

2000 Annual Report

**United States
Securities and Exchange Commission**

INTRODUCTION

The Securities and Exchange Commission is pleased to provide this Annual Report for fiscal year 2000. The activities and accomplishments presented on the following pages continue the agency's long tradition of effective enforcement in and regulation of our nation's capital markets.

The SEC is a civil law enforcement agency. Since its creation in 1934, the Commission's mission has been to administer and enforce the federal securities laws in order to protect investors, and to maintain fair, honest, and efficient markets.

Commission Members and Principal Staff Officers

Commissioners	Term Expires
Arthur Levitt, <i>Chairman*</i>	2003
In February 2001, Arthur Levitt stepped down as Chairman of the Securities and Exchange Commission, and Laura S. Unger was designated as Acting Chairman.	
Isaac C. Hunt, Jr., <i>Commissioner</i>	2000
Laura S. Unger, <i>Commissioner</i>	2001
Paul R. Carey, <i>Commissioner</i>	2002

Tracey Aronson, *Chief of Staff***

In February 2001, Tracey Aronson stepped down as Chief of Staff and David Levine was appointed Chief of Staff.

Jonathan G. Katz, *Secretary of the Commission*

Principal Staff Officers

David Martin, *Director, Division of Corporation Finance*

Michael McAlevey, *Deputy Director*

Martin Dunn, *Senior Associate Director*

Robert A. Bayless, *Associate Director*

Mauri Osheroff, *Associate Director*

Shelly E. Parratt, *Associate Director*

James Daly, *Associate Director*

William Tolbert, *Associate Director*

Richard Walker, *Director, Division of Enforcement*

Stephen Cutler, *Deputy Director*

William Baker, *Associate Director*

Paul Berger, *Associate Director*
Thomas Newkirk, *Associate Director*
Linda Thomsen, *Associate Director*

Joan McKown, *Chief Counsel*

David Kornblau, *Chief Litigation Counsel*
Stephen Crimmins, *Deputy Chief Litigation Counsel*

Charles Niemeier, *Chief Accountant*

Paul Roye, *Director, Division of Investment Management*
Cynthia Fornelli, *Deputy Director*
David B. Smith, *Associate Director*
Barry D. Miller, *Associate Director*
Susan Nash, *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*
Elizabeth King, *Associate Director*
Michael A. Macchiaroli, *Associate Director*
Catherine McGuire, *Associate Director/Chief Counsel*

David Becker, *General Counsel, Office of General Counsel*
Meyer Eisenberg, *Deputy General Counsel*
Meridith Mitchell, *Principal Associate General Counsel*
Anne E. Chafer, *Associate General Counsel*

Richard M. Humes, *Associate General Counsel*
Diane Sanger, *Associate General Counsel*
Jacob H. Stillman, *Solicitor*

Lori A. Richards, *Director, Office of Compliance Inspections and Examinations*

Mary Ann Gadziala, *Associate Director*

Gene Gohlke, *Associate Director*

John McCarthy, *Associate Director*

John Walsh, *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*

Estee Levine, *Director, Office of Congressional and Intergovernmental Affairs*

Marisa Lago, *Director, Office of International Affairs*

Susan Wyderko, *Director, Office of Investor Education and Assistance*

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

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.

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 will maintain his focus on investor protection by: increasing cooperation with the criminal authorities to combat securities fraud; fighting fraud in the microcap stock market; working to ensure that the securities industry's computers are prepared for the year 2000 (Y2K); maintaining quality accounting standards; harmonizing international accounting standards; and creating a regulatory framework that embraces new technology.

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.

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.

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. Unger 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. Unger played a key role in the Commission's efforts to deal with the Year 2000 problem. Ms. Unger worked to improve the disclosure of Year 2000 remediation efforts by both public reporting companies and Commission-regulated entities. Ms. Unger 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. Unger 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. Unger submitted a report outlining her findings and recommendations to the Commission: "Online Brokerage: Keeping Apace of Cyberspace."

Before being appointed to the Commission, Ms. Unger 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 Capitol Hill, Ms. Unger was an attorney with the Enforcement Division of the Securities and Exchange Commission in Washington, D.C.

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

SEC REGIONAL AND DISTRICT OFFICES

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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 \$445 million. Civil penalties ordered in SEC proceedings totaled more than \$43 million.

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 against them. The following is a sampling of the year's significant actions.

Financial Disclosure Cases

- *SEC v. Jay Gilbertson, et al.*¹ On September 28, 2000, the Commission filed charges against three individuals arising from its investigation into financial reporting fraud at McKesson HBOC, a Fortune 100 company formed by a merger of McKesson Corporation and HBO & Company. By “cooking the books” from 1997 through March 1999, the defendants enabled HBO & Company to report falsely in press releases and in periodic reports filed with the Commission that the

company was having an unbroken run of financial success and that HBO & Company had continually exceeded analysts' quarterly earnings expectations. One of the defendants, the former vice president of enterprise sales at HBO & Company, consented to the entry of an injunction and agreed to disgorge \$361,528.80 in ill-gotten gains (including interest) and to pay a civil penalty of \$50,000; this defendant also agreed to be barred for five years from serving as an officer or director of a public company. This case was pending as to the remaining defendants at the end of the fiscal year.

- *SEC v. Cosmo Corigliano, et al.*² The Commission filed a civil action, which was pending at the end of the fiscal year, against four former officers or managers of CUC International Inc. The Commission also instituted and simultaneously settled administrative proceedings against Cendant Corporation (which was created through a merger of CUC and HFS Incorporated), and three former managers of CUC. The administrative proceedings and litigation resulted from the Commission's investigation of a long-running financial fraud that began at CUC in the 1980s and continued until its discovery and disclosure by Cendant in April 1998. Upon disclosure of the fraud, the price of Cendant common stock plummeted, causing billions of dollars in losses for investors.
- *In the Matter of E.ON AG*³ The Commission brought and settled civil administrative fraud charges against E.ON AG, Germany's third largest industrial holding company (formerly known as Veba AG), for issuing materially false denials over the course of a month concerning merger negotiations with Viag AG, another German company. Veba denied press reports that it was engaged in merger negotiations with Viag when, in reality, the two companies had executed a

confidentiality agreement, retained investment bankers and legal advisors, exchanged financial forecasts, and engaged in high-level talks concerning proposed deal structures, valuation methods, corporate governance and other merger issues. E.ON consented to the entry of a cease and desist order.

- On September 27, 2000, the Commission announced the filing of 11 enforcement actions for fraud and related financial accounting and reporting abuses by six different public companies. These actions allege a variety of accounting abuses that were designed to fraudulently mislead the investing public about the state of the issuers' financial health. Among those named in the actions are former officers of Sirena Apparel Group, Inc. and Craig Consumer Electronics, Inc., two Southern California-based public companies. The SEC also brought securities fraud charges involving four other public companies located in California, Nevada, and Washington. These actions are part of a coordinated effort by the SEC and the U.S. Attorney for the Central District of California to highlight incidents of financial fraud occurring on the west coast.
- *SEC v. ABS Industries, Inc. et al.*⁴ On October 27, 1999, the Commission filed a complaint in federal district court against ABS Industries, William McCarthy, Theodore Ursu, John McHale, and David Bush. The complaint alleges that the defendants engaged in a fraudulent scheme to recognize millions of dollars of revenue prematurely by improperly recording purported “bill and hold” sales at ABS. The alleged purpose of this activity was to meet sales projections established by McCarthy. As a result, ABS overstated its accounts receivables, sales, pre-tax income, net income and earnings per share in its financial statements for fiscal year

1994 and for the first three quarters of 1995. This case was pending at the end of the fiscal year.

Offering Cases

Internet Cases

- On September 6, 2000, the Commission announced 15 enforcement actions against 33 companies and individuals who used the Internet to defraud investors by engaging in pump-and-dump stock manipulations. The perpetrators of these market manipulations “pumped” up the total market capitalization of those stocks involved by more than \$1.7 billion. The actions involve the stocks of more than 70 microcap companies and illegal profits of more than \$10 million. The cases include 11 civil actions filed in U.S. District Courts throughout the country and four related administrative proceedings, and involve individuals and small entities that spread false information through electronic newsletters, websites, e-mail messages, and through posts on Internet message boards. These actions were part of the fourth nationwide Internet fraud sweep conducted by the Commission, following earlier sweeps in 1998 and 1999.
- *SEC v. Yun Soo Oh Park a.k.a. Tokyo Joe, et al.*⁵ The Commission's action against Yun Soo Oh Park a.k.a. Tokyo Joe, and Tokyo Joe's Societe Anonyme Corp., a corporation under Park's control, alleged a scheme to defraud members of his Internet stock recommendation service through his undisclosed trading ahead of the stocks that he recommended over the Internet, the posting of false performance results, and

his recommendation of an issuer's stock without disclosing that he had indirectly received compensation from the issuer. This case was pending at the end of the fiscal year.

Microcap Cases

- On June 14, 2000, the Commission filed five actions against a total of 63 individuals and entities as part of a continuing campaign to clean up fraud in the “microcap” market for low-priced securities. The actions alleged a wide array of illegal conduct including “pump and dump” manipulation schemes, private placement fraud and investment adviser pay-to-play violations. All told, those charged reaped millions of dollars in illicit profits. In simultaneous criminal prosecutions, the U.S. Attorney for the Southern District of New York and the FBI announced indictments and criminal complaints naming more than 100 defendants in securities fraud schemes; the indictments name 11 members and associates of five different organized crime families in connection with several securities fraud scams. These individuals are charged with participating in numerous manipulations of microcap stocks, extortion, money laundering, bribery and kickbacks, witness tampering, and murder solicitation.

Insider Trading Cases

- *SEC v. James J. McDermott, Jr., et al.*⁶ The Commission filed a civil action against James J. McDermott, Jr., the former chairman and chief executive officer of Keefe, Bruyette & Woods, Inc., an investment banking firm, and two other individuals for insider trading. The complaint alleges that McDermott provided material nonpublic information, concerning at least six merger transactions, to Kathryn B.

Cannon, with whom he had a relationship. Cannon then purchased securities in relatively unknown regional banks. As a result of her illegal trading, Cannon made profits of at least \$88,135. The complaint also alleges that Cannon tipped a friend, Anthony P. Pomponio, who made profits of at least \$86,378. The U.S. Attorney for the Southern District of New York also filed criminal charges against these individuals, and, after a 12-day trial, a federal jury found McDermott and Pomponio guilty on charges of participating in an insider trading scheme with Cannon.⁷ The Commission's civil action, which was stayed pending the outcome of the criminal trial, was pending at the end of the fiscal year.

- *SEC v. John Freeman, et al.*⁸ The Commission filed an action alleging that 19 defendants engaged in a widespread insider trading scheme that produced over \$8 million in illegal profits. John Freeman, the source of the information, was a part-time word processor assigned by the temporary agency where he worked to two Wall Street investment banking firms, Goldman Sachs & Co., Inc. and Credit Suisse First Boston Corp. As a temporary employee at the two firms, Freeman was able to access material nonpublic information regarding numerous merger and acquisition transactions. Freeman allegedly misappropriated confidential information concerning at least 23 different transactions, and tipped at least ten others about the transactions. Some of those tipped by Freeman then tipped others about the transactions. Freeman was compensated by those he tipped in a variety of ways, including cash payments and gifts. Four principals or employees of broker dealers who traded on the inside information for their own account and/or

the accounts of their clients are also charged in the complaint. This case was pending at the end of the fiscal year.

Municipal Securities Cases

- On April 6, 2000, the Commission instituted and settled administrative proceedings against 10 Wall Street and regional brokerage firms for overcharging municipalities for government securities in a practice commonly known as “yield burning.” The firms are: Dain Rauscher Incorporated; Goldman, Sachs & Co.; Lehman Brothers Inc.; Merrill Lynch, Pierce, Fenner & Smith Incorporated; Morgan Stanley & Co. Incorporated; PaineWebber Incorporated; Prudential Securities Incorporated; Salomon Smith Barney Inc.; Warburg Dillon Read LLC; and William R. Hough & Co. The settlements were part of a global resolution of all yield burning claims with a total of 17 brokerage firms by the SEC; NASD Regulation, Inc.; the United States Attorney for the Southern District of New York; and the Department of the Treasury. The global resolution requires the firms to pay a total of more than \$139 million in disgorgement to Treasury and municipal issuers.
- *In the Matter of BT Alex. Brown Inc.*⁹ The Commission instituted and settled cease and desist and administrative proceedings against BT Alex. Brown, Inc., charging the firm with fraud in connection with two Pennsylvania transactions, and with yield burning in a number of other transactions. As part of a global settlement with the U.S. Attorney, the Department of the Treasury and the Commission, Alex. Brown agreed to pay disgorgement of more than \$15 million. The Commission also filed or instituted a number of related enforcement actions.

Broker-dealer Cases

- On September 26, 2000, the Commission announced that it had taken action against four broker-dealer firms as well as seven individuals associated with those firms for failing adequately to supervise individual brokers working in small, remote branch offices. Each supervisory failure involved a broker who had a disciplinary history or had been the subject of customer complaints. In addition, each of the actions charges the president of the broker-dealer with supervisory violations. Actions also were brought against four brokers associated with two of these firms for securities fraud. The brokers engaged in a variety of misconduct including unauthorized and unsuitable trading and churning investors' accounts, and theft of investor funds.
- *In the Matter of Investment Street Company, et al.; In the Matter of All-Tech Direct, Inc. a/k/a All-Tech Investment Group, Inc., et al.*¹⁰ The Commission instituted administrative proceedings against two broker-dealers—All-Tech Direct, Inc. and Investment Street Company—along with nine individuals charged with violating the federal margin lending provisions by providing loans in excess of legal limits to day trading customers. The Commission also charged some of the respondents with failing to disclose required information about the terms of the loans. Investment Street, two associated persons, and Dynamic Trading of Miami, Inc, an unregistered firm providing administrative services for Investment Street, settled the charges by consenting to the entry of cease-and-desist orders, and by agreeing to pay civil money penalties; two associated persons consented to suspensions from affiliation with any broker or dealer. The administrative

proceeding against All-Tech was pending at the end of the fiscal year.

Investment Adviser and Investment Company Cases

- *In the Matter of The Dreyfus Corporation, et al.*¹¹ The Commission instituted and settled administrative proceedings against the Dreyfus Corporation and Michael Schonberg, a portfolio manager for five Dreyfus funds, including the Dreyfus Aggressive Growth Fund (DAG). During DAG's first year, Schonberg's allocations of securities purchased in initial public offerings—especially “hot” IPOs—had the overall effect of favoring DAG over three other funds he managed. Dreyfus did not disclose the large impact of the IPO investments, though it was questionable whether DAG could replicate its prior performance through continuing to invest in IPOs as the fund grew larger. In fact, DAG's performance began to decline in June 1996. Notwithstanding this downturn and the fund's increased asset size, during the last quarter of 1996 Dreyfus continued to advertise DAG's excellent total return since its inception without disclosing the large impact of the IPOs on the fund's performance. The respondents consented to the entry of a cease and desist order. Schonberg also was ordered to pay a civil penalty of \$50,000 and was suspended from associating with any investment adviser for a period of nine months.
- *SEC v. Alan Brian Bond, et al.*¹² The Commission filed a civil action against New York pension fund manager Alan B. Bond for fraudulently receiving over \$6.9 million in kickbacks from brokerage firms in connection with his management of the pension and investment funds of such clients as the National Basketball Association, the Washington Metropolitan Transit Authority and the City University of New York. According to the

complaint, Bond dictated to the brokerage firms the amount of the mark-up on each trade; the firms, in turn, kicked back 57-80% of the mark-ups to Bond. In most cases, the kickbacks were funneled through dummy corporations set up by a registered representative at the firms. This case was pending at the end of the fiscal year.

International Affairs

The SEC operates in a global marketplace. The Office of International Affairs works to protect U. S. markets and investors by encouraging international regulatory and enforcement cooperation, negotiating information sharing arrangements for regulatory and enforcement matters, encouraging the adoption of high regulatory standards worldwide, and conducting technical assistance programs.

What We Did

- Worked with foreign authorities to address cross-border fraud, and signed a Memorandum of Understanding with the Singapore Monetary Authority.
- Addressed problems with non-cooperative jurisdictions by participating in multilateral efforts to enhance information sharing by secrecy havens.
- Promoted the implementation of high quality international standards.
- Offered technical assistance to regulators of emerging securities markets.

Enforcement Cooperation

The SEC needs assistance from foreign authorities to protect U.S. investors and markets from cross-border fraud. The SEC has developed formal and informal relationships with foreign authorities for enforcement cooperation, and has brought significant enforcement actions based on information gathered from abroad. The SEC has

entered into over 30 formal information-sharing arrangements with foreign counterparts. Most recently, in May 2000, the SEC, together with the U.S. Commodity Futures Trading Commission, signed a Memorandum of Understanding with the Monetary Authority of Singapore.

