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SEC AUTHORIZATIONS

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HEARING

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BEFORE THE

SUBCOMMITTEE ON SECURITIES

OF THE

COMMITTEE ON

BANKING, HOUSING, AND URBAN AFFAIRS

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

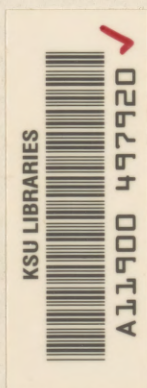
ON

S. 2715

TO AMEND THE SECURITIES EXCHANGE ACT OF 1934 TO AU-
THORIZE APPROPRIATIONS FOR THE SECURITIES AND EX-
CHANGE COMMISSION FOR FISCAL YEARS 1979-81

MAY 18, 1978

Printed for the use of the
Committee on Banking, Housing, and Urban Affairs



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SEC AUTHORIZATIONS

THURSDAY, MAY 18, 1978

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SUBCOMMITTEE ON SECURITIES,
Washington, D.C.

The Subcommittee met at 10:05 a.m. in room 5302, Dirksen Senate Office Building, Senator Harrison A. Williams (chairman of the subcommittee) presiding.

Present: Senators Williams and Proxmire.

OPENING STATEMENT OF SENATOR WILLIAMS

Senator WILLIAMS. The Subcommittee on Securities will come to order.

Our hearing this morning is on the Securities and Exchange Commission's budget request for fiscal years 1979 through 1981. The focal point of the hearing will be S. 2715, which Senator Proxmire, Senator Tower, and I introduced on March 10 at the Commission's request.

By amending the Securities and Exchange Act of 1934, the bill would provide multiyear authorizations for the Commission in the following amounts: \$70 million in fiscal year 1979; \$80 million in fiscal year 1980; \$91 million in fiscal year 1981; for a total of \$241 million over the next 3 years.

This is only the second time this subcommittee has held a hearing on the SEC's authorization. It's fair to say that last year's hearing, the first, was a learning experience for both the subcommittee and the new leadership at the Commission. During the course of these hearings the decision was made jointly to enact a 1-year authorization for the fiscal year to allow Chairman Williams the time necessary to develop his own budget, to formulate his own long-range priorities for the Commission's resources, and to generally leave his own imprint on the Commission.

In addition, as I recall, Chairman Williams and I both expressed concern over the quality of the materials submitted by the Commission in support of its budget request.

This year, I'm very pleased to say, the Commission has produced for the appropriate committees of the Congress two informative and useful documents: A budget request and a budget estimate. For the first time the Commission has prepared information which both provides and permits detailed analysis of every aspect of the Commission's activities and resource requirements. By setting out its program goals and long-range objectives, the Commission has greatly assisted the subcommittee.

At the same time, I believe the Commission has benefited signifi-

cantly from the exercise in terms of being better able to chart its own future and apply its resources to maximum advantage and efficiency.

I want to commend the Commission for its successful efforts. The Commission has requested a multiyear authorization at levels which increase, and increase substantially, over the life of the authorization. The Commission is aware that as a matter of practice this committee authorizes programs on an annual basis wherever possible. I am doubtful that the subcommittee would or should make an exception in this case, as the Commission requests. But I want to provide all the assurances I can that we will review carefully the Commission's submission and explore thoroughly the Commission's arguments for breaking our precedent of single-year authorizations.

Turning now to the SEC's budget request, the Commission has requested an authorization of \$70 million in fiscal year 1979. The current spending limit is \$36,750,000. This morning we will explore the need for a \$6.25 million increase.

In considering this request the expanding functions of the Commission must be kept well in mind. Legislation enacted in recent years—beginning with the 1975 Securities Act amendments, last year's Foreign Corrupt Practices and Improved Disclosure Acts, and even the Small Business amendment passed last week—have imposed additional responsibilities on the Commission and its staff.

These new requirements, when added to the Commission's historic regulatory missions, make the SEC one of our most active and aggressive independent regulatory agencies. Resources needed to meet these responsibilities must be made available to the Commission. At the same time, the resources must be employed wisely by the Commission to fulfill its congressional mandates and to provide the investing public with maximum protection.

We will have a statement from the chairman and then we will have time for further exploratory questions. I'm very pleased to ask Chairman Williams to present his statement now. It's a pleasure to welcome you again.

STATEMENT OF HAROLD M. WILLIAMS, CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION, ACCOMPANIED BY COMMISSIONERS JOHN EVANS AND IRVING POLLACK; BENJAMIN MILK, EXECUTIVE DIRECTOR; GEORGE KUNDAHL, DEPUTY EXECUTIVE DIRECTOR; AND SHELDON RAPPAPORT, DEPUTY DIRECTOR, DIVISION OF MARKET REGULATION

Mr. WILLIAMS. Thank you, Mr. Chairman.

Mr. Chairman, I have with me at the table this morning Commissioners John Evans and Irving Pollack, as well as the Executive Director of the Commission, Benjamin Milk; and George Kundahl, Deputy Executive Director.

I appreciate your encouraging and supportive opening comments. We apparently have been successful in our efforts to provide useful information and to apprise you of our thinking and planning for our needs for the next period of years. The process that underlies the material and the documents we have presented began with a very thorough and comprehensive internal process of analyzing the responsibilities

of the Commission and the most efficient bases for allocation of our scarce resources on a priority basis.

There are obviously many activities of the Commission which would justify greater outlays of resources, were they available, but we have on a very disciplined basis gone through the request and allocated our resources to what we consider to be our highest priorities. I should note that the value, as we see it, of multiyear authorization was well put by President Carter's January 12, 1978, memorandum in which he asked all executive agencies to incorporate multiyear budget planning into their budget processes noting "that it has become very difficult for either the Congress or the President to plan budgets effectively just 1 year in advance."

Even more importantly, it's difficult for an agency such as ours to plan for only 1 year. I would hope that the committee can see its way to grant a greater than 1 year authorization, with the particular underlying value of permitting and encouraging the kind of forward-looking dialog that can be so valuable, not only, as the President says, to Congress and the administration, but also at least as important from our standpoint, to the Commission itself in planning its own future.

I understand the subcommittee has been furnished with copies of the Commission's appropriation request, and I would ask that the document entitled "Budget Authorization Request for Fiscal Years 1979, 1980, 1981" be entered in the record in its entirety.

Senator WILLIAMS. It will be.

[Complete statement of Chairman Williams, a copy of S. 2715, and the additional material referred to are printed in the appendix to this hearing beginning at p. 27.]

Senator WILLIAMS. The chairman of our committee has joined us.

Senator PROXMIRE. I have no statement. I will follow you.

Senator WILLIAMS. When was your budget prepared?

Mr. WILLIAMS. In the summer of 1977, we prepared our appropriation request for 1979. In effect, by 1979 it will have been more than 2 years from the time we actually prepared our request.

Senator WILLIAMS. And as you have indicated, new responsibilities have been legislated into the SEC's life by Congress. The Foreign Corrupt Practices Act was last fall.

Mr. WILLIAMS. That's right, and I would expect some additional involvement and activity concerning other areas such as small business. I think we need to look at it in the context, Mr. Chairman, of saying that I think there are two "unpredictables" that are totally predictable. One is that there will be more congressional responsibility imposed on the Commission from time to time; and, second, that to the extent we attempt to predict precisely what our priorities will be 3 years off, we'll be probably about 50 percent wrong.

Senator WILLIAMS. I see the House subcommittees have directed you into two or three specific areas and maybe that accounts for their early and favorable action on your authorization for 3 years.

Mr. WILLIAMS. Right, along with their observation that our request was modest.

Senator WILLIAMS. They have been more demanding than we have, I guess.

Mr. WILLIAMS. I don't know that I quite agree with that. I'd say their hearings have been more numerous, but I don't think their ex-

pectations in terms of the quality of our performance has been more demanding.

Senator WILLIAMS. Well stated, Mr. Ambassador.

Now I have a chart that shows your personnel by major program activity. Of course, this is stated in broad area categories: 33 percent of the personnel involved in prevention and suppression of fraud, 21 percent in full disclosure, 16 percent in executive staff, 15 percent in supervision and regulation of securities markets, and 10 percent in investment management regulation, smaller in economic and statistical research, 2 percent in corporate reorganization, 1 percent in public utility holding company regulation.

We're looking at the same chart?

Mr. WILLIAMS. Yes, sir.

Senator WILLIAMS. Does this describe the present distribution of staff into activities?

Mr. WILLIAMS. This is the staffing level anticipated in 1979 in our appropriation request.

Senator WILLIAMS. And do the percentages reflect the priorities that you assign to these areas?

Mr. WILLIAMS. Yes, sir.

Senator WILLIAMS. In prevention and suppression of fraud, 33 percent—does the Foreign Corrupt Practices Act and responsibilities, does that fall within that area?

Mr. WILLIAMS. That would fall under the prevention and suppression of fraud category, but it would also be involved in the full disclosure area.

Senator WILLIAMS. Now, concerning the 15 percent in supervision and regulation of securities markets, your increased personnel request would assign 14 percent of the total increase to that area?

Mr. WILLIAMS. That's right.

Senator WILLIAMS. You have mentioned the options study. Is that within that area?

Mr. WILLIAMS. No, sir. That was a special program which was staffed on an emergency basis by personnel throughout the Commission. I would anticipate that the bulk of their work will be completed in the 1978 fiscal year.

Senator WILLIAMS. Now I would like to develop the history and your understanding of the potential expansion of the options market. The SEC reacted with the moratorium announcement. Was there a proposed rule at some point in there?

Mr. WILLIAMS. Yes, sir.

Senator WILLIAMS. And that was withdrawn?

Mr. WILLIAMS. No; we issued a moratorium rule proposal on October 17, 1977, and the final action on that moratorium rule should be coming before the Commission very shortly.

Senator WILLIAMS. When was the proposed rule first announced?

Mr. WILLIAMS. On October 17, 1977.

Senator WILLIAMS. Has there been an inordinate length of time following the proposal before action on the proposal?

Mr. WILLIAMS. Well, sir, it's a substantial period of time, but—

Senator WILLIAMS. It's unusual.

Mr. WILLIAMS. Well, I would say that it's unusual to propose a moratorium; I really have no frame of reference for comparison of

whether the action on the moratorium rule is overly lengthy or not. I would acknowledge that a substantial period of time has expired, and we would expect to be coming up with a final rule very shortly.

Senator WILLIAMS. Why has there been so much delay in the study following the moratorium announcement and prior to final action on the rule?

Mr. WILLIAMS. I don't recall exactly what the comment period was on the rule. Let me ask Sheldon Rappaport, Deputy Director of the Division of Market Regulation.

Mr. RAPPAPORT. We had a 4-day comment period on that proposal. It was first announced on October 17, 1977, but we had requests for an extension of time for comment by the American Exchange and the Chicago Board Options Exchange. After each of the other concerned self-regulators organizations indicated that a brief extension of time for public comments would not be objectionable, the comment period was extended to December 7, 1977.

Mr. WILLIAMS. The balance of the time the rule has been pending has been taken up by the staff in analysis of the responses and the preparation of recommendations to the Commission, which will be completed very shortly.

Senator WILLIAMS. And in this period have there been applications from other exchanges to permit them to trade options or from present options exchanges seeking to expand them to options trading?

Mr. RAPPAPORT. There have been no new applications by exchanges to commence options trading. We did, prior to the proposal, have before the Commission, however, a proposal by the New York Stock Exchange to commence options trading, and we also had had a proposal from the NASD.

Senator WILLIAMS. How do you handle that? You don't approve and you don't disapprove. What do you advise the applicants?

Mr. RAPPAPORT. The current status of that, Mr. Chairman, is that the applicants have been requested by the Commission to voluntarily postpone any further expansion or new programs for the trading of options. As of this point the exchanges in question and the NASD have acceded to the Commission's request. It's a matter, of course, where the proposed rule still pending; as Chairman Williams indicated, it will very shortly be before the Commission.

Senator WILLIAMS. You used the word acquiescence or accede to the request for a moratorium.

Mr. RAPPAPORT. Yes, sir.

Senator WILLIAMS. What could they do otherwise?

Mr. RAPPAPORT. Well, they could, of course, go to court. I think perhaps the Commission's General Counsel would be more expert in this area than I, but it is my understanding of the law that they could go to court and ask the court to require the Commission to take action on the proposal before the Commission. That would be, of course, prior to the adoption of the proposed rule by the Commission.

Senator WILLIAMS. Is there any rumble of discontent out there among the applicants?

Mr. RAPPAPORT. I think that there is a mild rumble, but on balance I think that the self-regulatory organizations have been cooperative with the Commission and its staff.

Senator WILLIAMS. But at any rate, you expect this study to be completed within this fiscal year?

Mr. WILLIAMS. I would expect that at least a major portion of it would be completed before the end of the fiscal year.

I would say, Mr. Chairman, that, while we know there's a certain amount of discontent about the moratorium, I think at the same time, the self-regulatory organizations realize the concerns the Commission has and have an understanding of our problem in dealing with the growth in the options markets. I would think also—and the staff can correct me if I'm wrong—that it would be within the province of the Commission if the exchanges desired to press their applications for permission to engage in options trading for the Commission to turn the applications down on the basis of findings that expansion would be inconsistent with the purposes of the statute.

Senator WILLIAMS. Are there any personnel changes in the department where the study is now residing?

Mr. WILLIAMS. We do have a change. We have just appointed a new director of the study, Richard Teberg, who comes to us from a New York law firm, replacing the initially appointed director who is returning to private practice. We don't anticipate that this change will in any way interfere with the progress of the study.

Senator WILLIAMS. How far along is the study?

Mr. WILLIAMS. We are still in the fact-gathering stage which, of course, will be the most time-consuming stage of the study. At this point there are five components to the study: Sales practices, trading practices, self-regulatory systems, market structure, and economic liaison. Our priorities are now focused on the first three areas. Our target is to complete them this fiscal year.

Senator WILLIAMS. I wonder if we could shift gears here. Are you familiar with the pending amendments to the capital gains tax?

Mr. WILLIAMS. Yes, sir.

Senator WILLIAMS. What do your people in economic and statistical research, which is 2 percent of your personnel—have they made any analysis of this?

Mr. WILLIAMS. No, sir; they have not.

Senator WILLIAMS. Is this an area where they would have any authority to project impact on the capital markets?

Mr. WILLIAMS. I don't know that we have any unique expertise to bring to it. I know there have been some in-depth economic analyses made of that. I think people might take either point of view as to whether or not with our scarce resources we should apply them in that direction.

I would say my own bias is that if we can bring something special to the matter in terms of analysis, then it is appropriate. But in this area at least, there are both private and, I gather, governmental bodies that are conducting that type of analysis, and I doubt that we could add incrementally to it.

Senator WILLIAMS. There will be the claim made by those of us who are supporting this that a major contributing factor to the economic situation we face today is the difficulty of capital formation. I would think that the SEC, unless forbidden by any jurisdictional limitations, would have the talent and should have the talent that could help to make an evaluation.

Mr. WILLIAMS. I agree that we should have the talent; I would agree we should be involved, and we would be glad to look at it. I could tell you that I have a personal point of view, but I don't think that's relevant.

Senator WILLIAMS. It's good enough for me right now.

Mr. WILLIAMS. Well, I personally support such a reduction. I think it will have a salutary effect and a very positive effect on capital formation and, at least on a personal level, I'm very supportive of it.

Senator WILLIAMS. I'm glad to hear that.

I would yield to the chairman of our committee now.

Senator PROXMIRE. Chairman Williams, you're asking for an increase, as I understand it—and the House went along with it—to \$70 million in 1979. That's an increase of about \$7.5 million. Is that correct?

Mr. WILLIAMS. Yes, sir.

Senator PROXMIRE. About 11 percent. Then you ask for another increase of \$10 million in 1980 over 1979, or an increase of 14 percent, and another 14 percent roughly in 1981 when you go from \$80 to \$91 million. Those increases seem sharp.

I realize that this is an extraordinarily efficient agency and has a great record, the best record, but that does seem to be a higher rate of increase than we have elsewhere in the Government.

How do you justify that sharp an increase in general terms?

Mr. WILLIAMS. Well, sir, in general terms, part of what's happened, at least in terms of the 1980 increase, is that we have incorporated in 1980 part of what we were cut back in our request for 1979, so that it would be a kind of a smoother curve otherwise. We have also assumed cost increases for continuing to do what we have been doing. The major increase in 1980 is 208 people, and in 1981, 145 people.

Senator PROXMIRE. I notice between 1978 and 1979 you have an increase in your executive staff of 11, going from 331 to 342. Why do you have to have that additional personnel in your overhead?

Mr. WILLIAMS. Well, part of the answer to that question is based on what we include in our definition of overhead. For example, a very large part of the increase, 4 out of the 11, is in the General Counsel's office, which stems in large part from just the sheer increase in litigation that the Commission is involved in and the complexity of that litigation.

Senator PROXMIRE. That's what? One position or two?

Mr. WILLIAMS. That's 4 of the 11.

Senator PROXMIRE. Four positions?

Mr. WILLIAMS. Right. As far as the rest of those positions are concerned, what is primarily involved is our effort to develop a better process of managing the agency—to give our attention to personnel development, to our computer capability, and to just assessing whether our resources are being as well allocated and deployed and effectively utilized.

Senator PROXMIRE. You need more bodies to do that, more people?

Mr. WILLIAMS. Yes, sir.

Senator PROXMIRE. How about the registration? Why do you have to continue to have 178 people? That seems like a high number. It's not increased, as I understand it, from 1978 to 1979, but it seems like a large number. This seems like the kind of area that you could make some reductions in.

What I'm trying to get at, to give you an understanding, we enacted, as you know, a new bill for outlawing bribery by corporations overseas and I notice you have a modest increase—what I regard as a modest increase in enforcement. You go from 690 to 704. That's an increase of 14 persons. But I wonder how many of those people would be required to work in the bribery area. It's a large, complex, time-consuming kind of activity. I wonder if you have sufficient manpower.

Mr. WILLIAMS. We made a preliminary estimate in response to a request from the committee at the time that the bill was being considered, and at that time we estimated the cost primarily of personnel to be on the order of \$300,000, as I recall the number. I expect that's going to turn out to be low.

The Foreign Corrupt Practices Act is obviously an important new responsibility for the Commission and one which we strongly support. It will have a priority in the resources we need allocated to it.

Senator PROXMIRE. Can you give us any notion as to what kind of manpower you have involved in enforcing that act?

Mr. WILLIAMS. I really can't at this point.

Senator PROXMIRE. What does \$300,000 translate into?

Mr. WILLIAMS. It would probably translate into about 15 people, but there are a lot of computer time and computer resources involved as well. A certain amount of the additional burden will fall on our full disclosure staff, where I think we will be dealing with the quality of disclosure both in financial statements and in the proxy area.

Senator PROXMIRE. Some of our staff people got the impression somehow that there was no provision in the budget for additional personnel to really enforce that proposal.

Mr. WILLIAMS. That's correct. Our budget proposal was submitted before the act was passed.

Senator PROXMIRE. I see. Then you will come up with a supplemental for this?

Mr. WILLIAMS. Either a reallocation or a supplemental. Hopefully we can do it within our existing budget.

Senator PROXMIRE. Do you have any notion on 1980 and 1981 whether it will be included there?

Mr. WILLIAMS. It is not in the present 1980 and 1981 request, but that's one reason we have a contingency in there, knowing there will be something like this. So I would expect to live within the contingency and within the authorization.

Senator PROXMIRE. Now I remember I was chairman of the subcommittee that handled the appropriations for the SEC. Now that's been moved to another subcommittee. But it used to be that a large proportion, most of your funds, were from fees. That's been diminishing in proportion I understand in recent years. It's now 55 percent and 45 percent appropriated money.

Mr. WILLIAMS. That's right.

Senator PROXMIRE. Why is that? Why can't the people who you supervise bear the same proportionate burden?

Mr. WILLIAMS. Well, our 1979 estimate is that 55 percent would come from fees. That compares to 52 percent in 1977 and 1978. So it actually has gone up in those years. The primary source of these fees is registration of securities under the Securities Act of 1933 where the fee is set by statute. So it's not flexible at the discretion of the Commission.

Senator PROXMIRE. Do you recommend an increase in that or is it practical to do so?

Mr. WILLIAMS. We are now studying both whether we can and should raise fees in areas that are somewhat more—

Senator PROXMIRE. I understood you to say it went from 52 to 55 percent. Am I wrong that these fees have been diminishing over the years?

Mr. WILLIAMS. When you say "over the years," I don't have enough history before me, but I do know our estimate for 1977 and 1978 was 52 percent.

Mr. EVANS. I think it has dropped from prior years. We were up in the sixties and low seventies at one point.

Mr. WILLIAMS. In 1970 we were 71 percent. We reached a high in 1973 of 73 percent. We dropped to 60 percent in 1974, 54 percent in 1975, 52 percent in 1976, and remained flat, but expect to go up to 55 percent in 1979.

Senator PROXMIRE. Do you project it for 1980 and 1981?

Mr. WILLIAMS. No, we don't; not as yet.

Senator PROXMIRE. For the record, could you do that?
[Statement of estimated fees follows:]

STATEMENT OF ESTIMATED FEES TO BE COLLECTED IN FISCAL YEARS 1979, 1980, AND 1981

Source of fees	1979 estimate	1980 estimate	1981 estimate
Registration of securities under the Securities Act of 1933.....	\$22,740,000	\$20,000,000	\$21,000,000
Other filings and reports.....	4,800,000	4,800,000	4,800,000
Securities transactions (sec. 31 of the Securities Exchange Act of 1934).....	7,500,000	7,700,000	7,700,000
Non-NASD brokers and dealers.....	565,000	595,000	625,000
Miscellaneous.....	22,000	22,000	22,000
Total.....	35,628,000	33,117,000	34,147,000

Mr. WILLIAMS. The key variable is that it depends upon the assumption we make on the number of registrations under the 1933 act. Now with registrations having been down over the last few years our percentage would drop. If we get into a good new issue market, we would expect our fees to increase significantly. That's more a factor of the kind of filings we receive.

Senator PROXMIRE. Now I anticipate there may be a controversy in the committee and maybe on the floor on the length of your authorization, whether the authorization should be 3 years or 2 years or 1 year or whatever. Could you give us your case for a 3-year authorization as compared with a shorter authorization?

The argument for a shorter authorization is pretty compelling for a congressional committee because we can have a much better, more consistent oversight if you come in every year and have to justify what you're doing and we can review what you're doing.

On the other hand, I understand that you want some continuity and some assurances as to what you can go ahead and act on. But can you give us the case for that?

Mr. WILLIAMS. Well, first of all, it seemed to us that our oversight committees have had more than one tool to address themselves to the activities of the Commission and to whether the Commission is being responsive to the committees' desires. I can't give you the precise data

this morning, but I believe we are one of the very few independent agencies that's still on the 1-year authorization. That is not necessarily compelling, but at least it does say we are the exception rather than the rule.

Senator PROXMIRE. Will you provide for the record the authorization period for the other agencies?

Mr. KUNDAHL. The Futures Trading Corporation and the Consumer Product Safety Commission both have 3-year authorizations. Only the SEC and the Nuclear Regulatory Commission are authorized on a single-year basis. The other independent regulatory agencies that we surveyed have no authorization at all. The appropriations legislation serves both as an appropriation and as an authorization.

Senator PROXMIRE. That would be true of the FCC and—

Mr. WILLIAMS. The CAB, FCC, Federal Maritime Commission, Federal Power Commission, Federal Trade Commission—

Senator PROXMIRE. What page are you reading from?

Mr. WILLIAMS. This is page 2 of our submission, the bottom of page 2.

Mr. KUNDAHL. The authorization document that was furnished.

Mr. WILLIAMS. Six of those agencies are funded either on the basis of an in-depth or standard budget authorization. Essentially, there's one process that encompasses both. What we are involved with here is—as we note at the top of page 3—of the four remaining agencies with definite or fixed budget authorizations, the SEC and the Nuclear Regulatory Commission are on a 1-year basis and the Commodity Futures Trading and the Consumer Product Safety are on the longer term basis.

Senator PROXMIRE. What is the principal justification for a longer authorization for the SEC?

Mr. WILLIAMS. Substantively, that it does provide us a much more effective planning horizon in terms of having a sense of what our direction and ceilings are. It provides an opportunity for us to dialog with our oversight committees on a longer term planning horizon. I think it makes our planning easier and gives us the benefit on a longer term horizon of your thinking in terms of whether or not what we're doing makes sense. Those are the reasons.

Senator PROXMIRE. Can you see any benefit for the Congress? You say a long-term planning basis. Can you give us a reason as to why that's important to your agency? Why would it be important, for example, to know what you're going to have in your enforcement area in 1980 and 1981—to know that now?

Mr. WILLIAMS. From our standpoint, it requires us—and we would do this in any event internally—to look ahead in a disciplined way in terms of what we anticipate the needs of the Commission and the responsibilities of the Commission will be and where we anticipate having to allocate resources. I would suspect that the greater value—by contrast with enforcement, which is clearly given priority by the Commission and will continue to be—is in other areas—for example, the investment management—in which, as I noted in my opening statement, we feel that we are not quite doing what we ought to be doing and where we, in our view, ought to be allocating more resources. We would like to have some confidence in our ability over the next period of years to do a more effective and more complete job in these areas

than we have been doing. Because of limited resources available to us, we can't do it. We would like to be able to say both internally and to the committee that since we're not doing our job in these areas as effectively as we should and we will make up for that in the years to come.

Senator PROXMIRE. You brought two of your very distinguished colleagues with you, Commissioner Evans and Commissioner Pollack. I know John Evans used to serve on this committee. Maybe they would like to give us a notion of the advantage to the Commission of a 3-year authorization compared to a 1-year authorization and the advantage to Congress.

Mr. EVANS. I'm not sure I can add an awful lot to what the Chairman has said. I believe it's very helpful to us in planning to look at least to 2 or 3 years ahead. He's also mentioned we can not do that adequately in the absence of having an authorization. It seems to me it is helpful to us in our planning. I don't know that too strong a case should be made for it, since I have served on the staff of this committee. Obviously, from your point of view, you would like to look at what we are doing every year, but I think you can do that without considering an authorization. You can have us come before you if you like. You can question or criticize what we're doing. Certainly I think it would be helpful to you to have before you the type of planning we have done for the next 3 years so you can get a feel for where we're going. As the Chairman has mentioned, we probably will not hit these exact figures very accurately as we get out 2 or 3 years in advance, because of changes—changes in legislation, changes in the markets themselves, other things that you may bring to our attention or the House may, or we may just find in the markets. Still, it's helpful for us and for those on our staffs to know what they can expect so they can do their planning. It takes a while to get through this planning process. As the Chairman has mentioned, it takes a couple of years from when we start planning until we receive the appropriations. Even so, it's good to have a long-range approach.

I would not argue too strongly for it, I guess, from the point of view that the Congress does have a right to decide annually how much funding we should obtain, but the appropriations process can do that very easily if there's a problem with what we have requested and what has been authorized. If you don't like what we're doing at the time of the appropriations hearings you can make that known. So I would think you still have the handle you want on the Commission, even if a 3-year authorization were approved.

As you know, this authorization process has only been going on for 2 or 3 years now. I'm not sure there was a problem before when we didn't have the authorization process. I believe the Commission acted in a responsible manner. There is every reason to believe we would with a 3-year authorization also.

Senator PROXMIRE. Mr. Pollack.

Mr. POLLACK. I think it provides a very helpful framework for the type of planning that we have to do.

Senator PROXMIRE. You're talking about a 3-year authorization?

Mr. POLLACK. Yes. I think the point that concerns you can be handled in the annual appropriation process. From the point of view of the agency, we need an indicator of the trend of increase or de-

crease over the period for which we are planning so that when we try to allocate in general terms where we're going to put our resources, we have some general idea that Congress feels that we're on the right road. If we're constantly shifting because of a lack of such a framework, I think it is inefficient. We would have to reallocate our resources all the time, and we'd not have been given a roadmap consistent with what the congressional committee may feel is appropriate for our agency to meet its overall functions and programs.

I think that the point that concerns you can be handled both in the way Chairman Williams has indicated and in the oversight hearings that take place during that period, as well as when we come in for the actual appropriation.

Senator PROXMIRE. Thank you.

Mr. WILLIAMS. If I may cite another example, Mr. Chairman. As I indicated earlier in relation to the Investment Company Act, our efforts work out on an average to a 10-year cycle in inspecting investment companies. That is not an acceptable cycle. We have made a resource allocation judgment that says that for now, in terms of priorities, it's the best use of our existing resources to allocate them to other areas. Part of that judgment comes from the expectation that a year or two down the stream we will be able to augment that area. If we were to know now, for example, that this is not a likely prospect, that that level of augmentation may not be there, we might need to do some reallocating now to start reducing that cycle. So it does provide a better planning horizon for us.

Also, we are being asked by OMB and the Congressional Budget Office to do this kind of estimating, and it seems to us rather inappropriate to be estimating to other people who might well be cranking those numbers in for other purposes without having an appropriate dialog and some measure of understanding with our oversight committee as to whether the numbers make sense.

Mr. EVANS. Let me add one other thing here. In hiring new people I think it's extremely important for our regional officers, as well as our headquarters divisions, to have an idea as to what they can expect, because hiring also takes some lead time. If we have an increase authorized, for example, then it is possible to talk with applicants at the appropriate time when they are getting ready to graduate, and to offer them employment rather than getting those that are left at a period somewhat later. Thus advanced planning will help us hire high-quality people.

Senator PROXMIRE. I apologize, Mr. Chairman, for taking so long. I would like to ask one more question with respect to this.

Would this have any effect one way or the other on the attitude of the investment community with respect to the SEC? Would they feel a 1-year authorization shows less confidence in the SEC, in your judgment, perhaps than a 3-year authorization? Do you feel the SEC is under more mistrust by the Congress or would you just feel, as Commissioner Pollack expressed it, that this might mean that you can't have the same kind of reliance on the kind of authorization you have and therefore the scope of your authority?

Mr. WILLIAMS. That's a very good question. I can't answer you as a result of any broad survey, but I suspect it could have some implications. Certainly this past year when we went through a good part of the year without an authorization at all, I did receive questions

from outside the agency asking me whether there was anything significant that ought to be read into it. If we are treated in a fashion that is significantly different from other independent agencies, it might be construed as reflecting some lack of confidence on the part of Congress and particularly the oversight committee in what the agency is doing.

Senator PROXMIRE. Thank you, Mr. Chairman.

Senator WILLIAMS. Thank you.

Chairman Williams, one of the subcommittees here requested from the Congressional Research Service a survey of Government agencies to determine the level of compliance with the Government in the Sunshine Act. The SEC came out with high statistical marks. The SEC most frequently closed all or part of their meetings.

Now, I wonder if you could give us some view of why the Commission, in holding 106 meetings during the time period considered in this survey, decided that 63 be totally closed and one partially closed. As you know, the "sunshine" approach to public activities is a matter of high priority around here. I'm sure that you can explain why the SEC has the highest percentage of closed meetings of all the independent agencies.

Mr. WILLIAMS. This does not in any way reflect adversely on our sense of responsibility or our responsiveness to the Sunshine Act. We take the injunction and the instructions of that act very seriously.

There are, of course, as you know, within the Commission several major areas of activity that are extremely sensitive and which are appropriately closed from public view under the Sunshine Act and, in fact, must be closed. These involve our decisionmaking process with respect to enforcement actions and certain types of quasi-judicial proceedings which constitute a major portion of the Commission's activity. With respect to our enforcement actions, the Commission is unique in having a formal order process before an investigation can be conducted, and each proposed investigation comes to the Commission and is the subject of extensive inquiry and discussion before a formal order is issued. I believe it appropriate that such discussions are held on a nonpublic basis. Similarly, in the early discussion stages of certain rule proposals, the ability to discuss the implications of proposals will often contain a discussion of ongoing investigations in terms of what those investigations tell us about the appropriateness of the rule proposal or how it ought to be articulated. So that in those cases also, whereas normally one would expect a discussion of a rule proposal to be open, we do often close those parts of our discussion which may involve our nonpublic investigations.

Senator WILLIAMS. I wonder whether you, Mr. Chairman, are familiar or any of you here are familiar with this Congressional Research Service inquiry and whether it was just a raw quantitative survey or whether there's any opportunity for—

Mr. WILLIAMS. Commissioner Evans testified in connection with that.

Mr. EVANS. In testifying on this I made some comments with respect to the validity of the figures used. It might be appropriate, if you like, for us to supply something for your record on that, because I think that some improper conclusions were drawn from the information supplied by the Congressional Research Service. Also some press

articles with respect to our Commission. It put us in a light which was not nearly as good as it should have been, in my opinion.

Mr. WILLIAMS. I have with me a copy of Commissioner Evans' testimony, which we would be glad to submit for the record.

Senator WILLIAMS. All right. I think that would be good for all concerned.

[Testimony follows:]

STATEMENT OF JOHN R. EVANS, COMMISSIONER, UNITED STATES SECURITIES AND EXCHANGE COMMISSION, BEFORE THE SUBCOMMITTEE ON FEDERAL SPENDING PRACTICES AND OPEN GOVERNMENT OF THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS, ON THE IMPACT OF THE GOVERNMENT IN THE SUNSHINE ACT

Mr. Chairman, Members of the Subcommittee: I am pleased to have this opportunity to review with you the Commission's experience over the last six months in administering the Government in the Sunshine Act. With me today is Harvey L. Pitt, the Commission's General Counsel, who has had a key role in assuring our compliance with the Act and is very knowledgeable with respect to the details of our experience. As the Subcommittee is aware, the Act was adopted to ensure, to the fullest practicable extent, public access to "information regarding the decision making process of the federal government."¹ The Act recognizes, however, that the desirability of public access to this information must be balanced against the need to "[protect] the rights of individuals" and to assure "the ability of the government to carry out its responsibilities."²

In order to allow the public the fullest possible access to the decision making processes of government, subsection (b) of the Act, 5 U.S.C. 552b(b), provides, as a general rule, that, "every portion of every meeting of an agency shall be open to public observation." This general rule is subject to ten exemptive provisions, set forth in subsection (c), which defines those agency deliberations that may occur at a closed meeting.

The other sections of the Act provide the procedural framework which, in theory, is designed to promote the objectives of the Act by imposing upon agencies certain requirements which must be followed, with respect to both "open" and "closed" agency meetings. Immediately following the adoption of the Government in the Sunshine Act in September 1976, our Office of General Counsel began the process of developing new rules and amending existing rules to carry out the purposes of the Act.

During the legislative process, we had expressed our support for the Act's objectives but also our concern that certain of the burdens of compliance might outweigh the benefits to the public. We knew that most of our meetings could not be open to the public given our broad ranging prosecutorial and quasiadjudicative responsibilities and the fact that even our rule-making decisions often include discussions of active enforcement cases. Nevertheless, we were determined to comply not only with the letter of the new law, but also its spirit.

During the last three months of 1976, our Office of General Counsel prepared an analysis of our meetings and found that an overwhelming number of them contained matters that would be closeable under the Sunshine Act. We then began a trial period during which members of the Commission were advised by the General Counsel's Office which matters on the Commission's agenda would be required to be open to the public by the Act. Staff members were not advised of this experiment in order that discussions would continue just as before. In this way, we could see what problems might arise if the meetings were public. After several weeks, this process was opened up to the staff so that we could all gain experience before the Act became effective. On the basis of that experience, we approved rules that we believe fully implement both the letter and spirit of the Sunshine Act, and at the same time protect the Commission's need, in order to discharge its responsibilities properly and fairly under the federal securities laws, to prevent improper public disclosure of exempt information.

To carry out the objectives of the Sunshine Act, each member of the Commission, and the General Counsel, personally devotes a substantial amount of his time to ensure compliance with the Act. Our General Counsel will not certify that a meeting may be closed unless the matter is clearly within the contempla-

¹ 5 U.S.C. 552b, note.

² 5 U.S.C. 552b, note.

tion of one of the exemptions. On occasion, he has refused to certify a meeting as closed, despite some strong views to the contrary, because of our commitment to implement the Act fairly. On the other hand, even though our General Counsel has been prepared to certify that a meeting could be closed as a matter of law, we have voted to open a number of meetings where we did not believe that a closed meeting was necessary.

Since the Act became effective on March 12, 1977, the Commission has held 150 meetings. We have been able to hold 60 of these, or 40 percent of the total, open to the public. I believe the open meetings have been beneficial not only to the public, but also to the Commission. I say this because the comments we have received about our public meetings indicate that the observers have often been impressed by the depth of discussion and the consideration afforded to opposing viewpoints on major issues by the Commission as well as the overall competence and fairness of the Commission's deliberations.