2000 Enforcement Cooperation Results

Requests to Foreign Authorities for Enforcement Assistance	345
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Requests from Foreign Authorities for Enforcement Assistance	519
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The following cases illustrate the effectiveness and importance of the SEC's international enforcement program.

- *SEC v. E.ON AG*. The SEC instituted and settled an administrative proceeding against E.ON AG, Germany's third largest industrial holding company (formerly known as Veba AG), based on materially false denials concerning merger negotiations with another German company, which violated U.S. anti-fraud laws. Veba's denials were made in Germany and widely disseminated there and in the United States. Veba settled this administrative proceeding, without admitting or denying the Commission's findings, by agreeing to the entry of a desist order.¹³
- *SEC v. Credit Bancorp et al.* The SEC filed a U.S. District Court action against Credit Bancorp, Richard Blech and others connected with a fraudulent ponzi scheme, and obtained an asset freeze and preliminary injunction. Defendants promised

investors risk-free returns of up to 14 percent a year, and induced investors to place the securities in purported trust accounts established at major financial institutions in the name of Credit Bancorp. In fact, the securities were not placed in trust accounts, but were placed in cash or margin accounts whose only signatory was Blech, the CEO of Credit Bancorp, and the promised returns were never met. Instead, Blech misappropriated the funds for his own use, or used the funds to pay earlier investors. The Swiss authorities assisted the SEC by freezing investor funds held in Swiss bank accounts and obtaining documents from Credit Bancorp's offices in Switzerland. The SEC is working with a U.S. Court-appointed trustee-receiver to repatriate money for investors' benefit.

- *SEC v. Hourmouzis and Loughnan*. The SEC filed a district court action against two Australian residents who used the Internet to falsely tout the stock of Rentech, Inc. to millions of investors in the United States and abroad. More than six million messages were posted on Internet sites and made to appear as though analysts wrote them. With the assistance of the Australian securities regulator, the SEC was able to connect the messages to the Australian defendants and to obtain injunctions from violations of the anti-fraud provisions of the federal securities laws. The Australian authorities are pursuing criminal charges against the Australian residents based on this conduct.¹⁴

Transparency and Disclosure

International Accounting 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 standards to be used in preparing financial statements. Securities regulators have been working on several projects to facilitate capital raising by seeking convergence on accounting standards among major countries. The SEC supports efforts towards convergence on high quality standards that provide investors consistent, comparable, relevant and reliable information.

SEC staff has been active, both directly and through the International Organization of Securities Commissions (IOSCO), in a project of the International Accounting Standards Committee (IASC) to develop international accounting standards that can be used in cross-border securities offerings and listings. Currently, foreign companies that register with the SEC are permitted to either prepare financial statements in accordance with U.S. GAAP or use their home country (or IAS) financial statements, with a reconciliation of net income and shareholder's equity to U.S. GAAP.

In February 2000, the SEC issued a concept release soliciting public comment on accounting, auditing and regulatory issues that affect the quality of financial reporting in a global environment. The SEC specifically raised questions about the possible use of IASC standards without reconciliation to U.S. GAAP in financial statements filed by foreign companies with the SEC. The staff is analyzing the approximately 100 comment letters received from a wide-range of respondents from the U.S. and other countries and is considering several alternatives for future action.

In addition, in May 2000, IOSCO approved a resolution recommending that its members accept financial statements prepared using IASC standards, as supplemented by national treatments (such as reconciliation) where necessary.

The SEC also followed closely the restructuring of the IASC from an industry organization to an organization dedicated to the public interest. SEC Chairman Arthur Levitt chaired an independent Nominating Committee that selected the trustees of the restructured IASC. The new Board, selected by the trustees based on technical expertise, will have sole responsibility for setting international accounting standards.

Investor Protection in the New Economy

With all of the highs and lows of today's new economy, the goals of investor protection and high quality corporate disclosure must remain priorities for both securities regulators and market professionals. The SEC chaired the IOSCO Task Force that developed a *Bulletin Regarding Investor Protection in the New Economy*. The Bulletin discusses four areas of heightened importance, to both investors and market professionals, when investing in the new economy:

- the initial public offering process;
- valuation of high tech companies, including accounting and financial reporting issues;
- the effects of short-term trading strategies on investors' risks and expectations; and
- preserving investor confidence.

Non-cooperative Jurisdictions

The less cooperative a country is in the fight against securities fraud, the more attractive it becomes as a locale for would-be securities law violators and the proceeds of their illegal transactions. The SEC has

been actively involved in efforts, on both a country-by-country basis and through international organizations, to encourage “non-cooperative” countries to join the international enforcement community. As a result of this international pressure, the past year has brought about changes in a number of secrecy havens.

Financial Stability Forum Offshore Financial Center Working Group

The Financial Stability Forum (FSF) comprises finance ministries, central banks and financial regulatory agencies, as well as international financial institutions such as the World Bank and the International Monetary Fund (IMF). The FSF determined that offshore countries with weak regulatory systems and a poor ability to cooperate can pose a threat to international financial stability. The SEC represented the United States in the FSF's working group on offshore financial centers (OFCs). The FSF publicly identified a list of OFCs that were perceived to be underregulated and uncooperative. The FSF recommend that the IMF conduct assessments of these OFCs for compliance with relevant international standards.

Financial Action Task Force Work on Non-Cooperative Jurisdictions

In June 2000, the international anti-money laundering organization, the Financial Action Task Force (FATF), with significant contribution from the SEC, publicly identified 15 countries as non-cooperative in light of serious deficiencies in their anti-money laundering regimes.

Through its participation in the FSF, FATF, and other similar international efforts to combat problems associated with non-cooperative countries, the SEC has been able to exert pressure on foreign countries to improve their ability to cooperate with SEC requests for assistance. Since being designated “non-cooperative,”

certain historically non-cooperative countries are now willing to assist the SEC's evidence gathering efforts.

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 implementation of the Core Principles, the SEC and other IOSCO members are conducting self-assessments regarding their compliance with the Core Principles. IOSCO also is working with international financial institutions (e.g., the IMF, the World Bank, the Asian Development Bank, and the Inter-American Development Bank), which are using the Core Principles in their reform and restructuring work.

Joint Forum

Through its work on the Joint Forum, the SEC is addressing issues that are of common interest to securities, banking and insurance regulators. The Joint Forum develops guidance to promote consistency in regulation of the different sectors of the financial services industry.

The SEC has participated in the Joint Forum's working groups that are studying the following issues:

- comparison of the structure and content of the core principles issued by securities, banking and insurance supervisors;

- approaches to corporate governance of regulated entities and the use of audits in the supervisory process; and
- approaches to risk assessment, internal controls, capital requirements and group-wide supervision.

Financial Stability Forum Implementation Task Force

The FSF is considering how to promote the global implementation of international standards to strengthen financial systems. SEC staff is working with the U.S. Department of the Treasury, Federal Reserve Board, and other FSF members on (a) identifying issues that may arise when countries adopt international standards, and (b) developing incentives, including technical assistance, to encourage countries to adopt international standards.

Technical Assistance

The SEC's technical assistance program helps emerging securities markets develop regulatory structures that promote investor confidence and capital formation. The program is multifaceted and includes training programs, review of foreign securities laws, and responses to specific inquiries from foreign regulators.

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, covering techniques for investigating securities law violations and oversight of market participants.

SEC staff participated in a range of overseas training initiatives including: a capital markets program in Bahrain for regulators from nine countries; corporate governance and clearance and settlement programs in the Russian Federation; and enforcement and self-regulatory organization programs in China.

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 82,709 complaints and inquiries, up nearly 15 percent from last year.
- Led in 8 investors' town meetings.
- Organized 44 education seminars.
- Released 10 new publications and
- substantially revised 2 existing brochures for investors.

Investor Complaints and Inquiries

Continuing Increase in Investor Contacts

The SEC's investor assistance staff received a record 82,709 complaints and inquiries, up 15 percent from 1999. The volume of investor contacts agency-wide has nearly doubled in the past five years, rising more than 94% since 1995. To better handle the increased volume of investor contacts, we launched a new online investor complaint form in December 1999. During the year, one-third of our total investor contacts came through this new tool or through

e-mail. Nearly half—approximately 49%—of these contacts came in over the telephone.

Complaint Trends

The SEC received a total of 28,345 complaints during 2000. Of these, 14,028—nearly half of all complaints—involved broker-dealers. The ten most common complaints against broker-dealers were:

1. Transfer of account problems
2. Failures to process/delays in executing orders
3. Unauthorized transactions
4. Misrepresentations
5. Failure to follow customer's instructions
6. Errors in processing orders
7. Errors/omissions in account records
8. Margin position sellouts
9. Difficulty in contacting broker
10. Receipt/delivery of funds following purchase/sale

Approximately 15% of all complaints received during the year concerned online broker-dealers. Online broker-dealer complaints rose to 4,258, up more than 28% over the 3,313 complaints we received in fiscal 1999 and more than 282% over the 1,114 complaints we received in fiscal 1998. The top five types of online broker-dealer complaints for fiscal 2000 included:

- Failure to process/delays in executing orders (716);
- Difficulty in accessing account/contacting broker (293);
- Margin position sellouts (289);

- Errors in processing orders (265); and
- Best execution problems (254).

Educating Investors

Because a well-educated investor provides one of the most important defenses against securities fraud, we continued our efforts to educate investors. A sampling of our significant accomplishments is as follows:

- *Investor Awareness Campaign on Brokered Certificates of Deposit.* We saw a dramatic rise in the number of complaints concerning long-term certificates of deposit sold by brokers. We discovered that increasing numbers of elderly investors have mistakenly purchased 20- and 30-year CDs from their brokers, intending only to obtain a 12-month CD. As a result, working with the banking regulators we mounted a nationwide investor education campaign, using extensive media coverage to ensure that investors are not misled.
- *Investors' Town Meetings and Seminars.* We led in investors' town meetings in the following cities:

Albuquerque, New Mexico Boston, Massachusetts Cleveland, Ohio
Los Angeles, California Milwaukee, Wisconsin New York, New York
St. Louis, Missouri Washington, D.C.

In connection with these town meetings, we and our partners—including industry associations, consumer groups, and state and federal agencies—held 44 educational seminars for beginning and advanced investors.

- *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.
- *New Publications.* We released the publications on the following page for investors:

Affinity Fraud: How To Avoid Investment Scams That Target Groups
How to spot affinity fraud and what to do if you have been lured into a scam

Broken Promises: Promissory Note Fraud
How investors-especially the elderly-can avoid promissory note scams

Certificates of Deposit: Tips for Investors
The risks of investing in brokered CDs, especially those with high-yields and long terms

Holding Your Securities: Get the Facts
The different ways securities can be held or registered and the advantages and disadvantages of each

Internet Fraud: How to Avoid Internet Investment Scams (revised)
How to spot different types of Internet fraud, what the SEC is doing to fight Internet investment scams, and how to use the Internet to invest wisely

Investment Advisers: What You Need to Know Before Choosing One
Frequently asked questions and answers investors should read before deciding on an investment adviser

Margin Trading

How margin works, the upsides and downsides of trading on margin, and the risks involved

Mini-Tender Offers: Tips for Investors (revised)

The potential risks of surrendering shares in a mini-tender offer

Risky Business: “Pre-IPO” Investing

How to avoid fraudulent and illegal “pre-IPO” scams

Rule 144: Selling Restricted and Control Securities

What investors need to know to sell their restricted or control securities and how to get a restrictive legend removed

Trade Execution: What Every Investor Should Know

The basics of where and how brokerage firms execute orders, including order routing, payment-for-order-flow, and internalization

Variable Annuities: What You Should Know

Important information to help investors better understand the benefits, risks, and costs of variable annuities

Regulation of Securities Markets

The Division of Market Regulation oversees the operations of the nation's securities markets and market participants. In 2000, the SEC supervised approximately 7,900 registered broker-dealers with over 83,200 branch offices and over 652,125 registered representatives. Broker-dealers filing FOCUS reports with the Commission had approximately \$2.9 trillion in total assets and \$186.1 billion in total capital for fiscal year 2000. In addition, the average daily trading volume reached 901 million shares on the New York Stock Exchange and over 1.55 billion shares on the Nasdaq Stock Market in calendar year 2000.

What We Did

- Developed rules to protect individuals' privacy.
- Approved the International Securities Exchange's application to become a national securities exchange.
- Created a committee to advise the Commission on market information fees and revenues.
- Proposed two rules that would require improved disclosure of order execution and routing practices by market centers and broker-dealers.
- Proposed rules requiring broker-dealers to disclose when a customer's order for a listed option was executed at a price inferior to the best-published quote, and generally requiring options markets' quotes to be firm.

Broker-Dealer Issues

Financial Modernization Legislation—Implementation of Privacy Rules

In accordance with the Gramm-Leach-Bliley Act of 1999, SEC staff worked with the bank regulators and the Federal Trade Commission to develop regulations to protect individuals' privacy. In June 2000, the Commission adopted Regulation S-P, which became effective on November 13, 2000.¹⁵

Regulation S-P applies to investment advisers registered with the Commission, brokers, dealers, and investment companies. Regulation S-P requires covered entities to adopt policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information. It also requires these entities to provide customers with a notice of their privacy policies and practices, including annual updates. In addition, covered parties may not disclose nonpublic personal information about a consumer to nonaffiliated third parties unless the consumer has been provided information regarding the proposed disclosure and the consumer has not opted out of the disclosure.

Internet Release

In April 2000, the Commission issued an interpretive release providing guidance on the use of electronic media, such as the Internet, under the federal securities laws.¹⁶ This release builds on earlier electronic media interpretative releases.¹⁷ Together, they are intended to help promote fair and orderly markets and the efficient dissemination of information to investors, security holders, and the securities markets while preserving key investor protection requirements. The 2000 release also addressed several outstanding issues on the use of electronic media to satisfy delivery obligations and issues relating to

online private offerings, including the importance of considering whether such activities require broker-dealer registration.

Letters Related to Broker-Dealer Activities

The staff issued a letter revoking a no-action position that had been granted to Dominion Resources, Inc. (Dominion) in 1985.¹⁸ The letter had been issued in response to a plan by Dominion to assist issuers by analyzing financial needs, recommending or designing financing methods, and participating in negotiations. In exchange, Dominion would have received a fee, that generally would not be payable unless the financing closed successfully, but in this case, the fee was not based on the successful issuance of securities to the public. Since issuing the 1985 letter, the staff has frequently considered the question of when a person is a broker that must register as a broker-dealer, and when a person is merely a “finder” that is not subject to registration. The staff now believes that an entity conducting the activities described in the letter would have to register as a broker-dealer.

The staff issued a no-action letter to an employee-leasing company that planned to “co-employ” the employees of registered broker-dealers. The staff concluded that the company did not have to register as a broker-dealer because, among other factors, the broker-dealers would maintain all supervisory control over its employees, and the fee received by the employee-leasing company would not be based on brokerage commissions.¹⁹

The staff also issued several letters addressing when online activities constitute broker-dealer activity. A no-action letter was issued to a website operator that proposed to administer an on-line customer loyalty program that gave consumers the option of redeeming cash rebates for shares in a mutual fund.²⁰ No-action requests were denied to website operators that proposed to bring the issuers of

securities together with investors.²¹ The staff also advised the operator of a website that conducted auctions of municipal securities that it was engaged in broker-dealer activity and should register.²² The staff further advised a transfer agent that operated a facility that brought together buyers and sellers of securities in return for a fee that it was engaged in broker-dealer activity and should register.²³

Foreign Broker-dealers—Exemption for Activities of Canadian Broker-dealers

On June 7, 2000, the Commission issued an exemptive order permitting Canadian broker-dealers to provide services to individuals who established Canadian retirement accounts while resident in Canada, but who are now resident in the United States, without having to register with the Commission or follow other requirements that apply to brokers or dealers who are not registered with the Commission.²⁴ The order included several conditions, including restrictions on advertising, solicitation of new accounts, and a requirement (subject to exception) that the Canadian broker have an existing relationship with the account participant before the participant enters the U.S.

Order Exempting American Express Travel Related Services

The Commission issued an order exempting American Express Travel Related Services, Inc. (TRS), a wholly-owned subsidiary of the American Express Company (American Express), from having to register as a broker-dealer.²⁵ The exemption allows TRS to establish and operate a processing arrangement for American Express cardholders to purchase variable annuity contracts and mutual funds through affiliated broker-dealers as part of their monthly card payment. The exemption was conditioned on TRS's representation that the registered broker-dealers would have exclusive responsibility for the accounts, orders, and transactions, as well as other representations

about the activities and responsibilities of TRS, its employees, and affiliates.

Arbitration and Mediation

The Commission approved a pilot program that allows parties to agree to use a single arbitrator for larger dollar amount cases to keep costs down and to expedite their cases.²⁶ The Commission further approved a NASD rule change that allows parties to stay arbitration proceedings to allow for further efforts at mediation.²⁷ In addition, the Commission's approval of an NASD proposal to place its dispute resolution activities into a separate subsidiary, NASD Dispute Resolution, Inc. became effective on July 9, 2000.²⁸

The National Money Laundering Strategy for 2000

The staff worked with the Departments of Treasury and Justice on initiatives called for by *The National Money Laundering Strategy for 2000*.²⁹ This is the second of five Strategies called for by the Money Laundering and Financial Crimes Strategy Act of 1998. We worked closely with other government agencies to implement the Strategy and identify ways to assure that anti-money laundering measures aid broker-dealer efforts in blocking laundering through the securities markets. The staff also worked on initiatives relating to the development of a suspicious activity reporting rule for broker-dealers, the identification of ways in which accountants and lawyers may play a role in the fight against money laundering, and the creation of guidance for scrutiny of high-risk accounts.

Securities Markets, Trading and Significant Regulatory Issues

SEC/CFTC Joint Proposal

In September 2000, Chairman Levitt and Commodity Futures Trading Commission (CFTC) Chairman Rainer reached an historic accord lifting the statutory ban on single stock futures. They submitted a joint proposal to Congress a statutory framework for the joint SEC/CFTC regulation of markets and intermediaries that trade futures on single securities and on narrow-based security indices. The joint proposal followed a December 1999 request from various Congressional committees. The joint SEC/CFTC proposal was largely incorporated into the Commodity Futures Modernization Act of 2000.

Alternative Trading Systems (ATS)

Regulation ATS under the Exchange Act establishes recordkeeping and reporting requirements for ATSs that choose to register as broker-dealers. In 2000, our staff reviewed 27 initial operation reports, 57 amendments, 120 quarterly activity reports, and 2 reports of cessation of operations under Regulation ATS.

Order Handling Rules

The staff renewed, through June 15, 2001, nine no-action letters to electronic communications networks (ECNs) regarding the ECN Display Alternative provisions adopted as part of the Order Handling Rules. In fiscal 2000, letters were issued to Instinet Real-Time Trading Service, the Island ECN, Bloomberg Tradebook, Archipelago, the Routing and Execution DOT Interface ECN, the ATTAIN System, the Strike System, NexTrade, and MarketXT. No-action relief was also issued for the first time to Globenet System. The Division of Market Regulation published a report entitled *Electronic Communication Networks and After-Hours Trading* (June 2000).

Disclosure of Order Execution and Order Routing Practices

In July 2000, the Commission proposed two rules that would require improved disclosure of order execution and routing practices by market centers and broker-dealers.³⁰ Under rule 11 Ac1-5, market centers that trade national market system securities would be required to make publicly available monthly electronic reports that include uniform statistical measures of execution quality. Under rule 11 Ac1-6, broker-dealers that route customer orders in equity and option securities would be required, among other things, to make publicly available quarterly reports that identify the venues to which customer orders are routed for execution.

Day Trading

In July 2000, the Commission approved a new NASD rule that requires firms promoting a day-trading strategy to: make a determination that day trading is appropriate for the customer when it approves the customer's account for day trading; or (b) obtain from the customer a written agreement stating that the customer does not intend to use the account for day-trading activities.³¹ The new rule also requires firms promoting a day trading strategy to furnish a risk disclosure statement to non-institutional customers prior to opening an account.

Derivatives

The Commission continued to approve new derivative products designed to aid investors in risk management while strengthening market stability and integrity. The Commission approved listing standards and trading rules proposed by several exchanges to permit the trading of several new derivative products, including trust issued receipts, portfolio depository receipts issued by a unit investment trust, and index fund shares issued by an open-end management investment company. By approving these “generic” listing standards and trading rules, these exchanges are now able to begin trading new

derivative products using an expedited procedure under rule 19b-4(e). Under this rule, which the Commission approved in 1998, an exchange can start trading a new derivative product without prior Commission approval 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. By the end of fiscal 2000, exchanges, in the aggregate, commenced trading of over 100 new derivative products under this rule.

International Securities Exchange

On February 24, 2000, the Commission approved the International Securities Exchange's (ISE) application to become a national securities exchange.³² The ISE began trading three options classes on May 26, 2000, after the SEC approved the proposed rule changes and grants of exemptive relief from the exclusivity provision in the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information.

Options Market Reform

The Commission continued to work closely with the options exchanges on a number of initiatives designed to encourage the further integration of the options markets into the national market system.

- *Intermarket Linkage Plan.* On July 28, 2000, the Commission approved an intermarket linkage plan³³ proposed by three of the options exchanges.
- *Proposed Trade-Through Disclosure Rule and Amendments to the Quote Rule.* On July 28, 2000, the Commission proposed a new rule that would require a broker-dealer to disclose when a customer's order for a listed option was executed at a price

inferior to the best-published quote. Transactions effected on an options market that participates in a linkage plan approved by the Commission would not require disclosure. The Commission also proposed amendments to its Quote Rule that would require options markets' quotes to be firm up to their published quotation size for customer orders.³⁴

Decimal Pricing

After extensive discussions throughout 1999 and early 2000 among participants in the securities industry about coordinating the conversion from fractions to decimals, the Commission, on June 8, 2000, ordered the self-regulatory organizations (SROs) to submit a decimal pricing phase-in plan by July 24, 2000. In the plan, the SROs outlined a schedule for the complete transition to decimal pricing in the securities markets by April 9, 2001.

On August 28, 2000, decimal pricing began in seven NYSE-listed stocks and six Amex-listed stocks, as well as for the options on those stocks. On September 25, 2000, decimal pricing expanded to 57 additional NYSE-listed stocks and 49 Amex-listed stocks, as well as for the options on those stocks. At each stage of the decimal phase-in of listed stocks, no significant problems were reported for systems operations, market capacity, or clearance and settlement.

As exchange-listed stocks and options converted from fractional to decimal pricing, Nasdaq prepared for decimalization with the goal of completing full decimal conversion no later than April 9, 2001. Decimal pricing on Nasdaq securities and the options on those securities will be implemented in three phases. On March 12, 2001, decimal pricing will begin in a pilot of 15 Nasdaq securities (and their options). On March 26, 2001, decimal pricing will begin in 100-200 additional Nasdaq

securities (and their options). All remaining Nasdaq securities and their options will begin quoting in decimals on April 9, 2001.

Market Information

On December 8, 1999, the Commission issued a concept release on the regulation of market information fees and revenues, to solicit public comment on the arrangements currently in place for disseminating market data to the public. In particular, the release focused on a cost-based limit on market information revenues; increasing public disclosure of fees, revenues, and costs; and expanding participation in the fee-setting process. We received approximately 35 comment letters, which revealed widely varying views. In response, the Commission created an Advisory Committee to examine issues relating to the public availability of market information in the options and equities markets and make recommendations for future action.

Oversight of Self-Regulatory Organizations

National Securities Exchanges

As of September 30, 2000, there were nine active securities exchanges registered with the SEC as national securities exchanges: American Stock Exchange (Amex), Boston Stock Exchange, Chicago Board Options Exchange, Cincinnati Stock Exchange, Chicago Stock Exchange, International Stock Exchange, New York Stock Exchange (NYSE), Philadelphia Stock Exchange, and Pacific Exchange Inc. During fiscal 2000, the Commission granted 180 exchange applications to delist equity issues and 46 applications by issuers seeking withdrawal of their issues from registration and listing on exchanges. The exchanges submitted 386 proposed rule changes during 2000. We approved 330 pending and new proposals. Thirty-two were withdrawn.

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 submitted 82 proposed rule changes to the SEC during the year. We approved 70, including some pending from the previous year. Seven were withdrawn. The NASD owns and operates The Nasdaq Stock Market (Nasdaq). In June 2000, Nasdaq ceased to be a wholly-owned subsidiary of the NASD. This was accomplished through a private placement of approximately 24 million shares of newly issued common stock in Nasdaq, and the sale by the NASD of warrants to purchase Nasdaq stock owned by the NASD would be redeemable over time for more than 25 million additional shares of Nasdaq common stock. Over 2,800 investors other than the NASD now own approximately 40% of Nasdaq.

Municipal Securities Rulemaking Board

The Municipal Securities Rulemaking Board (MSRB) is the primary rulemaking authority for municipal securities dealers. In fiscal 2000, we received 10 new proposed rule changes from the MSRB. A total of 11 new and pending proposed rule changes were approved, including amendments to MSRB rules that accommodate municipal fund securities. These securities are defined to include, among other things, interests in higher education trusts and local government investment pools, and the development of a new transaction report that will include data regarding all municipal securities transactions.

Trading Practices Developments

Regulation M

In August 2000, the Division of Market Regulation published a staff legal bulletin to remind underwriters, broker-dealers, and any other person who is participating in an offering of securities (distribution participants) that they are prohibited from requiring their customers to make aftermarket purchases as a condition for receiving an allocation of shares in the offering. The bulletin also reminds distribution participants that they are prohibited from soliciting aftermarket purchases while they are still in distribution.³⁵

Technology Developments

Year 2000

The Year 2000 conversion effort concluded with no problems identified in the securities markets. To facilitate this effort, the Division of Market Regulation established a Data Collection Center, which provided a website for major securities industry participants to report their progress. The Data Collection Center was a vital link to maintaining contact with market centers, broker-dealers, and investment companies and relaying that information to the President's Year 2000 Council and other regulators.

Automation Review Policy Program

The Automation Review Policy (ARP) program oversees the automation systems of the securities markets and market participants focusing on systems capacity and availability. The ARP program staff performed seven on-site inspections and issued 32 recommendations for improvement in information technology resources.

Clearance and Settlement Developments

Lost and Stolen Securities

As of December 31, 2000, 25,824 institutions were registered in the lost and stolen securities program, a one percent increase since 1999. The number of securities certificates reported as lost, stolen, missing or counterfeit increased 23 percent to 1,767,496 in 2000. The aggregate dollar value of these reported certificates was \$28,143,441,256, an increase of 20 percent. The total number of lost and stolen recovery reports received increased 7 percent to 214,165. The dollar value of these recovery reports increased to \$6,810,636,419, a 5 percent increase. Institutions participating in the program inquired about 7,267,028 certificates in total, a decrease of 9 percent. In 2000, a 21 percent increase to \$8,337,252,349 was experienced in the dollar value of certificate inquiries that matched previous reports of lost, stolen, missing, or counterfeit securities certificates.

Trade Reporting Rules

One of the undertakings in the settlement of an enforcement action against four of the five options exchanges³⁶ directs the exchanges to file proposed rule changes that would require options transactions to be reported within 90 seconds of the time of execution. The staff worked with the options exchanges to finalize their trade reporting rules to maintain consistency with the settlement agreement.

Net Capital Developments

In a no-action letter to the Securities Industry Association's Capital Committee, Commission staff provided guidelines to broker-dealers computing net capital on the appropriate treatment of certain debt securities and preferred stock. Securities will be deemed to have a ready market and receive this favorable treatment if the issuer of these securities is not in default, the initial issuance generally was greater

than \$20 million and the securities have not been in inventory for more than 90 days because of a failed offering. Further, the securities must either be issued by an issuer with outstanding non-preferred equity securities that are registered with the Commission whose equity securities are included in the FTSE World Index, traded on a national securities exchange or Nasdaq, have current non-investment grade ratings from at least two NRSROs, or have investment grade rating by one NRSRO. If the above-described criteria are met, the no-action letter sets forth guidelines for the “haircut” a broker-dealer should apply to these securities when computing net capital.

The staff also issued a letter to the NYSE and NASD Regulation clarifying the staff's position regarding the net capital treatment of temporary capital contributions. This no-action letter specifies that when an individual investor contributes capital to a broker-dealer with an understanding that the contribution can be withdrawn at the option of the individual investor, the contribution may not be included in the firm's net capital computation and must be recharacterized as a liability. The letter further states that any withdrawal of capital for that investor within one year (other than required tax payments or reasonable compensation as permitted under 15c3-1(e)(4)(iii)) will be presumed to have been contemplated at the time of contribution.

Municipal Securities Issues

Municipal Market Roundtable

The Commission held its Second Annual Municipal Market Roundtable in October. During the Roundtable, panels composed of issuers, underwriters, lawyers, financial advisers, investors, and SEC staff discussed current issues in the municipal securities market, including disclosure issues, use of electronic media, and MSRB rules. The Roundtable also included individual investors for the first time.

Pay-to-Play Practices

The Commission continued its efforts to end pay-to-play practices in the municipal securities markets, educate and promote compliance with related rules of the MSRB, and encourage voluntary action by national and local bar associations to end the practice. On February 14, 2000, after four years of controversy, the American Bar Association voted to adopt new ethics rule 7.6. This rule prohibits a lawyer or law firm from accepting government legal engagements or judicial appointments if they make or solicit political contributions for the purpose of obtaining the business or position.

Investment Management Regulation

The Investment Management Division regulates investment companies (which include mutual funds, closed-end funds, and unit investment trusts) 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

- Introduced a new on-line electronic registration and filing system for investment advisers.
- Adopted rules requiring investment companies and investment advisers to safeguard personal financial information, and to disclose their privacy policies to customers.
- Proposed amendments that would require mutual funds to disclose standardized after-tax returns for 1-, 5-, and 10-year periods to help investors understand the magnitude of tax costs and compare the impact of taxes on the performance of different funds.
- Adopted and amended rules permitting the delivery of a single prospectus and single copy of a shareholder report to two or more investors sharing the same address.
- Adopted and amended rules enabling Canadian investors living in the United States to purchase and sell in Canadian

tax-deferred retirement accounts securities not registered for sale in the United States.

Significant Investment Company Act Developments

Rulemaking

- *After-Tax Returns.* A mutual fund's trading practices and investment strategies affect the amount of taxes that investors must pay on fund profits. To help investors understand the magnitude of tax costs and compare the impact of taxes on the performance of different funds, the Commission proposed rule amendments that would require mutual funds to disclose standardized after-tax returns for 1-, 5-, and 10-year periods.³⁷ After-tax returns, which would accompany before-tax returns, would be presented in two ways: (1) returns after taxes on fund distributions only; and (2) returns after taxes on fund distributions and a redemption of fund shares.
- *Householding.* The Commission adopted a new rule under the Securities Act, and amended rules under the Exchange Act and the Investment Company Act, to allow mutual funds to deliver a single prospectus and single copy of a shareholder report to two or more investors sharing the same address.³⁸
- *Offers and Sales of Securities to Canadian Retirement Accounts.* The Commission adopted and amended rules permitting Canadian investors who reside or are temporarily present in the United States to manage their investments in Canadian tax-deferred retirement accounts.³⁹ The Commission adopted new rule 237 under the Securities Act and new rule 7d-2 under the Investment Company Act, and amended rule 12g3-2 under the Exchange Act, to permit

foreign investment companies and other foreign issuers to offer and sell securities to those Canadian investors' tax-deferred retirement accounts without registering the securities or the investment companies under United States securities laws. The rules do not, however, affect the applicability of the anti-fraud provisions of the United States securities laws.

- *Foreign Custody Arrangements.* The Commission adopted new rule 17f-7 under the Investment Company Act, and amended rule 17f-5 under the Investment Company Act, concerning the foreign custody of investment company assets.⁴⁰ The new rule and amendments permit mutual funds to keep fund assets in eligible foreign securities depositories that are regulated by a foreign financial regulatory authority and that comply with the rule's standards for security, recordkeeping, and reporting.
- *Interim Investment Advisory Contracts.* The Commission amended rule 15a-4 under the Investment Company Act, the rule that permits an investment adviser to an investment company to serve for a short period of time under an interim contract that shareholders have not approved.⁴¹ The amendments: (1) clarify the timing of the board of directors' approval of the interim contract; (2) allow an adviser to serve under an interim contract after a merger or other business combination involving the adviser or a controlling person of the adviser; and (3) lengthen the maximum duration of the interim contract from 120 days to 150 days.
- *Electronic Signatures Act.* The Commission adopted an interim rule under the Securities Act to exempt from the consumer consent requirements of the Electronic Signatures in Global

and National Commerce Act (Electronic Signatures Act) prospectuses of registered investment companies that are used for the sole purpose of permitting supplemental sales literature to be provided to prospective investors.⁴² This rule implements a provision of the Electronic Signatures Act, which directs the Commission to provide such an exemption. Consistent with Commission interpretations of existing law, the rule permits a registered investment company to provide its prospectus and supplemental sales literature on its web site or by other electronic means without first obtaining investor consent to the electronic format of the prospectus.

- *Significant Investor Privacy Developments.* The Commission adopted Regulation S-P, privacy rules promulgated under the Gramm-Leach-Bliley Act of 1999.⁴³ Regulation S-P implemented the requirements of the Gramm-Leach-Bliley Act with respect to, among others, SEC-registered investment advisers and investment companies, which are financial institutions subject to the SEC's jurisdiction under that Act, by requiring them to:
 - disclose their privacy policies to customers initially, then annually, during the customer relationship;
 - provide a method for consumers and customers to opt out of disclosure of information to third parties; and
 - adopt policies and procedures to protect the confidentiality and integrity of nonpublic personal information.

Exemptive Orders

The Commission issued 300 exemptive orders to investment companies (other than insurance company separate accounts) seeking relief from various provisions of the Investment Company Act. The Commission also issued 64 exemptive orders to investment companies that are insurance company separate accounts.