In this regard, I believe it is appropriate briefly to comment on a report prepared by the Congressional Research Service of the Library of Congress on "Sunshine Act Meetings" for the Senate Subcommittee on Federal Spending Practices and Open Government, concerning which an article appeared in the *Washington Star* on November 21, 1977. According to the author of that article, the report of the Library of Congress showed that the Securities and Exchange Commission was the agency that made the "most use of closed meetings" and that the "SEC gave valid reasons for closing the meetings in only 43 [of 64] instances * * *". This article also appeared to suggest that federal agencies such as this Commission are "by and large * * * ignoring the new Government-in-the-Sunshine law."

I do not believe that the report prepared by the Library of Congress supports all of the conclusions in the newspaper article. However, apart from that reservation, I do wish to call the following facts to the Subcommittee's attention concerning the statistics compiled by the Library of Congress.

First, while it may be true that the Securities and Exchange Commission has more "closed" meetings than other agencies, this is primarily because the Commission has apparently held substantially more meetings than other agencies. Even the incomplete data upon which this report is based indicates that out of 46 agencies whose compliance with the Sunshine Act was evaluated, the Securities and Exchange Commission held the most meetings between March 24, 1977 and September 9, 1977, the time period under study.

Moreover, the fact that a majority of Commission meetings was closed is, I am sure, no surprise to the Congressional committees in which the Sunshine Act legislation was developed. Indeed, the Senate Report accompanying the Government in the Sunshine Act noted this fact, in connection with its discussion of the provision allowing certain agencies to close their meetings by rule, pursuant to the modified procedure set forth in subsection (d) (4) of the Act, if a majority of that agency's meetings could be closed pursuant to certain of the exemptive provisions. It stated that subsection (d) (4) "will largely apply to agencies which regulate financial institutions, securities, or commodities, and which will often have to conduct their sensitive business in private, and on short notice * * *". The report further indicated that the Securities and Exchange Commission was among those agencies which would be permitted to issue regulations pursuant to these provisions, because a majority of its meetings were expected to be closed. S. Rep. No. 94-354, 94th Cong., 1st Sess. (1975) at 28-29. The Committee's expectation at the time it considered this legislation has been verified by our subsequent experience.

In addition, the Library report implies that for 21 of our closed Commission meetings held between March 24 and September 9, 1977, valid reasons for closing these meetings were not provided. Although we cannot be certain as to the methods used by the Library in compiling its statistics, it appears that the Library's analysis is based on a survey of the notices sent to the *Federal Register*, for publication pursuant to subsection (e) (1) of the Act, 5 U.S.C. 552b (e) (1). The Commission supplements its regular weekly notices with amending notices whenever necessary, such as when the previously announced time or date of a meeting is changed. Usually, these short amendatory notices simply set forth the change, and refer the reader back to the initial notice for additional details, including the Sunshine Act exemptions which the Commission had invoked.

We have reviewed our records and have found that there have now been 34 of these notices which contained no citations to exemptive provisions of the Sunshine Act. Virtually all of these notices were for schedule changes made after

the regular weekly notices had been sent, and involved either a change in date for consideration of a matter scheduled earlier, a deletion of a scheduled item, or notice of an emergency matter that could not have been scheduled earlier. Our tabulation of the notices, the dates of the meetings, and a general description of the items considered is available to the Subcommittee if you desire. In any event, although we should have cited the exemptive provisions in these amendatory notices, as well as in the initial notices, I categorically assure the Subcommittee that no matter is ever considered by the Commission, regardless of whether it is scheduled for an open or closed Commission meeting, without its first having been reviewed by the General Counsel for compliance with the Act. No meeting is closed unless we are certain that one or more of the exemptions is applicable, and that it is in the public interest to close the meeting in question.

Before I leave this subject, I would also like to call to the attention of the Subcommittee the fact that a review of the Library's report indicates that a number of agencies have a higher percentage of closed meetings than we do. I believe that, since the passage of the Sunshine Act, the Commission has endeavored, successfully in large measure, to open a significant number of its meetings to the public, in keeping with the Act's philosophy that, as a general rule, government business should be conducted in the open.

Inasmuch as this Subcommittee is holding oversight hearings on the administration of the Act for the first time, we have been asked to bring to the attention of the Subcommittee those problems—technical, procedural and substantive—which seem to us to call for some modification of the Act.

Because a primary responsibility of the Commission is to assure appropriate disclosure of material facts by those persons to whom the investing public entrusts its capital, we are naturally sympathetic to the principal objective of the Act, to bring the fullest practicable information to the public regarding the decision making processes of the federal government. Nonetheless, we also have a responsibility, imposed by the Congress, to protect the investing public, and we believe that we must maintain our ability to meet that responsibility. Whenever the ability of the Commission to act impeded for the sake of inflexible procedural requirements which, while theoretically designed to assure the public access to information about its government, do not in fact perform this function, the Commission would be remiss if it did not report to you its concerns.

Subsection (e) (1) of the Act, 5 U.S.C. 552b(e) (1), provides for the scheduling and public notification of agency meetings. It states:

"In the case of each meeting, the agency shall make public announcement, at least one week before the meeting, of the time, place and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting. Such announcement shall be made unless a majority of the members of the agency determines by a recorded vote that agency business requires that such meeting be called at an earlier date, in which case the agency shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time."

Subsection (e) (3) of the Act provides for publication in the *Federal Register* of the notice required by subsection (c) (1). In general, our rules require that notices of prospective open meetings be posted on the public information board in the lobby of the Securities and Exchange Commission at least one week prior to the consideration of any matter listed therein. These notices are also submitted at that time to the *Federal Register* for publication. This announcement contains a brief description of the subject matter to be discussed, the date, place and time at which the Commission will consider the matter, whether the meeting, or any portion of it, will be open or closed, and the name and telephone number of a Commission official designated to respond to requests for information concerning the meeting at which the matter will be discussed. Should the Commission determine, by recorded vote, that earlier consideration of any matter not previously posted is necessary, a public announcement is made, posted in the lobby, and submitted to the *Federal Register* at the earliest practicable time.

In addition, the Wednesday edition of the Commission's daily publication, the "SEC News Digest," contains announcements of Commission meetings, both open and closed, for the following week, and revises that information as soon as practicable when changes in the previously announced schedule are made. The "SEC News Digest" has current circulation of over 3,000, and is subscribed to by many persons who regularly follow the Commission's activities. Moreover, in order to allow the public to understand better the discussion at open meetings,

the Commission has informally begun to distribute summaries of relevant background information pertaining to agenda items to attendees at these meetings. We have previously submitted a number of these summaries to your staff for the Subcommittee's information.

In spite of these efforts, if the extent to which members of the public attend open Commission meetings is any measure of how successful the notice and dissemination provisions of the Act have been in involving the general public in the work of the Commission, then we must conclude that they are not working as expected. Based on a review of the affiliations of persons who attend Commission meetings, it is apparent that it is the representatives of vested and regulated interests who regularly attend Commission meetings and who are, therefore, the primary beneficiaries of the Act.³ We do not think that this problem can be solved merely by increasing the time between the publication of the notice and the meeting. In fact, because our investor constituency is located throughout the United States and because these people do not, for the most part, have the resources to come to Washington whenever the Commission discusses a matter in which they have an interest, it is doubtful that significant numbers of investors would attend agency meetings regardless of how much advance notice was provided.

The effects of this are unfortunate. Those persons who attend our meetings are persons who will be subject to the regulations or other agency actions we often discuss at open meetings. The information gained at these meetings often amounts to little more than the Commission inquiring into the legal authority available to it to protect the public interest. Questions may be posed, or doubts expressed, for the sake of discussion. There is no exemption available for such discussions, and yet, those present at our meetings may seek to utilize such candid discourse in seeking to vitiate our efforts to protect the public. We believe that, at a minimum, therefore, the Act should make clear what the law already is—that comments by individual Commissioners or staff members may not be used against the agency; only the agency's prepared explanation of its action should serve as the basis for any judicial challenge to the agency's action.

In the Commission's view, the procedural requirements of the Act relating to closed Commission meetings place too great a burden on the Commission, when compared with the public benefits received.

One of the principal reasons for the difficulties created for the Commission by the Act relate to the treatment required to be accorded matters exempt from the open meeting requirements of the Act. As discussed above, a large percentage of our work involves investigatory and enforcement matters which often require prompt action. While subsection (d) (4) of the Act, 5 U.S.C. 552b(d) (4), eliminates some of the procedural hurdles attendant upon the consideration of enforcement matters, the Act has nevertheless significantly hampered the Commission's ability to deal with some emergency enforcement problems.⁴

For example, frequently the Commission must consider the issuance of a subpoena, the filing of a complaint to enjoin an ongoing fraud, or the commencement of a federal investigation upon very short notice because of the nature and volatility of the matter involved. The requirement of the Sunshine Act that a notice be published, a vote held, and the General Counsel's certification obtained in order to engage in such deliberations often entails procedural steps which seem to do little to further the Act's goals. Since the Commission must delete all

³ All persons attending open Commission meetings register at the reception desk in the lobby of the Commission's building, where they receive a building pass. These persons are requested to state, *inter alia*, their professional affiliation, if any.

⁴ Because the Commission is an agency a majority of whose meetings may properly be closed pursuant to Exemptions 4, 8, 9(A) or 10, it need not follow the full procedural requirements of subsections (d) (1), (2), and (3) and subsection (e).

See 5 U.S.C. 552b(d) (4), which provides:

"Any agency, a majority of whose meetings may properly be closed to the public pursuant to paragraph (4), (8), (9)(A), or (10) of subsection (c), or any combination thereof, may provide by regulation for the closing of such meetings or portions thereof in the event that a majority of the members of the agency votes by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting and a copy of such vote, reflecting the vote of each member on the question, is made available to the public. The provisions of paragraphs (1), (2), and (3) of this subsection and subsection (e) shall not apply to any portion of a meeting to which such regulations apply: *Provided*, That the agency shall, except to the extent that such information is exempt from disclosure under the provisions of subsection (c), provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof at the earliest practicable time."

The Commission has implemented rules as authorized by this subsection. See 17 CFR 200.405.

identifying details from the public certification and public notice concerning meetings in this category, the notices which are released afford the public little, if any, real knowledge with respect to the Commission's deliberations concerning law enforcement matters.

Even when no emergency attends the Commission's consideration of a law enforcement matter, the procedural requirements of the Act appear to make little sense from the vantage point of the general public, since identifying characteristics must be deleted from the public notices. The problem is compounded should the Commission need to change its schedule for any reason. The procedural steps necessary to effect a Commission vote to modify an earlier Commission vote, and to publish a notice superseding a previously published notice in the *Federal Register* and in the Commission's "News Digest," appear pointless when little of substance is revealed to the public in any event.

The Commission believes that its business could be facilitated, with no attendant interference with the goals of the Sunshine Act, if subsection (d) (4) of the Act, 5 U.S.C. 552b (d) (4), were amended to permit agencies to close deliberations within the exemptions set forth in that subsection solely by rule and without the public notice requirements presently set forth in the proviso to subsection (d) (4). As noted above, since most law enforcement matters fall within these exemptions, the notice requirements burden the Commission but do not appear to assist the public in any meaningful way.

Moreover, in the Commission's experience, it would better serve the apparent purposes of Exemption 4 if it were dropped from the list of those exemptions included in subsection (d) (4) and if it were replaced by Exemption 5. Exemption 4 concerns the disclosure of " * * * trade secrets and commercial or financial information obtained from a person and privileged or confidential." The legislative history indicates that, "This paragraph applies to meetings which disclose trade secrets or financial or commercial information obtained from any person where such trade secrets or other information could not be obtained by the agency without a pledge of confidentiality or where such information must be withheld from the public in order to prevent substantial injury to the competitive position of the person to whom the information relates."

S. Rep. No. 94-354, 95th Cong., 1st Sess. at p. 23. Exemption 5, on the other hand, "covers meetings which accuse an individual or corporation of a crime, or formally censure such person. An agency regulating financial or security [sic] matters may wish to censure a firm for failing to live up to its professional responsibilities, or an agency may consider whether to formally censure an attorney for his conduct in an agency proceeding. Opening to the public agency discussion of such matters could irreparably harm the person's reputation. If the agency decides not to accuse the person of a crime, or not to censure him, the harm done to the person's reputation by the open meeting could be very unfair."

S. Rep. 94-354, *supra*, at 22. Insofar as the Commission's experiences is concerned, we believe that Exemption 5 bears a closer relationship to the other exemptions enumerated in subsection (d) (4) and should replace Exemption 4 in that provision.

We also suggest that the requirement of subsection (f) (1) of the Act, 5 U.S.C. 552b (f) (1)—that a verbatim transcript or recording be made of Commission meetings closed pursuant to subsection (d) (4), 5 U.S.C. 552b (d) (4)—ought to be eliminated, or at least modified. Not only does this requirement add significantly to the cost of these meetings but, in addition, it exposes agencies to the threat of burdensome litigation designed to afford the target of a Commission investigation some delay, even if it is extremely unlikely to result in the release of any significant information to the public. There is also some danger of frivolous and dilatory litigation seeking, for purposes unrelated to the Sunshine Act, to obtain these transcripts or recordings in order to frustrate law enforcement action.⁵ On the other hand, the detailed requirements prescribed by subsection (f) (1) of the Act, 5 U.S.C. 552 (f) (1), with respect to minutes of agency meetings as a substitute for transcripts (in the case of meetings closed pursuant to Exemptions 8, 9A, or 10) make it entirely impractical to maintain minutes. Accordingly, at the present time, we feel we have no real alternative but to

⁵ The Commission's experience under the Freedom of Information Act has been that suits under the Act have occasionally been instituted to enjoin Commission investigations or enforcement action until insubstantial claims under the FOIA are finally resolved by the courts. While we have not yet had any lawsuits filed against us under the Sunshine Act, and do not anticipate massive litigation arising under it, we are concerned that at least some parties may attempt to use the Act to delay or impede the effectiveness of particular Commission decisions.

prepare a verbatim recording of all closed Commission meetings. As we previously indicated to the subcommittee, these problems could be resolved if the fourth sentence of subsection (f) (1) were amended to read:

"Such minutes shall fully and clearly describe all agenda items discussed and shall provide a full and accurate summary of all actions taken and the record of any roll-call vote, reflecting the vote of each member on the question."

Similarly, if this suggestion is adopted, we urge that the use of minutes be expanded to include discussion exempt from public observation pursuant to Exemption 5 of the Act. Alternatively, we suggest that the statute should make it clear that under no circumstances should access to any transcript required to be maintained by the Act be provided to those who are the subjects of actual or potential law enforcement activity. Agency action should be justified by reference to what the agency as a whole has done and what reasons the agency has stated to support its action. This has always been the law, and it would not be appropriate for an off-hand remark or comment by any individual Commissioner or member of the staff to be used against the Commission as a whole.

In addition, the Commission is concerned that the failure of subsection (f) (1) expressly to provide that, in addition to the agency's General Counsel or chief legal officer, his or the agency's designee may result in a legal challenge to agency action taken at a meeting held in circumstances where the General Counsel was himself unable to provide the certification required by the Act.

While we agree that the power to certify that an agency meeting may be closed should be restricted to responsible legal officers of the agency, we do not believe it was Congress' intention that agency work cease unless it could be shown that the General Counsel was on business or on vacation. The Commission has implemented a procedure pursuant to which the next senior member of the General Counsel's staff performs the certifications when the General Counsel is physically absent from the Office. Beyond this, the rule provides for a chain of command by rank and seniority. *See* 17 CFR 200.21. But, we recommend to the Subcommittee that the statute be amended to provide specifically for a similar procedure to be employed when the General Counsel's time can be spent more profitably on matters of significant importance to the public, thus ensuring that the statute does not inadvertently create technical grounds for objecting to agency action which the Congress clearly never intended.

The Commission also believes that the requirement of subsection (d) (5) of the Act, 5 U.S.C. 552b(d) (5)—that "a full written explanation" of the agency action to close a meeting dealing with enforcement related matters be provided—is impractical, particularly in light of the statute's recognition an explanation should not include any exempt information. As a practical matter, there would appear to be little which can be said by way of explanation, beyond citation to the particular exemption involved, which would not reveal exempt information. Accordingly, subsection (d) (5) would appear to serve little useful purpose with respect to law enforcement related matters and we suggest it should be eliminated.

Finally, we understand that the Federal Reserve Board has recommended that the Act be amended to provide a specific exemptive provision to permit agencies to close meetings at which discussions of pending or proposed legislation will occur. We concur in that recommendation. We believe the public interest is best served by full and frank discussions on the many legislative proposals that are referred to us for comment. Such discussions may not occur in a public meeting for fear that one's statements may, at a later time, be used against the agency in some other context.

We hope that these comments will be helpful to the Subcommittee in its efforts to provide more meaningful information to the public about the workings of its government while not adversely affecting the ability of the government to carry out its responsibilities. This is a goal which the Commission wholeheartedly supports. Mr. Pitt and I will be pleased to attempt to respond to any questions the members of the Subcommittee may have.

Senator WILLIAMS. I'm going to submit some questions for written response for our record and Senator Tower has a similar request (see p. 157).

Mr. WILLIAMS. I have his questions.

Senator WILLIAMS. While I would like to continue here, the Senate is now in session and I have a feeling I'd better get over there.

Just one question, though, finally—the American Law Institute's work on the Federal Securities Code. I believe you all know that this

has been a long labor for many years and it is now ready to go to the American Law Institute for approval.

Mr. WILLIAMS. Yes.

Senator WILLIAMS. I wonder how far along the Commission is in its review and whether the Commission officially will be recommending the code's introduction for congressional consideration, aside from its opinions on some of the significant substantive issues.

Mr. WILLIAMS. We are not in a position to know whether we are going to recommend that or not. The code has indeed been an enormous effort and clearly a labor of love. What began as an effort to codify has in many cases turned into an expansion and a substantial modification of existing securities law. We have tried to track it in its development. It's changed continuously, and often almost without notice things would show up in the redraft as it went along.

Now that it has stabilized, we have an active Commission effort ongoing to analyze it and be certain we understand it and what its implications are, to what extent it codifies, and to what extent it changes the existing law.

We expect to be in a position to arrive at our own conclusion as to whether we would recommend that the Congress entertain it and specifically what our positions might be on one or another portion of that.

I might note that I'm sure if it were considered there would be an extensive period of time involved for something as massive and as fundamental as that proposal is. I suspect it would lie to my successor to go through the enormous burden of trying to convert over to a new code—you know, we are far from complete in terms of all of the rule modifications and other activities that were stimulated by the 1975 act amendments themselves, which involved only a very narrow and limited part of the securities laws—and the problem of conversion of something this massive would be enormous.

Senator WILLIAMS. Well, let me suggest that this consideration might well go into your successor's term. I have had the same observation made here, that it would probably require another term or two of continuity here.

Mr. WILLIAMS. I have one 5-year commitment, Mr. Chairman, and that's all.

Senator WILLIAMS. Professor Loss deals in his codification with what one writer describes in a very thoughtful piece in the Wall Street Journal today as "Those Troubling Consent Orders?" That's the headline of the article which I will place into the record:

[The article and memorandum from the SEC follows:]

[From the Wall Street Journal, May 18, 1978]

THOSE TROUBLING CONSENT ORDERS

THE SEC USES CONSENT ORDERS TO CLOSE ABOUT 90 PERCENT OF THE 160 OR SO CIVIL LAWSUITS IT BRINGS ANNUALLY, JUST AS LOCAL PROSECUTORS WRAP UP THE MAJORITY OF THEIR CASES WITH PLEA BARGAINING

(By Stan Crock)

WASHINGTON—"I didn't do it but I won't do it again."

That's how some people interpret what companies and executives say when they settle Securities and Exchange Commission charges that they violated the federal securities laws. They generally consent to a court order barring them

from future violations without admitting or denying that they had done anything wrong in the first place.

The most notable recent example of this was the unusual, if not unprecedented, spectacle of Bert Lance agreeing to two SEC settlements in little more than a month. But the former Budget Director, because he is a close friend of President Carter, is merely the most visible of a steady stream of people who enter into such accords with the SEC and other government agencies.

The SEC uses consent orders to close about 90% of the 160 or so civil lawsuits it brings annually, just as local prosecutors wrap up the majority of their cases with plea bargaining. But the same troubling questions that are raised about the district attorneys' practice are applicable to the SEC. Should the commission go to trial more often? Are the consent agreements mere slaps on the wrist?

Many SEC critics think the answer to both questions is a resounding "yes." Mark Green, director of Ralph Nader's Congress Watch, calls the consent-order system "a joke," saying it "minimizes deterrence because it guarantees one free illegality. . . . Street pickpockets would love to be punished merely by an injunction not to pickpocket again and (executive) suite pickpockets want and have that system."

Corporation lawyers respond that such critics unfairly imply that anybody who agrees to consent orders are guilty of the charges. Many companies and individuals, they contend, settle simply to avoid the costs of going to trial.

A COMPELLING ARGUMENT

And SEC officials, like local prosecutors and enforcement colleagues at other government agencies, reply that they couldn't possibly go to trial in even half the number of cases they currently are bringing—they don't have the money or personnel. But the commission officials offer an even more compelling argument for consent orders at their agency: The securities laws currently provide the SEC with such limited remedial powers that the public actually is better served when the commission stays out of court.

As a general matter, all the SEC can win when it goes into court is a civil injunction to stop the violations. "That being the case," contends Andrew Rothman, the SEC's chief spokesman, "there is usually very little extra to be gained from the point of view of the commission or the public interest from litigating a case when we can achieve the same relief through a consent agreement."

Moreover, when the SEC does go to trial, there always is the chance it will lose. This is because it is the hard cases that make it that far, says Theodore Sonde, associate director of the enforcement division's trial section. "You're throwing the dice when you go into court," he says. "You have a fair chance of something going wrong."

In addition, lawyers and judges, fearing reversal on appeal, are cautious in the courtroom. In consent negotiations, the SEC is freer to fashion imaginative consent decrees.

The SEC enforcement division has used its "limited remedial powers creatively," says Harvey Goldschmid, a professor of corporate law at Columbia University Law School. He cites as examples consent agreements the SEC obtained in cases involving questionable payments by corporations; the agreements required the appointment of audit committees, independent directors and special counsels who conducted investigations and made public reports. (The recently enacted Foreign Corrupt Practices Act might now make it easier for the SEC to win similar sanctions in court.)

The Lance cases are additional examples. In one case, Mr. Lance, some wealthy Arabs and others were accused of violating the law by failing to report that they had acquired more than 5% of Financial General Bankshares Inc. stock. As part of the settlement, the Arab interests agreed, among other things, to make a tender offer at a premium for all shares they didn't buy, a sanction usually applied to violations of the tender offer laws.

But in a parallel private lawsuit by Financial General's management, the same judge who accepted the consent agreement ruled that there hadn't been a violation of the tender offer laws; he concluded that there had only been a violation of the reporting requirements. So, it's unlikely the SEC would have done as well if it had gone to court.

In the other Lance case, in which the SEC and the Comptroller of the Currency accused him and two banks he once headed of violating various securities laws, Mr. Lance agreed to detailed controls over his now famous personal banking

habits and to refrain from banking activities for six months. This, too, probably wouldn't have been matched in court.

But some people contend the commission is usurping power by obtaining through consent orders something it can't get after a trial. The SEC is "too free-wheeling, too independent of control," says Monroe Freedman, a professor at Hofstra University Law School. He also accuses the commission's enforcement staff of putting "unconscionable pressure" to settle on companies and lawyers. Adds Donald Schwartz, a professor at Georgetown University Law Center, in reference to the questionable payments cases: "Reshaping the boards of directors is a good thing, but I'm not sure that the SEC has the power to do it."

Prof. Schwartz says that while consent agreements are useful for stopping practices that injure investors, there is a risk of abuses by SEC enforcers. "They can raise an eyebrow and cause people to knuckle under," he says, "and that's a bit dangerous."

One reason the SEC can compel stiff consent terms is that companies fear that a private party could swoop in on an SEC court victory, saying the violation has been proved and arguing that the only question left is damages. But Congress Watch's Mr. Green criticizes SEC consent orders precisely because they can't be used in court by private parties the same way that SEC court victories can be used. (The Supreme Court recently agreed to resolve a conflict between lower courts on the issue of whether the private party has to prove the violation all over again when the SEC wins in court.)

IT CAN HAVE SUBSTANTIAL IMPACT

Consumer advocates also criticize consent orders for generally failing to include findings that the accused violated the law, an omission that often leads to the wrist-slapping charge. But the filing of the lawsuit and settlement can have substantial impact.

"When combined with significant publicity and a respectable defendant who cares about business reputation, the injunctive provisions of a consent decree can be of real significance," Prof. Goldschmid says. "Unfortunately the traditional injunctive prohibition—'don't do it again'—is least effective against the serious wrongdoer who doesn't care much about his or her reputation," he adds.

It is this "go and sin no more" approach to white-collar law violators compared with much stiffer penalties imposed on someone who, say, holds up a bank, that irks critics. But there isn't much more that the SEC can do. The agency has administrative authority to discipline securities firms and their employees, as well as lawyers and accountants who deal with it. But the securities law gives the agency a rather meager arsenal when it takes legal action against corporations and executives.

The SEC can't bring criminal charges against suspected wrongdoers, but can only refer cases for prosecution to the Justice Department. The agency can't even impose a fine, a power that Stanley Sporkin, director of the enforcement division, says he would like to have.

Whether the SEC needs additional powers or already has too much clearly is a subject of considerable debate. "What is needed," says Prof. Goldschmid, "is a comprehensive review of the whole remedies area."

MEMORANDUM OF THE SECURITIES AND EXCHANGE COMMISSION TO THE SUBCOMMITTEE ON SECURITIES OF THE SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS ON WALL STREET JOURNAL ARTICLE, DATED MAY 18, 1978, ON COURT ORDERS OBTAINED BY THE COMMISSION THROUGH SETTLEMENT

During the appearance of Chairman Harold M. Williams before the Subcommittee, on May 18, Senator Harrison A. Williams, Jr. raised questions regarding an article which appeared in the *Wall Street Journal* of that date entitled "*Those Troubling Consent Orders*." In general, the article sets forth the concerns of certain individuals regarding the Commission's settlement of injunctive actions based upon the consent of a defendant to the court's entry of an injunction against the defendant, who neither admits nor denies the allegations in the complaint.

Congress has authorized the Commission to bring actions in the United States District Court to seek to enjoin violations of the federal securities laws. When the Commission files such an action, the parties may either litigate the case to

its conclusion (in which case the court will render findings of fact and conclusions of law in favor of either the Commission or the defendant), or the parties may consent to the relief requested or otherwise settle the case. In the vast majority of settled cases, the courts have entered orders enjoining the defendants from further violations of the federal securities laws. The court order then, without the necessity for a full trial on the merits, accomplishes what the Congress by statute authorized the Commission to accomplish, i.e., to obtain an injunction against further violations of the federal securities laws. Violation of such an order carries with it the same sanctions for contempt as the violation of a decree entered after a full trial on the merits.

As is generally the case with civil litigation between parties in the United States District Courts, the court order (in this case, based upon the defendant consenting to the order) does not require nor is it necessary for the defendant to admit the charges against him. In addition to obtaining injunctive orders, the Commission has also sought and obtained, both through litigation and agreement, other forms of equitable relief necessary to protect the interests of the public and to permit the Commission fully to discharge its responsibilities under the federal securities laws. In this connection, defendants have been ordered by the courts to pay back to investors funds improperly obtained, receivers have been appointed, fraud audits and accountings have been obtained, audit committees have been formed, and special committees of independent board members have been authorized to conduct internal investigations and report to the Commission and shareholders on their findings.

When such remedies are obtained by settlement instead of after lengthy and oftentimes protracted litigation, they not only conserve judicial and agency resources (and are looked upon favorably by the courts), but they significantly contribute to the effectiveness of the Commission's enforcement effort. They free up the Commission's limited staff to pursue other necessary enforcement matters in lieu of the substantial commitment required to litigate fully a civil enforcement action. Moreover, the court order itself is far from a "slap on the wrist." It is a vehicle by which the Commission accomplishes the statutory objective authorized by Congress and a vehicle by which the Commission has obtained significant other equitable relief, all of which has worked to the benefit of investors in the United States and ultimately to the public interest in general.

The use of the foregoing procedure is vital to the Commission's enforcement program. The benefits derived are indicated by the fact that the number of civil injunctive actions filed by the Commission in 1977—166—far exceeded those filed by the Commission in 1966—56. Similarly, the number of injunctions obtained in such years was 356 and 50, respectively. These results were achieved despite the fact that the Commission's staff only recently began to exceed the size of its staff in 1966. As the *Wall Street Journal* article indicates, a large majority of these injunctions were obtained through settlement.

As indicated above, great additional amounts of the Commission's limited staff time and resources would be required to be spent by the Commission if it were required to litigate each of its cases. Data available in the annual report of the Director of Administrative Office of the United States Courts for the year 1976 reveals that the median time from filing to disposition of all civil cases that go to trial in the United States District Courts was 16 months, assuming no appeal. And, appeal time through just the circuit courts more than doubles the total time involved. These figures were applicable to all civil cases. Inasmuch as the Commission's cases tend to involve highly complicated legal and factual issues, the Commission believes that the time intervals are of substantially lesser duration than would be applicable to Commission civil injunctive actions.

Thus, were the Commission required to litigate even a moderately greater number of its injunctive proceedings, the number of such proceedings which could be brought would be substantially fewer, entailing a consequent loss of protection to the public, and the public would be required to endure a significantly greater amount of time awaiting that protection.

Perhaps the most troubling comment reflected in the article is that a court order entered with a defendant's consent is a mere "slap on the wrist." Those making such comments simply ignore two facts: first, that, as mentioned above, the court order normally grants all the relief that the Congress has authorized the Commission to obtain in the public interest, assuming the case were litigated and won by the Commission; and, second, that one of the primary goals of the Commission in enforcing the federal securities laws is the prompt obtaining of effective prophylactic relief, to protect the public against recurrence of viola-

tive conduct. Obtaining that relief through the settlement process brings about such protection much sooner than would otherwise be the case.

The article also refers to the view expressed by some that court orders entered with the consent of defendants obtain relief which the Commission is not authorized to obtain. The courts and, of course, the Commission disagree. Numerous courts have recognized the inherent equity power of the courts to grant various forms of equitable relief such as the Commission has sought and obtained in court orders through settlement. *See, e.g., SEC v. Texas Gulf Sulfur Corp.*, 446 F. 2d 130 (C.A.2, 1971), *certiorari denied*, 404 U.S. 1005 (1971) and *SEC v. Manor Nursing Centers, Inc.*, 458 F. 2d 1082 (C.A.2, 1972).

The article refers to the Commission's statutory authority and states "... the securities law gives the agency a rather meager arsenal when it takes legal action against corporations and executives." In this connection, the Commission's staff is currently studying various legislative proposals which would expand the Commission's authority to include authority presently available to other administrative agencies such as the Commodities Futures Trading Commission and Federal Trade Commission.

Finally, it should be pointed out that court orders entered with the consent of defendants only dispose of certain aspects of the case and do *not* in any way prevent resort to the criminal process, if in the Commission's view, that is appropriate. In its settlement of civil injunctive actions with defendants, the Commission retains its ability, which it has often used, to refer the matter to the Department of Justice for criminal prosecution. An excellent example is the Commission's action against, among others, Emersons, Ltd. and its former president. *SEC v. Emersons, Ltd., et al.*, Civ. No. 76-0808 (D.D.C., 1976). There, the Commission simultaneously filed a civil injunctive action and settled the proceeding against all defendants. Broad remedial relief was obtained, including injunctions against further violations of the federal securities laws, the repayment to the corporation of monies misappropriated by its president, and, among other things, the appointment of a special counsel to perform a comprehensive inquiry as to the matters underlying the Commission's allegations and report thereon. As a result of the Commission's investigation, recently, the former president of Emersons was criminally convicted with respect to his activities which were the subject of the Commission's complaint. *U.S. v. Radnay*, Crim. No. 78-08090 (D.D.C., 1978). Thus, the process described herein in no way impinges upon the ability to secure adequate punishment for past violative conduct and is limited, as it should be, to the prevention of future violative conduct as well as the granting of appropriate equitable relief.

Mr. WILLIAMS. I have not read the article yet.

Senator WILLIAMS. It's the headline of a very thoughtful article in the Wall Street Journal.

Mr. WILLIAMS. Perhaps I should read the article before responding, and I will be able to give you a more thoughtful response after I have, but I must tell you that we look upon consent orders in a different way than perhaps some others do.

As far as we're concerned, there are two fundamentally important values to consent orders. The first is that our objective with consent orders is to derive as much of a remedial result as we judge we would be likely to get as a result of a full litigation of the issue on the merits. As you know, our primary remedy in these matters is injunctive relief. We make a judgment in terms of the likelihood, in terms of the probability, of the kind of relief we would expect we would get if the matter were fully litigated, and if we in our judgment are able to obtain the same type of prophylactic relief without full trial on the merits, then we feel it's a very appropriate way to proceed. Which leads to the second point; that is, with our very limited resources, to achieve those kinds of results without deploying our people in trial and litigation, so that we can dispose of one matter and move on to another one. Where we can do this by means of consent orders, it is a much more effective utilization of our resources than if these cases were tried.

So while I recognize that the consent order doesn't require that the defendant say "Uncle"—it doesn't admit or deny—the relief is still as compelling and as enforceable in court as when we try the matter on the merits.

Senator WILLIAMS. Well, I understand certain practical aspects and I'm a lawyer who has not practiced recently. But for a layman it's a strange procedure—"I didn't do it but I won't do it again."

Mr. WILLIAMS. I know, and it bothers me when the defendant afterwards says, "I didn't admit anything and I really didn't do anything anyway, but I just took the consent to get the matter out of the way." I find that troubling.

Senator WILLIAMS. The securities law is not the only area where this occurs. It can happen at the National Labor Relations Board.

Mr. WILLIAMS. It happens often in criminal actions as well when they plead *nolo contendere*, for example. It does create what sounds like a two-level justice system, where in white-collar offenses, one can get away without either being tried or admit guilt and what appears as a slap on the wrist. The slap-on-the-wrist appearance, I expect, is a product more of the limitation of our relief, namely, primarily injunctive relief.

I think in many cases people look at facts which might indicate criminal behavior as they might view it, see a result in the civil case that says, "I won't do it again," and interpret that as kind of a laxity, kind of a two-tiered justice system. They don't realize that in many cases there will be a subsequent criminal proceeding with more substantial penalties available.

Senator WILLIAMS. You're suggesting here that you're limited in your remedial tools?

Mr. WILLIAMS. That's right.

Senator WILLIAMS. Am I right that part of the staff increases would be directed at giving you greater opportunity to pursue a case thoroughly so that the agency would not have to seek the consent order so often?

Mr. WILLIAMS. I would be inclined to tip that the other way and say that over time an increasing number of cases involve parties under investigation who prefer to litigate the matter—for example, instances where we need to go into court on subpoena enforcement just to conduct our investigation—and instances where we are not able to achieve a settlement that we consider to be appropriate.

Senator WILLIAMS. I have a question from Senator Tower. This is Senator Tower's question and I will read his introduction to the question and the question in full.

I understand that the Commission has on its docket a proceeding known as the American Electric Power Company case which has been pending for more than 10 years. I also understand that in a series of letters from the Commission over a period of at least one year Congressman Devine of Ohio has received assurances that the Commission's decision would be forthcoming soon or shortly.

By what date will the Commission's decision of the American Electric Power Company case be announced?

A very cryptic question.

Mr. WILLIAMS. The American Electric Power case has indeed been before the Commission for an inordinately long time. It's a very complex case with a number of rehearings. It isn't quite as gross as the 10-year passage of time would indicate, but I'm not trying to defend it before you this morning.

Congressman Devine has indeed written, and most articulately, and we will dispose of this case promptly. That's not just a matter of priority this morning, but it's been a priority of the Commission now for some period of time. I can't give you a firm date, but I would expect it will be quite promptly. Well, I'd be comfortable in saying we hope to dispose of it within 60 days or earlier.

Senator WILLIAMS. Now I wonder whether this question is necessary. I'll see whether it is. "What have you done or what will you do to assure that other Commission proceedings will be decided without unreasonable delay?"

Mr. WILLIAMS. Well, we have a major effort on at this point. The American Electric Power case is by far the oldest one pending. We have one other case with cobwebs on it, and that one is currently in the process of being disposed of. Then we will be quite current on our administration proceedings calendar.

Senator WILLIAMS. Does your staff limitations have anything to do with delays in these cases?

Mr. WILLIAMS. No, sir; I don't think so.

Senator WILLIAMS. With the additional questions that will be submitted to you, that concludes this hearing, and thank you very much. [Whereupon, at 11:25 a.m., the hearing was adjourned.]

APPENDIX

STATEMENT OF THE HONORABLE HAROLD M. WILLIAMS, CHAIRMAN
U.S. SECURITIES AND EXCHANGE COMMISSION
BEFORE THE SUBCOMMITTEE ON SECURITIES OF THE
SENATE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
REGARDING S. 2715

May 18, 1978

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to testify this morning to discuss S. 2715, which would authorize the Commission's resource levels for the next three fiscal years. As you know, this legislation reflects the Commission's request for authorizations of \$70 million in fiscal 1979, \$80 million in 1980, and \$91 million in 1981.

I understand the Subcommittee has been furnished with copies of the Commission's appropriation request for fiscal 1979, as well as a detailed justification for our three-year authorization request. I would like to ask that the latter document, entitled "Budget Authorization Request for Fiscal Years 1979, 1980, 1981" be included in the record in its entirety.

During the past year, I have been deeply involved in analyzing the Commission's resource requirements and shaping its priorities. The Commission has gone through a comprehensive and detailed budget planning process which required each manager to examine carefully every aspect of the program for which he or she is responsible. It

involved dozens of the Commission's key officials and has enabled me to establish priorities for allocating resources in a manner which will permit the Commission to discharge its statutory responsibilities.

This has been a disciplined exercise for our staff, providing an opportunity to consider short-term resource requirements in light of long-range program objectives. We welcome the opportunity for the Commission's authorization committees to make input into this process, so that together we can plan beyond the single year affected by an annual appropriation. With the added insight offered by Congressional guidance on our program priorities, we can formulate performance targets and plan ahead for projected staff increases, consistent, of course, with our ability to absorb additional personnel.

Our appropriation request for fiscal 1979 was the first product of our comprehensive planning process. Using this resource level as a base, each program manager formulated staffing requirements for 1980 and 1981. I reviewed those levels and adjusted them in light of the Commission's responsibilities, priorities for implementation, and limitations imposed by existing resource levels. Following conversion of staffing needs into

funding requirements and the addition of non-personnel costs, a three-year authorization request was developed.

We believe that this multi-year authorization will assist the Commission in planning the most effective use of its resources. This long-range planning process is similar to those I experienced in the private sector and conforms with President Carter's guidance to all Federal agencies to begin multi-year resource planning.

The starting point for developing our authorization request is the proposed 1979 appropriation now before the Congress. That request totals \$64.8 million, which represents a 3.6 percent increase over our appropriation as revised for 1978. It will allow us an increase of 40 positions over what is currently authorized, 30 more staff years in average employment, and funding for uncontrollable cost increases. This last item accounts for over half of the dollar increase requested.

I think the Subcommittee will be interested to know that the general public would shoulder the burden for less than half the Commission's requested appropriation. We estimate that during fiscal 1979 the Commission will collect in fees and deposit in the United States Treasury an estimated \$35.6 million -- 55 percent of our requested budget.

As I noted earlier, our proposed authorization for 1979 is based upon the \$64.8 million appropriation request. Added to that are three principal components: an estimated \$3 million to fund the government-wide pay increase that is expected next October; \$1 million to pay for inflationary cost increases which are anticipated but could not be included in the appropriation request; and \$1.2 million for minor contingencies.

The first of these items, the October pay increase, is anticipated by the President's 1979 budget. However, since the exact amount of the pay raise has not yet been determined, it cannot be included in the Commission's appropriation request.

The inflationary cost increases which we anticipate are comprised of uncontrollable items, such as higher utility charges and new rates for penalty mail. Since these increases had not materialized when the budget was formulated last summer, they could not be reflected in our appropriation request. We have asked, however, that the authorization reflect the inflation which is expected to occur between budget formulation in 1977 and budget execution in 1979.

The final component is \$1.2 million for unforeseen program requirements. In this connection, I would point

out that our appropriation request was originally formulated during the summer of 1977 -- more than one year before the beginning of fiscal year 1979, and more than two years before its conclusion. A great deal can change during that period.

By way of example, let me cite two unforeseen occurrences during the current fiscal year.

First, the General Services Administration informed us on September 14 -- just before the start of the fiscal year -- that additional space we had long been seeking for our headquarters staff was finally available. While the extra space is most welcome, unbudgeted costs associated with the third headquarters location add up to \$502,000 during 1978. The full-year rental charges must be incorporated into appropriation levels for 1979 and subsequent years.

In the second instance, Congress passed legislation last July requiring all agencies to pay the cost of publishing their notices in the Federal Register and the Code of Federal Regulations. This will cost the Commission an estimated \$450,000 in 1978.

Fortunately, our 1978 authorization included enough flexibility to cover these contingencies. As a result we were able to seek a supplemental appropriation for the current fiscal year of \$1.4 million, which is now pending

before Congress. It would seem to make sense to incorporate this kind of flexibility into the authorization levels now under consideration. Without the ability to obtain supplemental funding in a timely manner, the Commission could be forced to absorb unforeseen costs within its existing budget, thus further reducing the already limited resources available to carry out program responsibilities under the Federal securities laws.

I would like to turn now to the requested authorizations for fiscal years 1980 and 1981 -- \$80 million and \$91 million respectively. The nature of the activities in which the Commission will employ these additional resources is discussed in the document we have submitted for the record. I would, however, like to spend a few minutes surveying the increasing responsibilities which justify larger authorizations in the years ahead.

The foremost example of the Commission's growing responsibilities relates, of course, to creation of a national market system. In accordance with the mandate provided by our oversight committees, in January we issued an outline of those initiatives we consider necessary to accelerate implementation of a national market system. We anticipate that by 1980 the basic trading mechanisms and facilities will be operating. Consequently, rules regulating the new system will have to be developed and adopted during the time frame under discussion today.

Last summer the Subcommittees on Consumer Protection and Finance and on Oversight and Investigations of the House Commerce Committee undertook a joint examination of the Commission's implementation of the Securities Acts Amendments of 1975. The report which resulted from that inquiry identified a number of areas in which the subcommittees believed that the Commission could improve its efforts to implement the legislation. In particular, the report emphasized that the Commission should devote more attention to the creation of a national clearing and settlement system and should act to implement Section 13(f), which confers upon the Commission responsibility to require reports on ownership and voting power from certain large institutional managers.

Each of these initiatives is important, and the subcommittees were correct in identifying them and highlighting the need for action. I think it important, however, to bear in mind that Congressional criticism and Congressional encouragement to act more vigorously in particular areas must be accompanied by the resources necessary to accomplish these tasks.

Another requirement for expanded oversight of the securities markets arises, not from new legislation, but rather from a new development in the marketplace itself -- the burgeoning growth of trading in put and

call options. As a result of rapid developments in this area, the Commission proposed a moratorium on expansion of options markets and initiated a special study through temporary and emergency allocation of existing resources. The study is intended to be a comprehensive review of options trading in light of the complex legal, economic, and regulatory problems which this new and specialized field has engendered. The study could result in a comprehensive new regulatory program, including new rules concerning trading practices and market structure. We would hope that any authorization level would be flexible enough to enable the Commission to administer an expanded program, if it is found to be warranted.

Another field of important activity results from the Commission's regulatory and enforcement responsibilities pursuant to the Investment Company Act of 1940 and the Investment Advisers Act of 1940. Unfortunately, the Commission's capacity to examine effectively the activities of these financial institutions -- where the collapse of a single firm could affect thousands of investors -- is much less than it should be. For example, even if the Congress approves the additional staffing the President has proposed for 1979, inspections of investment advisers will be possible on an average of only once every 10.6 years, because of the

rapid and continued increase in the number of registered advisers. Because most advisers are not knowledgeable of the requirements set forth under the securities laws, it is important to inspect them soon after they are registered. However, the Commission must assign first priority to "for cause" inspections and therefore can engage in only a limited program of routine inspections. We would like to improve our capability in this important area in 1980 and 1981.

In performing its oversight role, the Commission must demand high standards of competence and integrity from those professionals who practice before it. In response to guidance from the House Oversight Subcommittee and the Senate Committee on Governmental Affairs, we have undertaken substantial new responsibilities designed to foster close and continuous communications between the Commission and professional accounting bodies. Moreover, the Commission has agreed to prepare comprehensive annual reports to Congress concerning the accounting profession's progress in response to the issues raised during the House and Senate hearings. Further, the Commission has initiated measures to encourage the establishment of audit committees for publicly-held companies, to promote the independence of accountants who practice before the Commission, and to establish priorities with respect to the resolution of

issues concerning the adoption and application of accounting principles.

Recent developments have placed unprecedented demands on the Commission's litigation and enforcement staff and have strained its ability to continue to discharge its statutory responsibilities with current funding. With increasing frequency, individuals and corporations are contesting charges brought by the Commission in both administrative and district court enforcement proceedings. Further, appeals from the ensuing administrative orders or judicial decisions have multiplied in recent years, and the issues involved have become more complex. Accordingly, it is essential that the Commission increase its own litigation capabilities in order to keep pace. At the same time, the emerging case law tends to restrict the ability of private plaintiffs to seek redress in civil actions under the Federal securities laws, partially eliminating a valuable supplement to the Commission's enforcement program.

Similarly, in response to public revelations of widespread abuses, the Commission has conducted an extensive and continuing program to insure adequate disclosure to investors of instances in which public companies have engaged in questionable or illegal payments - especially bribery of foreign government officials. The Foreign

Corrupt Practices Act of 1977 was enacted in response to widespread abuses uncovered by the Commission. As this subcommittee knows, that Act obligates us to oversee new standards of corporate behavior and accounting controls. It also increases our responsibilities in connection with the reporting of beneficial ownership of securities. Nevertheless, our appropriation request for 1979 does not include any additional resources with which to carry out these expanded responsibilities, because the budget was prepared before the Act was passed by the Congress and signed into law.

Finally, the Commission is continuously reviewing its rules pertaining to full disclosure. This past winter the Commission conducted hearings in four cities concerning ways in which corporate accountability could be strengthened and shareholder participation in corporate governance enhanced. While the Division of Corporation Finance is now in the process of summarizing the voluminous file compiled in these proceedings, it is already clear that there are widely divergent and strongly held convictions concerning the accountability of American corporations. And in April the Commission began a series of public hearings in six cities, which conclude today in Boston, to determine the impact of its rules and regulations on small businesses, particularly with respect to their ability to

to raise capital. The hearings are intended to ascertain whether existing capital-raising vehicles available pursuant to Commission regulations unnecessarily present a deterrent to capital growth. The pending authorization levels must be elastic enough to permit the Commission to follow through on the conclusions drawn from these hearings.

* * *

Mr. Chairman, my statement today has attempted to provide the Subcommittee with an overview of what we perceive to be the Commission's responsibilities during the next three years and the resources we feel will be required to meet these challenges. The importance of our securities markets to the economic health of this nation is, I know, well understood by this subcommittee, as is the extent of the changes which those markets are now undergoing and the Commission's role in this evolution.

I appreciate this opportunity to meet with you and discuss the rationale and importance of our multi-year authorization request. I will be happy to try to answer any questions you may have.

95TH CONGRESS
2D SESSION

S. 2715

IN THE SENATE OF THE UNITED STATES

MARCH 10 (legislative day, FEBRUARY 6), 1978

Mr. WILLIAMS (for himself, Mr. PROXMIRE, and Mr. TOWER) (by request) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Securities Exchange Act of 1934 to authorize appropriations for the Securities and Exchange Commission for fiscal years 1979-1981.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 35 of the Securities Exchange Act of 1934 (15
4 U.S.C. 78kk) is amended—

5 (1) in the first sentence thereof, by striking out
6 “and” before the last comma;

7 (2) .by inserting immediately before the period at
8 the end of the first sentence thereof the following: “,
9 \$70,000,000 for the fiscal year ending September 30,
10 1979, \$80,000,000 for the fiscal year ending Septem-

1 ber 3, 1980, and \$91,000,000 for the fiscal year ending
2 September 30, 1981"; and
3 (3) in the last sentence thereof, by striking out
4 "fiscal year 1978" and inserting in lieu thereof "fiscal
5 year 1981".



OFFICE OF
THE CHAIRMAN

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

January 24, 1978

The Honorable John Slack, Chairman
Subcommittee on State, Justice, Commerce,
the Judiciary and Related Agencies
Committee on Appropriations
House of Representatives
Washington, D.C. 20515

Dear Chairman Slack:

Attached is the 1979 budget estimate of the Securities and Exchange Commission. It anticipates total expenses of \$64,800,000, an increase of \$2,275,000 over 1978, as amended. The policy decisions underlying this budget estimate were made in light of Presidential guidance to hold programs to their lowest feasible level. The budget reflects the Commission's commitment to responsible resource management. The Commission is requesting a modest increase of 2 per cent in personnel and 3.6 per cent in appropriations.

The requested increase consists of the following items:

• 40 new positions funded for nine months	\$ 847,000
• 30 unfunded positions already authorized by the Congress	541,000
• Uncontrollable cost increases	1,175,000
• Offsetting reductions for one-time costs in 1978	-288,000
	\$2,275,000

The Honorable John Slack
Page 2

Principal increases sought in 1979 are related primarily to regulation of securities markets and prevention and suppression of fraud:

- The Securities Acts Amendments of 1975 direct the Commission to facilitate the establishment of a national market system for securities and a national clearing system for the prompt and accurate settlement of securities transactions. The national market system, when fully implemented, will represent the most significant restructuring of the United States securities markets ever undertaken.
- The burgeoning growth of trading in put and call options has demanded that the Commission enhance its regulatory capabilities in order to keep pace, and the Commission recently commenced a comprehensive review of options trading in light of the complex legal, economic, and regulatory problems which this new and specialized field has engendered. The Commission's market surveillance capabilities have been severely tested by the commencement of options trading, and the possibilities of fraud in connection with the coordinated trading of both an option and the underlying security demand significantly increased Commission activity in this area.

Smaller personnel increases are necessary in order to maintain a viable regulatory presence with respect to registered investment advisers, to expand oversight of the accounting profession, and to improve management capabilities needed to support the program divisions:

- For the past several years the number of investment advisers registering with the Commission has expanded at a significantly faster rate than our related inspection program. The additional personnel requested to conduct inspections in the Commission's regional offices are needed in order to prevent the time lapse between inspections from regressing to the point where the activity no longer serves as a deterrent.
- In response to recommendations of the Subcommittee on Reports, Accounting and Management of the Senate Committee on Governmental Operations, the Commission has committed itself to encourage the establishment of audit committees for publicly-held companies, to promote the independence of accountants who practice before the Commission, and to establish

The Honorable John Slack
Page 3

priorities with respect to the resolution of issues concerning the adoption and application of accounting principles. A small staff increase is required to ensure the success of this new initiative.

- Too often in the past the management support functions of the Commission have been denied additional resources because of the pressing urgency of regulatory and enforcement activities. The 1979 budget takes a first step toward upgrading certain under-funded staff functions which can have a profound impact on the effectiveness of work done by program personnel.

Offsetting the 1979 request are an estimated \$35,628,000, which the Commission expects to collect in fees and deposit in the Treasury. This represents 55% of the estimated operating expense in 1979. The net cost to the public of the Commission's activities will actually decline to approximately \$29 million. To put it another way, the requested increase in appropriations of \$2,275,000 is more than offset by an anticipated rise in revenues of \$2,960,000 in 1979. When the revenues generated by the securities regulation program are combined with the estimated savings realized by the investing public as a result of the Commission's enforcement activities, it must be concluded that American taxpayers derive a greater benefit from the work of the SEC than its cost of operation.

* * *

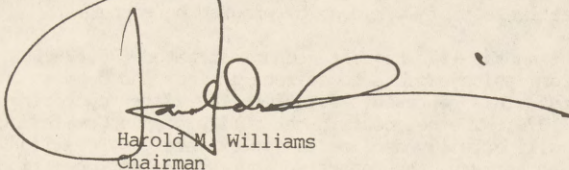
The attached budget represents a radical departure from those previously submitted to the Subcommittee. This is the first major change in the Commission's budget presentation in more than ten years, and the first time that our budget request is justified on a program, rather than an organizational, basis.

The revised format first presents a broad overview of each of the Commission's major programs, citing the program goal, recent accomplishments, long-range objectives, and methods of pursuing those objectives. The 1979 budget for each program is then discussed in terms of short-run objectives, justification for the resources requested, and the impact of the proposed activity level on the program's long-range objectives. Workload data is also presented for the past year, the current year, and the budget year.

The Honorable John Slack
Page 4

It is our belief that this new format will sharpen issues and provide the Congress with a clearer picture of the activity levels proposed for the upcoming fiscal year. We would welcome the Subcommittee's comments on this new budget package and any suggestions you may have for making our presentation still more informative. My staff and I are eager and prepared to answer any questions which may be generated by our revised presentation or the substantive matters addressed therein.

Sincerely,

A large, stylized handwritten signature in dark ink, likely belonging to Harold M. Williams. The signature is written over the word "Sincerely," and extends across the line of the name below.

Harold M. Williams
Chairman

Enclosure

SECURITIES AND EXCHANGE COMMISSION



BUDGET AUTHORIZATION REQUEST
FOR FISCAL YEARS 1979, 1980, 1981

JUSTIFICATION FOR SEC BUDGET AUTHORIZATION, 1979-1981

The Securities and Exchange Commission is seeking legislation which would provide budget authorization of \$70 million in fiscal year 1979, \$80 million in 1980, and \$91 million in 1981. These resource projections have been built on the foundation provided by the President's budget for 1979, which includes a request of \$64.8 million for the Commission. This document is intended to explain the importance of a multi-year authorization and to provide justification for the authorization levels requested.

The discussion is divided into four parts. The first deals with the concept of budget authorization and its application to independent regulatory agencies. Next is a brief discussion of long-range planning and the budget formulation process. This is followed by an overview of recent developments in the securities industry vis a vis the capacity of the Commission to respond. The last section addresses the specific authorization levels proposed in fiscal years 1979, 1980, and 1981.

The congressional committees responsible for overseeing the activities of the SEC — the Committee on Interstate and Foreign Commerce in the House and the Committee on Banking, Housing and Urban Affairs in the Senate — can be assured that after enactment of authorization legislation, they will be informed of any significant changes in the Commission's resource requirements, even though an

amendment to the authorization bill may not be required. The Commission is striving to provide an open and complete explanation of its program activities and resource requirements. The preparation of this authorization document -- unique among the regulatory agencies -- is one indication of the Commission's interest in improving the justification materials which support its resource requests to the Congress.

I. Authorizing legislation as applied to the SEC and other regulatory agencies

An "authorization" or authorizing legislation is defined by the General Accounting Office as:

"Basic substantive legislation enacted by Congress which sets up or continues the legal operation of a Federal program or agency either indefinitely or for a specific period of time or sanctions a particular type of obligation or expenditure within a program. ... It may limit the amount of budget authority to be provided subsequently or may authorize the appropriation of "such sums as may be necessary."

There are ten independent Federal regulatory agencies of approximately comparable size and responsibility. Six are presently funded on the basis of an indefinite or standing budget authorization -- the Civil Aeronautics Board, Federal Communications Commission, Federal Maritime Commission, Federal Power Commission*, Federal Trade Commission

* Creation of the Department of Energy has incorporated the Federal Power Commission into the new Federal Energy Regulatory Commission. The old Federal Power Commission has operated under standing or indefinite budget authority. However, the statute which establishes the new department requires specific annual authorizations, beginning in fiscal year 1980 for all components.

and Interstate Commerce Commission. Of the four remaining agencies with definite or fixed budget authorizations, only the Securities and Exchange Commission and the Nuclear Regulatory Commission are authorized appropriations on a single-year basis. The other two agencies, the Commodity Futures Trading Commission and the Consumer Product Safety Commission, have been granted budget authority for a three-year period.

Authorizations and Appropriations of the
Securities and Exchange Commission, 1976-1981
(\$000)

<u>Fiscal Year</u>	<u>Enacted</u>			<u>Requested</u>			
	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>
Authorization	51,000	56,500	63,750	No change	70,000	80,000	91,000
Appropriation	49,291	56,270	58,100	62,500	64,800	Not yet proposed	

Prior to 1975, appropriations for the Securities and Exchange Commission were based on the open-ended budget authorization contained in the Securities Exchange Act of 1934. The specific sum was determined by the size of the Commission's annual appropriation(s). However, during Congressional deliberations on the Securities Acts Amendments of 1975, the House inserted language to set a specific level of appropriations for the SEC in fiscal years 1976, 1977, and 1978.

The House Committee on Interstate and Foreign Commerce explained the reasons for its proposed authorization levels in a report to the full House.

"The workload of the Securities and Exchange Commission has increased tremendously over the years.... For example, in 1941 only 260 million shares of stock were traded on the Nation's securities exchanges; by 1971 trading had grown to 4.86 billion shares. This represented an increase in dollar volume from \$5.9 billion in 1941 to \$152.8 billion in 1971.

In 1941 there were 2,350 companies reporting under the Securities Exchange Act; by 1971 that amount had grown to 9,572. The number of reports filed under the Securities Exchange Act in 1941 totaled 4,940; by 1971 filed reports had increased to 32,472. Notwithstanding these tremendous increases, the size of the Commission staff actually declined in numbers from 1941 to 1971, going from 1,711 to 1,410.

In 1972, the Commission established an Advisory Committee on Enforcement Policy and Practices. The Advisory Committee concluded that the Commission should establish a goal of doubling the size of its total staff over the next five years. That goal appears reasonable to your Committee, and the authorizations limits in this section, while expressed in terms of maximum limitations, are set at levels sufficient to permit attainment of that objective."

The Senate version of the Amendments did not include a provision concerning SEC authorizations. However, the conference committee decided to establish authorization levels for the Commission by specifying amounts in fiscal years 1976 and 1977 and providing definite authorizations in subsequent years. This compromise subsequently

enacted as Section 24 of the Securities Acts Amendments of 1975 (P.L. 94-29).

"There are hereby authorized to be appropriated to carry out the functions, powers and duties of the Commission not to exceed \$51,000,000 for the fiscal year ending June 30, 1976 and not to exceed \$55,000,000 for the fiscal year ending September 30, 1977. For fiscal years succeeding the 1977 fiscal year, there may be appropriated such sums as the Congress may hereafter authorize by law."

The shortcomings associated with a fixed authorization level soon became evident. In January, 1977, the Commission asked the Congress to increase its 1977 authorization to \$58 million. The revised amount was necessary to accommodate supplemental appropriations required to fund the mandatory wage increase granted Federal employees in October, 1976, and to allow the appropriation of funds to engage in a multi-year modernization of the Commission's automatic data processing systems. After extended consultation with Congressional staff, the Commission reduced its request to \$56.5 million, which the Congress subsequently enacted into law (P.L. 95-20).

In February, 1977, the SEC proposed that Congress enact a three-year authorization for 1978-1980 in the amounts of \$64, \$70, and \$75 million. The request did not provide for any personnel growth beyond the level contained in the Commission's 1978 budget. In light of the leadership change underway at the Commission, the House Commerce Committee decided to recommend only a one-year authorization, in order to allow the new chairman to formulate his own program for 1979 and 1980 and present

it to Congress at a later date. The Committee reported a bill authorizing \$67 million to be appropriated in 1978. The Committee report gave the following explanation for the recommended increase in the requested 1978 authorization level.

"The Committee feels that an independent regulatory agency has a much larger duty than merely to acknowledge the existence of conditions which greatly impair its ability to adequately serve the public. A manpower shortage and overcrowded conditions do exist at the Commission. They are becoming worse and they will not resolve themselves, particularly within the confines of rigid and unrealistic budget constraints.

Accordingly, the committee is authorizing an additional \$3 million or an increase of 4.6 percent over the original Commission request for fiscal 1978. It is the intention of the committee that the Commission, under its new chairman, will request appropriations of such sums as are necessary to acquire additional space to alleviate the existing overcrowded conditions and to provide for increased personnel. The committee perceives that those areas which are particularly in need of additional staff in light of the present and anticipated workload are the Division of Enforcement, the Office of General Counsel and the regional offices.

The Senate passed a bill authorizing \$58,290,000 for 1978. The conference committee eventually agreed on a figure of \$63,750,000 which was then enacted into law (P.L. 95-211).

II. The importance of long-range planning in the budget formulation process

Long-range planning is an important component of the budget formulation process. The Congress has acknowledged the importance of looking beyond the immediate budget year to take into account the

longer-term effects of pending budget decisions. The Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344) requires the submission of requests for new budget authority in the year before the beginning of the fiscal year affected.

Sec. 607. Notwithstanding any other provision of law, any request for the enactment of legislation authorizing the enactment of new budget authority to continue a program or activity for a fiscal year (beginning with the fiscal year commencing October 1, 1976) shall be submitted to the Congress not later than May 15 of the year preceding the year in which such fiscal year begins. 1/

Long-range planning is also an important part of President Carter's management of resources. Establishment of long-range objectives was an essential first step in the implementation of zero-base budgeting. On January 12, 1978, President Carter sent a memorandum to the heads of executive departments and agencies asking them to incorporate multi-year budget planning into their budget formulation processes. The President noted that "it has become very difficult for either the Congress or the President to plan budgets effectively just one year in advance." Subsequently, on January 16, 1978, the Office of Management and Budget issued Bulletin No. 78-7 amplifying the President's guidance. The President's 1979 budget summarizes the reasons for this emphasis on multi-year budget planning:

1/ To comply with this requirement, the Commission must present its 1980 request prior to May 15, 1978.

"The result will be more effective use of the taxpayers' dollars and better control of the Federal budget. Further, the private sector, which makes wide use of multiyear budget planning, and the State and local sector will have a clearer view of Federal Government programs and intentions. Finally, the Congress will have a broader context within which to develop and project its concurrent resolutions on the budget and develop authorization and appropriation measures."

Within the SEC, the budget planning process for fiscal year 1979 began in earnest during the summer of 1977, when top management began formulating goals and objectives for the Commission's eight major programs in the course of implementing zero-base budgeting. The program goals, long-range objectives, and 1979 objectives cited in the Congressional budget justification are the products of that intensive formulation process. Similarly, the program levels requested for 1979 also emanated from last summer's budget preparation process, as modified by OMB in its annual fall budget review.

The 1980 and 1981 program levels were developed in a planning exercise which followed development of the 1979 budget, partially in conjunction with the preparation of this authorization request. The division directors with coordinating responsibility for the Commission's eight major programs were asked to develop staffing projections for 1980-1981, taking into account the long-range objectives already formulated, headquarters requirements, and input from the Commission's nine regional offices. These projections were reviewed by the Chairman, who considered them in light of long-term priorities for the Commission. After adjusting the personnel

estimates to reflect those priorities, the Office of the Comptroller converted the proposed position levels into personnel costs and factored in related non-personnel expenses.

Enactment of a three-year authorization will bolster the Commission's ability to engage in meaningful multi-year planning. It will provide an indication of the activity level at which the Congress intends for the Commission to operate. This will facilitate responsiveness to requests from OMB for multi-year budget data, collected as part of an overall compilation of revenue and outlay estimates for the Federal Government. A fixed authorization level for 1979, 1980 and 1981 will also assist the Commission in reviewing priorities and sizing budget requests for these years to coincide with Congressional expectations. The forthcoming hearings before the House and Senate oversight committees on the Commission's authorization and increased dialogue with staff members will serve to identify those programs where additional emphasis is required, as well as those activities which are considered to be already funded to provide an acceptable level of service.

III. Recent changes in the regulatory environment for securities

A new era in the regulation and enforcement of federal securities laws dawned in 1975, when Congress enacted the Securities Acts Amendments. This legislation not only strengthened the basic statutory authorities under which the Commission operated for over 35 years but it also

gave the SEC responsibilities in areas previously untouched by the Federal Government. The 1975 Amendments truly represent the most important securities legislation since 1940.

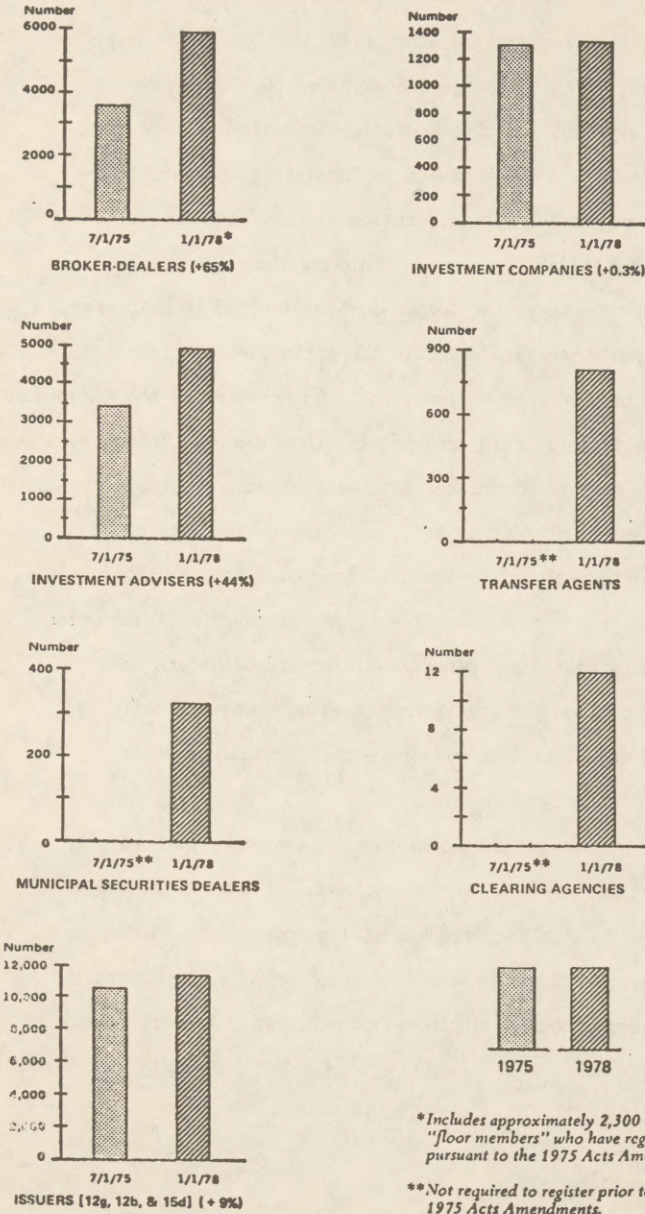
Specifically, this legislation expanded the Commission's regulation and oversight of the securities industry by:

(a) Directing the Commission to facilitate the establishment of a national market system, linking all markets for qualified securities by modern data processing and communications facilities. To achieve that objective, the Commission is directed to help create a national market system and regulate the activities of its participants. The National Market Advisory Board was created by the Amendments to aid the Commission in this task and to study the need for a new self-regulatory body to administer the national market system. In addition, the Amendments direct the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions. The Amendments also impose registration and other regulatory requirements upon securities information processors and transfer agents. Finally, the Commission is directed to eliminate the physical transfer of stock certificates between parties.

(b) Strengthening the Commission's regulatory authority over self-regulatory bodies (exchanges, associations, etc.) and their members. The Act requires Commission approval of rules proposed by self-regulatory organizations and grants to the Commission the power to review denials of access or membership as well as

Figure 1

CHANGES IN SEC REGISTRANT BASE



disciplinary actions. Furthermore, brokers and dealers, as well as other entities, are obliged to report information on missing, lost and stolen securities, while registrant officials and other personnel are, for the first time, subjected to fingerprinting requirements.

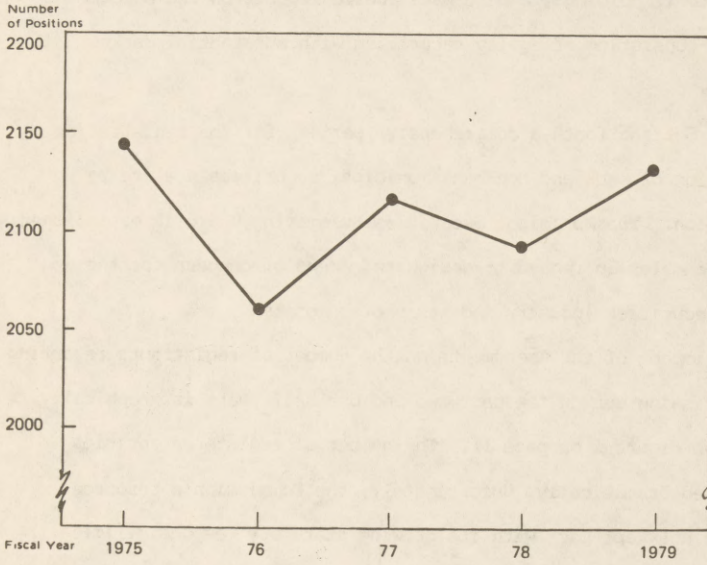
(c) Requiring institutional investment managers to file periodic reports, unless otherwise exempted, disclosing particular facts with respect to their holdings, and to make public reports on the management of accounts consisting of equity securities with substantial market value.

(d) Setting forth a comprehensive pattern for the registration and regulation of bank and non-bank municipal securities dealers by the Commission. The Municipal Securities Rulemaking Board is established to prescribe rules in regard to designated areas of concern for the municipal securities industry and its professionals.

The impact of the Amendments on the number of registrants reporting to the Commission during the past two and one-half years is graphically displayed on Figure I on page 11. The number of registered entities has increased dramatically. Unfortunately, the Commission's resource levels have not kept pace with its growing statutory responsibilities. Even if the Congress appropriates the full amounts requested for the SEC in the President's 1979 budget, the Commission will nevertheless have fewer authorized personnel than in 1975, when the Securities Acts Amendments were signed into law. Figure II on page 13 portrays the unevenness in personnel levels at the SEC over a five-year period, 1975-1979. After considering this peculiar pattern of resource allocation it should be evident why the Commission seeks to better understand the program level at which it may be authorized to operate in the years ahead.

Figure II

**AUTHORIZED POSITIONS FOR THE SECURITIES & EXCHANGE COMMISSION
SINCE ENACTMENT OF THE SECURITIES ACTS AMENDMENTS OF 1975**



IV. An explanation of the authorization levels proposed by the SEC

The Commission's three-year authorization request builds on the President's 1979 budget, which provides \$64.8 million for the SEC. A detailed justification for that request was transmitted to the Congress on January 24, 1978.

Proposed 1979 Authorization

Pending 1979 Appropriation	\$64,800,000
(1) October, 1978, Federal pay raise	3,000,000
(2) 1978 inflationary increases	1,000,000
(3) Allowance for contingencies	<u>1,200,000</u>
1979 Authorization Request	\$70,000,000

The SEC is requesting an authorization level of \$70 million for 1979, compared with a pending appropriation of \$64.8 million. The difference of \$5.2 million consists of three elements -- the October, 1978, pay raise, anticipated inflation, and unforeseen requirements. These additions can not significantly change the program levels approved by the President and included in his 1979 budget. To the contrary, if these factors are ignored, the Commission may well be required to cut into its established programs to obtain the resources necessary to satisfy uncontrollable cost increases.

(1) The President's 1979 budget includes an allowance to cover a statutory pay increase for Federal civilian agency employees, effective in October, 1978, and estimated to be no more than 6 per cent. However, the funding for this increase is not now allocated to the various executive agencies, but rather excluded from the Commission's 1979 request and earmarked elsewhere in the President's budget. The Commission estimates that its share of this amount is approximately \$3 million, including the associated cost increases in personnel benefits.

(2) OMB requires agencies to compute "other than personnel" expenses on a current cost basis. Anticipating inflationary cost increases is not permitted. Therefore the Commission's 1979 budget has been constructed using actual 1977 prices. It is reasonable to assume that inflation will take place before the 1979 budget is implemented. Even though the Commission makes every effort to absorb these costs to the greatest degree possible, provision should be made for an inflationary increase in the authorization now under consideration. The Commission's authorization request includes an increment of \$1 million for this purpose or approximately 7 per cent of its non-personnel costs, calculated at 1977 rates.

(3) An additional \$1.2 million is included for unforeseen program needs and contingencies. The Commission's initial 1979 budget request to OMB, on which the President's budget is based, was formulated in the summer of 1977, more than a year before the beginning of fiscal 1979 and more than two years before its conclusion.