Some of the significant exemptive orders that the Commission issued in fiscal 2000 are discussed below.

- *Exchange-Traded Funds.* The Commission issued several orders permitting open-end investment companies to operate as exchange-traded funds.⁴⁴ Two of these orders were the first to grant prospective relief for certain exchange-traded funds that applicants may offer in the future.⁴⁵ The Commission also issued an order permitting an open-end investment company to issue an exchange-traded class of shares.⁴⁶
- *Internet Holding Company.* The Commission issued an order declaring that an Internet holding company was not an investment company under the Investment Company Act.⁴⁷
- *Unaffiliated Fund-of-Funds.* The National Securities Markets Improvement Act of 1996 (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 unit investment trust to invest in unaffiliated mutual funds, subject to conditions designed to address investor protection concerns.⁴⁸ The Commission also issued an order upon an application from an “underlying fund” to permit unaffiliated funds-of-funds to acquire shares of the underlying fund.⁴⁹

- *Foreign Investment Company.* The Commission issued an order permitting a South African closed-end investment company, registered under section 7(d) of the Investment Company Act, to maintain its assets with a central securities depository in South Africa.⁵⁰
- *Shareholder Approval of Subadvisory Contracts.* The Commission issued an order permitting an open-end investment company that operates as a “multi-manager” fund to enter into, and materially amend, subadvisory agreements with sub-advisers that are wholly owned subsidiaries of the adviser and with sub-advisers that are not affiliated with the adviser.⁵¹ The order did not require shareholder approval of the new or amended subadvisory agreements.
- *Managerial Strategic Investment Company.* The Commission issued an order permitting an applicant to operate as a managerial strategic investment company (MSIC). As an MSIC, the applicant will provide a source of long-term financial support and managerial assistance to public companies seeking to improve their competitiveness.⁵²

Interpretive and No-Action Letters, Interpretive Releases, and Staff Legal Bulletins

Some of the most significant Investment Company Act guidance that the Division issued in 2000 is discussed below.

- *Valuation and Redemption.* The staff provided interpretive guidance to mutual funds and their directors concerning the valuation of portfolio securities, and suspensions of redemptions of fund shares. The guidance included:

- when and how funds must fair value price their portfolio securities;
 - factors that funds should consider when fair value pricing their portfolio securities;
 - how fund boards may discharge their obligations to fair value price a fund's portfolio securities in good faith; and
 - when funds are permitted to suspend redemptions.⁵³
- *Distribution Information.* The staff stated that a mutual fund could provide information about actual and estimated distributions to shareholders, via the fund's automated telephone system, consistent with rule 482 under the Securities Act, even though the information did not meet certain requirements of the rule that apply to the presentation of performance data.⁵⁴
 - *Reporting Requirements for Independent Directors.* The staff stated that it would not recommend enforcement action under section 17(j) of the Investment Company Act and rule 17J-1 if, for purposes of the personal trading reporting requirements of rule 17J-1, certain directors of an investment adviser to an investment company are treated in the same manner as are the directors of the investment company who are not “interested persons” of that company.⁵⁵
 - *Collective Investment Trusts.* The staff stated that a collective investment trust that consists of certain separate funds is “maintained by a bank” for purposes of an exclusion from the definition of “investment company” under the Investment

Company Act if the bank exercises “substantial investment responsibility” with respect to each of those funds. The staff also stated that a bank is exercising “substantial investment responsibility” if the bank exercises all or substantially all of the investment responsibility required in managing the trust.⁵⁶

- *Finance Companies.* The staff stated that it would not recommend enforcement action under section 7 of the Investment Company Act if a finance company did not register as an investment company and treated its operating company subsidiary as a majority-owned subsidiary for purposes of the 40 percent test in section 3(a)(1)(C) of the Act, even though the voting power to elect a majority of the board of directors of the operating company was held, not by the finance company, but by the owners of the trust units issued by the finance company.⁵⁷

The staff also stated that it would not recommend enforcement action under section 7 of the Investment Company Act if a finance company did not register as an investment company under the Act in reliance on rule 3a-5 where the finance company's securities were controlled, but not owned, by either the finance company's parent, or companies controlled by the parent. The finance company would be formed solely to provide financing for the parent or companies controlled by the parent and, with the exception of having only one class of securities that the parent or companies controlled by the parent, at least initially, would not “own,” the finance company either would meet all of the conditions in rule 3a-5, or would have the same characteristics as finance subsidiaries organized as business trusts with respect to which the staff previously agreed not to recommend enforcement action to the Commission.⁵⁸

- *In-Kind Redemptions.* The staff stated that it would not recommend enforcement action under section 17(a) of the Investment Company Act if, in limited circumstances, a fund satisfies a redemption request from an affiliated person by means of an in-kind distribution of portfolio securities, without obtaining an order from the Commission under section 17(b) of the Act.⁵⁹
- *Shareholder Approval of Reduction of Closed-End Fund Advisory Fee.* The staff stated that it would not recommend enforcement under section 15(a) of the Investment Company Act if an investment adviser to a closed-end fund serves under an advisory contract after implementing a permanent reduction in the amount of compensation paid under the contract, without seeking and obtaining shareholder approval for the change in compensation.⁶⁰
- *Bunched Orders for Privately Placed Securities.* The staff provided interpretive guidance regarding, and no-action relief under, section 17(d) of the Investment Company Act, and rule 17d-1, to an investment adviser that proposed to aggregate orders, on behalf of itself and funds and private accounts for which it served as adviser, for the purchase and sale of private placement securities for which the adviser negotiated no term other than price.⁶¹ In a subsequent letter, the staff clarified that its prior guidance and relief did not address aggregated transactions in which a fund's investment adviser: (1) does not participate or have a material pecuniary interest in a party that does participate; but (2) negotiates the terms of the private placement securities on behalf of the fund and other participants in the transaction.⁶²

- *Multiple Interim Advisory Contracts.* The staff stated that it would not recommend enforcement action under section 15(a) of the Investment Company Act if an investment adviser serves, for a total of no more than 150 days, under certain interim investment advisory contracts that were not approved by the funds' shareholders. The original contracts terminated due to their assignment, which occurred in connection with a change in control of the adviser. Control of the adviser changed two additional times, resulting in the assignment and termination of the first and second set of interim advisory contracts with the funds.⁶³
- *Presentation of Fund Performance.* The staff stated that it would not recommend enforcement action under section 5(b) of the Securities Act, section 34(b) of the Investment Company Act, or section 206 of the Investment Advisers Act if a fund spins off one of its classes of shares into a newly created fund and the newly created fund includes the performance information of the spun-off class as part of its standardized performance information, provided that, among other things, the new fund is a continuation of the spun-off class.⁶⁴
- *Index Fund Investments in Securities-Related Issuers.* The staff stated that it would not recommend enforcement action under section 12(d)(3) of the Investment Company Act if, under certain circumstances, a fund that has an investment objective of matching the investment performance of an unaffiliated, broad-based, securities market index, or an index that is based on sector classifications of such an index, invests more than 5 percent of its total assets in securities issued by certain financial services companies.⁶⁵

Significant Investment Advisers Act Developments

Rulemaking

- *Electronic Filing for Investment Advisers.* The Commission replaced the paper-based system for SEC investment adviser registration with the Investment Adviser Registration Depository (IARD), a one-stop, Internet-based registration system for investment advisers. The initiative involved the proposal and adoption of several new and amended rules and forms under the Investment Advisers Act to accommodate the new IARD, reflecting changes effected by NSMIA and other recent legislation, and making other improvements. SEC-registered advisers were required to transition to the IARD system during January-April 2001.⁶⁶
- *Investment Adviser Disclosure.* The Commission proposed amendments to the disclosure brochure that SEC-registered investment advisers must provide to their clients. Under the proposed amendments, the brochure would be a narrative document, written in plain English, providing information about the advisory firm, its business practices, and its disciplinary history. Supplements to the brochure would disclose information, including disciplinary information, about advisory personnel.⁶⁷
- *Broker-Dealer Exclusion.* The Commission proposed new rule 202(a)(11)-1 under the Investment Advisers Act to exclude certain broker-dealers, registered with the Commission under the Exchange Act, from the definition of “investment adviser” under the Investment Advisers Act. The proposed rule would exclude a broker-dealer that charges asset-based fees, provided the broker-dealer does not have discretionary authority over an account and satisfies certain other

conditions. The proposed rule also would exclude a broker-dealer that charges one commission rate for execution-only brokerage accounts and higher commission rates for full-service brokerage accounts. Under the current regulatory regime, these fee structures could result in the broker-dealer being an investment adviser under the Investment Advisers Act. The proposed rule also clarifies that if a broker-dealer is subject to the Investment Advisers Act, it is subject to the Act only with respect to its advisory clients.⁶⁸

Interpretive and No-Action Letters, Interpretive Releases, and Staff Legal Bulletins

- *Records Substantiating Investment Adviser Advertisements.* The staff notified investment advisers that advertise their performance that they can facilitate examinations by the staff by maintaining: (1) records prepared by third parties (e.g., custodial or brokerage statements) that confirm the accuracy of client account statements and other performance-related records maintained by the advisers pursuant to rule 204-2(a)(16) under the Investment Advisers Act; and (2) reports prepared by independent auditors that verify the advisers' advertised performance.⁶⁹
- *Financial Advisors.* The Division issued a Staff Legal Bulletin providing guidance on the applicability of the Investment Advisers Act to financial advisors to issuers of municipal securities. The staff clarified the circumstances under which financial advisors may be investment advisers under the Investment Advisers Act (e.g., when their advice routinely goes beyond the structuring of bond offerings to the investment of temporarily idle bond proceeds in non-government securities). The staff also specified that financial advisors may provide

specific advice to clients about investing bond proceeds in money market funds without being deemed investment advisers under certain circumstances.⁷⁰

Significant Public Utility Holding Company Act Developments

Developments in Holding Company Regulation

The trend toward consolidation of utility company systems resulted in an increase in the number of proposed mergers and acquisitions considered by the Commission in 2000. The Commission approved 5 new registered holding companies in 2000. Also in 2000, foreign companies purchased domestic utility systems for the first time, and holding companies continued to invest in nonutility activities in the United States and abroad.

Registered Holding Companies

As of September 30, 2000, there were 23 public utility holding companies registered under the Holding Company Act. The registered systems were comprised of 186 public utility subsidiaries, 68 exempt wholesale generators, 354 foreign utility companies, 840 nonutility subsidiaries, and 244 inactive subsidiaries, for a total of 1,715 companies and systems with utility operations in 39 states. These holding company systems had aggregate assets of approximately \$287 billion, and operating revenues of approximately \$121 billion for the period ended September 30, 2000.

Financing Authorizations

The Commission authorized registered holding company systems to issue approximately \$17.8 billion of securities, an increase of approximately 54 percent from last year. The total financing

authorizations included \$2.7 billion for investments in exempt wholesale generators and foreign utility companies.

Examinations

The staff conducted examinations of 2 service companies, 2 parent holding companies and 12 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 \$9.7 million.

Orders

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

- *The National Grid Group plc.* The Commission authorized The National Grid Group plc (National Grid), a U.K. public limited company, to acquire New England Electric System (NEES), a domestic registered holding company. In finding that the transaction satisfied the requirements of the Holding Company Act, the Commission evaluated several factors, including issues related to foreign acquisitions of United States utilities. Following the merger, National Grid and each of the intermediate holding companies formed to facilitate the merger registered as public utility holding companies under section 5 of the Holding Company Act.⁷¹

- *American Electric Power Company, Inc.* The Commission authorized American Electric Power Company, Inc. (AEP), a registered holding company, to acquire Central and South West Corporation (CSW), also a registered holding company. The Commission found physical interconnection and coordination of the combined system, in part, on the basis of a four-year 250-megawatt contract path providing east-to-west firm transmission service from AEP to CSW.⁷²

Concept Release

The Commission issued a concept release seeking comment on various issues relating to foreign acquisitions of United States utilities.⁷³ Specifically, the Commission solicited comment on the impact of foreign ownership on effective Commission regulation, effective state regulation, investor protection, and consumer protection.

No-Action Letter

The staff issued a no-action letter to HSBC Holdings plc, a U.K. financial services holding company, and certain of its subsidiaries (collectively, HSBC Group). The members of HSBC Group collectively owned more than 10 percent of the common stock of National Grid and provided loans and services to National Grid in connection with the acquisition of NEES (see above). HSBC Group requested assurance that no member of the group would be regulated as a holding company under section 2(a)(7), or an affiliate under section 9(a)(2), of the Holding Company Act, provided that the HSBC Group adhered to certain voting limitations and other conditions and restrictions placed on its relationship with National Grid, NEES, and NEES' domestic subsidiaries.⁷⁴

Compliance Inspections and Examinations

The Office of Compliance Inspections and Examinations manages the SEC's examination program. We inspect and examine brokers, dealers, municipal securities dealers, self-regulatory organizations (SRO), transfer agents, clearing agencies, investment companies, and investment advisers.

What We Did

- Inspected 263 investment company complexes, 1,458 investment advisers, 20 insurance company complexes, 650 broker-dealers, and 175 transfer agents. We also conducted 34 inspections of specific programs, including at least one program at each of the 10 SROs.
- Enhanced coordination among SEC examiners responsible for different regulated entities by utilizing multi-disciplinary examination teams and other such partnerships to improve investor protection, increase effectiveness, and boost productivity.
- Collaborated with the National Association of Securities Dealers, Inc. (NASD) and New York Stock Exchange (NYSE) to review programs for converting to decimal quotations and to identify any potential deficiencies in registrants' plans and procedures.
- Improved cooperation with foreign, federal, and state regulators, as well as with SROs, by planning and conducting joint examinations of firms registered in multiple jurisdictions.

Investment Company and Investment Adviser Inspections

Investment Companies

Our examiners inspected 263 investment company complexes, including 13 fund administrators discussed later. This includes 241 regular inspections, which fulfilled our goal under the Government Performance and Results Act (GPRA) of inspecting the 1,080 investment company complexes once every five years. The inspected complexes managed \$1.7 trillion in 2,603 portfolios, approximately 32 percent of the 8,108 mutual and closed-end fund portfolios in existence at the beginning of fiscal 2000. A mix of large and small complexes were inspected for compliance. Thirty-five of the inspections were initiated on a “for cause” basis, which means the staff had some reason to believe that a problem existed.

The staff identified violations or deficiencies in 213—or 81 percent—of investment company examinations that resulted in a deficiency letter to the registrant. Most frequent violations or deficiencies resulting in deficiency letters dealt with registration and SEC filings, internal controls procedures, boards of directors' oversight, conflicts of interest, and books and records.

Serious violations found during 18—or 8 percent—of the examinations warranted referrals for further investigation to the Division of Enforcement. The most common violations resulting in referrals involved fraud, the role of the fund's board of directors, conflicts of interests, and books and records.

Many 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, the fund's use of brokerage, and valuation procedures for illiquid securities.

Investment Advisers

The staff completed 1,458 inspections of investment advisers. This includes 1,434 regular inspections that fulfilled our goal under the GPRA of inspecting once every five years the 6,700 registered investment advisers. The non-investment company assets managed by the inspected advisers totaled \$2.8 trillion. Seventy-five of the 1,458 investment advisers were inspected “for cause.”

The staff sent deficiency letters to 1,318—or 90 percent—of the inspected investment advisers identifying problems found. Most frequent violations or deficiencies were related to form ADV/brochure, books and records, custody, conflicts of interests, and internal controls.

Serious violations warranting enforcement referrals were uncovered in 54—or 4 percent—of the examinations. The most common violations 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 focused on adviser performance advertising, personal trading, and 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.

The staff 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 British Columbia Securities Commission.

Mutual Fund Administrators

Many mutual fund complexes use third party administrators to perform their accounting and administrative functions. During fiscal 2000, examiners inspected 13 fund administrators.

Variable Insurance Products

In response to the rapid growth in variable insurance product assets and the emergence of new distribution channels, the Office of Compliance, Inspections, and Examinations' staff with expertise in specialized insurance products conducted 20 insurance company complex examinations. 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 look for patterns of sales practice abuses.

Broker-Dealer and Transfer Agent Examinations

Broker-Dealers

In fiscal 2000, the staff conducted 650 oversight, cause, and surveillance examinations of broker-dealers, government securities broker-dealers, and municipal securities dealers. These examinations included 103 branch office examinations. Deficiency letters were sent to 399 broker-dealers, representing 60 percent of those examined. Serious violations discovered in 123—or 18 percent—of the examinations warranted referrals to the Division of Enforcement for further investigation. An additional 70 examination findings were referred to SROs for appropriate action. The most common violations

and deficiencies found were recordkeeping deficiencies, net capital computation errors, unsuitable recommendations to customers, and inadequate written supervisory procedures.

Broker-dealer examinations focused on internal controls at several large broker-dealers and retail sales 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 staff also organized and conducted substantial examination reviews of on-line firms, day trading firms, and the firms that clear for these firms to assess the issues created by changes in the industry. The staff further examined the sales of variable annuity products, mutual fund switching, and brokered CDs. A public report describing this examination sweep, the *Report of Examinations of Day Trading Broker- Dealers*, was issued on February 25, 2000.