In an area as active as the securities industry, a great deal can change during that time span. A \$1.2 million increment is a modest amount which will provide some flexibility in the event that the President approves a small supplemental request to enable the Commission to address a development within the Commission's responsibility which is not now evident or to meet an unforeseen expense of relatively minor proportions. For example, the recently-enacted requirement that all Federal agencies pay the cost of publishing notices in the Federal Register and the Code of Federal Regulations has caused the Commission to request the related funding as part of a 1978 supplemental appropriations package now before the two Appropriation Committees. As a matter of policy, the Commission would confer with the oversight committees when seeking appropriation for these contingencies. In the event of a major change in Commission direction, requiring a substantial supplement to the 1979 resource level now under consideration, the SEC would return to the oversight committees to seek their concurrence for an amendment to the 1979 authorization.

Proposed 1980 and 1981 Authorizations

The SEC is requesting authorization levels of \$80 million in 1980 and \$91 million in 1981. Factored into these estimates are salary rate increases in both years and the anticipated impact of inflation. The estimate for "other expenses" in 1980 and 1981 allows for the increased cost of equipment, travel, printing and supplies. This projection also includes a cost factor for supporting the higher projected staffing levels anticipated in these years.

Two extraordinary accounts were computed separately, as they involve non-recurring increases which would otherwise skew the cost factor per employee. The first is the cost of renting office space. The Public Buildings Service of the General Services Administration now reappraises space rentals on a three-year cycle and adjusts user rates accordingly. Increases of approximately \$300,000 are expected in both 1980 and 1981. The second is the ADP improvement project. ADP systems costs will increase during the time frame under consideration as the Commission pays the rental charges for computer components which are added to implement the five-year ADP plan.

	Estimated Requirements (\$000)		
	<u>1979</u>	<u>1980</u>	<u>1981</u>
Salary and cost of related benefits	53,321	62,468	71,612
All other expenses	10,773	11,670	13,021
Extraordinary expenses:			
A. Rental of space	3,796	4,096	4,396
B. ADP improvement	910	1,766	1,971
Unforeseen contingencies	<u>1,200</u>	<u>---</u>	<u>---</u>
TOTAL AUTHORIZATION REQUEST	<u>70,000</u>	<u>80,000</u>	<u>91,000</u>
Projected Number of Authorized Positions	2,132	2,340	2,485

Not factored into the resource estimates, but of critical importance to the Commission, is the need to consolidate its headquarters offices at one location. The SEC is not a large agency, and the activities conducted in Washington are closely intertwined. The Commission's ability

coordinate its rule-making and policy formulation activities, as well as carry on basic management support functions, is severely hampered by the present space configuration. Hopefully, over the three-year period addressed in the authorization request, the Commission will succeed in convincing GSA to enable the SEC to consolidate its three separate headquarters locations and operate once again under one roof.

The projected increase in staffing would have a significant and essential effect upon the Commission's ability to move toward the accomplishment of its long-range program objectives, as stated in materials submitted to the Congress in justification of its 1979 appropriation request. Naturally, the urgency to expand some programs is greater than the need to increase others. There follows a brief discussion of the kinds of growth which might take place, presented in order of priority.

Regulation of securities markets - The Commission is taking a leadership role in the formation of a national market system. The Commission's program is being outlined in 1978, and developmental steps will occur in 1978 and 1979. By 1980, basic trading mechanisms and facilities will be operating, and new rules regulating the use of the system will have to be developed and adopted. Moreover, new oversight initiatives for governing the new system and exercising surveillance over trading must be formulated and implemented by that time. A national market system will consist of an extremely complex system of interrelated trading mechanisms. The increased sophistication in operation will require more finely-tuned rule-making and oversight on

the part of the SEC. At the same time, increased use of multiple instruments — equities, options, municipal securities, GNMA's, and tax shelters, to name only the most common forms traded today — intensify the complexity of the market oversight responsibility.

Personnel projections for 1980 and 1981 assume that the conclusions and recommendations emanating from the special study of the options markets, now underway, will require additional staffing to implement. It is anticipated that the study report will result in a comprehensive new regulatory program for options trading, including new Commission rules regulating trading practices and options market structure, increased emphasis on Commission oversight of self-regulation by options exchanges, and creation of a staff unit to administer the Commission's expanded options regulatory program.

Prevention and suppression of fraud - In order to continue to discharge its enforcement responsibilities in the years ahead at the current level of effectiveness, the Commission must address fraudulent devices and schemes of growing complexity. Because of the large sums of money involved and the very real opportunities for illicit gain, securities frauds often entail creative, novel and rapidly changing schemes. Indeed, the complexity of securities frauds is, in part, an outgrowth of the Commission's success in eradicating many of the improper practices prevalent in earlier years. As

Commission oversight of the marketplace has become effective and widely recognized, the unscrupulous elements have turned to new, more sophisticated and intricate devices in a continuing effort to avoid detection. Accordingly, Commission investigations have become progressively more complicated and time consuming. In addition, there has been a growing inclination throughout our society to litigate points in dispute, and this propensity to mount judicial challenges to government action of all kinds has had its effects on the Commission's fraud suppression program. Commission enforcement proceedings develop into protracted and complex litigation with increasing frequency. At the same time, a highly skilled and specialized private securities bar has evolved. Defendants in Commission litigation generally have the financial capability to retain first-rate counsel when they elect to contest Commission charges. Trial preparation and conduct accordingly impose very substantial demands on the Commission's enforcement staff. Likewise, the private bar often relies on extensive clerical and paralegal support services to assist it in complex securities litigation; the Commission must, therefore, likewise enhance the support on which its legal staff may draw. The tendency for defendants to resort to litigation to test the sufficiency of Commission charges is, of course, not in itself undesirable. It does, however, mean that the Commission must increase its legal staff simply to insure that the investing public enjoys the same degree of protection which the Commission was previously able to provide with fewer resources.

In addition to this overall trend toward more complex and time-consuming investigations and enforcement proceedings, a number of developments in the marketplace will place new demands on the Commission's investigative, surveillance, and enforcement capabilities. Some of these are listed below.

— The anticipated complexity of the evolving national market system, described earlier, will make the job of market surveillance a more demanding one. In particular, greater industry reliance on automatic data processing and electronic data transmission create a potential for new dimensions in fraudulent or manipulative practices incident to securities trading. Accordingly, the Commission's enforcement capabilities will have to expand to encompass more sophisticated techniques to ferret out and prevent fraud in the national market system environment. That capability may well have to include costly computerized surveillance procedures.

— The burgeoning growth of trading in put and call options demands that the Commission enhance its regulatory capabilities in order to keep pace, and the Commission recently commenced a comprehensive review of options trading in light of the complex legal, economic, and regulatory problems which this new and specialized field has engendered. Further, the possibilities of fraud in connection with the coordinated trading of both an option and the underlying security require significantly increased Commission activity in this area.

— Another growing problem involves Government National Mortgage Association (GNMA) forward transactions — the sale of contracts to be issued at a future date. A number of investigations are presently under way concerning fraudulent sales of these securities, and in one instance a special task force has been formed to examine the financial operations of a major university jeopardized by involvement in GNMA trading. At this point, it is difficult to determine the range of abuses or the extent to which the Commission may become involved over the next three years; the area is, however, one which will demand attention.

— The new requirement, enacted as part of the Securities Acts Amendments of 1975, that municipal securities dealers register with the Commission, has led to discovery of an unusual incidence of violations which, in turn, has generated additional enforcement workload. Municipal bond investments are of increasing interest as inflationary pressures raise incomes and new, generally less-sophisticated, investors are elevated into higher tax brackets. Accordingly, the role of the Commission's enforcement efforts in this market has become more significant.

— The growth in tax shelters during the past few years has also spawned special enforcement problems. In some instances, the Commission has encountered abuses including high-pressure sales techniques, misleading sales literature, and the diversion of funds to purposes different from those represented to investors. The opportunity for self-dealing and other misconduct in this field requires expansion

in the Commission's enforcement program.

— The internationalization of the securities markets has generated increasing numbers of cases involving transactions which are, in part, foreign. The problems in investigating events and entities outside the United States are obviously greater than in domestic cases. The Commission believes, however, that this area requires attention since a decrease in investor confidence, particularly among foreign nationals, could have a serious adverse impact on both the ability of American capital markets to attract funds from overseas and on investments by United States citizens in foreign markets.

— The Commission must devote additional manpower to monitor compliance with those provisions of the federal securities laws governing corporate take-overs, tender offers and proxy contests. This problem is exacerbated by low market prices in recent years which enhance the attractiveness of take-overs and result in greater incidence of abuse. Similarly, significant numbers of public companies have undertaken to repurchase their shares from the public and thus to return to private status. This later phenomenon has led to a number of Commission enforcement actions and, more significantly for future fiscal years, the Commission has proposed comprehensive rules to govern "going private" transactions. The Commission anticipates that the enforcement of those rules, if adopted, will place a significant new burden on the enforcement staff.

— The role of the Office of Consumer Affairs is growing in response to an increasing volume of consumer complaints and wider recognition of the Office's existence. The Office will need adequate resources to develop a close working relationship with self-regulatory organizations, increase its investor education initiatives and respond to the growing volume of investor correspondence. The Commission believes it important that the Office of Consumer Affairs have appropriate funding because of the Office's role in fostering investor confidence in both the Commission and the securities markets and because matters brought to its attention by individual investors often serve to identify problems which demand regulatory or enforcement action.

Investment management regulation - The long-range plan for this program is to reduce the inspection cycle for investment companies and investment advisers to 3 and 4 years, respectively, by 1981. There are several reasons for this objective.

The present inspection program is clearly inadequate. The Commission is currently able to inspect investment advisers on the average of only once every 10.4 years and investment companies only once every 4.4 years. This situation is further exacerbated by the significant growth in the number of investment advisers registering with the SEC, as reflected in Figure I on page 11. With the resources which the Commission can presently afford to devote to this activity, there can be no assurance that investors are receiving full and fair

disclosure from investment advisers and investment companies. The inspection cycle represents the average time between inspections. Recognizing that a significant number of all inspections are "for cause" (and without regard as to when last inspected), a four year cycle, for example, actually means that many companies might not be inspected for six or more years. More frequent inspections would permit a program of "start-up inspections" (within the first year of the inspected entity's operation). Such inspections are necessary to detect and eliminate inadvertent violations by new registrants. Increased frequency of inspections would have a marked prophylactic effect on the industry. Where violations do occur, the time interval before detection would be reduced, thus minimizing damages to investors by effecting, where appropriate, a return of monies to investors and/or permitting litigation before the statute of limitations expires.

Full Disclosure - The projected increase in staffing in 1980 over 1979 levels and the further increase in 1981 reflect in part the additional staff necessary to achieve progress toward the long-range objective of giving full review to all annual and other periodic reports filed pursuant to requirements of the Securities Exchange Act of 1934. Based on workload estimates for those years, the personnel increase in 1981 would allow for the full review of only 50% of the estimated annual reports filed on Form 10-K. Additional staff are expected to be needed to process large

increases in requests filed under the Freedom of Information Act and Privacy Act. Commission workload related to these acts increased by 35 per cent and 500 per cent, respectively, in 1977 over 1976.

Over the next three years, the Commission will begin shouldering the added responsibilities conferred by the Foreign Corrupt Practices Act of 1977. The SEC is charged with ensuring that reporting companies make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuers. The Securities Exchange Act of 1934 is further amended to make it unlawful for any reporting company to make payments to foreign officials in order to influence an act or decision which would assist in obtaining business. No additional resources are included in the President's 1979 budget to enable the Commission to carry out these responsibilities.

Legislation now under consideration in the Congress could further change the nature of the Commission's full disclosure workload. Several pending bills would substantially increase the dollar ceiling under Section 3(b) of the Securities Act. While this would ease the reporting burden on small issuers, it may well generate additional filings and would also increase the importance of a thorough review of these filings by SEC staff. While it is difficult to estimate precisely the volume of new filings which would be generated by the pending legislation, the staffing levels proposed for the full disclosure program in 1980 and 1981 give minimal recognition to this potential requirement.

Executive and staff - Personnel projections for 1980 and 1981

in this area include staffing increases comparable to those planned for the Commission as a whole. Staffing of the support offices in past years has not kept pace with increases in substantive responsibilities. As a result, the management analysis function is nearly dormant, contracting capability is weak, the data processing facility is outmoded and unable to support the operating divisions and personnel programs are oriented more towards processing transactions than towards effective personnel management. The Commission must re-establish a capability to perform management reviews, improve performance evaluation and management development programs and provide resources with which to initiate organization and manpower planning. As a result, the effectiveness of the operating divisions and the agency as a whole will be improved.

In addition, oversight of the accounting profession is also expected to consume a greater proportion of the Commission's staff resources as public expectations rise regarding corporate governance and full and fair disclosure by accounting firms retained to audit corporate financial affairs.

Corporate reorganizations - Present staffing levels are inadequate to permit the Commission to participate as a party in all proceedings where the rights of public investors are involved. There has not been one case since 1974 in which the Commission has not had to request at

least one extension in order to file an advisory report with the court. Provision is made in 1980 to improve the Commission's ability to perform its unique role under the Bankruptcy Act.

Economic and policy research - A modest staff increase is programmed in 1980 and 1981 to permit the Directorate of Economic and Policy Research to improve the economic and statistical analysis which contributes to the Commission's rulemaking function and its ability to evaluate the cost-effectiveness of Commission activity.

Public utilities holding company regulation - Uncertainties in obtaining supplies of energy have caused many holding companies to embark on major and expensive new commitments to acquire better control over their own fuel supplies, and these commitments require substantial additional capital. This trend has prompted the Commission to initiate a program of auditing and monitoring service companies and fuel company subsidiaries, but the current staffing levels are inadequate to discharge this responsibility, as required by Sections 13 and 15(f) of the Public Utility Holding Company Act of 1935.

SECURITIES AND EXCHANGE COMMISSION



**BUDGET ESTIMATE
FISCAL 1979**

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SECURITIES AND EXCHANGE COMMISSION

SALARIES AND EXPENSES

1978 appropriation enacted to date	\$58,100,000
Supplemental pending for October, 1977 pay raise . . .	3,000,000
Supplemental pending for cost of third headquarters location, printing expenses mandated by P.L. 95-94, and other cost increases	<u>1,425,000</u>
1978 revised estimate	\$62,525,000
Proposed increase	\$ 2,275,000
Proposed 1979 appropriation	<u>\$64,800,000</u>

APPROPRIATION LANGUAGE

SECURITIES AND EXCHANGE COMMISSION

SALARIES AND EXPENSES

For necessary expenses for the Securities and Exchange Commission, including services as authorized by 5 U.S.C. 3109, and not to exceed \$2,000 for official reception and representation expenses, [\$58,100,000.] \$64,800,000.

(15 U.S.C. 77a-77bbbb, 78a-78jj, 79-79z-6, 80a1-80a52, 80b1-80b21; 11 U.S.C. 501-676; 5 U.S.C. 551-559, 701-706, 1305, 3105, 3344, 5362, 7521; 60 Stat. 810; Department of State, Justice, Commerce the Judiciary and related Agencies Appropriation Act, 1978.)

STATUTORY AUTHORITY

The Securities and Exchange Commission was created by the Securities Exchange Act of 1934 as an independent, quasi-judicial agency. It administers a group of statutes in the area of securities and finance, which seek to protect the investing public by providing full disclosure, by regulating the nation's securities markets and by preventing and policing fraud and malpractices in the securities and financial markets. These statutes are, in addition to the 1934 Act, the Securities Act of 1933, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, and the Investment Advisers Act of 1940. By terms of Chapter X of the National Bankruptcy Act, as amended, the Commission also serves as adviser to Federal courts in certain corporate reorganization proceedings in which there is a substantial public interest.

1. Securities Act of 1933 - Issuers of securities are required to provide investors with financial and other information concerning new issues of securities and outstanding issues which are offered for public sale by parties with a controlling interest in the issues and others. The Act prohibits misrepresentation, deceit, and other fraudulent acts and practices in the offer and sale of securities.

2. Securities Exchange Act of 1934 - The 1934 Act requires certain issuers of publicly-traded securities to file registration applications, proxy materials, and annual and other reports with national securities exchanges and with the Commission. Persons directly or indirectly acquiring the beneficial ownership of more than five percent of any registered class of equity security, must furnish reports containing information. Persons initiating, supporting, or opposing tender offers with respect to any registered class of equity security, are also subject to the Act and to Commission rules and regulations. The Act details a regulatory and reporting pattern for securities transactions by directors, officers, and principal stockholders. Registration with the Commission is also required for self-regulatory organizations, e.g., securities exchanges, national securities associations, and clearing agencies. Securities brokers and dealers engaged in interstate commerce are regulated by the Commission. The activities and practices of the registrants are subject to pervasive review and regulation by the Commission.

3. Public Utility Holding Company Act of 1935 - This Act regulates holding companies controlling electric and gas utilities respecting: physical integration of public utility and related properties of holding company systems and simplification of financial and corporate structures of those systems; financing activities, acquisitions and dispositions of

securities and properties, accounting practices, and servicing arrangements of holding company systems; and the rights of persons affiliated with a public utility to acquire securities of other public utilities.

4. Trust Indenture Act of 1939 - The rights and interests of purchasers of debt securities issued under mortgage indentures and sold publicly are safeguarded through provisions of this Act which require certain protections. The Act also requires that the indenture trustee shall be "independent" and free of any interests which might conflict with the proper exercise of its duties.

5. Investment Company Act of 1940 - This Act requires investment companies to register with the Commission and subjects their activities to regulation by the Commission. This regulation includes oversight of the composition of boards of directors, central structure, and transactions with affiliated persons. The Act was amended by the Investment Company Amendments Act of 1970 to provide additional protections for investors. One of the principal amendments specifies that an investment adviser has a fiduciary duty with respect to the receipt of compensation from an investment company and provides for the Commission and shareholders to initiate legal action for court enforcement of this precept. The 1970 amendments also authorize the Commission, in conjunction with the National Association of Securities Dealers, to regulate charges levied in connection with investment company sales. The Commission is empowered to promulgate rules dealing with problems such as insider trading in an investment company's portfolio securities, the establishment by investment companies of codes of ethics, and the plans developed by sponsors and other sellers to carry out their refund obligations. In addition, the 1970 Amendments give the Commission new authority to institute administrative proceedings to bar persons who have violated the federal securities laws from the investment company business.

6. Investment Advisers Act of 1940 - Persons who engage in the business of advising others with respect to their security transactions must register with the Commission. This Act prohibits certain kinds of fee arrangements, prohibits fraud, and requires disclosure of any adverse interests the advisor may have in transactions executed for his clients. Amendments to this Act in 1960 expanded the authority of the Commission by empowering the Commission to require investment advisers to keep books and records, providing for regular and periodic inspections of registered investment advisers, expanding the power for denial or revocation of registration of investment advisers, and authorizing the Commission to issue rules and regulations which prohibit fraudulent, deceptive, and manipulative practices by investment advisers. Further amendments to this Act in 1970 removed exemptions for investment advisers whose only clients are investment companies registered under the Investment Company Act. These amendments also

strengthened disciplinary controls over investment advisers, making them similar to the provisions in the Securities Exchange Act of 1934 relating to disciplinary controls over broker-dealers.

7. National Bankruptcy Act - Chapter X - To aid the Federal courts in the administration of the affairs of debtor corporations being reorganized under Chapter X, the Commission participates actively as a party to proceedings in those cases in which a substantial public investor interest is involved and files advisory reports on reorganization plans, as appropriate. The Commission also may appear in Chapter XI cases to challenge whether the relief sought may properly be granted under the provisions of that chapter.

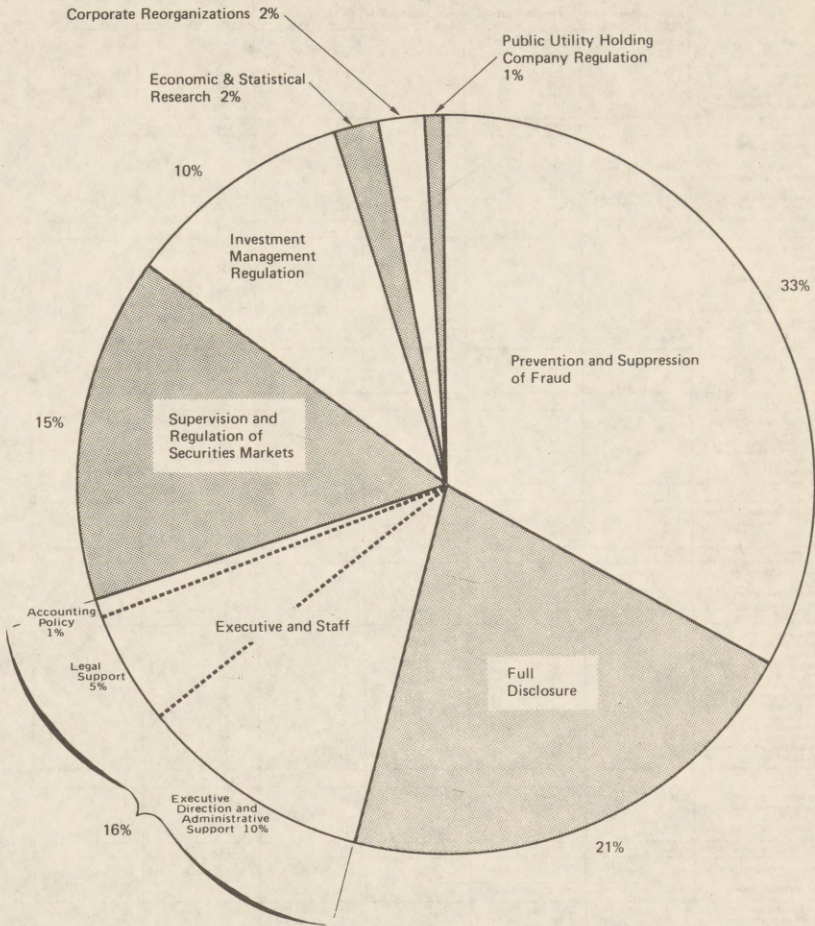
8. Securities Acts Amendments of 1975 - This recently-enacted legislation has expanded the Commission's regulation and oversight of the securities industry by:

(a) directing the Commission to facilitate the establishment of a national market system, linking all markets for qualified securities by modern data processing and communications facilities. To achieve that objective, the Commission is directed to help create a national market system and regulate the activities of its participants. The National Market Advisory Board was created by the Amendments to aid the Commission in this task and to study the need for a new self-regulatory body to administer the national market system. In addition, the Amendments direct the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions. Finally, the Amendments impose registration and other regulatory requirements upon securities information processors and transfer agents. The Commission also is directed to eliminate the physical transfer of stock certificates between parties.

(b) strengthening the Commission's regulatory authority over self-regulatory bodies (exchanges, associations, etc.) and their members. The Act requires Commission approval of rules proposed by self-regulatory organizations and grants to the Commission the power to review denials of access or membership as well as disciplinary actions. Furthermore, brokers and dealers, as well as other entities, are obliged to report information on missing, lost and stolen securities, while registrant officials and other personnel are, for the first time, subjected to fingerprinting requirements.

(c) requiring institutional investment managers to file periodic reports, unless otherwise exempted, disclosing particular facts with respect to their holdings, and to make public reports on the management of accounts consisting of equity securities with substantial market value; and

(d) setting forth a comprehensive pattern for the registration and regulation of bank and non-bank municipal securities dealers by the Commission. The Municipal Securities Rulemaking Board is established to prescribe rules in regard to designated areas of concern for the municipal securities industry and its professionals.

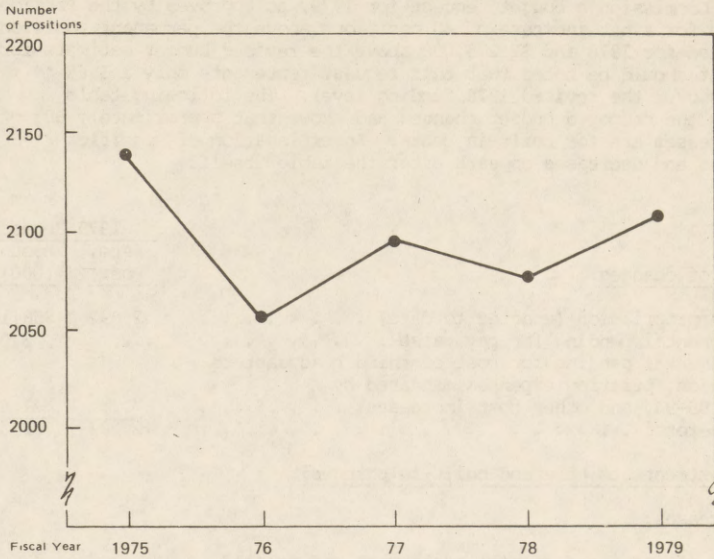
PERSONNEL BY MAJOR PROGRAM

SECURITIES AND EXCHANGE COMMISSION
ACTUAL COSTS FOR 1977, PROGRAM FOR 1978, AND ESTIMATE FOR 1979

PROGRAM	1977 Actual		1978 Estimate		Proposed 1978 Supplemental		Proposed 1978 Total		1979 Estimate		Difference FY-78 - FY-79	
	Posi- tions	Aggregate of Salaries	Posi- tions	Aggregate of Salaries	Posi- tions	Aggregate of Salaries	Posi- tions	Aggregate of Salaries	Posi- tions	Aggregate of Salaries	Posi- tions	Aggregate of Salaries
FULL DISCLOSURE												
Corporation Finance	281		278		-		278		278		-	
Reports & Information	150		132		-		132		126		(6)	
Services	35		35		-		35		35		-	
Regional Offices	7		-		-		-		-		-	
Advisory Committee on												
Corporate Disclosure	7		-		-		-		-		-	
Sub-Total	473		445		-		445		439		(6)	
PREVENTION AND SUPPRESSION												
OF FRAUD												
Enforcement	200		200		-		200		207		7	
Reports & Information	18		18		-		18		18		-	
Services	12		12		-		12		12		-	
Regional Offices	460		460		-		460		467		7	
Sub-Total	690		690		-		690		704		14	
REGULATION OF SECURITIES												
MARKETS												
Market Regulation	139		139		-		139		153		14	
Reports & Information	18		18		-		18		18		-	
Services	137		137		-		137		137		-	
Regional Offices	5		-		-		-		-		-	
National Market Advisory												
Board	5		-		-		-		-		-	
Sub-Total	299		294		-		294		308		14	
PUBLIC UTILITY HOLDING												
COMPANY REGULATION												
Corporate Regulation	24		24		-		24		24		-	
Sub-Total	24		24		-		24		24		-	
INVESTMENT MANAGEMENT												
REGULATION												
Investment Management	109		109		-		109		109		-	
Reports & Information	12		12		-		12		13		1	
Services	90		90		-		90		96		6	
Regional Offices												
Sub-Total	211		211		-		211		218		7	
CORPORATE REORGANIZATIONS												
Corporate Regulation	11		11		-		11		11		-	
Regional Offices	33		33		-		33		33		-	
Sub-Total	44		44		-		44		44		-	
ECONOMIC AND STATISTICAL												
RESEARCH												
Directorate of Economic &	53		53		-		53		53		-	
Policy Research	53		53		-		53		53		-	
Sub-Total												
EXECUTIVE AND STAFF												
Executive Staff	23		23		-		23		23		-	
Secretary	22		22		-		22		22		-	
General Counsel	62		67		-		67		71		4	
Administrative Law Judges	12		12		-		12		13		1	
Opinions & Review	11		11		-		11		11		-	
Chief Accountant	17		20		-		20		20		-	
Executive Director	10		10		-		10		12		2	
Comptroller	25		25		-		25		27		2	
Personnel	25		25		-		25		27		2	
Data Processing	51		51		-		51		52		1	
Administrative Services	55		55		-		55		55		-	
Public Affairs	10		10		-		10		9		(1)	
Sub-Total	323		331		-		331		342		11	
HEADQUARTERS TOTAL	1,362		1,337		-		1,337		1,364		27	
Reports & Information												
Services (Total)	(198)		(180)		-		(180)		(175)		(5)	
REGIONAL OFFICE TOTAL	755		755		-		755		768		13	
GRAND TOTAL - AUTHORIZED	2,117		2,092		-		2,092		2,132		40	
Permanent Annual Salary Rate		\$43,689,004		\$47,167,561		-	\$47,167,561		\$48,050,541		\$1,482,980	
Less: Savings (Lapse)	-205	-4,434,139	-137	-3,993,277		-	-137	-3,993,277	-147	-4,251,357	-210	-343,080
Cost of Permanent Positions	1,912	\$39,254,866	1,955	\$43,374,284		-	1,955	\$43,374,284	1,985	\$46,599,184	30	\$1,139,900
Cost of Temporary Positions	22	270,493	25	363,960		-	25	363,960	25	363,960	-	-
Overtime and Holiday Pay		171,943		186,756		-		186,756		186,756		-
Cost of Executive Pay Increase	-	-	-	-		\$ 350,000	-	350,000	-	-	-	(350,000)
Cost of Increased Average Employment	-	-	-	-		-	-	-	30	723,500	30	808,500
TOTAL COST OF SALARIES & STAFF YEARS	1,934	\$39,697,204	1,980	\$43,925,000		- 350,000	-	\$43,575,000	2,040	\$48,073,400	60	\$1,598,400
OTHER EXPENSES:												
Personnel Benefits		\$ 3,672,770		\$ 4,168,900		\$ 56,000		4,224,900		\$ 4,380,900		\$ 156,000
Benefits to Former												
Employees		68,006		66,200		-		66,200		66,900		700
Travel and Transportation												
of Persons		1,648,413		1,764,400		15,000		1,779,400		1,837,400		58,000
Transportation of Things		33,555		31,100		-		31,100		31,100		-
Communications & Rental		5,398,142		6,358,900		295,900		6,654,800		6,976,500		321,700
Printing and Reproduction		316,380		342,500		450,000		792,500		863,500		71,000
Other Services		2,484,936		3,252,500		258,100		3,510,600		3,438,300		(72,300)
Supplies and Materials		798,250		815,500		-		815,500		880,900		65,400
Equipment		2,116,940		375,000		-		375,000		443,100		68,100
SUB-TOTAL, OTHER EXPENSES		\$16,537,392		\$17,175,000		\$1,075,000		\$18,250,000		\$18,926,600		\$ 676,600
Total Expenses		\$56,234,596		\$61,100,000		\$1,425,000		\$62,525,000		\$64,800,000		\$2,275,000
Actual Savings		35,404		-		-		-		-		-
TOTAL APPROPRIATION		\$56,270,000		\$61,100,000		\$1,425,000		\$62,525,000		\$64,800,000		\$2,275,000
% ESTIMATE												

1/ Includes \$3,000,000 for pay increases pursuant to P.L. 95-130.

**AUTHORIZED POSITIONS FOR THE SECURITIES & EXCHANGE COMMISSION
SINCE ENACTMENT OF THE SECURITIES ACTS AMENDMENTS OF 1975**



SUMMARY OF CHANGES
1978-1979

The Commission's budget request for 1979, as approved by the President, provides for a net increase of 40 positions above the permanent positions authorized for 1978 and \$2,275,000 above the revised budget estimate for 1978. It should be noted that this request represents only a 3.6% increase over the revised 1978 funding level. The following table displays the proposed budget changes and shows that approximately 60% of the increases are for built-in costs. An explanation of specific increases and decreases appears after the table itself.

	1979 Request	
	Perm. Pos.	Amount (000)
<u>Summary of changes:</u>		
1978 Appropriation (enacted to date)	2,092	\$58,100
Supplemental pending for pay raise . . . . .	....	3,000
Supplemental pending for cost of third headquarters location, printing expenses mandated by P.L. 95-94, and other cost increases . . . . .	....	1,425
Sub-total	2,092	\$62,525

A. Adjustments to base and built-in changes:

Increases:

1) Cost of increased average employment and related benefits . . . . .	....	+541
2) Cost of within-grade increases . . . . .	....	+400
3) Computer component rental . . . . .	....	+178
4) Data processing contractual services . . . . .	....	+145
5) Equipment replacement . . . . .	....	+100
6) Other . . . . .	....	+352
Sub-total, increases		\$+1,716

Decreases:

1) Office alterations . . . . .	....	-208
2) Office moving expense . . . . .	....	-15
3) Micrographics equipment . . . . .	....	-65
Sub-total, decreases . . . . .	....	\$ -288

B. <u>Program Changes</u>	<u>1979 Request</u>	
	<u>Perm. Pos.</u>	<u>Amount (000)</u>
<u>Increases</u>		
Prevention and Suppression of Fraud:		
Division of Enforcement	+7	+125
Regional Offices	+7	+134
Supervision and Regulation of Securities Markets:		
Division of Market Regulation	+14	+313
Investment Management Regulation:		
Office of Reports & Information Services	+1	+11
Regional Offices	+6	+109
Executive and Staff Functions:		
Office of the General Counsel	+4	+72
Office of the Executive Director	+2	+34
Office of the Comptroller	+2	+36
Office of Personnel	+2	+36
Office of Administrative Law Judges	+1	+30
Office of Data Processing	+1	+14
Sub-total	+47	+\$914
<u>Decreases</u>		
Full Disclosure:		
Office of Reports and Information Services	-6	-59
Executive and Staff Functions:		
Office of Public Affairs	-1	-8
Sub-total	-7	-67
Total, net change	+40	+\$2,275
Total appropriation requested, 1979	<u>2,132</u>	<u>\$64,800</u>

A. Summary Explanation of adjustments to base and build-in changesIncreases:

- 1) Positions carried forward into 1979 were projected at a 5-1/2% lapse rate instead of the 6-1/2% rate used in 1978, thereby providing for a 30 staff-year increase in average employment. The increase of \$541,000 will provide for the full funding of these positions, including the costs of benefits associated with the additional personnel.
- 2) The cost of within-grade step increases was calculated on a person-by-person basis and adjusted to take account of projected turnover.
- 3) During 1978 the Commission is undertaking an interim upgrade of its computer as part of its ADP improvement plan. The funding increase cited is necessary to purchase peripheral hardware to bring the computer up to its full capability.
- 4) The ADP improvement plan provides for the use of contractual services for systems development and time-sharing. The cost of these services in 1979 is partially offset by a savings of \$25,000 resulting from completion of the five-year ADP development plan in 1978.
- 5) Pursuant to GSA schedules, general office equipment is fully depreciated after 10 years of age and may then be replaced. This increase is to replace those pieces of equipment which are in excess of 10 years of age and in extremely poor condition.
- 6) Other cost increases include:
 - a) Annualization of 1978 pay increase for 5 days
 - b) Payment to the Department of Labor Employees' Compensation Fund
 - c) 3% increase in public transportation fares
 - d) Federal Telecommunications System (FTS) cost increase
 - e) Annualization of space rental cost for third headquarters location obtained in 1978
 - f) Biennial printing of Commission decisions and reports and higher costs of publishing additional notices in the Federal Register and Code of Federal Regulations
 - g) 6% GSA supply cost increase offset by a decrease for the purchase of ADP software in 1978

- h) Conversion to three-year periodical subscriptions
- i) Microfiching of records

Decreases:

- 1) During 1978 the Commission is obtaining a third building location for its headquarters staff. This reduction is possible because of the anticipated completion of renovations to that space during 1978.
- 2) The cost of moving to the third headquarters location in 1978 is deducted from the Commission's funding base in 1979.
- 3) This reduction is due to the one-time purchase of micrographics equipment for the regional offices in 1978.

B. Summary Explanation of Program Increases and Decreases

Increases

Prevention and Suppression of Fraud - The requested new positions will be dedicated to enhanced market surveillance necessitated by rapidly-expanded trading in stock options. The increase in average employment will be necessary to maintain present activity levels despite increased numbers of complex cases investigated and the trend toward more actions being litigated.

Supervision and Regulation of Securities Markets - The requested staffing increases will permit the Commission to engage in the important work of developing a national market system. At the same time, the Commission will be implementing the recommendations of the special study of options trading, now underway, which is expected to involve rule-making and review of self-regulatory procedures related to trading in stock options.

Investment Management Regulation - The burgeoning growth in registered investment advisers requires the Commission to increase significantly the number of inspections conducted each year in order to keep pace. The personnel increase budgeted for 1979 will enable the Commission's regional offices to maintain approximately the same time interval between inspections as funded in 1977 and 1978. The additional staff-year for the Office of Reports and Information Services will be utilized to keep pace with the increased filings from Investment Advisers.

Executive and Staff Functions - The additional personnel requested for the General Counsel's Office will enable the Commission to become involved in more cases of significant public interest and to file briefs in all cases in a more timely manner. The Commission will also improve the operation of its Office of Administrative Law Judges and expand its

oversight of the accounting profession, as directed by the Congress. The remaining new positions being requested will be utilized to engage in more long-range planning, provide needed financial information to managers on a timely basis, create employee utilization and evaluation programs, and develop new information systems cited in the ADP requirement analysis.

Decreases

Full Disclosure - The six-position reduction in the Office of Reports and Information Services is attributable to the conversion of Commission records from paper to a dynamic microform process and the upgrading of supporting computer hardware.

Executive and Staff Functions - Through better internal management and utilization of personnel, the Office of Public Affairs is expected to be able to perform its functions using one fewer person in 1979.

FULL DISCLOSURE

Program goal: To provide investors and shareholders with material business and financial information in connection with the trading, voting and offering for public sale of securities in order to assist in making investment decisions, prevent fraud and misrepresentation, and protect investor confidence.

1977 Accomplishments

The Commission took steps to expand significantly its ongoing program of integrating the disclosure requirements of the 1933 and 1934 Acts through the adoption of amendments to certain forms under those Acts. This program will reduce the cost to issuers of complying with the applicable disclosure requirements, lessen the time required by the staff to review filings, and substantially upgrade the content and quality of disclosure in filings under the two Acts.

Because of increases in the number of filings made under the 1933 and 1934 Acts in recent years without comparable growth in the number of personnel assigned to examine filings, the Division of Corporation Finance adopted procedures designed to curtail the processing time of certain filings by providing for an abbreviated review of them, thereby expediting approval given to important business transactions and financings.

The Commission's staff identified those registrants which were delinquent in filing periodic reports within three weeks of a definite determination of delinquency as compared with six weeks in prior years. This reduction in the time required for identification enabled the staff to initiate more promptly remedial action required to effect compliance with the reporting requirements.

The staff reduced the time period for responding to requests for information pursuant to the Freedom of Information Act and Privacy Act from 10-20 days of receipt of request to 10-15 days.

The Advisory Committee on Corporate Disclosure recently submitted its final report to the Commission. Included were recommendations with respect to Commission procedures in developing disclosure requirements and standards, as well as recommendations regarding additional or revised substantive disclosure requirements. Anticipating these recommendations, the Commission took preliminary steps to implement many of them by proposing, among other things, the adoption of new forms and rules and amendments to existing forms and rules.

The Commission held hearings in four cities on the subject of amending the rules and regulations applicable to shareholder communications, participation in the corporate electoral process and

corporate governance generally. It is anticipated that significant amendments to the Commission's proxy rules and regulations will be proposed as a result of these hearings.

Long-range objective

To effect compliance with disclosure requirements of the Securities Act of 1933 and Securities Exchange Act of 1934 by:

1. Conducting full review of 100% of new registration statements under both Acts within 20 days of filing, all annual reports within 270 days, all quarterly reports within 45 days and all current reports within 15 days of filing, and conducting an abbreviated review within 20 days of filing of 40% of proxy materials and 50% of post-effective amendments and registrations filed by previously-registered issuers under the 1933 Act.
2. Examining substantively 100% of miscellaneous disclosure forms and Freedom of Information Act and Privacy Act requests within 10 days of receipt.
3. Submitting recommendations to the Commission within 90 days of the close of the public comment period on 75% of the projects for revising the rules, forms, schedules and guides under the 1933 and 1934 Acts.
4. Responding within 21 days of receipt to requests for interpretations or no-action positions under the Acts.
5. Distributing all requested filings and reports within 24 hours of receipt; and
6. Reviewing and issuing comments within 10 days of filing on all filings by small issuers and within one week of receipt on filings made under rules limiting resales and offerings of restricted securities and securities of small issuers; monitoring and investigating 100% of offerings by small issuers, where cause exists, within 3 months of clearance of the offering; and enhancing services provided to the public in the regional office reference rooms.

Current method of pursuing long-range objective

1. Review of filings under the 1933 and 1934 Acts. A full or abbreviated review, depending on the type of filing, is made of all registration statements, periodic reports, proxy statements and beneficial ownership filings, and comments on perceived deficiencies are provided to the issuer prior to initiating any necessary corrective action.

Adoption of the full and abbreviated review categories was critical to assure that the program's disclosure operations continue to meet the Commission's statutory responsibilities to issuers, which have enormous capital needs, and to the investing public, which has a right to have adequate information on which to make investment decisions. The change from the previous procedure -- which was to give a full review to every filing -- to the present procedure for review, was precipitated by: 1) substantial increases in workload in recent years; 2) a relatively level number of division personnel; 3) increasing complexity and sophistication of disclosure contained in filings; and 4) the general desire of the division and the Commission to continue to respond to filings on a timely basis.

A full review is a complete review of all business, accounting, financial and legal disclosure contained in a filing. Such review is conducted by the appropriate staff members of the Division of Corporation Finance, i.e., staff accountants, attorneys, and/or financial analysts. This review contemplates an examination of all documents comprising the filing and seeks to determine compliance with the federal statutes, rules and regulations. A concerted effort is made to determine not only that disclosures made are accurate and not misleading, but that there has not been any omission of a material fact. Any review of a filing or report that is less than full is termed abbreviated. An abbreviated review indicates that not all documents contained in the filing are examined by the staff.

2. Examination of miscellaneous disclosure forms and requests. All miscellaneous filings are examined to determine their acceptability and completeness. Requests made pursuant to the FOIA and Privacy Act are recorded and indexed, and a search is made for the information requested. In addition, all requested information that is "non-public" is examined to determine whether or not it may be released, and arrangements are made in appropriate circumstances for the requestor to review the materials in question.

3. Promulgation of rules, forms, schedules and guides under the 1933 and 1934 Acts. Legal and financial research is conducted in order to formulate programs for completing new proposed projects relating to the rules, forms, schedules and guides under the two Acts. In addition, fact-finding and analytical studies and proceedings are conducted where appropriate, and interpretive releases are prepared for the Commission's issuance when it appears they will promote compliance with the requirements of the two Acts.

4. Issuance of responses to no-action and interpretive requests. Responses to letters requesting either interpretations of the provisions of the 1933 and 1934 Acts or no-action positions with respect to proposed

activities under those Acts are issued to the requestors after appropriate review and revision by senior-level attorneys.

5. Receipt and distribution of filings and display of data. All documents submitted to the Commission are manually processed and distributed, and computer data files are maintained containing all pertinent information about each document and registrant.

6. Review of filings by small issuers in the Commission's regional offices. All filings are examined and analyzed, and conferences with issuers are conducted where appropriate. After coordination with the states and the National Association of Securities Dealers, clearance letters are issued with respect to such filings and appropriate follow-up procedures are instituted to monitor compliance with applicable requirements. Suspected violations are investigated, and suspension memoranda relating to such violations are prepared for referral to the appropriate enforcement unit. In addition, the regional offices represent the Division of Corporation Finance in administrative proceedings relating to the 1933 and 1934 Acts, and they prepare recommendations for injunctive actions and criminal reference where appropriate.

1979 BUDGET

	<u>FY-1977</u>		<u>FY-1978</u>		<u>FY-1979</u>	
	<u>Actual</u>	<u>Cost</u>	<u>Estimate</u>	<u>Cost</u>	<u>Estimate</u>	<u>Cost</u>
<u>Organizational Units</u>	<u>Years</u>	<u>(000)</u>	<u>Years</u>	<u>(000)</u>	<u>Years</u>	<u>(000)</u>
Corporation Finance	256.8		256		256	
Reports & Information Services	133.7		122		118	
Regional Offices	32.2		33		33	
Advisory Committee on Corporate Disclosure	6.1		-		-	
Subtotal	<u>428.8</u>	\$8,432	<u>411</u>	\$8,683	<u>407</u>	\$8,726
Personnel Benefits		780		830		831
Travel Expenses		58		43		45
Other Expenses		<u>2,336</u>		<u>2,447</u>		<u>2,545</u>
Total Program Cost		<u>\$11,606</u>		<u>\$12,003</u>		<u>\$12,147</u>

1979 Objectives

1. To conduct full review or abbreviated examinations of all (a) registration statements and post-effective amendments filed under the 1933 Act within 26 days of receipt; (b) registration statements filed under the 1934 Act within 30 days; (c) preliminary proxy materials within 10 days; (d) current, quarterly and annual reports within 60, 90 and 350 days, respectively; and (e) tender offer filings within four days. Numbers of examinations by type of review are shown on the table on the following page.

2. To process and/or respond to 100% of all miscellaneous disclosure forms and Freedom of Information Act and Privacy Act requests within 10 days of receipt.

3. To submit recommendations to the Commission on urgent matters regarding revision of rules, forms, schedules and guides as soon as feasible, but no later than 90 days of the close of the public comment period on 50% of all projects and on less-urgent matters as time allows.

4. To prepare responses to all letters requesting no-action or interpretive positions under the 1933 and 1934 Acts within an average of 28 days of receipt.

5. To process and distribute 65% of the approximately 120,000 filings are reports and related data within 24 hours of receipt.

	FY-1977 Actual			FY-1978 Estimate			FY-1979 Estimate		
	Examinations			Examinations			Examinations		
	Full No.	%	Abbreviated No.	Full No.	%	Abbreviated No.	Full No.	%	Abbreviated No.
Securities Act of 1933									
Registration Statements	1,992	85	351	1,870	74	655	2,100	74	730
Post-effective Amendments	3,573	90	397	3,750	90	420	3,500	80	870
Securities Exchange Act of 1934									
Registration Statements	433	100	0	500	100	0	550	100	0
Preliminary Proxy Materials	5,196	82	1,109	4,900	70	2,100	5,110	70	2,190
Annual Reports	5,497	66	2,785	4,050	45	4,950	2,500	27	6,750
Quarterly Reports	11,728	50	11,729	12,310	50	12,310	6,340	25	19,030
Current Reports	6,786	50	6,787	7,200	80	1,800	7,200	80	1,800
Tender Offers	133	100	0	180	100	0	160	100	0

6. To review and issue comments within 14 business days on all filings by small issuers and within one week on filings made under rules limiting resales and offerings of restricted securities of small issuers; to monitor 100% of offerings, where cause exists, within 4 months of clearance of the offering; and to maintain the current minimum level of service to the public in regional office reference rooms.

Program Justification

The decrease of four staff years in 1979 relates to a reduction of six positions in the Office of Reports and Information Services. The Commission expects that the conversion of its records from paper to a dynamic microform and the upgrading of its computer hardware will result in significant staff savings. The microform system should enable the Commission to reduce the number of persons required to file, maintain, retrieve and deliver paper. The upgraded hardware for computer processing as well as the new telecommunication system should enable the Commission to reduce the number of employees required to extract data from records, reconcile discrepancies, and review information. The personnel savings anticipated in 1979 are based on the assumption that the new information processing systems will be successful, that the workload will remain generally at the current levels, and that the new systems will become fully operational during 1978.

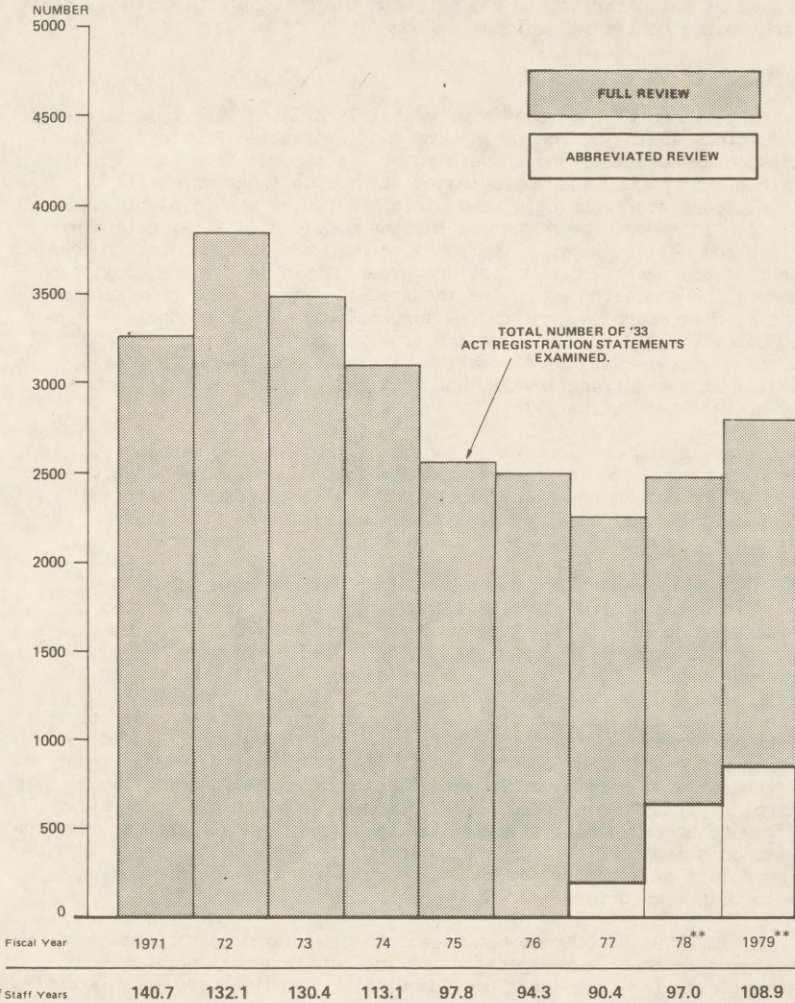
Accomplishing the long-range objective for the full disclosure program requires both (a) a continual review of documents filed with the Commission to determine whether they comply with pertinent rules and regulations, as well as (b) periodic re-examination of disclosure requirements to ensure that they are reasonable and adequate.

(a) The increasing pressures associated with examining a steadily-growing volume of filings and, at the same time, engaging in necessary disclosure rule-making projects eventually resulted in development of abbreviated reviews, as described earlier in the section "Current method of pursuing the long-range objective." The number of filings reviewed is expected to increase by 10% in 1979 over 1978 estimates, yet the staffing level will remain constant. Consequently, it will be necessary to expand the utilization of abbreviated reviews in order to process filings expeditiously. The alternative, which is not acceptable, is to permit backlogs to develop, and risk harming the critical capital-forming process. It is expected that the staff will continue to accord a full review to filings made by small issuers with the Commission's regional offices. This level of review is necessary in view of the nature of such filings and the particular need for protecting investors in such offerings.

(b) In 1979 the Commission expects to be engaged in three major initiatives in the other aspect of its full disclosure function -- reviewing existing procedures and formulating new disclosure requirements.

Implementing Recommendations of the Advisory Committee on Corporate Disclosure. In November, 1977, the report of the Advisory Committee on Corporate Disclosure was presented to the Commission. That report contained recommendations in thirteen broad areas to improve the

FULL DISCLOSURE
FULL AND ABBREVIATED REVIEW OF REGISTRATION STATEMENTS FILED UNDER
THE 1933 SECURITIES ACT



* Staff Years dedicated solely to the examination of '33 Act
Registration Statements.

** Estimates

Commission's administration of the corporate disclosure system: (1) disclosure objectives; (2) rulemaking and monitoring practices; (3) development of selected industry disclosure guidelines; (4) earnings projections and other soft information; (5) segment reporting; (6) social and environmental information; (7) proxy statement disclosure; (8) further integration of the 1933 and 1934 Acts; (9) periodic reporting under the 1934 Act; (10) financial statement disclosure; (11) disclosure problems of small companies; (12) dissemination of company filings; and (13) reorganization of the Commission's file-keeping system.

In most of the areas involving rulemaking processes, the Division of Corporation Finance has already or will soon initiate rulemaking inquiries, including regional hearings on capital-raising problems confronting small businesses. Other aspects of the Committee's recommendations, such as monitoring new and existing disclosure requirements, and reorganizing the Commission's file system, involve essentially internal administrative practices of the Commission. Although certain of these actions might be completed during 1979, others, such as improved monitoring and further integration of the 1933 and 1934 Acts, may continue for an indefinite period.

Beneficial Ownership of Securities and Tender Offers. Congressional interest in the disclosure of beneficial ownership of securities is reflected in a number of actions, the most recent being the Foreign Corrupt Practices Act of 1977. In addition to prohibiting certain types of corporate conduct, the Act expanded the disclosure requirements under Section 13(d) of the Securities Exchange Act of 1934 and added new Section 13(g) to expand further the definition of persons subject to beneficial ownership disclosure requirements. This new law also directs the Commission to establish a centralized reporting system without unnecessarily duplicative reporting and to minimize the compliance burden. In addition, the Commission is directed to tabulate and make available, on a timely basis, the information contained in the filings made pursuant to the Act and to report to Congress on such matters by mid-1978. Pursuant to those directives, the staff is currently engaged in the development of a rulemaking package which will implement disclosures under Section 13(g), incorporate them with those required under Section 13(d) and (f), and produce an integrated system which avoids duplicative reporting. It is contemplated that the reports filed under this system will provide information necessary to identify all persons who own more than five percent of the equity securities and the nature of their ownership.

The Commission's staff is also developing new and amended rules concerning third party tender offers, issuer tender offers, and going private transactions. The tender offer regulations are intended to replace or augment the emergency rules adopted by the Commission subsequent to the enactment and revision of earlier legislation in 1968 and 1970 and to recognize the dynamic and rapidly increasing volume of

tender offers and the increasing need to protect investors confronted by a tender offer and a forced investment decision.

Additionally, the Commission has issued for public comment proposed rules relating to going-private transactions by public companies or their affiliates. In publishing these proposals, the Commission recognized that going-private transactions are a matter of serious concern to the nation's capital markets and can be detrimental to investors and the public interest.

Corporate Governance and Management Disclosure. The Commission's staff is actively considering testimony presented at hearings conducted in late 1977 on the subject of shareholder communications, shareholder participation in the corporate electoral process, and corporate governance. It is expected that the results of this inquiry will ultimately lead to revisions in the proxy disclosure and solicitation process, as well as to new mechanisms, unrelated to the proxy solicitation process, to stimulate increased shareholder interest and participation in corporate governance and to improve corporate accountability.

In separate rulemaking or disclosure actions presently in process, the Commission is seeking to improve the information available to investors concerning the background, ability and integrity of members of management, including the disclosure of management remuneration paid in the form of prerequisites.

The net increase of \$144,000 in total program cost for 1979 consists of: 1) an increase of \$84,000 for within-grade costs; 2) a decrease of \$41,000 for six fewer positions; and 3) an increase of \$101,000 representing a pro rata share of the higher cost of personnel benefits, travel, and "other expenses."

Impact on long-range objective

The accomplishments expected in 1979 will result in limited progress toward achieving the long-range objective for full disclosure. With respect to those levels of the objective which relate to filings under the 1933 and 1934 Acts and which seek to place greater emphasis on reviewing filings made under the 1934 Act, funding at this level will provide barely enough resources to maintain the levels of review conducted in 1978. Any increased efficiency which might result would be offset by the expected 10% rise in the number of filings.

With respect to the areas of the long-range objectives relating to the processing of miscellaneous disclosure forms, requests filed under the Freedom of Information Act and Privacy Act, and distribution of requested filings and reports, there also will not be significant progress made in 1979. Because of a reduction of approximately 16 staff years from the 1977 level to 1979, there is likely to be an increase in the time required to distribute requested filings and reports, and it will be difficult to comply with the 20-day maximum processing time set forth in the Freedom of Information Act and Privacy Act.

Additionally, the introduction of certain new information processing procedures and systems (which require additional staff time for user acceptance and debugging) and the anticipated increase in filings, especially with respect to the volume and complexity of Privacy Act and Freedom of Information Act requests, will probably retard substantial progress in 1979 toward achieving the long-range objective of processing miscellaneous disclosure filings within 24 hours of receipt.

FULL DISCLOSURE - WORKLOAD ESTIMATES

	<u>1977</u> <u>Actual</u>	<u>1978</u> <u>Estimate</u>	<u>1979</u> <u>Estimate</u>
<u>I. 1933 Act</u>			
A. Registration statements			
Pending at beginning of year	457	503	400
Filed during year	2,389	2,422	2,830
Total for disposition	<u>2,846</u>	<u>2,925</u>	<u>3,230</u>
Examined during year	<u>2,343</u>	<u>2,525</u>	<u>2,830</u>
Pending at end of year	<u>503</u>	<u>400</u>	<u>400</u>
B. Post-effective amendments			
Pending at beginning of year	537	399	400
Filed during year	3,832	4,171	4,370
Total for disposition	<u>4,369</u>	<u>4,570</u>	<u>4,770</u>
Examined during year	<u>3,970</u>	<u>4,170</u>	<u>4,370</u>
Pending at end of year	<u>399</u>	<u>400</u>	<u>400</u>
<u>II. 1934 Act</u>			
A. Registration statements			
Pending at beginning of year	73	71	70
Filed during year	<u>431</u>	<u>499</u>	<u>550</u>
Total for disposition	<u>504</u>	<u>570</u>	<u>620</u>
Examined during year	<u>433</u>	<u>500</u>	<u>550</u>
Pending at end of year	<u>71</u>	<u>70</u>	<u>70</u>
B. Examination of preliminary proxy statements and information statements to stockholders			
Pending at beginning of year	132	168	150
Filed during year	6,341	6,982	7,300
Total for disposition	<u>6,473</u>	<u>7,150</u>	<u>7,450</u>
Examined or disposed of during year	<u>6,305</u>	<u>7,000</u>	<u>7,300</u>
Pending at end of year	<u>168</u>	<u>150</u>	<u>150</u>
C. Proxy Contests	<u>37</u>	<u>37</u>	<u>37</u>

	1977 Actual	1978 Estimate	1979 Estimate
D. Examination of Annual Reports (Form 10-K)			
Pending at beginning of year	2,882	3,217	3,100
Filed during year	8,617	8,883	9,250
Total for disposition	<u>11,499</u>	<u>12,100</u>	<u>12,350</u>
Disposed of by full review	5,497	4,050	2,500
Disposed of by abbreviated review	2,785	4,950	6,750
Pending at end of year	<u>3,217</u>	<u>3,100</u>	<u>3,100</u>
E. Examination of Quarterly Reports (Form 10-Q)			
Pending at beginning of year	1,043	1,186	1,100
Filed during year	23,600	24,534	25,270
Total for disposition	<u>24,643</u>	<u>25,720</u>	<u>26,370</u>
Examined or disposed of	23,457	24,620	25,370
Pending at end of year	<u>1,186</u>	<u>1,100</u>	<u>1,000</u>
F. Examination of Current Reports (Form 8-K)			
Pending at beginning of year	1,048	708	600
Filed during year	13,233	8,892	8,950
Total for disposition	<u>14,281</u>	<u>9,600</u>	<u>9,550</u>
Examined or disposed of	13,573	9,000	9,000
Pending at end of year	<u>708</u>	<u>600</u>	<u>550</u>
G. Tender Offers			
1. Tender Offers			
Pending at beginning of year	4	5	5
Filed during year	134	180	160
Total for disposition	<u>138</u>	<u>185</u>	<u>165</u>
Examined or disposed of	133	180	160
Pending at end of year	<u>5</u>	<u>5</u>	<u>5</u>
2. Acquisition Statements (Schedule 13D)			
Pending at beginning of year	76	56	31
Filed during year	1,098	1,200	1,200
Total for review or disposition	1,174	1,256	1,231
Reviewed or disposed of	<u>1,118</u>	<u>1,225</u>	<u>1,225</u>
Pending at end of year	<u>56</u>	<u>31</u>	<u>6</u>

	<u>1977 Actual</u>	<u>1978 Estimate</u>	<u>1978 Estimate</u>
H. 1. Public and Interpretive letters	2,000	2,000	2,000
2. Shareholder Inquiry and Complaint Correspondence	3,000	3,000	3,000
I. Ownership, transaction reports and miscellaneous disclosure forms	140,000	140,000	140,000
III. Administration of Regulations A, B, & F			
A. Regulations A and F			
1. Permanent suspension orders issued	6	4	4
2. Temporary suspension Orders	2	2	2
3. Review (post audit) of Regulation A Financial Statements	85	70	70
4. Examination of Regulation A filings in Regional Offices	213	200	190
5. Examination of Regulation A filings	60	50	50
6. Applications for Waiver of Disqualifications - Rule 252(f)	7	5	5
B. Regulation B			
1. Regulation B offering sheets filed and examined	96	90	80
2. Amendments to offering sheets	95	85	75
3. Permanent suspension orders issued	2	2	2
4. Temporary suspension orders issued	1	1	1
5. Orders fixing effective dates of amendments	71	70	70
6. Number of reports of sales filed	109	100	90

PREVENTION AND SUPPRESSION OF FRAUD

Program goal: To detect, investigate, prosecute and remedy fraud and manipulation in the purchase, sale, and trading of securities, illegal distributions of unregistered securities; reporting violations; and other conduct unlawful under the securities laws, by investigating complaints, questionable trading activities and other indications of possible violations of the federal securities laws and by instituting and participating in administrative, civil and criminal actions to enforce such laws.

1977 Accomplishments

Among the many accomplishments of the Commission in enforcing the nation's securities laws in 1977 were the following noteworthy items:

Conducted one of the largest securities investigations in the Commission's history into the sale of New York City municipal bonds in 1974 and 1975, requiring almost two years to complete.

Established a program to take access to and review internal investigations of corporations disclosing questionable or illegal payments and joined with the Justice Department to form a task force to prosecute cases resulting from questionable or illegal payments.

Formulated a program to investigate and prosecute the improper use of corporate funds and equipment for the private personal benefit of officials.

Expanded training programs including litigation in seminars for attorneys at Boulder, Colorado, Columbia University and Howard University, and a special enforcement seminar last fall for personnel from the home office, regional offices, state and local regulatory agencies, and other federal agencies.

Sponsored a dozen "Cooperative Enforcement Conferences" across the country during the past year at which the Commission's enforcement staff met with their counterparts from the self-regulatory bodies and the states to discuss common areas of concern and ways to resolve them.

Created a separate Office of Consumer Affairs to ensure stronger emphasis on representation and protection of the individual investor.

Long-range objective

To preserve the integrity of the securities markets by annually conducting approximately 2,500 investigations and approximately 2,000 enforcement actions against persons involved in questionable securities transactions or other activity illegal under the securities laws.

Current method of pursuing long-range objective

Obtain preliminary indications of possible violations of the federal securities laws through the inspection program, the review and analysis of market surveillance data, complaints from the public, and information referred from elsewhere in the Commission as well as from federal, state, local and self-regulatory bodies. Substantiate or evaluate the merits of possible violations by review and analysis of Commission filings, documents furnished voluntarily and pursuant to subpoena, and testimony under oath. Refer appropriate matters to other federal, state, and self-regulatory bodies. Conduct investigations, in some cases as a member of a Department of Justice strike force. Prepare enforcement action recommendations to be submitted for the Commission's approval. Draft documents to be filed with a court or administrative law judge in civil injunctive actions and administrative proceedings and conduct any resulting trial. Prepare and review criminal referrals and assist the Department of Justice in criminal prosecutions.

Commission staff in the Division of Enforcement and the nine regional and six district offices engage in these activities in numerous kinds of cases, the most important of which are the following current major enforcement programs:

Management Fraud. The Commission is continuing to pursue management fraud investigations into companies which have maintained secret slush funds in order to make illegal domestic political contributions and foreign or domestic bribes. This has been made possible by the falsification of corporate books and records and the direct involvement or participation of senior management officials. This program has resulted in the filing of civil injunctive actions against approximately 50 major corporations.

In addition to injunctive relief, the program has included important ancillary relief. Typically, the consent decree in a management fraud case has required the company to undertake to establish a special review committee, comprised of independent members of its board of directors, which is required to conduct a full investigation of the irregularities alleged in the Commission's complaint. A report of investigation is required to be submitted to the board of directors and filed with the court and with the Commission. In some cases, as a result of this process, substantial restitution has been made to the corporation for improperly-diverted monies.

Some of the practices uncovered in these cases have included:

- bogus bonuses to selected employees rebated for use in paying domestic political contributions;
- use of an offshore subsidiary to conceal a revolving cash fund used for distributing diverted corporate funds to both domestic and foreign political activities;
- anonymous Swiss bearer stock corporations used as depositories for secret kick-backs on purchase or sales of contracts;
- fictitious payments to foreign consultants which were recycled to management and used for domestic political contributions and commercial bribery; and
- direct, secret payments to foreign government officials in return for special considerations.

In certain cases, consultants or commission agents received payments aggregating tens of millions of dollars without accounting procedures, controls or records sufficient to document whether any services were rendered, or whether such services, if rendered, were commensurate with the amounts paid. In many of these cases the creation of a secret cash fund was facilitated by a significant lack of internal audit controls over corporate funds. In some of these cases, the Commission has also alleged that the diversion of corporate funds was, at least in part, for the personal benefit of individual corporate managers.

Municipal Securities. Although exempt from the registration provisions of the Securities Act, municipal securities are subject to the antifraud provisions of both the 1933 and 1934 Acts. After receiving numerous complaints about questionable practices in the industry, the Commission undertook a program designed to cope with the municipal securities problem. The activities of municipal securities dealers are now subject to the scrutiny of the staff as a result of the 1975 Amendments and an increasing number of enforcement actions are being brought involving municipal securities offerings.

Government Securities. A growing problem involves Government National Mortgage Association (GNMA) forwards. The staff has instituted one action, will recommend criminal action in another case, and has six other pending investigations concerning fraudulent sales of such securities. The financial operations of a major university have been jeopardized by such activities. A task force is being formed to investigate that particular matter. Meetings have been held with industry representatives regarding growing problems in this area.

Organized Crime. The organized crime unit in the Enforcement Division is primarily responsible for conducting investigations and coordinating the efforts of the regions in matters involving organized crime cases. A concerted effort is undertaken to maintain close contacts with Department of Justice strike forces and certain state and local agencies that have historically provided key information on organized crime infiltration in the securities industry. In furtherance of this objective, the Division participates in seminars and training programs on organized crime sponsored by state and local governments throughout the nation.

Foreign Investment. In view of the continuing internationalization of the securities markets, the Division of Enforcement is implementing a program to ascertain whether foreign investment in U.S. securities markets is in compliance with the federal securities laws. Such review will seek to determine whether the identities of beneficial owners are disclosed when accumulations surpass the levels specified under the Securities Exchange Act of 1934, and whether there is a significant number of transactions made through foreign banks and other entities which appear to be based on material non-public information.

Oil and Gas Offerings. The Division has instituted a program calculated to curb a number of abuses which have proliferated recently in connection with oil and gas offerings. As a result, a number of expedited enforcement actions have been brought and the Commission has issued a release alerting prospective investors to the dangers in this area. Such abuses involve boiler-room type sales tactics and misappropriation of proceeds. Pursuant to the requests of several state officials, the staff is considering a number of different approaches to the problem including increased disclosure requirements and utilization of escrow accounts.

Corporate Takeovers. Within the past few years, corporate takeovers of all types (tender offers, proxy contests and going-private transactions) have been increasing substantially. Due to the critical time pressures inherent in these types of activities, the Division has implemented a program that enables an expedited investigation in order to determine whether violative conduct is occurring.

The initial phase of the program is a screening process to identify, from available information, those changes in corporate ownership possibly warranting quick enforcement action. This activity is primarily carried out by the home office. The primary source of this information is the Schedule 13D and 14D filings with the Commission and amendments thereto, information published in the public financial news media and comments about such disclosure, especially related to tender offers, from the Division of Corporation Finance. With respect to a possible securities law violation with regard to a change in corporate ownership which lends itself most appropriately to regional or branch office investigations, the

program assures that the matter is promptly referred to the respective office for immediate inquiry and quick enforcement action. As a result of this program, we have brought a number of tender offer cases including SEC v. Royal Industries, Inc. and SEC v. Milgo Electronic, Ltd.

Real Estate Investment Trusts (REIT's). The advent of the tight mortgage market and the resulting widespread adverse effect upon real estate investment trusts brought to light a number of questionable transactions by REIT's which were calculated to misrepresent financial statements of the publicly-held REIT's. Some of the most prevalent improper practices have involved purchases of bad loans and non-arms-length transactions between affiliates. In view of the apparently widespread nature of these self-dealing transactions, the severe depression of the REIT industry, and its potential for an adverse impact on the banking industry, the Commission has given special attention to alleged improprieties in this area.

Delinquent Reports Program. This program was established three years ago to insure that companies whose securities are being publicly-traded have submitted the required filings with the Commission. The Commission continuously monitors compliance with the reporting requirements of the 1934 Act. When a delinquency is detected, a notice is mailed to the registrant requesting a written explanation, which becomes part of the registrant's public file. Depending upon all of the relative circumstances, the Commission may thereafter temporarily suspend trading in the securities of the registrant, institute action to compel the filing of the required report, and even refer the matter to the Department of Justice for criminal prosecution.

1979 BUDGET

	<u>FY-1977</u>		<u>FY-1978</u>		<u>FY-1979</u>	
	<u>Actual</u>		<u>Estimate</u>		<u>Estimate</u>	
<u>Organizational Units</u>	<u>Staff</u> <u>Years</u>	<u>Cost</u> <u>(000)</u>	<u>Staff</u> <u>Years</u>	<u>Cost</u> <u>(000)</u>	<u>Staff</u> <u>Years</u>	<u>Cost</u> <u>(000)</u>
Enforcement	184.3		187		199	
Consumer Affairs	5.4		12		12	
Reports & Information Services	20.2		20		20	
Regional Offices	423.2		439		451	
Sub-total, Salaries	633.1	\$14,026	658	\$15,569	682	\$16,146
Personnel Benefits		1,298		1,486		1,554
Travel		1,067		1,071		1,106
Other Expenses		4,350		4,592		4,741
Total Program Cost		<u>\$20,741</u>		<u>\$22,718</u>		<u>\$23,547</u>

1979 Objective

To preserve the integrity of the securities markets by conducting approximately 1,900 investigations and approximately 1,100 enforcement actions in 1979 against broker-dealers, investment advisers, investment companies, transfer agents, issuers of securities, corporate officials, promoters, members of organized criminal syndicates, and others involved in questionable securities transactions or other activity illegal under the securities laws.

Program Justification

The 1979 increase of 24 staff years is comprised of: 1) a 13 staff-year increase in average employment, six in the Division of Enforcement and seven in the regional offices; and 2) a 11 staff-year increase, representing an increase of 14 positions for nine months, seven positions each for the Division of Enforcement and the regional offices.

The requested personnel increase of 14 additional positions will be dedicated to enhanced market surveillance, which is necessitated by rapidly expanding trading in stock options. New opportunities exist for market manipulation of the underlying stock, as well as the stock option, particularly with the recent addition of trading in put options. Because of the newness and rapid growth of options trading, Commission staff are not yet familiar with all of the abuses possible in the options market. Unfortunately, the current resource level does not permit the Commission to address adequately enforcement matters involving stock options.

The projected 1979 personnel level would appear to be the lowest resource level practical, given the growing importance of the enforcement program. A significant consideration in selecting cases is their visibility in the investment community, because increased public awareness is an effective deterrent to potential violators of federal securities laws. At the same time, new fraud techniques are continually surfacing, requiring the present enforcement staff to be ever vigilant to detect innovative illegal activities before they spread so widely as to seriously defraud investors, thereby destroying public confidence in the securities markets. An increasing responsibility related to this function is overseeing the performance of professionals associated with the securities industry -- attorneys, accountants, investment advisers, financial analysts, and others -- to ensure that their conduct is in accordance with the law. However, the resources provided in 1979 probably will not permit an increase over 1978 program levels enforcing securities laws pertaining to professionals.

Enforcement activities related to compliance by issuers and regulated entities will be funded at the 1978 resource level. Consequently, the Commission may be unable to take access to financial records of all 400 companies that have acknowledged making illegal foreign payments. Regional offices will be unable to address some enforcement matters concerning compliance by issuers. The regional offices and the Enforcement Division may be unable to develop indications of securities violations in connection with municipal securities and government securities transactions. In addition, resources provided for 1979 may be insufficient to provide enforcement follow-up related to the expanding number of investment advisers.

Recent increases in trading activity and the growth in the number of regulated entities and offerings under the purview of the Commission enhance the prospects of more improper conduct which should be investigated. Continuing the 1979 enforcement program at 1978 activity levels may well be inadequate to meet this challenge:

- the number of registered broker-dealers increased from 4,081 in 1974 to 5,864 as of December 31, 1977 due primarily to the additional broker-dealers required to register under the Securities Acts Amendments of 1975;

- the volume of shares traded has expanded from five billion in 1974 to seven billion in 1977;
- the number of registration statements filed in accordance with the Commission's disclosure requirements is expected to increase at a rate of ten percent per year in 1978 and 1979; and
- the number of registered investment advisers has grown from 3,857 in 1976 to 4,823 in 1977.