The staff conducted several reviews of registrants' programs for dealing with the conversion to decimal quotations in the markets. These included general oversight reviews in which the staff, in collaboration with the NASD and NYSE, reviewed developments at the largest broker-dealers. The staff reviewed registrants' plans and procedures for dealing with potential decimalization problems. Any deficiencies found were promptly brought to the registrants' attention for correction.

We also reviewed broker-dealers' compliance with their best execution obligations. We concentrated on the adequacy of information barriers/Chinese Walls. In addition, we focused on problems that can arise when entities merge their financial and accounting systems. We will continue emphasizing these areas next year.

Our staff enhanced our cooperation with foreign, federal, and state regulators, as well as with SROs by conducting more joint examinations.

Transfer Agents

In fiscal 2000, our staff conducted 175 examinations of registered transfer agents, including 55 federally regulated banks. The program resulted in 137 deficiency letters, 56 cancellations or withdrawals of registrations, 11 referrals to the Division of Enforcement, 52 referrals to bank regulators, and one staff conference with a registrant. In addition, the staff completed one routine inspection of a clearing agency.

Self-Regulatory Organizations Inspections

In fiscal 2000, the staff completed 34 inspections of SRO operations. These inspections included at least one program at the following SROs:

- NYSE,
- American Stock Exchange,
- Pacific Exchange,
- Boston Stock Exchange,
- Philadelphia Stock Exchange,
- Chicago Stock Exchange,
- Chicago Board Options Exchange,

- Cincinnati Stock Exchange,
- Municipal Securities Rulemaking Board, and
- NASD.

The NASD inspections included review of the regulatory programs administered by the NASD's 14 district offices. The staff also initiated an inspection of the Securities Investor Protection Corporation.

The inspections focused on SRO programs dealing with arbitration, initial listing and continued listing of securities for trading, financial and operational surveillance and examinations of member firms, market surveillance, investigations, disciplinary actions, and the detection of and sanctioning for sales practice abuses. In addition, the staff conducted inspections relating to limit order display in the equities and options markets, alternative trading systems, payment for order flow and internalization, after hours trading, and deep discount brokers. These inspections resulted in recommendations to improve each SRO's effectiveness and efficiency.

We issued public reports on the customer limit order project and the payment for order flow in the options market project. The limit order display report described problems in the display of limit orders in the equities and options markets and inadequacies in the markets' surveillance and disciplinary programs for limit order display. (See *Report Concerning Display of Customer Limit Orders*, May 4, 2000). The staff's report on payment for order flow and internalization in the options markets found that between November 1999 and September 2000, options specialists paid over \$33 million to brokers to induce them to route their customer orders to the specialists. We also

concluded that payment for order flow has had an impact on order routing decisions. Specifically, firms with policies not to accept payment for order flow re-routed significantly fewer options classes to specialists that pay for order flow than did firms with policies to accept payment for order flow (See *Payment for Order Flow and Internalization in the Options Markets Report*, December 2000).

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 fiscal 2000, a total of 1,101 reports were filed with the SEC, as reflected in the following table.

SRO Reports of Final Disciplinary Action

American Stock Exchange	13
Boston Stock Exchange	0
Chicago Board Options Exchange	47
Chicago Stock Exchange	3
Cincinnati Stock Exchange	0
National Association of Securities Dealers	847
National Securities Clearing Corporation	0
New York Stock Exchange	181
Options Clearing Corporation	0

Philadelphia Stock Exchange	8
Pacific Exchange	2
Total Reports	1,101

Full Disclosure System

The full disclosure system's goals are to:

- *foster investor confidence;*
- *provide investors with material information;*
- *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 financial and non-financial disclosures made by companies in their periodic reports and transactional filings. The Division also achieves its goal by recommending to the Commission new rules to facilitate and enhance corporate disclosure.

What We Did

- Completed reviews of year-end financial statements of 1,535 reporting issuers and 2,435 new issuers.
- Processed over 500 letters relating to shareholder proposals and nearly 500 other no-action and interpretive letters.
- Issued interpretive releases relating to the use of electronic media to deliver or transmit information under the federal

securities laws and providing guidance on the disclosure and dissemination of mini-tender offers.

- Adopted rules to exempt subsidiary guarantors and subsidiary issuers of guaranteed securities from Exchange Act financial statement and reporting requirements and to permit the delivery of a single disclosure document to two or more investors sharing the same address.
- Adopted new rules and amendments in connection with the second stage of EDGAR modernization.

2000 Statistics

Companies filed registration statements covering \$2.3 trillion in proposed securities offerings during the year, an increase of 9% from the \$2.1 trillion in 1999. Offerings filed by first time registrants (IPOs) totaled approximately \$186 billion, 58% more than the \$118 billion filed in 1999.

International Activities

Foreign companies' participation in the U.S. public markets continued to grow in 2000. Approximately 200 foreign companies from over 30 countries entered the U.S. markets for the first time. At year-end, there were almost 1,400 foreign companies from over 55 countries filing reports with us. Public offerings filed by foreign companies in 2000 totaled over \$211 billion.

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. We provide general interpretive and accounting advice through interpretive releases, staff legal bulletins, staff accounting bulletins, no-action and interpretive letters, current issues outlines, and responses to telephone inquiries.

Rulemaking

- *Electronic Delivery of Information to Security Holders.* On April 25, 2000, the Commission issued the third of a series of interpretive releases and rules addressing the use of electronic media to deliver or transmit information under the federal securities laws.⁷⁵ In the latest release, among other things, the Commission clarified that information which may be obtained through a hyperlink embedded within a prospectus or other document required to be filed or delivered under the federal securities laws causes the hyperlinked information to be a part of that document. The Commission also clarified that the close proximity of information on a web site to a public offering prospectus does not, by itself make that information an “offer” within the meaning of the federal securities laws. In addition, the release provided guidance on responsibility under the anti-fraud provisions of the federal securities laws for information hyperlinked to issuer websites.
- *EDGAR Modernization and Related Rule Amendments.* On April 24, 2000, the Commission adopted new rules and amendments in connection with the second stage of EDGAR modernization and the conversion of the EDGAR system to an Internet-based system using hypertext markup language (HTML) as the predominant filing format.⁷⁶ On May 30, 2000, we added new features to the system that facilitate the

transmission of filings over the Internet and expand the use of hyperlinks and graphic and image files in HTML documents.

- *Mini-Tender Offers.* On July 24, 2000, the Commission issued an interpretive release providing guidance on the regulation of tender offers that result in the bidder holding five percent or less of the outstanding securities of a company (mini-tender offers).⁷⁷ The release sets forth specific disclosure guidelines for bidders in mini-tenders and notes practices that should be avoided because they may be considered fraudulent, deceptive, or manipulative. The release also addresses disclosure in tender offers for limited partnership units.
- *Financial Statements and Periodic Reports for Related Issuers and Guarantors.* On August 4, 2000, the Commission adopted rules to exempt subsidiary guarantors and subsidiary issuers of guaranteed securities from Exchange Act financial statement and reporting requirements.⁷⁸
- *Delivery of Disclosure Documents to Households.* The Commission adopted rules concerning the delivery of a single disclosure document to two or more investors sharing the same address (householding) if the investors have consented in writing or by implication.⁷⁹ One rule, issued on November 4, 1999, covers householding of prospectuses, annual reports and, in the case of investment companies, semiannual reports. The second rule, issued on October 27, 2000, adopted similar changes to the proxy rules to permit householding of proxy and information statements, but not proxy cards.

Interpretive Guidance

Securities Issued by “Blank Check” Companies. In January 2000, the Division staff issued an interpretive letter to NASD Regulation, Inc., limiting unregistered resales of securities in blank check companies by promoters, affiliates, and their transferees. The letter also indicated that the exemption provided in Rule 701 for offerings of employee benefit plan securities by non-reporting companies generally would not be available to blank check companies.

Conferences

At the 17th Annual Federal/State Uniformity Conference held in April 2000 in Washington, D.C., approximately 60 Commission officials met with approximately 60 representatives of the North American Securities Administrators Association, Inc. to discuss methods of achieving greater uniformity in federal and state securities matters. After the conference, a final report summarizing the discussions was prepared and distributed to interested persons and participants.

We conducted the *19th Annual Government-Business Forum on Small Business Capital Formation* in San Antonio, Texas in September 2000. This is the only government-sponsored national gathering providing an opportunity for small businesses to let government officials know how the laws, rules, and regulations are affecting their ability to raise capital.

Throughout the year, we also met with representatives of professional organizations whose members are affected by our regulations. These groups included the following:

- Securities Industry Association,
- American Bar Association,

- American Society of Corporate Secretaries,
- American Corporate Counsel Association,
- National Venture Capital Association,
- Bond Market Association,
- Council of Institutional Investors, and
- American Institute of Certified Public Accountants.

Accounting and Auditing Matters

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

- *rulemaking and interpretation initiatives that supplement private sector accounting standards and implement financial disclosure requirements;*
- *a review and comment process for agency filings to improve disclosures in filings, identify emerging accounting issues (which may result in rulemaking or private-sector standard setting), and identify problems that may warrant enforcement action;*
- *oversight of U. S. private sector efforts, principally by the Financial Accounting Standards Board, the American Institute of Certified Public Accountants, and the Independence Standards Board; and*
- *monitoring various international bodies, which establish accounting, auditing, and independence standards to improve financial accounting, reporting, and the quality of audit practice, including standards applicable to multinational offerings.*

What We Did

- Continued initiatives to ensure public company auditor independence.
- Issued rules that modernized the Commission's auditor independence requirements.
- Participated in industry discussions and issued a concept release for public comment on international accounting and auditing matters.
- Issued two Staff Accounting Bulletins and a related rule proposal to address financial reporting problems attributable to abusive “earnings management.”

Accounting Rules and Interpretations

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

Earnings Management

During the past two years, SEC accounting staff focused heavily on financial reporting problems attributable to abusive “earnings management” by public companies. Abusive earnings management involves the use of accounting gimmickry to distort a company's true financial performance in order to achieve a desired result. The staff issued accounting bulletins providing guidance on the criteria necessary to recognize restructuring liabilities and asset impairments⁸⁰ and the prerequisite conditions for recognizing revenue.⁸¹ This guidance was supplemented by a *Frequently Asked Questions and*

Answers document that responded to inquiries from auditors, preparers, and analysts about how the guidance would apply to particular transactions.⁸² The staff also worked on a rule proposal that specifies the disclosure requirements for changes in valuation and loss accrual accounts and that elicits certain information concerning the effects of the estimated useful lives assigned to long-lived assets.⁸³

Auditor Independence

After making several modifications in response to public comments, the Commission adopted rules that modernized its auditor independence regulations.⁸⁴ The adoption of the rules culminated many years of public debate; studies by the Independence Standards Board (ISB) and private research organizations; a hearing by the Securities Subcommittee of the Senate Committee on Banking, Housing, and Urban Affairs; a 75-day comment period that generated 3,000 comment letters; and three public hearings at which 100 investors, accountants, lawyers, academics, analysts and others testified. The final rules:

- reduced the number of audit firm partners and employees whose investments in, and relatives' employment with, audit clients would impair the auditor's independence;
- provided guidance for assessing whether a non-audit service, if provided to an audit client, impairs an auditor's independence, and a list of services that are deemed to be incompatible with being an independent auditor; and
- required the disclosure of: (1) audit fees, (2) fees for information system design and implementation, (3) fees for all other non-audit services, (4) whether the company's audit committee considered whether non-audit services provided by

the auditor are compatible with the auditor's independence, and (5) if greater than 50 percent of the hours expended on the audit were done by persons other than the auditor's full-time, permanent employees.

Allowance for Loan Losses

The SEC staff and the four federal banking agencies⁸⁵ through their Joint Working Group continued to study loan loss allowance issues. This group worked towards the issuance of parallel guidance in 2001 on the documentation of loan loss allowances and the disclosure of an entity's exposures to credit risks and associated allowances for loan losses. The SEC staff continued to observe and support the work of the American Institute of Certified Public Accountants (AICPA) task force developing additional accounting guidance in the area of loan loss allowances. As required by the Gramm-Leach-Bliley Act, the SEC staff consulted with the banking agencies on comments to be issued to public companies related to their reporting of loan loss allowances in the financial statements.

Audit Committees

The accounting staff coordinated its efforts with those of other divisions, the New York Stock Exchange, National Association of Securities Dealers, the Blue Ribbon Panel on Improving the Effectiveness of Audit Committees, and the Auditing Standards Board to craft rule amendments that improve disclosures related to the functioning of corporate audit committees and that enhance the reliability and credibility of public companies' financial statements.⁸⁶

Oversight of Private Sector Standard Setting

Accounting Standards

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's oversight focuses on whether the FASB process is operating in an open, fair, and impartial manner and that each standard is within an acceptable range of alternatives that serves the public interest and protects investors. The Commission works with the FASB in an ongoing effort to improve the standard-setting process, including the need to respond to various regulatory, legal, and business changes in a timely and appropriate manner. The FASB process involves constant, active participation by all interested parties in the financial reporting process.

The staff attends meetings of the Emerging Issues Task Force, observing task force meetings, and holding quarterly discussions with the FASB staff. The Commission's Chief Accountant also observed the quarterly meetings of the Financial Accounting Standards Advisory Council, which consults with the FASB on major policy and agenda issues.

A description of certain FASB activities overseen by the staff is provided below.

- The FASB's Derivatives Implementation Group, which addressed financial instruments and off-balance sheet financing issues to identify those issues related to the implementation of the accounting standard for derivative instruments and hedging instruments⁸⁷ and to develop recommendations for their resolution.

- The review of solicited public comments on issues relating to the determination and use of fair value for measuring financial instruments.⁸⁸
- The FASB's continued deliberations on the accounting for business combinations encompassed by Accounting Principles Board Opinion Nos. (APB) 16, *Business Combinations*, and 17, *Intangible Assets*. The FASB considered the comments received on an exposure draft of a proposed new standard that would prohibit the use of the pooling-of-interests method to account for business combinations.⁸⁹
- The FASB's continued work towards a final statement to specify when entities should be included within consolidated financial statements, including entities with specific limits on their powers. The FASB considered the comments received that would require a controlling entity or “parent” to consolidate all entities it controls unless such control is temporary.⁹⁰ For this purpose, control was deemed to involve the non-shared decision-making ability of one entity to direct ongoing activities of another entity so as to increase the benefits and limit the losses from the other group's activities. The FASB has deferred final action on this project. The staff believes the existing standards, based on majority voting ownership, generally should be adequate until the planned FASB reassessment in July 2001. However, the existing standards do not adequately address circumstances involving entities with specific limits on their powers, also referred to as “SPEs”. The FASB is urged to continue its efforts to provide consolidated guidance concerning these entities.

- The completion of a project that addresses certain implementation issues involving the application of APB 25, *Accounting for Stock Issued to Employees*. An interpretative release was issued that provided accounting guidance on practice issues identified over several years in implementing APB 25.⁹¹

Accounting Standards Executive Committee (AcSEC)

Our accounting staff oversaw various accounting-standard setting activities conducted through AcSEC. AcSEC issued a position statement that provided revised guidance on appropriate accounting and financial reporting for producers and distributors of motion picture films.⁹² It also continued to work on providing guidance for specialized industries, such as insurance companies, investment companies, and the loan loss reserves of financial institutions. AcSEC was established by the AICPA to provide guidance through position statements and bulletins.

Panel on Audit Effectiveness

During the year, the SEC requested that the Public Oversight Board (POB) study the effectiveness of audits, including an assessment of factors that could 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 (the Panel), appointed by the POB to undertake this study, issued a report with recommendations for improving the quality and effectiveness of audits.⁹³ This report included approximately 200 recommendations for the accounting profession, standard setters, audit committees, and regulators. Some of these recommendations focused on the need to improve international auditing and quality control standards.

The staff believes that the implementation of the recommendations made by the Panel is important to maintaining investor confidence in the reliability of financial statements and has encouraged the responsible parties to address each recommendation. Chairman Levitt and the Chief Accountant testified at public hearings held in New York City that implementation of the Panel's recommendations, including greater specificity in auditing standards, the development of proposed forensic auditing procedures, the renewed emphasis on the importance of auditing practice within accounting firms, a strengthened POB, and adoption of recommendations for audit committees was vitally important.

Auditing Standards

Auditing Standards Board (ASB)

The staff continued to oversee the activities of the ASB, established by the AICPA to set generally accepted auditing standards. The staff also monitored the ASB's progress in addressing the recommendations contained in the Panel on Audit Effectiveness' report and its effort to generally enhance the effectiveness of the audit process.

The ASB issued new auditing standards that require certain communications between auditors, the audit committee, and management⁹⁴ and provide revised guidance related to auditing certain financial instruments.⁹⁵ The AICPA staff issued a series of annual Audit Risk Alerts to provide auditors with an overview of recent economic, professional, and regulatory developments that may affect the 2000 year-end audits. To complement this overview, the SEC staff sent a letter to the AICPA's 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.⁹⁶

Quality Controls and Peer Reviews SEC *Practice Section (SECPS)*

Our accounting staff oversaw the processes of the SECPS, which was established by the AICPA to improve the quality of audit practices by member accounting firms that audit the financial statements of public companies. We exercised oversight through frequent contacts with the staff of the POB and members of the SECPS committees. The accounting staff reviewed a sample of peer review working papers, closed case summaries, and related POB oversight files.

Our staff encouraged the creation of a charter that would give the POB explicit authority to oversee additional aspects of the profession's system of governance because of the importance of the POB's role in overseeing the peer review and QCIC processes and the potential for its greater overall impact were its role to be expanded. The charter ultimately adopted falls short of instituting all the recommendations of the Panel but does adopt provisions giving the POB greater oversight of the setting of auditing standards and the ability to conduct special reviews of the accounting profession.

We also worked with the SECPS staff to develop new membership requirements including quality controls over independence, foreign associated firms, and the strengthened requirements for concurring partner review.

Self Discipline

The staff met with the AICPA's Professional Ethics Executive Committee (PEEC) to discuss the PEEC's disciplinary actions. These disciplinary actions are affected by a lack of subpoena power and the ability to maintain the confidentiality of its investigations. The PEEC has taken steps to address its failure to take action in several cases brought by the SEC. The PEEC has added three representatives of the

public to its Board which numbers approximately 20 members. Accounting firms within the profession have supported increasing the public members to half of the membership. This will require the approval of the AICPA Board, Council, and membership. The Panel on Audit Effectiveness also made several recommendations to the AICPA and the PEEC which, if implemented, should result in improvements in the PEEC process.

Independence

The SEC's Chief Accountant sent a letter to the SECPS highlighting worldwide quality controls that concern auditor independence matters and the possibility that there may be a systemic failure by partners and other professionals to adhere to their own firm's existing controls. He also sent a letter to the POB that stated the peer review process relating to the testing of controls over compliance with independence matters is inadequate. As a result, the POB was requested to oversee SECPS member firms' design and implementation of strengthened systems to achieve and monitor compliance, and conduct a comprehensive special review of member firms' compliance with the independence requirements.

The SECPS issued a new membership requirement that sets standards for member firms' quality control systems for monitoring auditor's independence in U.S. firms. The largest firms in the SECPS agreed to conduct a voluntary "look-back" program that will assess their firm's compliance with the specified independence criteria. The agreement also requires firms to upgrade their quality control systems that monitor compliance with auditor independence rules. In the look-back program, the POB is required to issue two reports covering the firm's design and implementation of the new quality control systems as of December 31, 2000, as well as the results of testing of the effectiveness of these systems during the first six months of 2001.

Independence Standards Board (ISB)

The ISB is a private sector body formed to promote investor confidence in the audit process and in the securities markets. The ISB issued two new standards related to audits of mutual funds and an accounting firm's independence if an audit client employs a former professional.

International Accounting and Auditing

Requirements for listing or offering securities vary from country to country. Some countries' accounting principles are comprehensive and result in financial statements that provide greater transparency of underlying transactions and events than others. As a result, securities regulators in the U.S. and elsewhere have been working on several projects to enhance the quality of international reporting and disclosure requirements.

- The Commission issued a concept release on international accounting standards in February 2000.⁹⁷ Approximately 100 comments letters were received covering the many aspects of international accounting and auditing, including under what conditions the Commission should consider accepting the financial statements of foreign issuers that are using standards promulgated by the International Accounting Standards Committee (IASC).
- In May 2000, the International Organization of Securities Commissions (IOSCO), completed an assessment of a specified set of IASC standards, the "IASC 2000 Standards," to determine whether they would be acceptable for cross-border listings of securities. Based on this assessment, IOSCO

recommended that its members accept the IASC 2000 standards, as supplemented by additional requirements for reconciliation, interpretation, or disclosures where necessary to address any outstanding substantive issues at a national or regional level. The SEC's current process is consistent with the IOSCO resolution.

- The Report of the Panel on Audit Effectiveness, appointed by the Public Oversight Board, provided recommendations for improving international auditing. In particular, the Panel recommended:
 - a global oversight body with a primary goal of serving the public interest to monitor and report on the activities of individual country audit firm self-regulatory organizations;
 - an external review of the quality controls of auditing firm's accounting and auditing practices;
 - comprehensive annual reports to the public by the global oversight body on its activities, including the results of its monitoring of the quality assurance functions for the auditing profession on a country-by-country basis;
 - uniform audit methodologies throughout the world;
 - periodic inspection procedures covering all audits, not just foreign registrants affiliated with U.S. SEC registrants;

- personnel assigned by auditing firms throughout the world to function as technical consultants in the application of international accounting and auditing standards; and
- establishment of intra-firm international “clearing houses” to resolve differences in the application of international accounting and auditing standards and promote consistency of practice.

The staff has written to IFAC regarding the critical elements and characteristics that are needed for an international public oversight organization to be effective.⁹⁸ Among these elements are the following:

- the selection of the initial members of the oversight organization, including a chairman, should only be finalized after seeking and receiving consideration from international organizations representing the public interest, including securities regulators;
- the members of the oversight organization should be public interest representatives without ties to the accounting profession;
- the funding for the organization's operations should be structured in such a manner that the organization can be independent in fact and in appearance; and
- other characteristics noted by the staff include details relating to membership and review processes, reporting to the public and other matters.

Addressing improvements in international auditing from another standpoint, the staff has also called for the International Forum on Accountancy Development (IFAD) and in particular its “major firm” members, “to take a leadership role by raising their own firms' minimum standards while at the same time pursuing improvements in differing national requirements.” These communications result from the staff's concern that the IFAD “vision” plan for international accounting and auditing improvement focuses principally on the regulatory environments of individual countries, and underemphasizes the role and responsibilities of the accountancy profession and in particular, the major firms.”

The SEC staff will monitor the continuing work of the international accounting and auditing standards bodies, as well as the actions of international CPA firms and professional groups, in the coming year.

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 and in defense of civil litigation, and provides technical assistance to Congress on legislative initiatives.

What We Did

- Played a lead role in developing new rules on selective disclosure of information by public companies and revising auditor independence rules.
- Played a significant role in negotiations leading to the enactment of the Commodity Futures Modernization Act of 2000.

Significant Litigation Developments

Insider Trading

In *SEC v. Sargent*¹⁰⁰ the court reversed a judgment for defendants in an insider trading case, ruling that the Commission could rely on circumstantial evidence to establish the violation, that the alleged tipper owed his partner a duty to keep the tipped information confidential even though it did not relate to the business of the partnership, and that the defendants could violate rule 14e-3 even if they did not know that the information they received related to a tender offer, as opposed to some other means of corporate acquisition.

Materiality

In *Ganino v. Citizens Utilities Co.*,¹⁰¹ the court of appeals agreed with the Commission's brief *amicus curiae* that the district court erred in using a numerical benchmark to determine whether a misstatement on a financial statement was material, and relied in part on Staff Accounting Bulletin No. 99, which explained that qualitative factors such as a company's desire to meet analyst's expectations or to smooth annual earnings may cause quantitatively small misstatements to be material.

Duty to Disclose of Municipal Securities Professional

In *SEC v. Cochran*,¹⁰² the court of appeals reversed a grant of summary judgment for the defendant in a yield burning case, holding that a municipal securities professional who managed an underwriting was entrusted to temporarily invest the proceeds of bond offerings, provided financial assistance to issuers, and represented an issuer in negotiations with a firm where the proceeds were invested could be found to have a fiduciary or similar relationship with the issuers, such that it would be securities fraud for the defendant not to disclose the fact that his firm received large payments from institutions in which the proceeds were temporarily invested, assuming that the fact of the payments was material.

Compliance with Industry Practices as Defense to Fraud Claim

In *SEC v. Dain Rauscher, Inc.*,¹⁰³ the Commission challenged the grant of summary judgment in favor of a defendant who was the lead investment banker for a series of municipal note offerings, urging that the district court erred in holding that the industry norm for disclosure rather than the securities laws defined the standard of liability against which the defendant's conduct should be measured, regardless of

whether that standard was reasonable. While compliance with industry norms might be evidence that the defendant was not negligent or reckless, such compliance is not dispositive.

Fraud Liability of Corporate Official Signing Document Filed with Commission

In *Howard v. Everex Systems, Inc.*, the court of appeals agreed with the Commission's friend of the court brief that when a corporate officer signs a document filed with the Commission, and knows or is reckless in not knowing that the document contains material misrepresentations, that officer is not merely an aider and abettor of the fraud but can be liable in a private action as a primary violator of section 10(b) even if he was not involved in the preparation of the document.

Broker-Dealer Disclosure of Payments From Third Parties

In *Press v. Quick & Reilly, Inc.*,¹⁰⁵ the court of appeals agreed with the Commission's friend of the court brief, that broker-dealers may rely on money market fund prospectuses to satisfy their obligation under Exchange Act rule 10b-10 to disclose the nature and amount of fees paid to them by funds into which they sweep investor money, and that the disclosure made in these cases was sufficient to satisfy the requirements of the rule.

Aiding and Abetting Customer's Fraudulent Trades

In *Graham v. SEC*,¹⁰⁶ the court of appeals affirmed the Commission's decision sustaining the National Association of Securities Dealer's (NASD) disciplinary action and finding that a registered representative of a brokerage firm aided and abetted a customer's fraudulent trading in his margin account. The court held that the customer's wash trades

were fraudulent because they were not bona fide and were for the purpose of obtaining a float from brokerage firms.

“Willful” Registration Violations

In *Wonsover v. SEC*,¹⁰⁷ the court of appeals affirmed a Commission order imposing sanctions on a registered representative for “willfully” violating the registration provisions of section 5 of the Securities Act. The court held that “willfully” in this context did not require, as petitioner claimed, that he knowingly or recklessly disregarded the registration requirement, but instead that he “intentionally committed the act which constitutes the violation.”

Remedial Orders Under the Investment Advisers Act

In *Valicenti Advisory Services, Inc. v. SEC*,¹⁰⁸ the court of appeals upheld the Commission's order requiring the petitioners, an investment advisory firm and its owner, to deliver a copy of the Commission's disciplinary decision to all present clients and to potential clients for one year. The court held that the delivery requirement was authorized by the remedial provisions of the Investment Advisers Act, and also that it was justified by the Commission's objectives of informing clients of petitioners' misconduct and of deterring petitioners from future violations.

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 filed in the Fifth, Sixth, and Eighth Circuits.¹⁰⁹ These briefs took the position that the pleading standard does not eliminate recklessness as a basis for liability and that, in interpreting the pleading standard, courts should rely upon the pre-Reform Act

Second Circuit tests, under which a plaintiff may allege facts that constitute strong circumstantial evidence of conscious misbehavior or recklessness or facts that show that the defendant had both a motive and an opportunity to commit fraud. In *Novak v. Kasaks*,¹¹⁰ a case in which the Commission had previously filed a brief, the Second Circuit agreed with all five other Circuits to consider the issue that recklessness, in some form, continues to suffice for liability. In *Novak*, the Second Circuit also joined at least three other Circuits that allow reliance upon the pre-Reform Act Second Circuit tests in at least some circumstances.

The Commission addressed the Reform Act's provision for the selection and retention of lead counsel in a friend of the court brief in *In re Cendant Corp. Litig.*,¹¹¹ a case in which the district court had conducted an auction to select lead counsel and establish a benchmark for attorney fees. The brief recognized that an auction could be a way in which a district court can exercise its traditional discretion to protect the interests of the class. However, the brief urged that a district court should not take the responsibilities for selecting and retaining lead counsel away from the lead plaintiff unless the circumstances clearly and substantially depart from the Reform Act model of large, active, and effective institutional and individual lead plaintiffs or unless the lead plaintiff's counsel proposal is inadequate under general class action standards.

Issues Under the Investment Company Act

In *Marquit v. Williams*,¹¹² the court of appeals agreed with the Commission's friend of the court brief, that investment companies, and not just their shareholders, have an implied private right of action for director breach of fiduciary duty involving personal misconduct under section 36(a) of the Investment Company Act.

In *McLachlan v. Simon*,¹¹³ the Commission filed a friend of the court brief explaining that rule 15a-4 under the Investment Company Act permits the directors of a mutual fund to approve an interim advisory contract for no more than 120 days following the termination or non-renewal of an existing contract without first obtaining shareholder approval, and that the rule does not require unforeseen circumstances (such as the death or incapacity of the existing adviser) as a precondition to such approval. The Commission also urged that adoption of the rule was a valid exercise of the Commission's exemptive authority under section 6(c) of the act. Finally, the Commission argued that there is an implied private right of action under section 36(a) of the act for a fund director's breach of fiduciary duty involving personal misconduct.

Liability for Short-Swing Profits Under Section 16(b)

In *Feder v. Frost*¹¹⁴ the court of appeals, relying on the views expressed in a friend of the court brief the Commission filed at the court's request, reversed the district court's dismissal of a complaint seeking recovery of short-swing profits under section 16(b) of the Exchange Act. The plaintiff alleged that the defendant, an insider of a public company, realized profits when he purchased the company's stock within six months of sales of such stock by a second public company in which the defendant had a substantial ownership interest and a controlling influence by virtue of a shareholders' agreement to which he was a party. Rejecting the lower court's view that a defendant must have cash in hand to be deemed to have realized short-swing profits, the court of appeals held that the defendant had an indirect pecuniary interest in his proportionate share of the stock sold by the second company and therefore was the beneficial owner of that stock within the meaning of the Commission's rule 16a-1 (a)(2), which defines "beneficial owner" for this purpose to include an insider who has an "indirect pecuniary interest." The court of appeals held that the

Commission had authority to adopt a definition that includes indirect interests.

In *Morales v. Quintal Entertainment, Inc.*,¹¹⁵ the Commission filed a friend of the court brief addressing the question of who is an insider subject to the section 16 reporting and short-swing liability provisions by being a ten percent beneficial owner of a company's securities. The Commission took the position that, in appropriate circumstances, lock-up provisions may demonstrate an agreement to hold or dispose of securities for purposes of deciding whether shareholders acted as a group such that the shares owned by all group members should be aggregated for purposes of determining whether the ten percent threshold of section 16 has been crossed. In *Schaffer v. CC Investments, Inc.*,¹¹⁶ the Commission responded to a request from a district court for a friend of the court brief and took the position that it did not exceed its authority when it promulgated rule 16a-1(a)(1), which adopts, for purposes of determining who is a ten percent beneficial owner under section 16, the definition of beneficial owner in section 13(d).

Challenges to Rule 102(e)

In *Clark v. SEC*,¹¹⁷ a CPA serving as a corporate officer filed a declaratory judgment action in federal district court challenging the Commission's authorization of a rule 102(e) proceeding against him. In Clark's view, the rule should only be applied to those who appear before the Commission in adjudicative proceedings and engage in misconduct. Clark subsequently dismissed his action after agreeing to a suspension under rule 102(e) as part of a settlement of the Commission's pending injunctive and rule 102(e) proceedings against him. In *Marrie v. SEC*,¹¹⁸ the district court granted the Commission's motion to dismiss an injunctive action filed in 1999 by two respondents in a Commission administrative proceeding brought under rule 102(e).

Plaintiffs alleged that application of amended rule 102(e) to their pre-amendment conduct violated the Ex Post Facto Clause, that the amended rule was void for vagueness, and that promulgation of the 1998 amendments to the rule exceeded the Commission's authority.

Actions to Enforce NASD Restitution Orders

Pursuant to section 21(e)(1) of the Exchange Act, the Commission, working with the NASD, filed applications seeking court orders requiring payments of fines and restitution imposed as NASD disciplinary sanctions that were affirmed by the Commission. Obtaining court orders enabled the NASD to enforce the disciplinary sanctions by collecting the fines and restitution. The Commission filed 11 section 21(e)(1) applications in 2000, and in each of those cases the Commission obtained a court order requiring payment or the NASD received payment from the respondent.

The “In Connection With” Requirement

In *SEC v. Zandford*,¹¹⁹ the court of appeals reversed a lower court order granting summary judgment for the Commission on the basis of collateral estoppel in a case against a stockbroker who had stolen funds from a customer account. The court of appeals found that Zandford's fraud was not sufficiently connected to a particular securities transaction to come within the scope of section 10(b) of the Exchange Act. The court of appeals also concluded that the Commission failed to satisfy the “identity of issues” requirement of collateral estoppel. The Commission has appealed this decision to the U.S. Supreme Court.

Equal Access to Justice Act (EAJA) Cases

In *SEC v. Dambro et al.*,¹²⁰ two respondents applied for an award of their attorney's fees and expenses on the ground that the Commission was not "substantially justified" in seeking to enforce subpoenas for their personal financial records and date books. The district court denied the application, agreeing with the Commission's arguments that the Commission cannot be liable for attorney's fees for enforcement of an investigative subpoena, and that in the absence of a final judgment respondents could not be deemed prevailing parties and thus were not eligible for a fee award. The Fifth Circuit affirmed the district court's denial of EAJA fees.