These statistics suggest an increasing potential for securities violations, as evidenced by the increasing number of enforcement actions being brought. For example, a comparison of the two fiscal years ended September 30, 1977, with the two prior years, reveals that while only two more injunctive actions were instituted, the number of injunctions ordered increased by 29 and the number of defendants enjoined increased by 175, or more than 12 percent. Similarly, the number of criminal cases referred to the Department of Justice increased by 70 and the number of persons convicted increased by 35, or almost 18 percent.

The requested increase in average employment will allow for a slight increase in the number of enforcement actions closed, based on the current ratio of personnel to investigations. However, more actions are being litigated; they are being contested vigorously; they are more complex, time consuming and costly. The practice of the Commission in seeking various types of ancillary relief to provide long-lasting protection for investors increases the likelihood that many actions will be contested in 1979. Consequently, average costs per enforcement case are rising. Depending upon the rate at which this trend accelerates, the proposed funding level may not accomplish the short-term objective stated above. If a significantly larger percentage of the defendants and respondents litigate, the costs will be much greater than estimated. If this occurs, the Commission will be unable to act in as many cases as is presently estimated, and public investors will lose substantial sums to fraudulent activity and manipulative market activities.

The increase of \$829,000 in total program cost for 1979 consists of: 1) \$145,000 for within-grade costs; 2) \$229,000 for higher average employment and annualization of the pay increase effective October, 1977; 3) \$203,000 to fund the 14 new positions; and 4) \$252,000 representing a pro rata share of the higher cost of personnel benefits, travel, and "other expenses."

Impact on long-range objective

The long-range enforcement objective will not be reached at this level of funding. Furthermore, activities related to issuers and regulated entities will operate below 1977 levels. Many violations of the federal securities laws involving late filing and failure to file or to disclose questionable or improper payments affecting many public investors will continue either undetected or without formal investigation or enforcement action. The increasing frequency of contested cases and instances of protracted litigation, the growing number of matters coming to the Commission's attention, and the change in the market place and among the

classes of regulated entities are all creating a tremendous strain on the existing complement of personnel in both the Enforcement Division and the field offices. Unless additional resources are allocated to this program, the enforcement staff will be required to make certain concessions and sacrifices which are not in the best interest of the public or the Commission. Among the specific ramifications will be the recommendation of settlements in more of the Commission's cases to save manpower and money which may not provide the protection for investors which could have been obtained if the Commission had been able to fully investigate and litigate the cases; limiting the enforcement staff primarily to matters brought to its attention and thereby restricting its ability to develop new cases involving novel and unique issues in accordance with an overall enforcement strategy; the inability to seek various forms of ancillary relief which may call for a significant amount of time to implement; and the failure to respond in a timely fashion to the variety of crises which confront the Commission on an almost daily basis. In this connection, it should be emphasized that the Commission's inability to address fully a securities law violation within a short time after it comes to its attention may result in public investors losing a great deal of money unnecessarily. Additionally, below the requested funding level, the capacity to render assistance to other federal, state and local governmental bodies will be substantially lessened and consideration must be given to discontinuing such assistance so that absolutely essential investigations and enforcement cases can still be conducted.

PREVENTION AND SUPPRESSION OF FRAUD - WORKLOAD ESTIMATES

	1977 <u>Actual</u>	1978 <u>Estimate</u>	1979 <u>Estimate</u>
1. Investigations			
Pending at beginning of year	1,329	1,404	1,475
Opened during year	400	431	435
Sub-total	<u>1,729</u>	<u>1,835</u>	<u>1,910</u>
Closed during year	325	360	365
Pending at end of year	<u>1,404</u>	<u>1,475</u>	<u>1,545</u>
2. Administrative Proceedings			
Pending at beginning of year	78	69	60
Opened during year	139	116	120
Sub-total	<u>217</u>	<u>185</u>	<u>180</u>
Closed during year	148	125	130
Pending at end of year	<u>69</u>	<u>60</u>	<u>50</u>
3. Injunctive Actions			
Pending at beginning of year	295	330	365
Opened during year	186	180	185
Sub-total	<u>481</u>	<u>510</u>	<u>550</u>
Closed during year	151	145	150
Pending at end of year	<u>330</u>	<u>365</u>	<u>400</u>
4. Criminal Actions			
Pending at beginning of year	259	284	320
Opened during year	98	101	105
Sub-total	<u>357</u>	<u>385</u>	<u>425</u>
Closed during year	73	65	75
Pending at end of year	<u>284</u>	<u>320</u>	<u>350</u>

SUPERVISION AND REGULATION OF SECURITIES MARKETS

Program goal: To regulate trading in securities markets and persons participating in those markets to prevent fraud, manipulation and deception, to promote competition, and to insure the maintenance of fair, honest and efficient markets.

1977 Accomplishments

The Division of Market Regulation made considerable headway in studying and evaluating possible changes in the consolidated reporting system and removal of off-board trading restrictions. The Division also published a proposed rule governing dissemination of quotation information and proposed for adoption a set of rules providing for regulation of certificate turnaround time of transfer agents.

Based on the findings of an extensive monitoring program, the Commission prepared requirements to the Congress on the effects of competitive commission rates on the operation of the nation's securities markets.

Working with the Division of Market Regulation, the National Market Advisory Board prepared and submitted a report to Congress on the desirability of modifying the existing scheme of self-regulation, and prepared comment letters to the Commission addressing key issues related to the development of a national market system.

Achievements in fulfilling oversight responsibilities over the self-regulatory organizations ("SRO") are evidenced by: (1) review and action upon proposed rule changes filed by SRO's dealing with matters such as exchange option trading, floor trading rule, capital rules, etc.; (2) the conduct of 32 inspections of SROs with particular emphasis on surveillance procedures; (3) the review, now in progress, of approximately 1,000 existing rules of national securities exchanges and associations for conformity to the Securities Exchange Act of 1934; (4) the adoption, amendment or proposal of rules regulating the activities of SROs including rules dealing with their enforcement responsibilities, the allocation of such responsibilities among those organizations and the procedures to be followed in disciplinary proceedings and related actions; and (5) the writing of 210 regulatory oversight letters concerning the activities of SROs.

The Division of Market Regulation prepared for proposal or adoption sixty rules and amendments dealing with such matters as the financial requirements imposed upon brokers and dealers, reporting requirements, confirmation of securities transactions, the conduct of municipal securities brokers and dealers, and short selling, and completed studies and reports regarding securities held in street names and the effect of

competitive commission rates. The Division also write 1,240 exemptive, interpretive, advisory or no-action letters to issuers, brokers and dealers, transfer agents and securities information processors.

Long-range objective

To promote the standards of fair conduct, protection of investors, and the maintenance of fair and orderly markets by:

1. facilitating establishment of a national market system and a nationwide system for the prompt and accurate clearance and settlement of transactions in securities;
2. overseeing the operation of the securities markets and ensuring that self-regulatory organizations have the capacity to carry out their responsibilities in accordance with the Securities Exchange Act of 1934, reviewing all rule changes filed by the self-regulatory organizations (SROs) within 35 days, and conducting at least 30 periodic and "for cause" inspections annually;
3. conducting an ongoing program of review, modifications and advice with respect to proposal, adoption, and amendment of rules governing practices of securities professionals in accordance with requirements of the Securities Exchange Act of 1934; and
4. conducting all examinations of SECO broker-dealers (who are not members of any self-regulatory organization) required "for cause" and oversight examinations of 25% of non-SECO broker-dealers (who belong to self-regulatory organizations); conducting post-effective conferences with 100% of new registrants within 180 days of the effective date; reviewing all financial reports filed by broker-dealers within 15 days of receipt; examining 100% of the subordination agreements filed by SECO registrants; and annually examining all transfer agents, including those examinations required "for cause."

Current method of pursuing long-range objective

Establishment of National Market and Clearing Systems. Work to date in this area has involved primarily: development and adoption of rules, particularly relating to the dissemination of quotations and last-sale reports; elimination of SRO rules which impose burdens on competition; reliance on competitive forces within the industry; development and adoption of rules governing the registration and activities of

participants in the clearance and settlement system; and approval of the merger of several of the major clearing facilities. Because of the complexity of the issues involved and the various diverse economic interests represented by the various segments of the securities industry, private sector efforts to achieve various elements of a national market system have been unsuccessful, and it appears that greater Commission initiatives are required to achieve rapid progress and fulfill the Congressional objective in this area. The Commission will announce its plans for fostering development of a national market system, including priorities and a tentative timetable for various initiatives, sometime in late January, 1978.

Oversight of SROs and trading markets and regulation of securities professionals. Study and assess the securities markets and self-regulatory organizations; propose, amend or adopt rules as necessary for the protection of investors; examine and review disciplinary actions; participate in judicial and administrative proceedings; review, modify and formulate advice with respect to fraudulent or manipulative trading practices, safe transfer of securities and practices of money managers; conduct hearings; prepare no-action and interpretive statements; and examine and review applications and background materials of broker-dealers and transfer agents, amendments to applications, and notices of withdrawal.

Regional office inspections and examinations. Conduct a nationwide comprehensive examination program for broker-dealers and transfer agents through the development of examination goals, checklists, manuals, training seminars and educational circulars; perform on-site inspections of the broker-dealer examination programs of the self-regulatory organizations; review and analyze financial reports and other materials filed with respect to brokers and dealers.

1979 BUDGET

Organization Units	FY-1977		FY-1978		FY-1979	
	Actual		Estimate		Estimate	
	Staff	Cost	Staff	Cost	Staff	Cost
	Years	(000)	Years	(000)	Years	(000)
Market Regulation	116.7		116		137	
National Market						
Advisory Board	4.7		1		-	
Reports & Information Services	20.2		20		20	
Regional Offices	125.3		130		130	
Sub-Total, Salaries	266.9	\$5,452	267	\$5,690	287	\$6,160
Personnel Benefits		504		539		586
Travel		236		263		272
Other Expenses		1,421		1,618		1,693
Total Program Cost		<u>\$7,613</u>		<u>\$8,110</u>		<u>\$8,711</u>

1979 Objective

1. To facilitate the establishment of national market and clearing systems and assume a more active role in the development and implementation of all new procedures, practices and regulations and the planning and design of networks and facilities through: (a) rulemaking and oversight supervision relating to elimination of competitive barriers in the securities markets; (b) the design of complex systems necessary to receive and hold limit orders entered in many marketplaces and to route orders efficiently to and among those marketplaces (large amounts of staff time will be employed in this endeavor and expert consultants may be required for advice and design work); (c) implementation of a composite quotation system; (d) enhancement of consolidated transaction reporting system; and (e) establishment of standards for registration of clearing agencies in cooperation with Federal bank regulatory agencies, and review of clearing agency rules for compliance with the standards of the Exchange Act.

2. To oversee the operation of the securities markets and ensuring the SROs have the capacity to carry out their 1934 Act responsibilities by: (a) reviewing 350 anticipated proposed rule changes filed by the self-regulatory organizations, within 43 days; (b) conducting 20 annual inspections and 25 periodic and "for cause" inspections of SROs; (c) preparing interpretive, advisory, or no-action responses to 100% of the anticipated 250 inquiries from regulated entities and other persons; (d) completing a major review of 1,000 existing SRO rules; and (e) introducing a program to study and analyze the development of exchange-listed option markets by reviewing rule changes, trading practices and surveillance procedures.

3. To conduct an ongoing program of review, modification, and advice with respect to proposal, adoption, and amendment of rules governing practices of securities professionals with respect to trading practices, financial responsibility, safekeeping of customer funds and securities, reporting of lost and stolen securities, fingerprinting of employees, safe transfer of securities and payment of commission charges; and to respond to an anticipated 1,200 requests for interpretive, advisory or no-action letters and review professional registrations and reports entailing the processing of applications, amendments and notices filed by securities professionals, at present as soon as is feasible, but in the near future within three months.

4. To further promote standards of fair conduct, the protection of investors, and the maintenance of fair and orderly markets by: (a) conducting examinations of all SECO broker-dealers required "for cause," (at present only 25% are examined "for cause") and oversight examinations of 5% of all non-SECO broker-dealers, all major transfer agents each year, and all smaller transfer agents at least every four years; (b) reviewing all financial reports filed by broker-dealers within 15 days of receipt and to analyze all subordination agreements filed by SECO broker-dealers as well as those filed by non-SECO broker-dealers; (c) holding post-effective conferences with all new registrants within 180 days; (d) conducting surveillance of all brokers and dealers who enter voluntary self-liquidation; and (e) initiating a comprehensive study into the growth and operation of trading in stock options on securities exchanges.

Program Justification

The 1979 increase of 20 staff years represents: 1) a 9 staff-year increase in average employment, an increase of 10 in the Division of Market Regulation and a decrease of 1 due to the completion of the National Market Advisory Board in 1978; and 2) an 11 staff-year increase associated with an increase of 14 positions for nine months in the Division of Market Regulation.

The additional staff years requested will be devoted primarily to the increased emphasis on achieving a national market system and in the rule development effort that will follow the options study report. The need for additional resources in these areas are discussed below.

In House oversight hearings held on July 23, 1977, both the Chairman of the Commission and key committee members expressed dissatisfaction with the progress made to date in achieving a national market system, and as a result, the Commission was encouraged to assume greater initiative in the matter. This submission provides for an increased Commission commitment to the development of a national market system to respond to this mandate. In furtherance of this undertaking, it is anticipated that by the end of January, 1978, the Commission will have issued a statement on the development of a national market system listing its priorities and

providing a timetable for various initiatives designed to facilitate that system.

The increased oversight of market trading provided by this submission is vital to accomplishing the Commission's mandate of ensuring fair and honest securities markets. Trading in standardized stock options is a new activity requiring extraordinary attention, but the Commission's current resource level has not permitted the emphasis required. Because of the newness and rapid growth of options trading, the Commission's staff are not yet familiar with all of the abuses possible. New opportunities are presented for manipulation in trading the underlying stock as well as in the options market. The Commission must understand these nuances and carefully formulate rules to govern options trading.

As an initial step, the Commission has initiated a comprehensive study on options trading. A special task force composed of staff members from six headquarters divisions and offices has been designated to conduct the study and prepare a report of its findings to the Commission. The major areas which will be studied include trading practices, sales practices, surveillance systems now in place, the economic impact of options trading, and effect on market structure. It is anticipated that the study report will identify areas of concern that must be addressed by new Commission rules and by self-regulatory programs of options exchanges. Formulation of rules and self-regulatory procedures to implement the recommendations contained in the options report will carry over into and perhaps throughout 1979.

The increase of \$601,000 in total program cost for 1979 consists of: 1) an increase of \$59,000 for within-grade costs; 2) an increase of \$155,400 in average employment and annualization of the pay increase effective October, 1977; 3) an increase of \$256,000 for new positions; and 4) an increase of \$130,600 representing a *pro rata* share of the higher cost of personnel benefits, travel, and "other expenses."

Impact on long-range objective

1. The long-range objective as it relates to the establishment of national market and clearing systems will be substantially met at this level of funding. Additional resources are mandatory due to the complexity of this objective and resistance from segments in the industry to certain aspects of the systems under development. Accomplishment of this objective involves significant changes in the existing trading mechanisms, the development of complex interactive computer systems, and actions of an increasingly difficult nature including: analysis of the impact of national market system activities on the nation's capital formation process; development and implementation of a regulatory framework for participants in the national market system which will ensure fairness, equal regulation and protection of the public interest; proposal, adoption and revision of very complex rules; review and action

with respect to existing SRO and Commission rules; determination of which classes of securities are qualified for inclusion in the system; development of a program for enhancement of existing mechanisms for the dissemination of market information relating to quotations for and transactions in securities; and design and implementation of new surveillance techniques and monitoring devices.

2. The long-range objective of overseeing the activities of the SROs will be met. However, it is expected that in addition to the 300 proposed rule changes which would normally be anticipated, an additional number of proposed rule changes will be submitted as a result of the special review of all existing SRO rules now underway within the Commission. In such case, the Commission will be unable to act upon all rule changes within the statutory time period at the current level of funding. An increase in workload is also expected to result from a newly-conceived study of options trading and the various exchange-listed option programs.

3. Some elements of the long-range objective relating to the regulation of securities professionals will be achieved. However, demands upon Commission resources to meet this major objective have increased over the years. For example, the enactment of the Securities Acts Amendments of 1975 has imposed an additional burden on the Commission with respect to this objective by granting the Commission new authority to regulate trading in municipal securities. As a result, the Commission will be unable in all cases to propose, adopt or amend, in a timely manner, rules necessary to insure the protection of investors or to respond promptly to all inquiries requesting interpretations of the law of "no-action" positions. An inability to adopt rules in a timely manner to end perceived abuses or to respond promptly to inquiries for interpretive advice will result in investors continuing to be exposed to such abuses or to other violations of the securities laws by professionals who proceed with proposed transactions in the absence of Commission or staff interpretations, will require a diversion of additional resources to enforcement activities, and will increase the risk of costly litigation involving the Commission, securities professionals and investors.

4. Major functions related to regional office inspections and examinations will be performed as statutorily required. However, supplemental financial and operational examinations of all SECO broker-dealers will be eliminated, oversight examinations of non-SECO broker-dealers will be held at a 5% level and inspections of smaller transfer agents will be once every four years, rather than annually, as set forth in the long-range objective.

5. The Commission's ability to execute the mandates of the Securities Acts Amendments of 1975 by overseeing the activities of transfer agents, municipal securities dealers, and floor brokers will be effective by timely review of applications and notices, although its

ability to protect investors will be somewhat impaired by long delays in receiving amendments which may report important financial developments.

SUPERVISION AND REGULATION OF SECURITIES MARKETS -
WORKLOAD ESTIMATES

	<u>1977</u> <u>Actual</u>	<u>1978</u> <u>Estimate</u>	<u>1979</u> <u>Estimate</u>
1. <u>Exchange Regulation Activities</u>			
Formal amendments to exchange rules and regulations	361	350	350
Inspections of exchanges	23	25	27
Congressional, public and broker-dealer correspondence relating to exchange activities	1,719	2,100	1,875
Development of Commission rules	24	22	18
2. <u>Regulation of Registered Association (NASD)</u>			
Formal amendments to rules filed and examined	19	35	35
Inspections made of NASD	25	25	30
Analysis and reports prepared relating to rules and procedures of association	12	12	20
Congressional, public and broker-dealer correspondence relating to OTC activities	59	60	60
3. <u>Regulation of Non-NASD Broker-Dealers</u>			
Developing rules and regulations relating to qualification standards, rules of conduct, fees, exemptions, etc.	10	13	13
Personnel forms - associated persons - filed and examined during the year	2,095	2,840	2,840
Number of non-NASD members at end of year	345	340	340
Number of associated persons at the end of year	22,100	22,500	22,500
Inquiries from non-members	3,500	3,500	3,500

4. <u>Securities Information Processors</u>	1977 <u>Actual</u>	1978 <u>Estimate</u>	1979 <u>Estimate</u>
Developing rules and regulations relating to processing procedures	2	3	3
Developing rules and regulations relating to registration of SIPs	1	1	1
Estimated number of registered securities information processors	4	5	6
Estimated number of exempted securities information processors	4	4	4
5. <u>Clearing Agencies Including Banks</u>			
Estimated number of registered clearing agencies including banks	12	13	14
6. <u>Transfer Agents Including Banks</u>			
Estimated number of transfer agents including banks	2,400	2,400	2,400
Preliminary reviews or examinations	240	247	311
7. <u>Broker-Dealer Examinations</u>			
Examinations for cause	446	312	392
Examinations of Non-NASD broker-dealers	192	192	296
Sampling by SEC of examinations made by exchanges and NASD	332	396	287

PUBLIC UTILITY HOLDING COMPANY REGULATION

Program goal: To protect the public interest by restricting the operation of public utility holding company systems to integrated utility systems and activities incidental thereto, maintaining a prudent financial structure and overseeing their corporate and financial activities.

1977 Accomplishments

During 1977, the Commission instituted programs to inspect service companies and analyze allocations of fuel costs among the different components of public utility holding companies. In addition, the Commission has endeavored to maintain close liaison with other federal and state regulatory agencies in this area in an attempt to improve the efficiency of regulation for participating agencies and regulated entities alike.

Long-range objective:

To regulate public utility holding company systems by (a) analyzing and reviewing all applications and declarations within 30 days of filing; (b) disposing of applications and declarations within 60 days of filing, unless a hearing is requested or ordered by the Commission, in which case it will be covered within 180 days of filing; (c) reviewing all annual and other reports within 60 days of their filing; and (d) inspecting each service company every three years to determine compliance with the Public Utility Holding Company Act of 1935.

Current method of pursuing long-range objective:

Analyze and review applications relating to financing of registered systems, acquisitions, dispositions, proposed reorganizations, annual reports, and other related documents. Prepare for and participate in hearings on issues raised by these applications. Inspect and review accounts of subsidiary service companies. Review and revise forms. Propose revisions in rules policy, and interpretations under the 1935 Act.

1979 BUDGET

<u>Organization Unit</u>	<u>FY-1977</u>		<u>FY-1978</u>		<u>FY-1979</u>	
	<u>Actual</u>		<u>Estimate</u>		<u>Estimate</u>	
	<u>Staff</u>	<u>Cost</u>	<u>Staff</u>	<u>Cost</u>	<u>Staff</u>	<u>Cost</u>
	<u>Years</u>	<u>(000)</u>	<u>Years</u>	<u>(000)</u>	<u>Years</u>	<u>(000)</u>
Corporate Regulation	<u>21.4</u>		<u>23</u>		<u>23</u>	
Sub-Total, Salaries		\$472		\$585		\$589
Personnel Benefits		44		56		56
Travel Expenses		8		13		13
Other Expenses		<u>113</u>		<u>129</u>		<u>133</u>
Total Program Cost		<u>\$637</u>		<u>\$783</u>		<u>\$791</u>
<u>1979 Objective</u>						

To regulate public utility holding company systems by (a) analyzing and reviewing 75% of applications within 30 days; (b) disposing of applications and declarations within 90 days, unless a hearing is ordered by the Commission; (c) reviewing all annual and other reports within 90 days of their filing; and (d) inspecting a limited number of service companies as time permits, but not less than 2 or 3 each year.

Program Justification

There is no staff year increase projected in 1979 for this program.

The assumption that the level of activity will be the same in 1979 as in 1978 is based on the character of the regulatory activity. Utility planning is long-range, and budget forecasts of regulated companies are part of the record examined on financing applications. The relationship between their construction budget, which is reasonably firm for up to five years in the future, and their sources of funds provides a basis for reliable estimates of the number and timing of upcoming financing applications. There is also little doubt as to the level of special applications and interpretive questions which will be addressed in 1979, because of the recurring nature of this workload, year after year. However, no allowance has been made for such contingencies as another fuel crisis, which would generate unanticipated workload.

The increase of \$8,000 in total program cost for 1979 is comprised of: 1) \$4,000 for within-grade costs; and 2) \$4,000 for a pro rata share of the higher cost of "other expenses."

Impact on long-range objective:

The 1979 program will be conducted at the same personnel level funded in 1978. Therefore, it is not likely there will be progression toward accomplishment of the major objective because hearings will be delayed, inspections will only be conducted as time permits but with no assurance of timeliness, regulation of service companies will be curtailed, and effective review of financing applications will be impaired.

PUBLIC UTILITY HOLDING COMPANY REGULATION - WORKLOAD ESTIMATES

	1977 <u>Actual</u>	1978 <u>Estimate</u>	1979 <u>Estimate</u>
1. Examination of annual and periodic reports	670	700	700
2. Number of applications for approval of exemptions, financing transactions, acquisition of securities or other assets, inter-company loans, dividends, contributions, etc.			
Pending at beginning of year	104	35	35
Filed during year	304	350	350
Sub-Total	408	385	385
Processed	373	350	350
Pending, end of year	<u>35</u>	<u>35</u>	<u>35</u>
3. Acquisitions, consolidations reorganizations and status of persons and administrative proceedings	6	8	8
4. Public and interpretive letters	95	100	100
5. Service company inspections	2	2	2

INVESTMENT MANAGEMENT REGULATION

Program goal: To administer the federal securities laws applicable to investment advisers and investment companies to ensure that fiduciary obligations to investors are satisfied and that investors receive full and fair disclosure concerning the activities of investment advisers and investment companies.

1977 Accomplishments

The Bank Study, for which the Division of Investment Management was responsible, was completed with submission to Congress of a 549 page report. After submission of this report, members of Congress requested that the Commission draft and submit legislation to implement its recommendations.

The inspection programs for both the investment companies and investment advisers have increased. The larger number of examinations resulted in over \$3,200,000 being returned to shareholders in 1977. The increased activity in the inspection area also resulted in more deficiency letters being sent and more enforcement cases being opened. Unfortunately, while the number of investment company and investment adviser examinations increased, the percentage of investment advisers inspected actually decreased as a result of the large number of new advisers being registered.

A large number of complex and important applications were processed, among them, the American Bakeries application and the related administrative hearing relating to the propriety of a retroactive exemption allowing an otherwise prohibited sale of securities and the Merrill Lynch Municipal Bond Fund application concerning the propriety of allowing the fund to purchase municipal bonds in public offerings in which affiliates of the adviser participated as underwriter. In addition, the Vanguard application where exemption was sought to permit use of fund assets to pay for distribution was set down for an administrative hearing.

During 1977 the Division of Investment Management undertook an in-depth review of the administration and interpretation of the statutes it administers. As a result, a number of new rules and interpretive releases were promulgated, old positions revised, and new procedures developed both to monitor the interpretive work of the Division and to

identify on a continuing basis the need for new rules and interpretive releases.

Long-range objective

To insure that investors are fully informed about investment companies and investment advisers and that fiduciary obligations are satisfied by:

1. reviewing and commenting upon 90% of the disclosure documents filed by investment companies within 10-25 days of receipt, depending on the type of filing;
2. publishing notices on non-controversial applications for exemptive relief within 30 days of filing or notifying the applicant of the staff's objections within 45 days;
3. processing investment adviser registration forms within 30 days of receipt; and
4. conducting inspections of registered investment companies and investment advisers on a two-year cycle.

Current method of pursuing the long-range objective

A full examination and analysis is given to two-thirds of the disclosure filings now received. Applications for exemptive relief are processed by analyzing information submitted, meeting with applicants, and examining precedents. Applications for registration as investment advisers are examined and applicants' backgrounds are reviewed to determine whether they meet the registration requirements. Inspections are conducted primarily by the regional offices with the assistance and technical support of the Division of Investment Management. In addition, this program entails responding to requests for interpretation and proposing new rules to the Commission.

1979 BUDGET

Organization Units	FY-1977		FY-1978		FY-1979	
	Actual		Estimate		Estimate	
	Staff Years	Cost (000)	Staff Years	Cost (000)	Staff Years	Cost (000)
Investment Management	93.4		93		93	
Reports & Information Services	15.3		15		16	
Regional Offices	82.5		83		91	
Sub-Total, Salaries	<u>191.2</u>	\$3,675	<u>191</u>	\$4,587	<u>200</u>	\$4,779
Personnel Benefits		340		432		452
Travel		84		129		133
Other Expenses		<u>940</u>		<u>1,153</u>		<u>1,199</u>
Total Program Cost		<u>\$5,039</u>		<u>\$6,301</u>		<u>\$6,563</u>

1979 Objectives

1. To give a full review to 90% of the disclosure documents filed by investment companies; to examine 360 registration statements within 30 days of receipt; to analyze 630 pre-effective amendments within 15 days of receipt; and 2,537 post-effective amendments within 45 days; and to review 900 proxy solicitations within 10 days of receipt and the remaining 130 within 20 days.

2. To keep pace with incoming applications for exemptive relief so that the backlog does not increase, and to issue notice or give comments with respect to 65% of the applications for exemptive relief from investment companies and investment advisers within 60 days of filing.

3. To examine registration forms of investment advisers and amendments thereto within 30 days of filing and notices of withdrawal from registration within 45 days.

4. To inspect 22.7% of the investment companies (318) and 9.5% of the investment advisers (530).

Program Justification

The 1979 increase of nine staff years represents: 1) a four staff-year increase in average employment -- an increase of three in the regional offices and one in the Office of Reports and Information Services; and 2) a five staff-year increase in the regional offices associated with six additional positions funded for nine months.

The funds requested are the absolute minimum that will allow the program to continue in 1979 as it is now. For example, even with the additional staff years allocated to the investment adviser inspection program, the percentage of registered advisers inspected will not increase because of the large number of new registrants. Except for adjustments due to inflation, no other increases have been included.

Because there are no self-regulatory organizations governing investment companies and advisers, compliance with the regulatory scheme of the securities laws can only be assured through an inspection program conducted by the Commission. The investment company inspection program is currently on a 4.4 year cycle, which is the minimum level feasible in order to conduct all "for cause" inspections and still have a meaningful routine program. Even at this level, it will be well over six years between routine inspections for some companies in this \$80 billion industry.

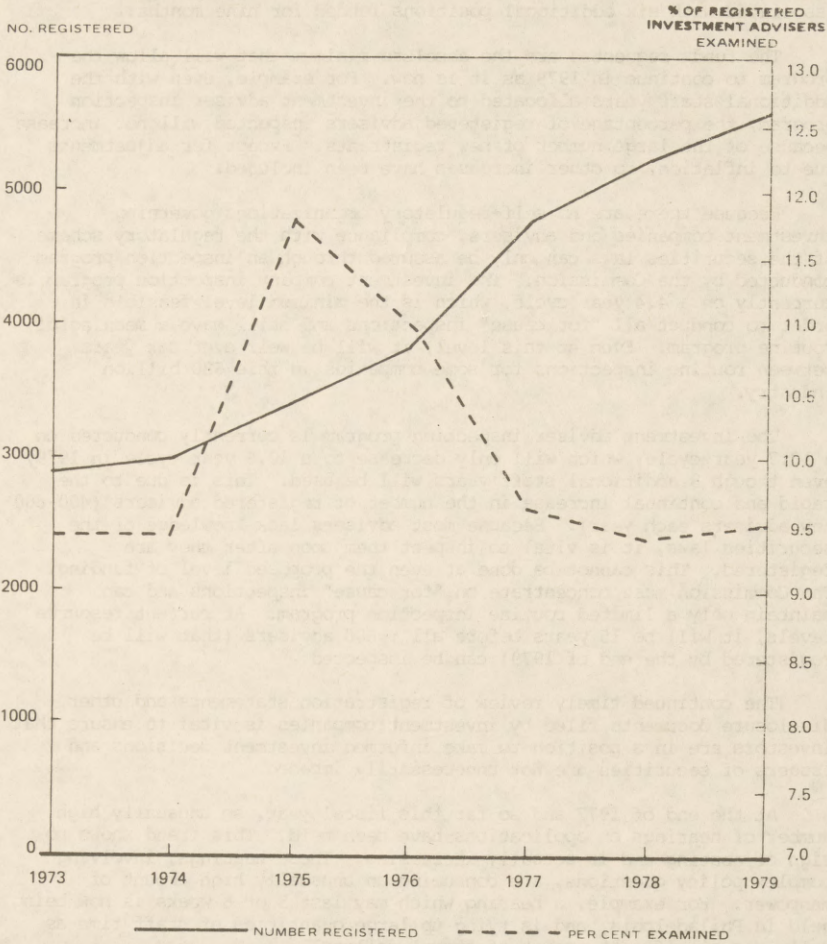
The investment adviser inspection program is currently conducted on a 10.7 year cycle, which will only decrease to a 10.6 year cycle in 1979, even though 8 additional staff years will be used. This is due to the rapid and continual increase in the number of registered advisers (400-600 new advisers each year). Because most advisers lack knowledge of the securities laws, it is vital to inspect them soon after they are registered. This cannot be done at even the proposed level of funding. The Commission must concentrate on "for cause" inspections and can maintain only a limited routine inspection program. At current resource levels, it will be 15 years before all 5,600 advisers (that will be registered by the end of 1979) can be inspected.

The continued timely review of registration statements and other disclosure documents filed by investment companies is vital to ensure that investors are in a position to make informed investment decisions and issuers of securities are not unnecessarily impeded.

At the end of 1977 and so far this fiscal year, an unusually high number of hearings on applications have been held. This trend shows no sign of abating and is actually increasing. These hearings, involving complex policy questions, are consuming an unusually high amount of manpower. For example, a hearing which may last 5 or 6 weeks is now being held in Philadelphia, and is tying up large quantities of staff time as well as a significant amount of travel dollars.

The one additional person in the Office of Reports and Information Services will enable that office to barely keep current with the processing of applications for registration by investment advisers. Timely review of these applications is imperative, because they are

COMPARISON OF INVESTMENT ADVISER REGISTRATIONS AND EXAMINATIONS



automatically granted unless the Commission takes specific action within 30 days of filing.

This budget request also provides resources to enable Commission staff to respond to inquiries on interpretations of statutes and regulations within 30 days in 75% of the cases, as is currently the practice. Also included in this budget are resources to maintain the current activity level related to formulation of new rules concerning investment companies and investment advisers.

The increase of \$262,000 in total program cost for 1979 is comprised of: 1) \$40,000 for within-grade costs; 2) \$72,000 for increased average employment and annualization of the pay increase effective October, 1977; 3) \$80,000 for new positions; and 4) \$70,000 representing a pro rata share of the higher cost of personnel benefits, travel, and "other expenses."

Impact on long-range objective

1. This level of activity represents the minimum acceptable level for reviewing disclosures by investment companies. Assuming no dramatic increase in the number of filings, it provides for a level of examination which would assure that prospective issuers would not be unduly delayed by the regulatory process in their efforts.

2. Based on past experience in processing applications for exemption by investment companies and advisers and anticipated volume of work, the long-range objective for processing applications would never be attained at this funding level.

3. Progress will be made toward reaching the objective of timely review of investment adviser registration forms and amendments thereto.

4. The major objective of inspecting 50% of all investment companies by 1983 will not be met unless there are significant increases in the level of funding between 1979 and 1983. The 22.7% level permits all "for cause" inspections and a significant number of "routine" inspections. Although a program at this level offers some degree of prophylactic effect, the results are at a minimal level for a meaningful compliance program. This is the lowest level of funding possible to ensure the inspection of investment companies that we have reason to believe are violating the law and also maintain a meaningful routine inspection program.

INVESTMENT MANAGEMENT REGULATION - WORKLOAD ESTIMATES

A. INVESTMENT COMPANY ACT OF 1940

	<u>1977</u> <u>Actual</u>	<u>1978</u> <u>Estimate</u>	<u>1979</u> <u>Estimate</u>
1. Applications reviewed for exemption of transactions with affiliates, status matters and other proposals of investment companies			
Pending at beginning of year	132	133	143
Filed during year	226	220	225
Total for disposition	<u>358</u>	<u>353</u>	<u>368</u>
Disposed of during year	225	210	215
Pending at end of year	<u>133</u>	<u>143</u>	<u>153</u>
2. Administrative proceedings			
Pending at beginning of year	1	3	4
Instituted during year	<u>3</u>	<u>4</u>	<u>3</u>
Total for disposition	<u>4</u>	<u>7</u>	<u>7</u>
Closed during year	<u>1</u>	<u>3</u>	<u>3</u>
Pending at end of year	<u>3</u>	<u>4</u>	<u>4</u>
3. Public and interpretative letters	436	450	475
4. Investment companies	1,332	1,350	1,400
Number of investment company examinations	280	307	318
Average cycle of examinations (in years)	4.8	4.4	4.4

B. INVESTMENT ADVISERS ACT OF 1940

	<u>1977</u> <u>Actual</u>	<u>1978</u> <u>Estimate</u>	<u>1979</u> <u>Estimate</u>
1. Applications for exemption under various sections of the Investment Advisers Act			
Pending at beginning of year	4	3	3
Filed during year	<u>1</u>	<u>2</u>	<u>2</u>
Total for disposition	<u>5</u>	<u>5</u>	<u>5</u>
Disposed of during year	<u>2</u>	<u>2</u>	<u>2</u>
Pending at end of year	<u>3</u>	<u>3</u>	<u>3</u>
2. Public and interpretive letters	290	360	400
3. Estimated number of registered investment advisers	4,801	5,225	5,600
Investment adviser examinations	459	490	530
Average cycle of examinations (in years)	10.5	10.7	10.6

C. DISCLOSURE OF INVESTMENT INFORMATION -- 1933 AND 1934 ACTS
(INVESTMENT COMPANIES)

	<u>1977</u> <u>Actual</u>	<u>1978</u> <u>Estimate</u>	<u>1979</u> <u>Estimate</u>
1. Registration statements under the Securities Act of 1933			
Pending at beginning of year	80	92	92
Filed during year	<u>294</u>	<u>340</u>	<u>360</u>
Total for disposition	<u>374</u>	<u>432</u>	<u>452</u>
Examined during year	<u>282</u>	<u>340</u>	<u>360</u>
Pending at end of year	<u>92</u>	<u>92</u>	<u>92</u>
2. Post-effective amendments under the Securities Act of 1933			
Pending at beginning of year	330	203	203
Filed during year	<u>1,915</u>	<u>2,197</u>	<u>2,537</u>
Total for disposition	<u>2,245</u>	<u>2,400</u>	<u>2,740</u>
Disposed of during year	<u>2,042</u>	<u>2,197</u>	<u>2,537</u>
Pending at end of year	<u>203</u>	<u>203</u>	<u>203</u>

	1977 Actual	1978 Estimate	1979 Estimate
3. Annual and other periodic reports			
Pending at beginning of year	2,534	393	393
Filed during year	6,009	6,900	7,500
Total for disposition	8,543	7,293	7,893
Disposed of during year	8,150	6,900	7,500
Pending at end of year	393	393	393
4. Preliminary proxy statements			
Pending at beginning of year	96	16	16
Filed during year	810	950	1,030
Total for disposition	906	966	1,046
Examined during year	890	950	1,030
Pending at end of year	16	16	16

D. OTHER

	1977 Actual	1978 Estimate	1979 Estimate
Number of investment adviser and investment company inspection deficiency letters	454	418	493
Inspection results referred to Division of Enforcement	63	66	69

CORPORATE REORGANIZATIONS

Program goal: To protect the interests of public security holders by providing independent expert assistance to courts and investors involved in proceedings under Chapters IX, X and XI of the Bankruptcy Act.