In *In the Matter of Rita C. Villa*,¹²¹ Ms. Villa applied for more than \$200,000 in attorney's fees and expenses allegedly incurred in successfully defending against charges that she violated reporting and recordkeeping provisions of the Exchange Act. After an administrative law judge (ALJ) ruled in her favor, the Commission, on review, reversed the ALJ, on the grounds that the ALJ had failed to conduct an independent inquiry into whether the Division of Enforcement was substantially justified in filing the case initially. The Commission conducted its own inquiry and concluded that the Division had satisfied the "substantially justified" test.

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

The Commission filed a friend of the court 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 action is pending.

Confidentiality of Documents from Foreign Governments

The Commission filed a friend of the court brief in a Commodity Futures Trading Commission (CFTC) administrative proceeding regarding the interpretation of a Memorandum of Understanding (MOU) the Commission and the CFTC have with United Kingdom authorities. The Commission argued that the MOU prohibits disclosure of investigative reports and correspondence from the United Kingdom authorities. The Commission filed the brief in support of the CFTC's Division of Enforcement after an administrative law judge ordered production of documents from United Kingdom authorities and held that the MOU did not provide that the reports were confidential.

Requests for Access to Commission Records

The Commission received 106 subpoenas for documents and testimony. In certain of these cases, the Commission declined to produce the requested documents or testimony because the information sought was privileged.

The Commission received 2,834 requests under the Freedom of Information Act (FOIA) for access to agency records and 10,418 confidential treatment requests from persons who had submitted information to the Commission. There were 51 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 personal identifying information contained in consumer complaint letters. A magistrate has recommended to the district that the case, *Registered Representative Magazine v. SEC*,¹²² be dismissed as the Commission did not improperly withhold records.

Actions Under the Right to Financial Privacy Act

Several actions were filed against the Commission in federal district courts under the Right to Financial Privacy Act seeking to quash Commission subpoenas to financial institutions for bank account records. In *Ogden Murphy Wallace P.L.L.C. v. SEC*,¹²³ a law firm moved to quash a subpoena issued to a bank for records related to the interest a law firm earned on its trust account, contending that compliance would reveal client information that the law firm had a fiduciary duty to protect. The district court denied the motion to quash the subpoena.

Significant Adjudication Developments

The Commission issued 18 opinions and 42 orders, and the staff resolved by delegated authority an additional 65 motions. Appeals from decisions of Commission ALJs constituted over 20 percent of the cases decided by the Commission in 2000, more than double the 1996 percentage (but less than the 30 percent level of 1999). We anticipate that the number of appeals from law judge decisions will continue at a heightened level because of the Commission's increased use of the administrative enforcement authority granted it by Congress in the Securities Enforcement Remedies and Penny Stock Reform Act of 1990. Highlighted are some of the significant opinions issued by the Commission in fiscal 2000.

- In *The American Stock Exchange, Inc.*,TM the Commission declined to consider the AMEX's appeal of a decision by the Consolidated Tape Association (CTA). The opinion holds that, under Exchange Act rule 11Aa3-2(e)(1), Commission review of any action taken or failure to act by any person in connection with an effective national market system plan is discretionary. The CTA had concluded that the AMEX had entered into a contractual relationship granting the AMEX the exclusive right

to trade Diamonds, a derivative product, and therefore was not entitled, under the revenue-sharing provisions of the CTAs national market system plan, to have revenue generated from the sale of Diamonds transaction information counted in the calculation of the AMEX's annual share of revenue. The AMEX disputed this finding of exclusivity. The Commission found that its review of the CTAs action was discretionary, and, further, that it would not exercise its discretion and review the AMEX's appeal. The issues raised implicated neither the broad objectives of the national market system—the public interest, the protection of investors, or the maintenance of fair and orderly markets— nor the Commission's role in facilitating the establishment of a national market system. Rather, at stake was an ordinary commercial dispute.

- In *The Cincinnati Stock Exchange (CSE)*,¹²⁵ in contrast, the Commission found that its review of the CSE's appeal from a CTA decision was mandatory under the Exchange Act. At issue was the decision of the CTA, a registered securities information processor, to charge CSE specialists a “market data display device” fee for use of Consolidated Tape data. Section 11 A(b)(5) of the Exchange Act mandates Commission review, on petition of an aggrieved person, of any limitation on access to the services of a registered security information processor. The Commission determined that the CSE had made its case that charging fees to its specialists was a limitation on access to the CTA's services.
- The Commission in *Jeffrey Ainley Hayden*¹²⁶ concluded that the New York Stock Exchange's (NYSE) disciplinary action should be set aside because the inordinate amount of time between the conduct charged and the initiation of the Exchange's disciplinary proceeding violated fundamental

fairness principles. The Commission concluded that the NYSE had not met its statutory obligation to ensure the fairness and integrity of its disciplinary proceedings. The NYSE had brought the *Hayden* proceeding some fourteen years after the first act of alleged misconduct and over six years after the last incident. Two years elapsed between the NYSE's receipt of an enforcement referral and the start of the NYSE's investigation, and the NYSE investigated the matter for three years before bringing its charges.

- Acting under rule 102(e) of its Rules of Practice and under the Exchange Act in *Russell Ponce*,¹²⁷ the Commission barred the former certified public accountant and auditor for American Aircraft Corporation (AAC) from appearing or practicing as an accountant before the Commission, with the right to reapply in five years. The Commission also ordered Ponce to cease and desist from violations of the antifraud, issuer reporting, and issuer books and records provisions of the Exchange Act. Ponce had improperly certified financial statements that falsely overvalued a license the company owned and falsely capitalized tooling and prototype costs that should have been expensed as research and development costs. By this certification, Ponce willfully aided, abetted, and caused AAC's filing of misleading financial reports and AAC's failure to correct misleading financial reports. Ponce also failed to act with due professional care in performing his audit of AAC's financial statements and falsely certified that AAC's financial statements were presented in conformity with Generally Accepted Accounting Principles. In the Commission's view, the fact of unpaid fees for previous audits affects both the independence of an auditor and the public's perception of the auditor. Throughout the period Ponce prepared statements for AAC, AAC owed Ponce money for services for prior year audits.

Further, Ponce did not comply with the independence requirement under Generally Accepted Auditing Standards.

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 lead in the agency's drafting of selective disclosure rules (Regulation FD), as well as in revising the Commission's auditor independence rules. In the legislative area, the General Counsel played a significant role in major financial services legislation enacted early in the fiscal year, the Gramm-Leach-Bliley Act of 1999, and has participated in implementation of the Act, including assisting in the interagency development of financial privacy rules required by Title V of the act. In addition, the General Counsel played a significant role in electronic signature legislation (the Electronic Signatures in Global and National Commerce Act).

Significant Legislative Developments

In fiscal 2000, Congress passed the following bills affecting the work of the SEC.

- *Gramm-Leach-Bliley Act of 1999*. An important bill for the Commission and securities firms, the Gramm-Leach-Bliley Act,

was enacted early in fiscal 2000. This major financial services reform legislation has a substantial impact on the Commission and securities firms. The act:

- permits financial services companies to own banks, securities firms, and insurance companies;
 - repeals the blanket “bank” exemptions from broker and dealer regulation under the Exchange Act and repeals the blanket “bank” exemption under the Investment Advisers Act for banks that advise investment companies;
 - provides for SEC umbrella regulation of investment bank holding companies, such as broker-dealers that own financial institutions other than banks; and
 - contains significant financial privacy provisions.
- *Electronic Signatures in Global and National Commerce Act.* The act facilitates electronic commerce by recognizing contracts using electronic signatures and promotes electronic record creation and retention. Consumers must consent to receiving records electronically.
 - *SEC Appropriation.* The Consolidated Appropriations Act of 2001 establishes the SEC's fiscal 2001 appropriation at \$422.8 million in funding authority for 2001.

The Commission testified on 20 occasions in 2000. The 106th Congress held hearings regarding changes in the structure of U.S. capital markets. Hearings explored the impact of electronic trading and electronic markets and the future of the National Market System for securities.

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

- SEC rulemaking in the area of auditor independence;
- decimal pricing in the securities and options markets;
- securities law amendments in the proposed Competitive Markets Supervision Act;
- proposals to facilitate netting of financial contracts and to improve hedge fund disclosure;
- organized crime involvement in Wall Street;
- proposals to repeal the Public Utility Holding Company Act;
- reuniting lost security holders with their assets; and
- appropriation of the SEC for 2000, including the issues of Internet fraud and SEC staff retention.

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 reorganization are protected. During the past year, the Commission entered a formal appearance in 38 Chapter 11 cases with significant public investor interest.

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

A Chapter 11 disclosure statement is a combination proxy and offering statement used to solicit acceptances for a reorganization plan. The bankruptcy staff commented on 182 of the 203 disclosure statements it reviewed during 2000. 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 staff's comments to debtors or plan proponents were adopted; formal Commission objections were filed in 16 cases.

The Commission was able to eliminate provisions in 24 plans that improperly attempted to release officers, directors, and other related persons from liability. This is a significant issue for investors because in many cases debtors improperly seek to use the bankruptcy discharge to protect officers and directors from personal liability for various kinds of claims, including liability under the federal securities laws. In 10 cases, the Commission was able to block plan provisions that would have resulted in an asset less public shell company that could have been used for stock manipulation purposes. The Commission was also able in 16 cases to prevent improper use of the Bankruptcy Code exemption from Securities Act registration.

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

- Provided economic advice, analysis, and data in connection with major policy initiatives, such as Decimalization, Regulation FD, the new Execution Quality Disclosure Rule, and revised Auditor Independence Standards.
- Produced and published a study comparing the quality of order executions across equity market structures. The study was a part of the Commission's ongoing inquiry into the impact of order interaction on the quality of executions for customer orders in the National Market System for equity securities.
- Co-produced and published studies with the Office of Compliance Inspections and Examinations focusing on compliance with the Commission's Limit Order Display Rule and analyzing the extent of payment-for-order-flow arrangements and their impact on the options markets.
- Provided advice and technical assistance in a variety of investigations and enforcement actions, applied financial

economics and statistical techniques to examine evidence, and estimated the amount of disgorgement to be sought in insider trading cases.

Economic Analysis and Technical Assistance

Our economic analysis staff provided substantial quantitative economic evidence on a number of rulemaking projects.

Market Structure and Trading Practices

- Provided technical assistance to the Commission in analyzing the likely effects of decimalization on quoted spreads, trading costs, quotation depth, limit orders, specialists' participation rates, and price volatility. Before decimalization, the staff published an empirical analysis of the reduction in markets' in the minimum tick size from an eighth to a sixteenth. The staff also monitored the impact of the initial phases of decimalization.
- Provided technical assistance to the Commission in analyzing the association between the pricing of initial public offering (IPOs) and certain trading practices employed by investment banking firms and investors. For example, the staff analyzed the effects of short sales and short-covering practices, flipping, and penalty bids to help policymakers in assessing the rules governing trading practices during IPOs.
- Published a report comparing order executions across equity market structures. The staff based the study on matched samples of Nasdaq and NYSE stocks. The study is a part of the Commission's ongoing inquiry into the impact of order interaction on the quality of executions for customer orders.

- Worked with the Division of Market Regulation to provide a report to Congress on the extent and impact of after-hours trading. The economics staff provided data and analysis of ECNs' market shares, quoted spreads, price volatility, and trading costs.
- Analyzed the effects of intensified competition in the options markets on quoted spreads, trading costs and market share.
- Provided economic advice and empirical data regarding the economic effects of rules governing market operations and trading structures, such as the execution quality disclosures and rules governing options' markets quotations, electronic linkages, and trade-throughs.

Disclosure and Accounting Standards

- Evaluated the costs and benefits of policy alternatives considered in conjunction with the revision of the Auditor Independence Standards. Analyzed pertinent research and provided empirical data and analysis pertaining to non-audit revenues of accounting firms.
- Provided economic advice and empirical data regarding the economic effects of new and revised disclosure rules. These included analyses of the impact of new Regulation FD, enhanced audit committee disclosures, equity compensation disclosures, and rules governing the delivery of proxy materials to shareholders.
- Prepared a report analyzing differences in the measures of net income and shareholders equity between US Generally

Accepted Accounting Principles (GAAP), home-country GAAP and International Accounting Standards for 92 foreign registrants.

Mutual Funds

- Provided economic advice and empirical data on issues impacting mutual funds. These included analyses of the effects of rules governing mutual funds' purchases of securities from affiliates, the independence of mutual funds' directors, mutual funds' adherence to the investment style that their names imply, and new disclosure requirements that require mutual funds to calculate and present after-tax returns.
- Provided advice and analytical support to the Division of Investment Management on its Study of Mutual Fund Fees. In particular, the economics staff helped develop an econometric model to measure the relationship between mutual fund fees and certain fund attributes.
- Provided economic advice and empirical data on issues impacting investment advisers. These include pay-to-play restrictions on investment advisers and rules that simplify the registration process for investment advisers.

Inspections and Examinations

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

- Analyze compliance with the Commission's Limit Order Display Rule. The staff published its findings in a report issued in April of 2000.

- Analyze the extent of payment-for-order-flow arrangements and their impact on the options markets. The staff published its findings in a report issued in December of 2000.

Enforcement Issues

Our economic analysis staff provided assistance in investigations and enforcement actions involving 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. The economics staff also assisted in evaluating the testimony of experts hired by opposing parties.

Policy Management and Administrative Support

The policy management and administrative support staff provide the Commission and operating divisions with the necessary services to accomplish the agency's mission. Their 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 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 48 Commission meetings, during which 177 matters were considered.
- Acted on 1,133 staff recommendations by seriatim vote.
- Enhanced the EDGAR system and SEC website.
- Submitted justification to the Office of Personnel Management in support of special salary rate increases for attorneys, accountants, and securities compliance examiners.

Policy Management

Commission Activities

During the 48 Commission meetings held in 2000, the Commission considered 177 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 1,133 staff recommendations by seriatim vote.

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 coordinated and implemented the agency's compliance with the Government Performance and Results Act of 1993 (GPRA). Working closely with other senior officials, the office formulated the agency's budget submissions to the Office of Management and Budget and the Congress.

Administrative Support

Financial Operations

Originally, the SEC deposited \$2.27 billion in fees in the U.S. Treasury in fiscal 2000, of which \$173.8 million was used to directly fund the agency in 2000. Of the \$2.27 billion in total fees collected, 49% were from securities registrations; 48% were from securities transactions; and 3% were from tender offer, merger, and other filings.

The fee rate for securities registrations was established in the Securities Act of 1933 at 1/50 of 1 percent. Between 1990 and 1996, Congress annually increased this fee rate to partially offset the costs of funding the agency. In October 1996, Congress enacted Title IV of the National Securities Markets Improvement Act (NSMIA), reducing the fee rate for fiscal 1997 to 1/33 of 1 percent and providing future annual reductions in the fee rate. The rate for fiscal 2000 was 1/38 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 Securities Exchange Act of 1934 at 1/300 of 1 percent of the total dollar value of all trades. To equalize the costs of trading across markets, NSMIA extended these transaction fees to the over-the-counter market at the same rate of 1/300 of 1 percent. This rate will be reduced to 1/800 of 1 percent in 2007 for exchange listed and over-the-counter securities.

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

Public Reference Room

Due to the success of electronic information dissemination through EDGAR and the Internet (www.sec.gov), the Commission closed its New York and Chicago public reference rooms. However, the SEC continues to maintain a public reference room in its headquarters office. All public filings, Commission rules, orders, studies, reports, and speeches are obtainable from the SEC website or by written request, e-mail, or in person visit.

The SEC completed its transition to electronic document storage for paper filings. Paper filings are available electronically in the headquarters public reference room via the *Global Access* system. A total of 401,505 electronically imaged paper filings, including 310,121 trading reports by insiders (forms 3, 4, 5, and 144), were added to the library of information available to the public.

EDGAR System

The Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system entered the last year of its three-year modernization effort. Using commercial software products in lieu of custom-developed solutions, filers may now submit documents securely via the Internet in both ASCII and HTML (the most common languages on the Internet). The SEC privatized its document dissemination service significantly reducing the cost of the subscription service. The public continues to have free access to filings via the SEC website.

During the past year we also established an Internet-based filer website that allows filers to seek assistance, download software, or submit documents to us. The EDGAR system is on target to complete modernization in 2001.

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 popular source of information, generating over 1.2 million hits per day, with over 37 gigabytes of data displayed per day and roughly 35 gigabytes of data downloaded per day. The site underwent a major redesign to make information more easily available and to expand the public's ability to search for information.

New Registration and Filing System for Investment Advisers

The SEC partnered with the National Association of Securities Dealers Regulation to develop a web-based electronic registration and filing system for investment advisers. The IARD system became operational in January 2001 and, when fully implemented, will contain information on over 8,000 SEC registered advisers and an additional 15,000 state registered advisers.