1977 Accomplishments

The Commission appeared in two Chapter IX proceedings and in nine new proceedings under Chapter X, making a total of 124 reorganization proceedings in which the Commission participated. These cases involved assets of about \$5.3 billion and \$4.8 billion in indebtedness. During the year, 17 proceedings were closed. The Commission also submitted three formal advisory reports on plans of reorganization, one of which was the Penn Central Transportation Company, and expressed its views on 10 other plans of reorganization either orally or through written memoranda. The Commission reviewed 616 applications for compensation, totalling \$21 million and was active in continued litigation with respect to transfer motions made in the prior year.

Long-range objective

To participate as a party in all those proceedings where the rights of public investors are involved, attempts are made to misuse the bankruptcy chapters, or SEC participation is requested by the court, and to analyze and review 95-100 percent of petitions filed under Chapters IX, X and XI of the Bankruptcy Act within three weeks of receipt.

Current method of pursuing long-range objective

Review petitions filed under Chapters IX, X and XI and analyze various financial and legal documents under Chapter XI to determine whether these proceedings should be transferred to Chapter X; attend meetings and hearings related to negotiation and settlement of questions raised in proceedings, including provisions for the protection of and substantive safeguards for public investors, as well as problems arising from the overlapping of the Bankruptcy Act and the securities acts, and file briefs, legal memoranda and recommendations in connection therewith, assist the court-appointed trustee in analyzing the debtor's finances and formulating the reorganization plans; and prepare advisory reports related thereto.

1979 BUDGET

Organization Units	FY-1977		FY-1978		FY-1979	
	Actual	Cost	Estimate	Cost	Estimate	Cost
	Staff	(000)	Staff	(000)	Staff	(000)
	Years		Years		Years	
Corporate Regu- lation	9.8		11		11	
Regional Offices	30.0		31		31	
Sub-Total						
Salaries	39.8	\$864	42	\$953	42	\$961
Personnel Benefits		80		91		92
Travel Expenses		56		71		73
Other Expenses		234		247		254
Total Program Cost		<u>\$1,234</u>		<u>\$1,362</u>		<u>\$1,380</u>

1979 Objective

To participate fully in approximately 70% of the reorganization proceedings where there is substantial public interest and review all filings under Chapters IX, X, and XI of the Bankruptcy Act within 45 days of receipt.

Program Justification

There is no staff year increase projected in 1979 for this program.

The assumption that the Commission's responsibilities under the Bankruptcy Act will remain at the level experienced in the prior year is a conservative one. It is impossible to predict what cases will be filed, since bankruptcy proceedings involving the interests of public investors are determined to a large extent by the general conditions prevailing in the economy. But the duration and level of activity required by our present case load is reasonably certain. We are dealing with the aftermath of the last recession and assuming, perhaps optimistically, that another inundation of new cases will not occur in the period covered.

The increase of \$18,000 in total program cost for 1979 consists of: 1) \$8,000 for within-grade costs; and 2) \$10,000 representing a pro rata share of the higher cost of personnel benefits, travel, and "other expenses."

Impact on long-range objective

The 1979 program will be conducted at the same personnel level funded in 1978. Consequently, there will be no progress in moving toward accomplishment of the long-term objective of participating actively in all cases involving public investors.

CORPORATE REORGANIZATIONS - WORKLOAD ESTIMATES

	1977 <u>Actual</u>	1978 <u>Estimate</u>	1979 <u>Estimate</u>
1. Review of reorganization petitions filed in court:			
Chapter IX	2	3	3
Chapter X	76	80	80
Chapter XI	2,695	2,800	2,800
2. Reorganization proceedings in which the Commission participated during fiscal year - Chapters X and XI:			
Pending beginning of year	129	125	123
Notices of appearance filed during year	16	18	18
Sub-Total	<u>145</u>	<u>143</u>	<u>141</u>
Proceedings closed during year	20	20	20
Pending end of year	<u>125</u>	<u>123</u>	<u>121</u>
3. Commission participation in Chapter IX proceedings:			
Pending beginning of year	1	2	3
Notices of appearance filed during year	1	2	2
Sub-Total	<u>2</u>	<u>4</u>	<u>5</u>
Proceedings closed during year	0	1	1
Pending end of year	<u>2</u>	<u>3</u>	<u>4</u>
4. Public & interpretive letters	215	250	275
5. Memoranda, documents, reports received or filed in court	13,525	15,000	15,000

ECONOMIC AND STATISTICAL RESEARCH

Program goal: To provide economic and statistical analysis pertinent to the Commission's rulemaking.

1977 Accomplishments

Establishment of a single, integrated FOCUS reporting system which may be used in the regulation of broker-dealers for surveillance, annual audit, and economic data collection and which substantially reduces the paperwork burden imposed on broker-dealers without sacrificing the collection of crucial data; compilation and dissemination of 12 statistical series on a regular basis; completion of initial designs for monitoring the National Securities Clearing Corporation merger; and development of methods and identification of alternative market models for testing the empirical validity of evidence gathered for proposed administrative proceedings with respect to suspected market manipulation.

The economic and statistical research and support for the major Commission studies are as follows: Bank Study - analysis of the extent of bank involvement in four major brokerage-type plans (dividend reinvestment plans, employee stock purchase plans, automatic investment services and customer transaction services), commercial bank involvement in the private placement of securities and securities transactions which are executed directly or indirectly by the trust department of commercial banks; Street Name Study - the staff constructed an empirical model of the current system of transmitting issuer-shareholder communication through intermediaries which made possible a comprehensive analysis of the efficiency and costs of the proxy distribution system; Disclosure Study - the Advisory Committee on Corporate Disclosure utilized the expertise of the staff of the Directorate of Economic and Policy Research in the design of statistical surveys, the development of questionnaires and the selection of case study companies. The staff has been responsible for the "individual investor" survey phase of the overall disclosure study; Examination of Systematic Disturbance in the Price and Volume Behavior of Underlying Securities During Option Expiration Period - this study analyzed the impact of option trading on the market for underlying stocks during expiration periods; NYSE Rule 390 - analysis and supporting data were forwarded to the Commission regarding the elimination of off-board trading restrictions; and Specialist Study - two studies of the profitability of the specialist system were undertaken, completed and presented to the National Market Advisory Board and the Commission.

Long-range objective:

To ensure that the Commission is kept well-informed of economic implications of Commission regulations and potential changes related thereto by thoroughly researching, analyzing and assessing the economic

impact of securities market regulations, and regularly processing and disseminating market data to the Commission, other government agencies and the public in a timely manner.

Current method of pursuing long-range objective:

Economic Analysis - analyze rule changes and engage in long-term research and policy planning, build and maintain diverse computer data bases, design programs to assess data, and develop and test alternative methodologies; Economic Monitoring - conduct monitoring programs of securities market regulations to determine the economic impact of competitively determined commission rates and of the National Securities Clearing Corporation merger on entities associated with the securities industry; Economic Statistics - collect, process and disseminate securities industry data related to broker-dealers, financial reports of exchange members, registered securities issues, property and liability insurance companies, volume and value of trading of exchange-listed equities, quarterly stock transactions and of non-financial institutions.

1979 BUDGET

Organization Unit	FY-1977		FY-1978		FY-1979	
	Actual		Estimate		Estimate	
	Staff Years	Cost (000)	Staff Years	Cost (000)	Staff Years	Cost (000)
Directorate of Economic & Policy Research	<u>47.6</u>		<u>48</u>		<u>48</u>	
Sub-Total, Salaries		\$1,081		\$1,247		\$1,263
Personnel Benefits		100		120		120
Travel Expenses		9		10		10
Other Expenses		<u>265</u>		<u>287</u>		<u>295</u>
Total Program Cost		<u>\$1,455</u>		<u>\$1,664</u>		<u>\$1,688</u>

1979 Objective:

To ensure that the Commission is kept well-informed of the economic implications of its regulations and changes related thereto.

Program Justification

There is no staff-year increase projected in 1979 for this program.

Staff responsibilities for 1979 will include further monitoring the relationships between the options and equity markets (e.g., development of surveillance models), the effect of new corporate information on the options and equity markets, and specific reports on options markets and exchanges. In addition, the staff will continue to analyze financial information currently available on the securities industry and may be called upon to examine and report on additional information generated by a one-time data collection effort during 1978 which is now under consideration. More importantly, special reports on specific broker-dealers may be required as a result of the recent rash of mergers on Wall Street.

In 1979 the staff can be expected to review and analyze specific questions related to off-board trading rules, the national market system, margin and net capital requirements of broker-dealers, accounting standards, economic and financial data disclosed in filings with the Commission, and reducing the costs of small businesses in meeting the Commission's disclosure requirements related to raising capital.

New program requirements may have a strong impact on the level of funding needed: 1) development of exchange-listed options markets will require empirical research into options trading; 2) further research into the secondary impact of competitive commission rates will be necessary in order to determine the reaction of brokerage firms to the sharp decline in rates and its implications for the securities industry; 3) possible elimination of off-board trading restrictions has created a need for a clearer understanding of the impact of off-board trading on capital markets and the capital-raising process.

The increase of \$24,000 in total program cost for 1979 is comprised of: 1) \$16,000 for within-grade costs; and 2) an increase of \$8,000 representing a pro rata share of the higher cost of "other expenses."

Impact on long-range objective

In general, resources will be provided to monitor the important changes taking place in the securities markets and to assess the impact of existing or proposed regulations. However, resources at this level will not be provided for the development of a generalized, large-scale model of the securities markets or industry. For example, while sophisticated, state-of-the-art techniques will be applied to specific economic questions, the Directorate of Economic and Policy Research will not devote resources to the development of linked market-wide or industry-wide models which would be useful in the decision-making process. Furthermore, this resource level will not permit the development of a capability for rigorous assessment of the impact of prospective changes in macro-economic policy on the outlook for the securities markets or securities industry.

EXECUTIVE AND STAFF FUNCTIONS

Program Goal - To establish policy, provide managerial and legal support, and direct the staff in preventing fraud and manipulation in the purchase, sale, and trading of securities, illegal distributions of unregistered securities, and other conduct unlawful under the securities laws (by investigating complaints, questionable trading activities and other indications of possible violations of the federal securities laws), and by instituting and participating in administrative, civil and criminal actions to enforce the federal securities laws.

1977 Accomplishments

Development or initiation of such major personnel programs as upward mobility, manpower planning, EEO training, and performance evaluation.

Creation of a full-time, permanent position of Director of Regional Office Operations and a rotating position of Advising Regional Administrator to ensure meaningful exchange of information and coordination between the regional offices and the headquarters staff.

Development of a Five-Year ADP Plan, supplemented by a comprehensive requirements analysis now in preparation.

Promulgation of revised ethical standards for reimbursement of travel expenditures and for imputation of a former employee's disqualification to his or her law firm.

Implementation of the Government in the Sunshine Act by opening large portions of the Commission's meetings to the public.

Long-range objective

To formulate policy which encourages the offering and trading of securities in an open, equitable, and honest manner; to provide competent, effective legal advice to, and legal representation of, the Commission; to promote the highest standards in financial accounting to investors; and to provide both leadership and administrative support to the operating divisions, regional offices, and other staff offices.

Current method of pursuing long-range objective

Hold 3-8 Commission meetings each week to consider enforcement recommendations and matters related to regulating markets and issuing securities. Render technical and legal advice to the Commission regarding

proposed quasi-judicial administrative decisions, orders, and rulemaking. Represent the Commission in district court and appellate litigation to which it is a party and appear as amicus curiae in private litigation involving legal issues of significance to the Commission and the interests of investors. Formulate legal opinions in response to requests from Congress, the staff, and the public. Draft proposed bills and prepare comments on pending legislation. Conduct administrative proceedings to consider disqualification of professional persons from practicing before the Commission. Conduct administrative proceedings to decide ultimate issues and interlocutory matters. Identify accounting and auditing problems and, where appropriate, propose amendments to existing rules, consult with registrants, and provide technical assistance to investigators.

Carry out necessary administrative and executive responsibilities -- receive and disburse funds, prepare needed financial reports, provide records and ADP services; develop and implement advanced management information systems; execute effective and creative personnel programs; provide the full range of administrative services; and maintain good relations with the Congress and the public through timely dissemination of useful information.

1979 BUDGET

Organization Units	FY-1977		FY-1978		FY-1979	
	Actual		Estimate		Estimate	
	Staff Years	Cost (000)	Staff Years	Cost (000)	Staff Years	Cost (000)
Executive Offices	17.0		22		22	
Executive Director	9.1		9		10	
Secretary	19.5		21		21	
General Counsel	46.7		62		66	
Administrative						
Law Judges	11.1		12		13	
Opinions & Review	12.6		11		11	
Chief Accountant	14.6		16		19	
Public Affairs	9.6		10		9	
Comptroller	22.8		25		26	
Personnel	23.0		24		25	
Administrative						
Services	52.4		54		54	
Data Processing	45.1		49		50	
Sub-Total, Salaries	283.5	\$5,695	315	\$7,059	326	\$7,249
Personnel Benefits		527		671		690
Travel		130		179		185
Other Expenses		1,557		1,773		1,849
Total Program Cost		<u>\$7,909</u>		<u>\$9,682</u>		<u>\$9,973</u>

1979 Objective

1. To conduct Commission meetings and hearings for the purpose of making policy decisions related to administration and enforcement of federal securities statutes (includes recording and processing Commission decisions in the Office of the Secretary);

2. To concentrate litigation on cases of unusual significance to the Commission, seeking the assistance of program divisions to file briefs and pleadings on time in 50% of the cases; to respond to half of the internal requests for legal advice on a time-available basis, and participate as amicus curiae in those cases presenting issues of significance to the Commission and public investors; to hold quasi-judicial hearings as ordered by the Commission;

3. To monitor private organizations responsible for establishing generally-acceptable accounting principles and to advise the Commission on accounting and auditing matters; and

4. To improve the level of staff support provided by the Offices of Comptroller, Personnel, Data Processing, and Administrative Services and to continue to be responsive to the public through programs conducted by the Office of Public Affairs.

Program Justification

The 1979 increase of 11 staff years is comprised of: 1) a 4 staff-year increase in average employment, 1 for the Office of the General Counsel and 3 for the Office of the Chief Accountant; and 2) a 7 staff-year increase, representing 11 additional positions for nine months -- 1 position each in the Office of Administrative Law Judges and Data Processing, 2 positions each for the Offices of the Executive Director, Comptroller and Personnel, and 4 positions for the Office of the General Counsel, offset by a reduction of 1 position in the Office of Public Affairs.

As the chief legal officer of the Commission, the General Counsel has an important responsibility to provide legal interpretations on a wide variety of issues. Moreover, when other offices of the Commission encounter difficult legal issues in the course of their work, it is the General Counsel's responsibility to resolve the issue by rendering a legal opinion. This responsibility is also important in terms of the Commission's deadlines with Congress, and frequently the General Counsel's opinions are requested by members of Congress. The Commission's participation as amicus curiae in private civil actions serves as important adjunct to its other regulatory activities, and through such cases the Commission has been able to maintain its ability to administer and enforce the federal securities laws and preserve protections for investors contemplated by the federal securities laws. The additional personnel requested for the Office of the General Counsel will enable the Commission to file with increased timeliness in more cases involving the Commission, to respond in a timely manner to more internal requests for interpretative services, and to initiate participation as amicus curiae, when warranted.

The new position assigned to the Office of Administrative Law Judges will be utilized for in-depth legal research, which will expedite the scheduling of hearings and upgrade the legal preparation of the administrative law judges. As a result, it is expected that hearings will be scheduled within an average of 30 days of the institution of proceedings. The judges will attempt to render an initial decision within 35 days of service of record in all but the most complex cases.

As a result of the Metcalf hearings into the adequacy of the Commission's oversight of the accounting profession, the Office of the Chief Accountant must begin to prepare annual reports of accomplishments made by accounting firms in meeting their public responsibilities, which will provide a basis for the Commission to recommend further legislative actions if needed. The first such report is due to the Congress on July 1, 1979. The additional staff years requested for the Chief Accountant will enable this office to keep pace with current developments in financial reporting and improve its oversight of the accounting profession in an effort to foster better quality control of audits and higher accounting standards.

The management capability of the Office of the Executive Director will be significantly strengthened by the addition of the two new positions budgeted for 1979. Consequently, this Office will improve the delivery of management services to the major program divisions and nine regional offices and begin to engage in long-range planning in order to ensure that today's activities are consistent with the direction the Commission will be taking in the future.

The two additional positions requested for the Comptroller's office will be utilized to provide needed financial information to managers on a timely basis. Absence of this data has impaired management's ability to analyze and evaluate the agency's financial position and has hampered informed planning and efficient allocation of resources. Additionally, document controls will be instituted and forms analysis performed to improve the processing time for the payment of claims.

The two additional positions identified for the Personnel Office will permit the planning, implementation and execution of employee utilization and evaluation programs, including samplings to spot and address problems and initiate position surveys; manpower planning programs will be undertaken; and a concentrated effort made to develop a more meaningful employee performance evaluation program.

In 1979 the Office of Data Processing will be in the midst of the follow-up work required to implement the information systems cited by the ADP requirements analysis now underway. The first two major systems -- manpower reporting and case tracking -- will be operational in 1979. Staff members will be utilized to prepare detailed system designs, develop program specifications, and then actually write the related computer programs. The office is expected to meet this new requirement, in part, through the internal reallocation of personnel, but at least one additional position will be required.

Through better internal management and utilization of personnel, the Office of Public Affairs is expected to be able to perform its functions using one fewer person in 1979.

The increase of \$389,000 in total program cost for 1979 consists of: 1) \$44,000 for within-grade costs; 2) \$69,000 for an increase in average employment; 3) \$175,000 for new positions; and 4) an increase of \$101,000 representing a pro rata share of the higher cost of personnel benefits, travel and "other expenses."

Impact on Long-Range Objective

Executive Direction - The level of funding required in this area depends to a large extent on the types of projects or activities necessary to meet responsibilities of the Commission as designated by the Congress. It is anticipated that the resources requested will enable the executive staff to perform its necessary functions. This budget will also permit the Office of the Secretary to continue to maintain accurate records of Commission actions. The office will also try to expedite administrative proceedings by finalizing related Commission minutes and other records within 30 days of Commission action. However, the current backlog in finalizing minutes and records will most likely continue, delaying the announcement of Commission decisions to the headquarters staff, regional offices, and the general public.

Legal services - The Office of the General Counsel will be required to establish a procedure to identify those cases in which timely filing of pleadings and briefs is an absolute necessity and those cases in which it believes the Commission can run the risk of incurring sanctions for its inability to meet the established deadlines. It is anticipated that timely briefs will be filed in 50% of the court cases. In addition, there may be instances of professional misconduct that will not be pursued to the fullest extent because of insufficient manpower. Some progress will be made toward achieving the major objective of providing competent legal advice to the staff, Congress, the public and other federal agencies. However, the proposed funding level will not be sufficient to allow the same responsiveness to the general public, including the securities industry, as is given to the staff and Congress.

Chief Accountant - The Office of the Chief Accountant will be able to make substantial progress toward accomplishing its major objective of improved financial reporting to investors and respond effectively to Congressional direction by performing more active oversight of the accounting profession. Specifically, the Commission is committed to a major study and reevaluation of its replacement cost data disclosure requirements. The Commission is also responsible for the development and monitoring of uniform accounting rules for oil and gas producers under the Energy Policy and Conservation Act in coordination with the Department of Energy. In addition, significant research analysis and possible rule proposals are planned in the areas of municipal accounting, (as a result of the recent New York City investigation), the work of foreign auditors, and industry accounting and disclosure policies for railroads, public utilities and casualty insurance companies.

Administrative Support - The Executive Director's Office will conduct four or five management studies of Commission divisions and offices each year, as required to meet its long-term objective. The Comptroller will also develop the capability to prepare timely analyses of costs by organizational entity, improve its ability to forecast expenditures, implement a comprehensive work measurement system, and be more responsive to inquiries from the Congress, OMB, and GAO. The Personnel Office will begin to make improvements in the areas of staffing, employee development, and position classification. In particular, the executive/managerial development program will be initiated. Implementation of new systems identified by the ADP requirements analysis will be completed by 1983, as specified in the Five-Year ADP Plan.

SUMMARY - OTHER EXPENSES

By Object Class	1977 Actual	1978 Revised Estimate	1979 Estimate	Change
A. Personnel benefits	\$3,672,770	\$ 4,224,900	\$ 4,380,900	\$156,000
B. Benefits to former employees	68,006	66,200	66,900	700
C. Travel and transportation of persons	1,648,413	1,779,400	1,837,400	58,000
D. Transportation of things	33,555	31,100	31,100	-
E. Communications and rental	5,398,142	6,654,800	6,976,500	321,700
F. Printing and reproduction	316,380	792,500	863,500	71,000
G. Other services	2,484,936	3,510,600	3,438,300	(72,300)
H. Supplies and materials	798,250	815,500	888,900	73,400
I. Equipment	2,116,940	375,000	443,100	68,100
Totals	<u>\$16,537,392</u>	<u>\$18,250,000</u>	<u>\$18,926,600</u>	<u>\$676,600</u>

By Program				
I. Full Disclosure	\$3,174,000	\$ 3,320,000	\$ 3,421,000	\$101,000
II. Prevention and Suppression of Fraud	6,715,000	7,149,000	7,401,000	252,000
III. Regulation of Securities Markets	2,161,392	2,420,000	2,550,600	130,600
VI. Public Utility Holding Company Regulation	165,000	198,000	202,000	4,000
V. Investment Management Regulation	1,364,000	1,714,000	1,784,000	70,000
VI. Corporate Reorganization	370,000	409,000	419,000	10,000
VII. Economic & Statistical Research	374,000	417,000	425,000	8,000
VIII. Executive & Staff	2,214,000	2,623,000	2,724,000	101,000
Totals	<u>\$16,537,392</u>	<u>\$18,250,000</u>	<u>\$18,927,600</u>	<u>\$676,600</u>

A. PERSONNEL BENEFITS

Funds requested under this category are to cover the Commission's share of costs as required by statute, for life and health insurance, retirement, and social security taxes. Also included in this request are funds for awards to employees and relocation expenses related to permanent change of station.

<u>Item</u>	<u>1977 Actual</u>	<u>1978</u>		<u>1979 Estimate</u>	<u>Change</u>
		<u>Revised Estimate</u>			
Life insurance contributions	\$ 129,886	\$ 136,400	\$ 141,400	\$ 5,000	
Contributions to civil service retirement fund	2,713,290	3,104,100	3,218,800	116,500	
Awards to employees	22,816	20,200	20,200	-	
Social security taxes	21,699	20,200	20,200	-	
Health benefits contributions	765,869	930,900	965,400	34,500	
Subsistence and temporary expenses	3,189	10,400	10,400	-	
Real estate costs	13,500	2,000	2,000	-	
Miscellaneous moving expenses	2,521	700	700	-	
Totals	<u>\$3,672,770</u>	<u>\$4,224,900</u>	<u>\$4,380,900</u>	<u>\$156,000</u>	

The increased payments for life insurance, retirement contributions and health benefits are directly related to the increased staffing requested. Of these increases, \$82,400 is required by the requested growth in average employment and \$73,600 is associated with the new positions requested

B. BENEFITS TO FORMER EMPLOYEES

Funds requested in this category are to cover the Commission's costs for benefits and other payments made from the Employees' Compensation Fund to or on behalf of former Commission employees. Payment is made to the Department of Labor as required by 5 U.S.C. 8147.

<u>Item</u>	<u>1977 Actual</u>	<u>1978</u>		<u>1979 Estimate</u>	<u>Change</u>
		<u>Estimate</u>			
Accident Compensation	<u>\$68,006</u>	<u>\$66,200</u>	<u>\$66,900</u>	<u>\$700</u>	

C. TRAVEL AND TRANSPORTATION OF PERSONS

Funds requested under this category are to cover all Commission costs for travel of employees in the performance of their official duties, travel of an employee's family in the case of a duty station change, travel to first duty station for new recruits in selected occupational groups, and similar travel authorized or required by statute.

<u>Item</u>	<u>1977 Actual</u>	<u>1978 Revised Estimate</u>	<u>1979 Estimate</u>	<u>Change</u>
Transportation of persons	\$ 825,536	\$ 890,000	\$ 917,700	\$35,700
Commercial rental of automobiles	28,538	30,700	30,700	-
Subsistence expenses	610,247	640,500	662,200	22,300
Incidental expenses	10,151	10,200	10,200	-
Mileage - use of private auto	82,648	97,200	97,200	-
Government motor pool rentals - cars	28,479	30,700	30,700	-
Compensation of witnesses	62,814	80,100	80,100	-
Totals	<u>\$1,648,413</u>	<u>\$1,779,400</u>	<u>\$1,837,400</u>	<u>\$58,000</u>

The increase of \$35,700 for transportation of persons represents a 3% fare increase in the cost of public transportation (\$26,700) and \$9,000 for the requested new positions.

The increase of \$22,300 for subsistence expenses is required for the requested new positions.

D. TRANSPORTATION OF THINGS

Funds requested under this category are to cover costs of shipping household goods in selected instances of initial hiring or change of duty station, shipping other freight, or renting trucks.

<u>Item</u>	<u>1977 Actual</u>	<u>1978 Estimate</u>	<u>1979 Estimate</u>
Transportation of things	\$14,233	\$16,100	\$16,100
Rental of trucks	8,280	4,000	4,000
Transportation of household goods	<u>11,042</u>	<u>11,000</u>	<u>11,000</u>
Totals	<u>\$33,555</u>	<u>\$31,100</u>	<u>\$31,100</u>

No additional funds are requested.

E. COMMUNICATIONS AND RENTAL

Funds requested under the category are to cover costs associated with rental of office space, telephone service, mail charges, teletype and telegraph services, and a variety of equipment rentals, including ADP equipment.

Item	1978			
	1977 Actual	Revised Estimate	1979 Estimate	Change
Telegraph service	\$ 7,114	\$ 8,000	\$ 8,000	\$ -
Telephone - local	634,501	619,840	622,240	2,400
Telephone - long distance	591,628	656,800	716,200	59,400
Teletype and ticker service	22,613	25,000	25,000	-
Payment of penalty mail	424,245	470,000	470,000	-
Rental of space	2,967,389	3,714,600	3,796,500	81,900
Rental of key punch equipment and computer components	109,715	391,900	569,900	178,000
Rental of other equipment	640,937	768,660	768,660	-
Totals	<u>\$5,398,142</u>	<u>\$6,654,800</u>	<u>\$6,976,500</u>	<u>\$321,700</u>

The increase of \$2,400 to the Commission's local telephone cost is related to the additional requested personnel.

GSA estimates that it will bill the Commission an additional \$54,800 for its share of the cost of the Federal Telecommunications Service. The remaining increase of \$4,600 to the long distance telephone account is related to the requested additional personnel.

The full-year cost of additional office space being acquired in 1978 comprises \$68,900 of the increase in "Rental of Space" in 1979. The remaining increase of \$13,000 relates to the additional requested personnel.

During 1978 the Commission is acquiring an interim upgrade of its computer. The requested increase of \$178,000 for computer components in 1979 is required by the increased hardware capability provided by the interim upgrade.

F. PRINTING AND REPRODUCTION

Funds requested under this category are to cover costs of all printing and reproduction work performed by GPO or other outside sources.

<u>Item</u>	<u>1977 Actual</u>	<u>1978 Revised Estimate</u>	<u>1979 Estimate</u>	<u>Change</u>
1. Reprints of rules and amendments, technical forms and <u>Code of Federal Regulations</u>	\$ 5,500	\$ 5,500	\$ 5,500	\$ -
2. Legal briefs, transcript of record, etc.	5,000	5,000	5,000	-
3. <u>The Commission's Annual Report to Congress</u>	16,000	16,000	16,000	-
4. Administrative forms, letterheads, envelopes, standard forms, printed supplies, etc.	35,000	35,000	35,000	-
5. <u>Official Summary of Securities Transactions and Holdings; Statistical Bulletins and Daily News Bulletin</u>	64,040	64,000	64,000	-
6. Photo duplication, binding and reproduction	21,987	23,500	23,500	-
7. Copies of public bills, etc.	31,030	31,000	31,000	-
8. ADP supplies, marginally-punched forms, custom and stock forms	30,000	30,000	30,000	-
9. <u>SEC Weekly Docket</u>	49,000	117,200	117,200	-
10. <u>Directories, pamphlets, and miscellaneous forms</u>	8,823	15,300	15,300	-
11. SEC decisions and reports	50,000	-	50,000	50,000
12. Publishing notices in the <u>Federal Register and Code of Federal Regulations</u>	-	450,000	471,000	21,000
Totals	<u>\$316,380</u>	<u>\$792,500</u>	<u>\$863,500</u>	<u>\$71,000</u>

An increase of \$50,000 is required for the biennial printing of the Commission's decisions and reports.

An additional \$21,000 will be required in 1979 to pay the cost of publishing notices in the Federal Register and Code of Federal Regulations, as required by P.L. 95-94.

G. OTHER SERVICES

Funds for this category are to cover the cost of a variety of contractual services, as described in the following table:

Item	1977 Actual	1978 Revised Estimate	1979 Estimate	Change
Equipment maintenance and repairs	\$ 189,184	\$ 300,000	\$ 300,000	\$ -
Office alterations	158,139	285,000	76,600	(208,400)
Air conditioning and heating	90,695	158,300	158,300	-
Guard service	98,033	138,800	138,800	-
Miscellaneous expenses	172,336	190,500	190,500	-
Stenographic reporting contract	863,795	915,000	915,000	-
Purchase of transcript	180,813	212,000	212,000	-
Training expenses	132,881	150,300	150,300	-
Health unit expenses	65,023	77,000	82,900	5,900
Storage of household goods	1,712	1,700	1,700	-
Background investigations	4,455	10,000	10,000	-
Moving expenses	1,754	17,000	2,000	(15,000)
ADP contract services and other contractual services	525,758	1,053,000	1,198,200	145,200
Reception and representation	358	2,000	2,000	-
Totals	<u>\$2,484,936</u>	<u>\$3,510,600</u>	<u>\$3,438,300</u>	<u>\$(72,300)</u>

A reduction of \$208,400 in monies earmarked for office alterations will be possible in 1979 due to the completion of space renovations at the third headquarters location during 1978.

The increase of \$5,900 for health unit services relates to the requested additional personnel.

The cost of moving to the third headquarters location in 1978 (\$15,000) may be deducted from the Commission's funding base in 1979.

The net ~~increase of \$11,000~~ ^{increase of \$115,200} for ADP contractual services consists of \$160,200 for systems development and \$10,000 for time-sharing, offset by a savings of \$25,000 resulting from the completion of the five-year ADP development plan in 1978.

H. SUPPLIES AND MATERIALS

Funds requested in this category are to cover the costs of items which are ordinarily consumed or expended within one year after being put to use, or which are needed to form a minor component of equipment or fixed property.

<u>Item</u>	<u>1977 Actual</u>	<u>1978 Estimate</u>	<u>1979 Estimate</u>	<u>Change</u>
Office and duplicating supplies	\$491,961	\$504,800	\$514,800	\$10,000
Newspapers	4,868	8,700	8,700	-
Library materials	202,539	179,200	196,600	17,400
Microfiche services	98,882	122,800	168,800	46,000
Totals	<u>\$798,250</u>	<u>\$815,500</u>	<u>\$888,900</u>	<u>\$73,400</u>

The net increase of \$10,000 for office and duplicating supplies consists of an increase of \$30,000 for 6% price increases and a \$3,300 increase associated with the additional requested personnel, offset by the one-time cost of \$23,300 for ADP software purchases funded in 1978.

The increase of \$17,400 for library materials is to convert some existing subscriptions to a three-year basis, because of vendors' insistence on processing larger purchase orders.

An increase of \$46,000 for costs relating to microfiche records which the Commission is required by law to retain — e.g., personnel actions, financial records, purchase orders, etc.

I. EQUIPMENT

Funds requested are used to purchase equipment or other property utilized by Commission employees. These items are expected to have a period of service of one year or more after being put into use.

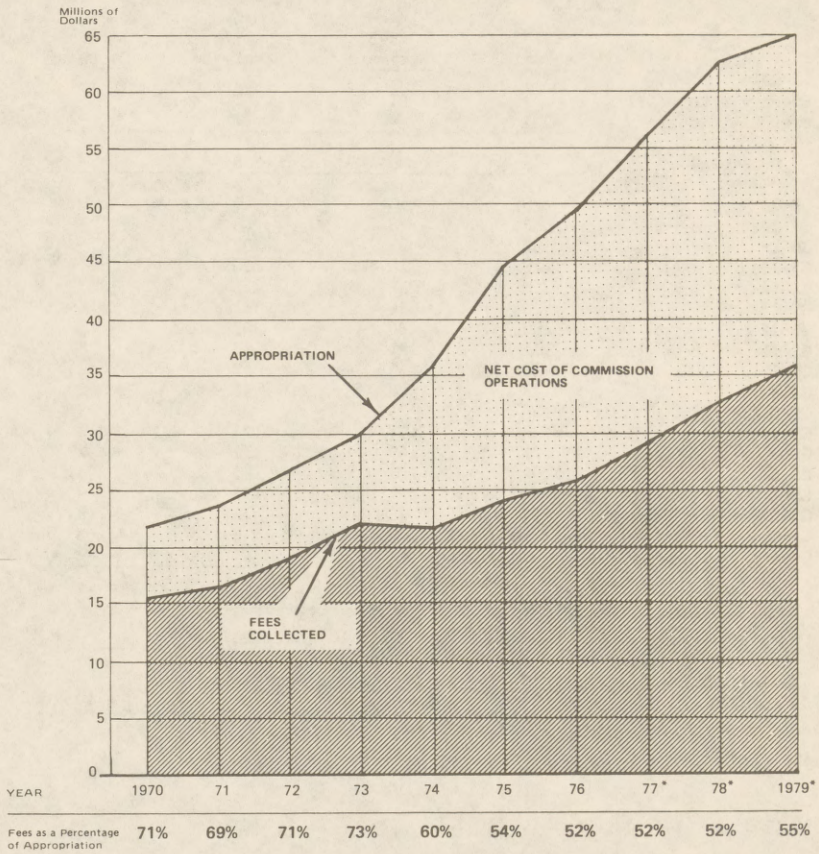
<u>Item</u>	<u>1977 Actual</u>	<u>1978 Estimate</u>	<u>1979 Estimate</u>	<u>Change</u>
Serially-numbered equipment	\$1,816,402	\$375,000	\$443,100	\$68,100
Office furniture	197,255	-	-	-
Computer components	103,283	-	-	-
Totals	<u>\$2,116,940</u>	<u>\$375,000</u>	<u>\$443,100</u>	<u>\$68,100</u>

The requested increase of \$68,100 in 1979 represents (a) an increase of \$100,000 for the replacement of fully-depreciated equipment (10 years of age); (b) an increase of \$33,100 for equipment for the additional personnel requested; and (c) a savings of \$65,000 related to the purchase of micrographics equipment for the regional offices in 1978.