Human Resources This year our staff:

- gathered and developed justification that was submitted to the Office of Personnel Management in support of special salary rate increases for attorneys, accountants, and for the first time, securities compliance examiners;
- established and staffed a labor relations function as employees elected the National Treasury Employees Union to be their exclusive representative; and
- with the addition of an agency Chief Recruiter, enhanced the Commission's recruitment efforts through increasing our participation in law school visitation, job fairs and recruitment conferences, including Career 2000. This included the expanded use of Internet technology.

Endnotes

- ¹ *SEC v. Jay Gilbertson, et al.* Litigation Release No. 16743 (Oct. 2, 2000).
- ² *SEC v. Cosmo Corigliano, et al.*, Litigation Release No. 16587, (June 14, 2000).
- ³ *In The Matter of E. ON AG*, Securities Exchange Act Release No. 43372 (Sept. 28, 2000).
- ⁴ *SEC v. ABS Industries, Inc. et al.*, Litigation Release No. 16344 (Oct. 28, 1999).
- ⁵ *SEC v. Yun Soo Oh Park a/k/a Tokyo Joe, et al.*, Litigation Release No. 16399 (Jan. 5, 2000).
- ⁶ *SEC v. James J. McDermott, Jr., et al.*, Litigation Release No. 16395 (Dec. 21, 1999).
- ⁷ *U.S. v. McDermott*, Litigation. Rel. No. 16530 (Apr. 28, 2000).
- ⁸ *SEC v. John Freeman, et al.*, Litigation Release No. 16469 (Mar. 14, 2000).
- ⁹ *In the Matter of BT Alex. Brown Inc.*, Securities Exchange Act Release No. 42145 (Nov. 17, 1999).
- ¹⁰ *In the Matter of Investment Street Company, et al.*, Securities Exchange Act Release No. 42447 (Feb. 22, 2000); *In the Matter of All-Tech Direct, Inc. 1/k/a All-Tech Investment Group, Inc., et al.*, Securities Exchange Act Release No. 42446 (Feb. 22, 2000).

¹¹ *In the Matter of The Dreyfus Corporation, et al.*, Investment Company Act Release No. 24450 (May 10, 2000).

¹² *SEC v. Alan Brian Bond, et al.*, Litigation Release No. 16394 (Dec. 16, 1999).

¹³ *In the Matter of E.ON AG*, Securities Exchange Act Release No. 43372 (Sept. 28, 2000).

¹⁴ *SEC v. Stephon Hourmouzis and Wayne Loughnan*, Litigation Release No. 16432 (May 5, 2000).

¹⁵ Release Nos. 34-42974, 1C-24543, 1A-1883 (June 22, 2000), 65 FR 40334 (June 29, 2000) codified at 17 CFR part 248.

¹⁶ Release No. 34-42728 (Apr. 28, 2000), 65 FR 25843 (May 4, 2000).

¹⁷ See Release No. 34-36345 (Oct. 6, 1995), 60 FR 53458 (Oct. 13, 1995); Release No. 34-37182 (May 9, 1996), 61 FR 24644 (May 15, 1996).

¹⁸ Letter regarding Dominion Resources, Inc. (Mar. 7, 2000) (revoking letter regarding Dominion Resources, Inc. (Aug. 22, 1985)).

¹⁹ Letter regarding Staff Management, Inc. (Apr. 27, 2000).

²⁰ Letter regarding Stockback.com, LLC (July 28, 2000).

²¹ Letters regarding Oil-N-Gas, Inc. (June 8, 2000), OilOre.com (Apr. 21, 2000).

²² Letter regarding MuniAuction, Inc. (Mar. 13, 2000).

- ²³ Letter regarding Transfer Online, Inc. (May 3, 2000).
- ²⁴ Release No. 34-42906; Int'l Series Release No. 1227 (June 7, 2000), 65 FR 37678 (June 15, 2000).
- ²⁵ Release No. 34-43617 (July 24, 2000), 65 FR 75321 (Dec. 1, 2000).
- ²⁶ Release No. 34-42426 (Feb. 15, 2000), 65 FR 8753 (Feb. 22, 2000).
- ²⁷ Release No. 34-43147 (Aug. 11, 2000), 65 FR 50,582 (Aug. 18, 2000).
- ²⁸ Release No. 34-41,971 (Sept. 30, 1999), 64 FR 55793 (Oct. 14, 1999).
- ²⁹ Available at www.usdoj.gov/criminal/afmls/ml2000.pdf (March 2000).
- ³⁰ Release No. 34-43084 (July 28, 2000), 65 FR 48406 (Aug. 8, 2000).
- ³¹ Release No. 34-43021 (July 10, 2000), 65 FR 44082, (July 17, 2000).
- ³² Release No. 34-42555 (Feb. 24, 2000), 65 FR 11388 (Mar. 2, 2000) (File No. 10-127).
- ³³ Release No. 34-43086 (July 28, 2000), 65 FR 48023 (Aug. 4, 2000).
- ³⁴ Release No. 34-43085 (July 28, 2000), 65 FR 47918 (Aug. 4, 2000) (File No. S7-17-00).

³⁵ Division of Market Regulation Staff Legal Bulletin No. 10 (Aug. 25, 2000).

³⁶ *In the Matter of Certain Activities of Options Exchanges*, Administrative Proceeding File No. 3-10282 (Sept. 11, 2000).

³⁷ Release No. IC-24339 (Mar. 15, 2000), 65 FR 15500 (Mar. 22, 2000).

³⁸ Release No. IC-24123 (Nov. 4, 1999), 64 FR 62540 (Nov. 16, 1999).

³⁹ Release No. IC-24491 (June 7, 2000), 65 FR 37672 (June 15, 2000).

⁴⁰ Release No. IC-24424 (Apr. 27, 2000), 65 FR 25630 (May 3, 2000).

⁴¹ Release No. IC-24177 (Nov. 29, 1999), 64 FR 68019 (Dec. 6, 1999).

⁴² Release No. IC-24582 (July 27, 2000), 65 FR 47281 (Aug. 2, 2000).

⁴³ Release No. IC-24326 (Mar. 2, 2000), 65 FR 12354 (Mar. 8, 2000) (proposing release); Release No. IC-24543 (June 22, 2000), 65 FR 40334 (June 29, 2000) (adopting release).

⁴⁴ *Barclays Global Fund Advisors, et al.*, Release Nos. IC-24394 (Apr. 17, 2000), 65 FR 21219 (Apr. 20, 2000) (notice) and 24451 (May 12, 2000) (order); *Barclays Global Fund Advisors, et al.*, Release Nos. IC-24393 (Apr. 17, 2000), 65 FR 21215 (Apr. 20, 2000) (notice) and 24452 (May 12, 2000) (order); *State Street Bank and Trust Company, et al.*, Release Nos. IC-24631 (Sept. 1, 2000), 65 FR 54327 (Sept. 7, 2000) (notice) and 24666 (Sept. 25, 2000) (order); *Vanguard Index Funds, et al.*, Release Nos. IC-24680 (Oct. 6, 2000), 65 FR 61005 (Oct. 13, 2000) (notice) and 24789 (Dec. 12, 2000) (order).

⁴⁵ *Barclays Global Fund Advisors, et al.*, Release Nos. IC-24394 (Apr. 17, 2000), 65 FR 21219 (Apr. 20, 2000) (notice) and 24451 (May 12, 2000) (order); *Barclays Global Fund Advisors, et al.*, Release Nos. IC-24393 (Apr. 17, 2000), 65 FR 21215 (Apr. 20, 2000) (notice) and 24452 (May 12, 2000) (order).

⁴⁶ *Vanguard Index Funds, et al.*, Release Nos. IC-24680 (Oct. 6, 2000), 65 FR 61005 (Oct. 13, 2000) (notice) and 24789 (Dec. 12, 2000) (order).

⁴⁷ *Bill Gross' Idealab!*, Release Nos. IC-24642 (Sept. 15, 2000), 65 FR 57211 (Sept. 21, 2000) (notice) and 24682 (Oct. 10, 2000) (order).

⁴⁸ *Van Kampen Funds Inc. et al.*, Release Nos. IC-24548 (June 29, 2000), 65 FR 42038 (July 7, 2000) (notice) and 24566 (July 25, 2000) (order).

⁴⁹ *PADCO Advisors, Inc., et al.*, Release Nos. IC-24678 (Oct. 5, 2000), 65 FR 60697 (Oct. 12, 2000) (notice) and 24722 (Oct. 31, 2000) (order).

⁵⁰ *ASA Limited*, Release Nos. IC-24321 (Feb. 29, 2000), 65 FR 11811 (Mar. 6, 2000) (notice) and 24367 (March 27, 2000) (order).

⁵¹ *PIMCO Funds, et al.*, Release Nos. IC-24558 (July 17, 2000), 65 FR 45632 (July 24, 2000) (notice) and 24597 (Aug. 14, 2000) (order).

⁵² *XSource, Inc.*, Release Nos. IC-24596 (Aug 11, 2000), 65 FR 50245 (Aug. 17, 2000) (notice) and 24634 (Sept. 6, 2000) (order).

⁵³ Letter to Craig S. Tyle, General Counsel, Investment Company Institute, from Douglas J. Scheldt, Associate Director and Chief Counsel, Division of Investment Management (Dec. 8, 1999).

⁵⁴Vedder, Price, Kaufman & Kammholz (pub. avail. Dec. 6, 1999).

⁵⁵Mackenzie Investment Management, *et al.* (pub. avail. Aug. 8, 2000).

⁵⁶ General Motors Investment Management Corporation (pub. avail. Feb. 2, 2000).

⁵⁷Pengrowth Energy Trust (pub. avail. Jan. 27, 2000). ⁵⁸ Brown & Wood (pub. avail. Feb. 24, 2000). ⁵⁹Signature Financial Group, Inc. (pub. avail. Dec. 28, 1999). ⁶⁰R.O.C. Taiwan Fund (pub. avail. Feb. 11, 2000).

⁶¹ Massachusetts Mutual Life Insurance Company (pub. avail. June 7, 2000).

⁶² Letter to Stephanie M. Monaco, Esq., from Annette M. Capretta, Senior Counsel, Division of Investment Management (July 28, 2000).

⁶³Gartmore Global Partners (pub. avail. July 31, 2000).

⁶⁴ Janus Adviser Series (pub. avail. Aug. 28, 2000).

⁶⁵ Select Sector SPDR Fund and Diamonds Trust (pub. avail. July 6, 2000).

⁶⁶ Release No. IA-1862 (Apr. 5, 2000), 65 FR 20524 (Apr. 17, 2000) (proposing release); Release No. IA-1897 (Sept. 12, 2000), 65 FR 57438 (Sept. 22, 2000) (adopting release). ⁶⁷ *Id.*

⁶⁸ Release No. IA-1845 (Nov. 4, 1999), 64 FR 61226 (Nov. 10, 1999).

⁶⁹ Jennison Associates LLC (pub. avail. July 6, 2000).

⁷⁰ Division of Investment Management, Staff Legal Bulletin No. 11 (pub. avail. Sept. 19, 2000).

⁷¹ *The National Grid Group, plc*, Release No. 35-27154 (Mar. 15, 2000).

⁷² *American Electric Power Company, Inc. and Central and South West Corp.*, Release No. 35-27186 (June 14, 2000).

⁷³ Release No. 35-27110 (Dec. 14, 1999), 64 FR 71341 (Dec. 21, 1999).

⁷⁴ HSBC Holdings, *et al.* (pub. avail. July 13, 2000).

⁷⁵ Release No. 33-7856 (May 30, 2000), 72 SEC Docket 6.

⁷⁶ Release No. 33-7855 (May 23, 2000), 72 SEC Docket 5.

⁷⁷ Release No. 34-43069 (August 22, 2000), 72 SEC Docket 18.

⁷⁸ Release No. 33-7878 (September 5, 2000), 72 SEC Docket 20.

⁷⁹ Release No. 33-7912 (November 28, 2000), 73 SEC Docket 12.

⁸⁰ Staff Accounting Bulletin No. 100 (Nov. 24, 1999), 71 SEC Docket 473.

⁸¹ Staff Accounting Bulletin No. 101 (Dec. 3, 1999), 71 SEC Docket 667.

⁸² Staff Accounting Bulletin No. 101: Revenue Recognition in Financial Statements—Frequently Asked Questions and Answers (Oct. 12, 2000),

⁸³ Release No. 33-7793 (Jan. 21, 2000).

⁸⁴ Financial Reporting Release No. 56 (Nov. 15, 2000), 73 SEC Docket 2601.

⁸⁵ Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and Office of Thrift Supervision.

⁸⁶ Release No. 34-42266 (Dec. 22, 1999).

⁸⁷ Statement of Financial Accounting Standards No. 133, *Accounting for Derivative and Similar Financial Instruments and for Hedging Activities* (June 1998).

⁸⁸ FASB Preliminary Views, *Reporting Financial Instruments and Certain Related Assets and Liabilities at Fair Value* (Dec. 14, 1999).

⁸⁹ Proposed Statement of Financial Accounting Standards, *Business Combination and Intangible Assets* (Sept. 7, 1999).

⁹⁰ Proposed Statement of Financial Accounting Standards, *Consolidated Financial Statements: Purpose and Policy* (Feb. 23, 1999).

⁹¹ FASB Interpretation No. 44, *Accounting for Certain Transactions Involving Stock Compensation, an Interpretation of APB Opinion No. 25* (March 2000).

⁹² Statement of Position 00-2, *Accounting by Producers or Distributors of Films* (June 12, 2000).

⁹³ The Panel on Audit Effectiveness, *Report and Recommendations* (Aug. 31, 2000).

⁹⁴ Statement on Auditing Standards No. 90, *Audit Committee Communications*; Amendments to Statement on Audit Standards No. 61, *Communications with Audit Committees* and Statement on Auditing Standards No. 71, *Interim Financial Information*.

⁹⁵ Statement on Auditing Standards No. 92, *Auditing Derivative Instruments, Hedging Activities, and Investments in Securities*.

⁹⁶ Letter to Ms. Arleen Thomas, Vice President - Professional Standards and Services, AICPA, from Lynn E. Turner, Chief Accountant dated Oct. 13, 2000.

⁹⁷ Release No. 33-7801 (February 2000) 71 SEC Docket 1913.

⁹⁸ Letter to Tsuguoki Fujinuma, President, IFAC, from Lynn E. Turner, Chief Accountant, dated October 16, 2000.

⁹⁹ Letter to Frank Harding, President, IFAC, from Lynn E. Turner, Chief Accountant, dated February 23, 2000.

¹⁰⁰ 229 F.3d 68(1st Cir. 2000).

¹⁰¹ 228 F.3d 154(2d Cir. 2000).

¹⁰² 214 F.3d 1261 (10th Cir. 2000).

¹⁰³ No. 99-56828 (9th Cir.).

¹⁰⁴ 228 F.3d 1057 (9th Cir. 2000).

¹⁰⁵ 218 F.3d 121 (2d Cir. 2000).

¹⁰⁶ 222 F.3d 994 (D.C. Cir. 2000).

¹⁰⁷ 205 F.3d 408 (D.C. Cir. 2000). ¹⁰⁸198 F.3d 62 (2d Cir. 1999).

¹⁰⁹ *Alewine v. Billing Concepts Corp.*, No. 99-51032 (5th Cir.); *Weld v. Stage Stores, Inc.*, No. 00-20230 (5th Cir.); *Helwig v. Vencor, Inc.*, No. 99-5153 (6th Cir.) (en bane); *In re K-Tel International, Inc. Sec. Litig.*, No. 00-321OMN (8th Cir.).

¹¹⁰ 216 F.3d 300 (2d Cir. 2000), *cert, denied*, 121 S. Ct. 567 (2000).

¹¹¹ Nos. 00-2769, 00-3653 (3d Cir.).

¹¹² 229 F.3d 1135 (Table), No. 00-7085(1), 2000 WL 1529918 (2d Cir. Oct. 13,2000).

¹¹³ Nos. 99-17059, 99-17061, 99-17388 (9th Cir.).

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¹¹⁵ No. 99-9374 (2d Cir.).

¹¹⁶ 115 F. Supp. 2d 440 (S.D.N.Y. 2000).

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¹¹⁹ No. 99-1733 (4th Cir. 2001).

¹²⁰ No. 99-10224-MB (D.Mass. 2000).

¹²¹ No. 3-8527-EAJ (SEC 2000), Release 34-42502 (Mar. 8, 2000).

¹²² No. 1:99 CV 01793(D.D.C.).

¹²³ No. C00-1540R (W.D.Wash. 2000).

¹²⁴ Release No. 34-42312 (Jan. 4, 2000), 71 SEC Docket 1160.

¹²⁵ Release No. 34-43316 (Sept. 21, 2000), 73 SEC Docket 1006.

¹²⁶ Release No. 34-42771 (May 11, 2000), 72 SEC Docket 1125.

¹²⁷ Release Nos. 34-43235, AAE-1297 (Aug. 31, 2000), 73 SEC Docket 442, *appeal filed*, No. 00-71398 (9th Cir.).