STATEMENT OF ACTUAL FEES COLLECTED IN FISCAL 1977
AND ESTIMATE FOR FISCAL YEARS 1978 AND 1979

<u>Source of Fees</u>	<u>1977 Actual</u>	<u>1978 Estimate</u>	<u>1979 Estimate</u>
Registration of securities under the Securities Act of 1933	\$16,938,868	\$20,674,000	\$22,740,000
Other filings and reports	4,363,752	4,632,000	4,800,000
Securities transactions (Section 31 of the Securities Exchange Act of 1934)	7,626,740	6,774,000	7,500,000
Non-NASD brokers and dealers	216,499	566,000	566,000
Miscellaneous	<u>21,847</u>	<u>22,000</u>	<u>22,000</u>
Total	<u>\$29,167,706</u>	<u>\$32,668,000</u>	<u>\$35,628,000</u>
Fees as a percentage of appropriation, including proposed supplementals for fiscal 1978	52%	52%	55%

SECURITIES & EXCHANGE COMMISSION APPROPRIATED FUNDS VS FEES COLLECTED



*FY 1977, 1978, 1979 are estimated

SECURITIES AND EXCHANGE COMMISSION
SALARIES AND EXPENSES

DETAIL OF PERMANENT POSITIONS BY GRADE

	<u>1977</u> <u>Actual</u>	<u>1978</u> <u>Estimate</u>	<u>1979</u> <u>Estimate</u>	<u>Increase/</u> <u>Decrease ()</u>
Executive Level III	1	1	1	-
Executive Level IV	4	4	4	-
Sub-Total	5	5	5	-
GS-18	5	5	5	-
GS-17	8	8	8	-
GS-16	32	32	32	-
GS-15	128	126	130	4
GS-14	218	218	221	3
GS-13	428	426	431	5
GS-12	280	280	295	15
GS-11	181	181	187	6
GS-10	10	8	7	(1)
GS-9	78	78	83	5
GS-8	25	24	24	-
GS-7	122	117	120	3
GS-6	171	169	171	2
GS-5	193	189	193	4
GS-4	124	121	121	-
GS-3	79	78	75	(3)
GS-2	8	5	2	(3)
GS-1	1	1	1	-
Sub-Total	2,091	2,066	2,106	40
Ungraded	27	27	27	-
Total permanent positions	2,123 ^{1/}	2,098 ^{1/}	2,138 ^{1/}	40

^{1/} Includes six reimbursable positions.

ANSWERS TO QUESTIONS SUBSEQUENTLY RECEIVED BY THE SECURITIES
AND EXCHANGE COMMISSION

Question 1. What provisions are you making for inducting, assigning and training the many new employees in a manner which will avoid disruption to on-going programs and activities?

Answer. The Commission anticipates no serious problem in assimilating the additional personnel cited in its 1980 and 1981 authorization request. To the extent that the new positions would be filled by non-professional employees who report for work with the basic skills required to do their jobs, little additional training would be required. Where training is necessary, the Commission should be able to provide it. As to professional personnel, training is a matter of substantially increased concern to the Commission today. Over the past two years, the agency's training expenditures have more than tripled and they are being efficiently employed. The use of videotape equipment, for example, now permits a greater dissemination of training materials than ever before possible. In sum, the addition of one new person for every ten now employed, when spread over a twelve-month period, would appear to present less of a burden on the induction capacity of the Commission than it has in the past. At the same time, systematic efforts are being made through performance evaluation and training to reduce the amount of turnover in the future.

Question 2. Fifty-five percent of the Commission's professionals are lawyers. Law, therefore, may be considered the Commission's core discipline. However, according to page 21 of the authorization request, the National Market System will be highly automated. What steps are being taken by the Commission to develop an in-house computer capability to do program-oriented work, specifically, to review system and operational aspects of the national market system?

Answer. On April 19, 1978 the Commission issued solicitation SEC-R-549 for the definition and design of a market surveillance system ("MSS"). Attached as Exhibit A are pertinent portions of the description of the background and scope of the solicited MSS. It is expected that the MSS, and the staff effort necessary to attempt to create such a system, will enable the Commission's staff professionals more effectively to monitor and conduct surveillance of trading in all markets and to conduct particular examinations and investigations, for compliance with applicable Commission and self-regulatory rules in a manner concurrent with its responsibilities under the Act and with the increasingly complicated structure of the securities markets. This effort seems particularly necessary (and, at the same time, feasible) in light of the growing use of computer technology by market participants and by self-regulatory organizations.

EXHIBIT A

A. Background

The Securities Act of 1933 requires that certain issuers of securities file with the Commission registration statements containing financial and other pertinent data about the issuer and the securities being offered. Registration of securities by itself does not ensure investors against loss in their purchase but serves rather to provide information upon which investors may make informed and realistic evaluations of the worth of the securities. Unless a registration statement is in effect, it is unlawful to sell securities required to be registered in interstate commerce or through the mails.

The Securities Exchange Act of 1934, which was enacted to provide for the regulation of securities exchanges and the over-the-counter markets and to prevent inequitable and unfair practices on such exchanges and markets, requires securities exchanges and associations to register with the Commission and to adopt rules which are designed, among other things, to promote just and equitable principles of trade. The Commission is given broad powers to alter or supplement rules of exchanges if such action appears to be necessary or appropriate for the protection of investors or to ensure fair dealing, fair administration and otherwise protect investors.

The Exchange Act also requires the filing of registration applications and annual and other reports with national securities exchanges and the Commission. Such applications and reports must contain financial and other data prescribed by the Commission as necessary or appropriate for the protection of investors. In addition, the solicitation of proxies, authorizations or consents from holders of such registered securities must be made in accordance with rules relevant to the subject matter of the solicitation.

Disclosure of the holdings and transactions by officers, directors and large holders of equity securities of companies is also required, and persons who acquire more than 5% of certain equity securities are required to file detailed information with the Commission. Moreover, any person making tender offers for certain classes of equity securities is required to file reports with the Commission and comply with Commission regulations with respect to such offers.

Brokers and dealers who engage in exchange or over-the-counter securities business must register with the Commission. In addition, the Commission has broad rule making authority with respect to, among other things, short sales, the trading of options on national securities exchanges, stabilizing transactions, floor trading, exchange members off-floor trading and the activities of specialists and odd-lot dealers. The Commission is also authorized to adopt rules concerning the financial responsibility of brokers and dealers and rules specifying the reports to be made by brokers and dealers. The Exchange Act also empowers the Board of Governors of the Federal Reserve System to prescribe rules relating to the extensions of credit by brokers and dealers for securities transactions, particularly with respect to margin requirements.

The Commission's surveillance program, in its broadest sense, is composed of four parts.

a. *Review of trading in all markets.* This aspect of the program encompasses monitoring trading activity on the exchanges, NASDAQ and the over-the-counter market, monitoring news and wire services for indications of unusual trading activity, and analysis of special trading reports provided by the self-regulatory organizations.

b. *Review of filings.* This aspect of the program includes review of disclosure documents filed by issuers and review of financial and operating documents filed by registered broker-dealers.

c. *Examinations.* The Commission employs a staff of securities compliance examiners, accountants and others who conduct examinations of books and records, sales practices, and other business activities at the offices of registered broker-dealers. In addition, the staff examines the various activities of the self-regulatory organizations, including validation of examinations of broker-dealers done by the self-regulatory organizations.

d. *Investigations.* Where information received by the Commission through its reviews and examinations or through other means suggest the possibility of market manipulation, insider trading, false and misleading disclosure, net capital violations or other violations of the securities laws, the Commission's staff may conduct investigations and initiate administrative or civil court proceedings.

Current Commission systems for collecting and utilizing data necessary to performance of the foregoing functions are limited. To the extent such data is now collected (by various means), each type of information is received and processed separately, and most cross-referencing is performed manually. Complete information pertaining to a particular person, firm or issue may often be obtained only after a considerable delay, and there is no good means of highlighting patterns of irregularities which result from intermarket trading. In addition, while certain kinds of analyses are computerized, most are not.

B. Scope

Given dramatic changes in the complexity and structure of the securities markets during the past five years (including the rapid development of new products, such as exchange traded put and call options), and the need to accelerate progress toward realization of a national market system, the Commission seeks to establish a comprehensive surveillance system for the markets and for professional and nonprofessional users of the markets based upon the latest computer technology. In addition to the federal securities statutes and the Commission's own rules and regulations, it is envisioned that a comprehensive market surveillance system will take into consideration:

a. relationships between the equities and options markets and relationships between reported transaction and clearing data;

b. relationships between trading in the various market centers (including the over-the-counter market), the proposed national market system and the self-regulatory organizations;

c. data systems used by vendors of market information and generally available proprietary programs utilized by various categories of market professionals (e.g., brokers, market makers, traders, etc.) to assist them in formulating trading decisions and recommendations;

d. registered broker-dealer compliance systems;

e. Commission and SRO rules regarding trading.

It is expected that any such surveillance system will integrate systems presently existing (or to be created) in the Commission, the self-regulatory organizations, the broker-dealer community and elsewhere. It will be able to interface with systems utilized by transfer agents, clearing corporations and other components of the financial community. Special attention must be focused on: (i) analyzing trading activity for the purpose of identifying unusual trading patterns, (ii) cross-referencing information from different data bases, and (iii) providing prompt assembly of trading activity data at major market centers and, perhaps, at selected broker-dealers (including, to the extent feasible, on-line real-time access to such data).

It is anticipated that trading analyses will be continuously performed using different predetermined sets of price, volume, and broker-dealer trading concentration parameters established so that irregular trading patterns can be brought immediately to the attention of the staff and so that special situations (e.g., tender offers, distributions, etc.) can be studied. In addition, it is expected that the system will be able to integrate information from SEC filings, SRO filings, inspection reports, SRO broker-dealer compliance and market surveillance systems, and major news events to detect over-the-counter (NASDAQ and non-NASDAQ) and exchange manipulations and other violations of the securities laws. For example, the system should be able to automatically monitor information contained on reports on Forms 3, 4 and 144 as well as annual and quarterly reports, and Schedules 13D and 14D might be monitored automatically to highlight possible irregularities.

More specifically, with respect to exchange and over-the-counter trading, relevant data from the following will be input into the system and analyzed for use in detecting irregular trading patterns on a real-time basis: (i) corporate news items and broker-dealer research reports; (ii) clearing information for all securities (including options) and transfer agent data; (iii) comprehensive bid/ask, price and volume information, including executing firm and market identification; (iv) relevant Commission filings, including delinquencies; (v) broker-dealer concentration information; (vi) Regulation T extension information; and (vii) complete analysis of distributions where stabilization and other market activity by participants has occurred. It may also be necessary to gather and integrate such data as to transactions in foreign countries as can be secured.

With respect to options transactions on the various exchanges, it would be desirable to monitor the following additional items on a prompt recall or real-time basis in conjunction with an analysis of trading in the underlying securities: (i) transaction data (including type of transaction, identity of the participant and market of execution), transaction exercise information (including date of the option purchase, identity of the option exerciser and the disposition of the stock acquired through exercise) and collateral information as to transactions in related series of options underlying securities and equivalents thereto; and (ii) assignment information (including the date of assignment to the firm and date of notice to customer, method by which the assignment obligation was met and the identity of the option assignee). It may also be necessary to gather and integrate such data as to transactions in foreign countries as can be secured.

The test of an effective program lies in the Commission's ability to monitor and analyze different types of securities trading patterns and practices rapidly, identifying the sources of unusual activity (i.e., the parties to particular trades which, in combination, appear to account for that activity) and the markets used to effect those trades. In order to succeed in its efforts to discourage and detect fraud and manipulation and other inequitable practices in connection with the purchase and sale of securities, the Commission seeks to establish a surveillance capability which can identify and/or monitor such activities as:

- a. transactions by broker-dealers involving violations of Regulation T, churning, free riding, mark-up and suitability regulations;
- b. analysis and pricing of a firm's inventory positions for net capital purposes, marking such positions to the market;
- c. transactions executed at prices inside and outside best firm quotations available at the time of execution;
- d. insider trading and manipulation patterns (front running, etc.);
- e. double blocking or buying through foreign bank accounts, foreign branches of U.S. firms and foreign broker-dealers;
- f. hedge fund and institutional trading activities;
- g. price movements, volume movements, stock/option movements;
- h. changes in the short interest in particular issues, extent of uncovered option writing and writing of "deep-in" and "deep-out" of the money options.

Question 3. The 1975 Securities Acts Amendments required municipal securities dealers to register with the Commission. The Budget Authorization Request claims that this has led to an "unusual incidence of violations which, in turn, has generated additional enforcement workload."

(a) What kind of violations is the Commission uncovering?

Answer. The causes of action and violations that have arisen from broker-dealer ("BD") regulatory requirements of registered municipal securities dealers under the 1975 Amendments have, in the main, centered around the financial status of the firms. Examples of the types of violations which the Commission is uncovering are set forth below.

The Commission instituted administrative proceedings against J.B. Hanauer & Co., and five of its officers on September 19, 1977 (Securities Exchange Act Rel. No. 13965) based on alleged violations of the customer protection, bookkeeping and anti-hypothecation provisions of the Securities Exchange Act of 1934 (the "Exchange Act"). Hanauer, a large New Jersey municipal securities firm which has been in business over 50 years, also violated the BD registration provisions by allegedly failing to disclose in its BD registration statement the withdrawal by the firm's principals of approximately one-third of the firm's capital. The firm also allegedly failed to disclose, in financial statements submitted with the registration statement, the existence of a material amount of contingent liabilities arising from the sales of municipal securities with buy-back guarantees.

In the Matter of Kurtz & Co., Inc. (Securities Exchange Act Release No. 34-13520, May 9, 1977) arose from a BD examination which uncovered violations of the net capital, bookkeeping and reporting provisions of the Exchange Act. In a financial statement accompanying its BD registration statement, the Ohio firm allegedly misrepresented the existence of a savings account.

Also in early 1977, the Commission charged A. H. Speer Co. in injunctive proceedings (*SEC v. Adventure Lines Manufacturing Co., Inc.* (D. Kansas, 1977)), with violating the net capital, customer protection and bookkeeping provisions of the Exchange Act. The Wichita municipal securities firm was also charged, in its capacity as managing underwriter, with violations of the antifraud provisions in connection with an industrial revenue bond offering.¹

The staff is currently conducting several active investigations concerning the trading activities of municipal securities firms which may involve violations of the 1975 Amendments. With respect to the staff's investigation involving investments made by the University of Houston, which has been the subject of much publicity, the staff is inquiring into the trading activities of a firm registered as a municipal securities dealer with a view to determining whether the firm charged unreasonable and undisclosed commissions. In another case, the market-making activity of a municipal securities firm is being investigated in connection with attempts to sell worthless industrial revenue bonds.

In *SEC v. Arthur T. Mudd, et al.* (W.D. Oklahoma, 1977) the Commission sued three individuals based on a charge of failure to register as a municipal securities dealer and based on violations of the antifraud provisions of the Exchange Act arising from misrepresentations with respect to the quality of municipal securities.²

¹ The Commission has brought a number of cases involving industrial development bonds (e.g., *SEC v. Astro Products of Kansas, Inc.* (D. Kansas, 1976) and *SEC v. Western States Plastics, Inc.* (W.D. Oklahoma, 1977)) (See also the response to question 3(b)) and involving raw land development bonds. (E.g., *SEC v. Reclamation District No. 2090* (N.D. Cal., 1976)). The latter case involved two accompanying administrative proceedings, *In the Matter of Lawrence Luebbe* (Securities Exchange Act Rel. No. 14180, November 17, 1977) and *In the Matter of All-States Tax Exempt Securities, Inc.* (Securities Exchange Act Rel. No. 12774, September 7, 1976), which involved municipal securities firms but which did not necessarily arise from violations of the 1975 Amendments.

² In addition to the examples set forth above, the Commission has instituted other proceedings involving violations of the 1975 Amendments, including *In the Matter of Richard Flick and Charles West* (Securities Exchange Act Rel. No. 7965, June 14, 1975) (antifraud violations regarding boiler room sales activities); *In the Matter of Baker, Welker and Company, Inc.* (Securities Exchange Act Rel. No. 13339, March 7, 1977) (registration, financial responsibility and bookkeeping violations); *Allison-James Inc.* (Securities Exchange Act Rel. No. 13025, December 1, 1976) (reporting, financial responsibility and bookkeeping violations); *In the Matter of Hibbard and O'Connor Securities, Inc.* (Securities Exchange Act Rel. No. 12343, April 14, 1976) (antifraud, registration, confirmation, anti-hypothecation, reporting, financial responsibility and recordkeeping violations); *In the Matter of SMW Securities* (Securities Exchange Act Rel. No. 12375, April 26, 1976) (registration and bookkeeping violations); *In the Matter of Gulf Investment Bankers Inc.* (Securities Exchange Act Rel. No. 13460, April 20, 1977) (registration violations); *In the Matter of Delta Securities of Little Rock, Inc.* (Securities Exchange Act Rel. No. 13404, March 24, 1977) (registration violations).

As indicated by the examples set forth below, the Commission has brought proceedings or is actively investigating numerous other matters which, while not necessarily based on the expanded jurisdiction given the Commission by the 1975 Amendments, do involve the activities of those involved in the municipal securities business.

The Commission instituted public administrative proceedings against Bache Halsey Stuart & Co., Inc., (Securities Exchange Act Rel. No. 12847, October 1, 1976) based upon its market-making activities of industrial revenue bonds at a time when, allegedly, it knew or should have known that the obligor private corporation was incapable of paying the interest of principal on the bonds. The Commission also alleged that the registrant recommended these bonds to customers at a time when it did not have current information regarding the obligor. An investigation is also underway with respect to the mark-up and commission practices of a municipal securities firm which has twelve branch offices located throughout the southeastern portion of the United States.

The staff has also investigated the underwriting activities of municipal departments of certain banks and registered BDs. The Commission released, on August 26, 1977, the results of the staff's comprehensive investigation into the circumstances surrounding the public offerings of municipal securities by New York City. Among other things, the staff report reviewed the due diligence procedures, marketing efforts and other activities of six large municipal underwriting firms. Similarly, a review was made in connection with the public offering of general obligation bonds by a raw land utility district. *SEC v. San Antonio Municipal Utility District No. 1* (S.D. Texas, 1977). The underwriter, a banking institution, was named as a defendant based on the failure to disclose, in a so-called "Official Statement," certain underwriting arrangements. The participation of the municipal bond department of a registered BD which acted as fiscal agent to the issuer was also reviewed.

In *In the Matter of Glen Sivarð Stevens* (Securities Exchange Act Rel. No. 13244, February 4, 1977), public administrative proceedings were instituted against principals of a municipal BD, which acted as an underwriter, based on the failure to disclose windfall profits obtained by it in connection with an offering.

The staff is conducting an investigation concerning the selling activities of a registered municipal securities dealer, which has allegedly received improper kickbacks from municipal securities issuers. The staff is also engaged in an inquiry concerning an individual who appears to be conducting extensive municipal securities BD activities without being registered as a dealer under the Exchange Act.

Finally, in *In the Matter of Thomas Ray Rowland* (Investment Advisors Act Rel. No. 603, August 1, 1977) the Commission, for the first time, instituted administrative proceedings against an investment adviser (which had registered with the Commission in late 1975) in connection with violations of the advertising provisions of the Investment Advisors Act of 1940 based on the touting of municipal investment seminars.

Question 3(b). Are these the concerns which led the SEC to request legislation to require the registration of industrial development bonds?

Answer. The Commission's proposed industrial development bond legislation is intended to put the industrial or commercial enterprise that is the obligor under the industrial development bond arrangement on a parity with corporate entities issuing other types of debt securities with respect to the protections provided by the registration and reporting requirements of the Securities Act and the Securities Exchange Act, and the filing and qualification provisions of the Trust Indenture Act.³

The concerns that prompted the Commission to submit this legislative recommendation to Congress are essentially two-fold. First, the Commission believes that industrial development bonds that are funded by payments by an industrial or commercial enterprise are conceptually indistinguishable from other corporate debt securities. Industrial development bonds are payable in whole or in major part from revenues received by a governmental unit in accordance with the

³ It should be noted, however, that the bill would not affect the status of exempted industrial development bonds as "exempted securities" under the Securities Exchange Act, except to give the Commission authority to suspend trading pursuant to Section 12(k) of that Act. Commercial enterprise issuers of industrial development bonds would be subject to the periodic reporting requirements set forth in Section 13 of the Securities Exchange Act only because Section 15(d) of that Act would be triggered by application of the registration requirements of the Securities Act.

terms of its contractual agreement with a private enterprise, and are not secured by the general credit and taxing powers of the governmental unit. As a result, the holder of an industrial development bond must depend on the financial health of the participating private entity, not the municipality, for the payment of part, and often all, of the principal and interest. Under the circumstances, sufficient disclosure to permit an informed evaluation of the private entity's viability and chances for success should be available to an investor prior to the purchase. Thus, as reflected in our legislative proposal, the Commission believes that to the extent industrial development bonds are payable from payments by an industrial or commercial enterprise, the industrial and commercial entity obligated on these bonds should be treated the same as other corporate entities that seek financing in the public securities markets, and should provide investors with the information required to be disclosed pursuant to the registration and periodic reporting provisions of the Securities Act and Securities Exchange Act.

Second, these concerns are underscored by the emerging enforcement problems involving the public offering or trading of these bonds and by the resurgence in industrial development bond financing.⁴ In recent years, the Commission has brought an increasing number of enforcement actions involving industrial development bonds, numerous industrial development bond arrangements are currently under investigation, and a substantial number of defaults have come to our attention.⁵

Although application of the registration and reporting requirements would not, of course, prevent the public offering of industrial development bonds which eventually fall into default, the Commission believes that appropriate disclosure should be required to permit investors to make investment decisions based on an informed evaluation of the risks involved. With respect to violations of the 1975 Securities Acts Amendments by municipal securities broker-dealers to which you refer in question 3(a), in the Commission's view the broad dissemination of current information required of issuers pursuant to the Securities Act registration requirements, and the Securities Exchange Act periodic and current reporting requirements would provide an effective supplemental restraint on improper selling practices. More importantly, however, a number of cases premised on violations of the antifraud provisions of the federal securities laws and involving defective or inadequate disclosures indicate that application of the registration and reporting requirements, as is proposed in the Commission's legislative recommendation, might well have served to deter the abuses.

One example, *Securities Exchange Commission v. Astro Products of Kansas, Inc.*, 76-359, D. Ka. (October 26, 1976), a pending enforcement action, involves the offer and sale of \$2,200,000 in industrial development bonds to promote an industrial project in Haysville, Kansas. The Commission has asserted that the underwriters sold the bonds on the basis of unverified information supplied by the promoters. It is alleged that, as a result, the underwriters misrepresented material facts, including the financial condition of the corporate issuer, the use of proceeds and the qualifications of the individuals who were to manage the project.

Securities and Exchange Commission v. Adventure Line Manufacturing Co., Ltd., 77-1013, D. Ka. (Jan. 18, 1977), which involves alleged material misstatements and omissions in connection with an industrial development bond offering totaling \$1,200,000 and sold to more than ninety investors, is a second illustration of the need for application of the registration requirements to public

⁴ Between 1960 and 1968, industrial development bond financing increased from \$70 million to between \$1.5 and \$2 billion, and from an average size of \$2 to \$7 hundred thousand to \$80 to \$140 million. McDaniel, *Federal Income Taxation of Industrial Revenue Bonds: The Public Interest*, 1 Urb. Law. 157, 158-9. The 1968 amendments to the Internal Revenue Code, which restricted the availability of the tax exemption, severely reduced the volume of industrial development bond financing in 1969. However, the exceptions provided by the amendments, particularly for pollution control facilities (Section 103(b)(4)(F) of the Internal Revenue Code of 1954, as amended), have led in recent years to the sale of large amounts of industrial development bonds. Twentieth Century Fund, *Building a Broader Market*, 45, 48-49 (1976).

Sales of industrial development bonds, excluding pollution control bonds, totaled \$451 million in 1976 and over \$2 billion in 1977, a greater than 300% increase. In 1977, sales of industrial development bonds for pollution control alone totaled over \$2.6 billion, up from approximately \$2 billion in 1976. In 1977, the average size of industrial development bond issues for pollution control was \$13 million, and the average size for all other industrial development bond issues was \$7.3 million. (Source: computerized municipal securities data base managed jointly by the State University of New York (Albany) and the Public Securities Association).

⁵ The Commission is aware of 41 issuers of industrial development bonds that have defaulted because of insolvency since January 1975.

offerings of industrial development bonds. The Commission has alleged that in connection with the offering the company and the underwriters failed to disclose material facts, including the fact that prior to the bond offering the company was experiencing financial difficulties so severe that insurance premiums were not paid, withholding taxes were overdue, checking accounts were overdrawn and payroll obligations had not been met. Moreover, although the undated, four-page offering circular stated that the proceeds of the offering were to be used for the purchase of land and equipment, the Commission alleged that the proceeds were, in fact, used to restructure Adventure Line's debt obligations for the benefit of company insiders and to relieve cash flow problems.

A recent criminal case, *United States v. George Mariscal*, CR 78-80 (Ariz. March 9, 1978) is a further example of the need for the type of safeguards that would be provided to investors in industrial development bonds if the proposed legislation is enacted. In March of this year, Phoenix attorney George Mariscal was indicted by a federal grand jury on fraud charges stemming from a \$1.2 million industrial development bond issue to finance the construction of a hydroponic farm near Las Cruces, New Mexico. The indictment alleges that in connection with the bond offering Mariscal made false representations to investors regarding the use of proceeds of the offering, the association with the project of experts in the field of hydroponic agriculture, and the availability of assets for use in financing if events required an infusion of additional capital.

The cases cited above, as well as other recent Commission and private actions, and the substantial number of defaults that have come to our attention⁶ suggest that even as strengthened by the 1975 Securities Acts Amendments, in many instances the present regulatory framework has not, in fact, elicited sufficient and reliable information on which to base an investment decision. The Commission believes that the registration and reporting requirements of the federal securities laws, as contemplated in the Commission's proposal, are an appropriate framework for increased federal regulation of industrial development bonds, and that the proposal would, by promoting dissemination of information in an expedient and effective manner, provide needed protections to investors in such bonds.

Question 3. (c) This legislation deals with only a small part of a much larger and more serious problem that S. 2339, the Municipal Securities Full Disclosure Act, is designed to address in a comprehensive way. Does the Commission believe there is a need for better and more uniform disclosure for *all* issues of municipal securities? Is S. 2339 a sound approach or does the Commission favor other alternatives which are also under active discussion, e.g., either voluntary compliance with disclosure guidelines or full registration with the SEC?

Answer. The Commission is very concerned over the current lack of specific disclosure requirements applicable to municipal issuers and municipal securities, and over the past few years the Commission staff has provided technical assistance to members of the staff of the Senate Subcommittee on Securities of the Committee on Banking, Housing and Urban Affairs in connection with the preparation of municipal securities disclosure legislation. The Commission staff has, for several months, been intensively examining this matter as brought into focus by S. 2339. A comprehensive report of the Commission's views concerning S. 2339 and the complex problems addressed by that bill is currently in the final stages of drafting. It is anticipated that the report will be submitted to Congress on or before July 15, 1978.

Question 4. Several years ago the Commission established an Office of Consumer Affairs. What role does this office play in responding to consumer complaints? In the ordinary and routine activities of the Commission and its major divisions?

Answer. The Office of Consumer Affairs ("OCA") was established in May of 1976. It was given responsibility to develop plans for a uniform nationwide dispute resolution system for investors, to upgrade the Commission's complaint processing program, to represent the interests of individual investors as a class in matters before the Commission which affect those interests, and to improve and increase the amount of educational material about practices in the securities industry. The following description of OCA's role includes activities related to consumer complaints and participation in the routine work of the Commission.

A. Consumer complaints

In March of 1977 OCA assumed responsibility for managing the Commission's complaint processing system, in order to fulfill its purpose of upgrading the existing system. OCA receives complaints and inquiries from individual inves-

⁶ See note 3, *supra.*, and see supporting material accompanying our legislative proposals.

tors and assigns the letters to its own staff members for response, or to other Commission staff members if necessary, depending upon the nature of the complaint. Copies of correspondence which may be of interest to the work of another office or division are also forwarded to that office or division. The Commission's regional office staff members also respond to investor complaints and forward information about the complaints to OCA at the headquarters office.

Complaints are answered individually, with a minimum use of form letters although similar approaches have been developed for recurring types of complaints. For example, many complaints about registered brokers and dealers are frequently resolved through a request for a report from the broker-dealer with a copy to the complainant. Information about particular issuers can be provided from public files.

OCA has initiated improvements and changes to the Commission's computer system for investor complaints, and the computer is expected to be an increasingly useful tool for regulatory purposes. OCA furnishes monthly reports about complaints involving registered entities to the major divisions responsible for those entities, as well as special reports when needed.

In accordance with its responsibility to represent consumer interests, OCA frequently brings matters which are the subject of frequent complaints to the attention of the appropriate office or division. In these cases, OCA suggests a number of alternative solutions for discussion.

In order to improve the opportunities for investors to resolve their disputes with broker-dealers, OCA is presently overseeing the implementation and initial operation of a uniform simplified arbitration system for small claims, to be administered by the securities industry self-regulatory organizations. The system will offer arbitration by a single arbitrator who is knowledgeable but in most cases unaffiliated with the securities industry, on the basis of written pleadings and documentary evidence without a hearing. This summary procedure would be available for claims of less than \$2,500 and would be initiated only by investors against broker-dealers. Such a procedure is expected to bring about the timely resolution of investor complaints that do not justify the expense and delay involved in litigation or full-scale arbitration, and might otherwise remain unresolved. In addition, OCA expects the self-regulatory organizations to implement a uniform arbitration system for all claims, and has worked with a group of securities industry and public representatives, which is currently developing these proposals.

B. Participation in the ordinary and routine activities of the Commission and its major divisions.

As indicated above, one of the major ways in which OCA participates in routine Commission activities is by analyzing investor complaints to detect emerging trends in the securities industry. Information is transmitted to other offices and divisions on a monthly or sporadic basis or upon request of a division or office. OCA also recommends action in response to increased frequency of problems experienced by investors.

In order adequately to represent the interests of individual investors in matters brought before the Commission, OCA keeps itself continually informed about pending proposed recommendations for Commission action, through informal contact with other staff members and by receipt and study of all memoranda addressed to the Commission by other offices and divisions of the Commission. When a proposal of another office or division appears to affect the interests of individual investors, or when a number of recent investor complaints bear on issues raised in such a proposal, OCA generally discusses the proposal with staff members prior to presentation of the proposal to the Commission, and may submit its views to be included in an action memorandum or in a separate memorandum. In this manner, OCA participates in discussions of basic policy issues to be decided by the Commission.

In addition, OCA cooperates with the Office of Public Affairs in the drafting and publication of consumer educational materials. These are designed primarily to alert investors to various kinds of fraudulent schemes, and to list sources of further detailed information about investments.

Finally, OCA often assists the Office of General Counsel in preparation of comments on pending legislation that may directly or indirectly affect individual investors.

In summary, the Commission's complaint processing function is viewed as an important adjunct to the Commission's routine activities, and as an effective aid to individual investors.

Question 5. Section 13(f) of the Securities Exchange Act of 1934 was added in 1975 to create a reporting and disclosure system with respect to the portfolio holdings and transactions of institutional investors. This provision originated from recommendations of the SEC in 1974.

Since then, there has been every reason to question the SEC's original support for this disclosure system. The Commission has basically ignored the new reporting requirements despite repeated criticisms from the late Senator Metcalf and myself.

Then recently, the SEC adopted rules under Section 13(f) which explicitly reject the value of periodic transaction reports—something which the SEC proposed to the Congress and supported before this Subcommittee a few years ago.

(a) Why has the Commission decided not to require transaction reports (only annual reports) from institutional investment managers?

Answer. The question involves two distinct issues: (a) whether reports of securities holdings should be filed annually or quarterly (or semi-annually) and (b) whether transaction data should be included. Perhaps the question was addressed in this fashion because quarterly reports now required to be filed with the Comptroller of the Currency by national banks and with the Commission by registered investment companies are reports of transactions.

We assume the question primarily relates to the first point: whether reports of securities holdings should be filed quarterly. This is the issue on which we have had the most interest expressed; few commentators have expressly supported quarterly reports of transactions. In fact, some commentators who strongly favor quarterly reports of holdings have noted that transactions can be inferred by comparisons of quarterly reports of holdings.

The Commission's decision to adopt a relatively simplified program at the outset, including annual reporting, was designed to allow the Commission and those affected by an interest in the program, to gain experience with its operation before any final decisions are reached on the ultimate scope of the program.⁷

On the one hand, the Commission recognized that it was important to commence an operational program, particularly given the passage of time since the enactment of Section 13(f). On the other hand, it recognized that this is a new program for the Commission and many of the respondents and that there is a paramount need to see that the program is operating accurately and efficiently before expansion.

In fact, regarding one of the very issues you raised, quarterly reporting, our staff contacted several users of information derived from the Comptroller's existing quarterly reports of transactions and found that they viewed the utility of those reports as limited because of systematic flaws in the responses being made. As a practical matter it may be necessary to review at least one set of filings made under the new reporting system to ensure consistency of the responses before requiring more frequent reporting.

In addition to wanting to perfect the basic reporting program before expanding it too much, the Commission based its decision to require only annual reporting initially on its own perceived needs for the data and on the record established in the rulemaking proceeding. The Commission's staff believes that there would be only a limited greater internal utility for more frequent reporting at this time, and members of the industry and others who commented on the original rule proposal overwhelmingly opposed more frequent reporting, citing costs and burdens. Indeed, only two out of 31 commentators who addressed this issue favored reporting more often than annually, and many of those who commented represented entities which could have an interest in using the data as well as a concern about reporting burdens.

As you know, recently, a number of persons have communicated an interest in quarterly reporting to the Commission and to Congress. The staff ascertained independently that certain block traders and other prospective users would regard quarterly reports as useful. The Commission takes these indications of interest seriously but believes it would be preferable to give the public further opportunity to comment. Accordingly, the Commission decided to adopt a rule as it is in order to avoid further delay in implementing the disclosure system. However, the release announcing the adoption of Rule 13f-1 explicitly calls for comment on the burdens and benefits of more frequent reporting. The Commission expects, by focusing public attention on this single issue, to develop a

⁷ See Testimony of Commissioner Philip A. Loomis, Jr., before the Subcommittee on Oversight and Investigations and the Subcommittee on Consumer Affairs and Finance of the Committee on Interstate and Foreign Commerce of the House of Representatives (July 26, 1977).

detailed and balanced record which will permit an accurate assessment of whether the public interest in and need for more frequent than annual reporting outweighs the costs and burdens associated therewith.

Question 5(b). When the Commission's non-action is combined with the Comptroller of the Currency's recent decision to drop his quarterly reports for national banks, what we have is far less disclosure than the Commission in the past said would be useful. Was the Commission's decision related at all to the Comptroller's? Does it make a difference to the Commission?

Answer. The Commission took the very recent decision of the Comptroller into account. It can be noted that the Comptroller is continuing his reports through the third quarter of this year and that the year-end report will be covered by our annual report. The comment period set by the Commission on the issue of quarterly reports would permit a decision by the Commission to institute quarterly reports for the very next quarter, if this would be the preferable course of action.

Question 5(c). How frequently are registered investment companies required to report the type of information required by Section 13(f) on a quarterly basis? Why should other institutional investors not be subject to similar periodic reports which the Commission has found to be useful in the investment company industry?

Answer. Registered investment companies are required to report on a quarterly basis any acquisition or disposition of portfolio securities and the amount owned after such acquisition or distribution at the end of the quarter (Form N-1Q). In the first quarterly report filed after the end of a calendar year, the investment company has to include in the report information as to all portfolio securities owned by the investment company at the end of the calendar quarter.

In determining whether or not to require quarterly reporting from most institutions, the Commission was concerned only with the purposes of the institutional disclosure program. Investment companies, however, unlike other types of institutions, are subject to extensive Commission regulation pursuant to the Investment Company Act of 1940. Requiring quarterly reporting on Form N-1Q by investment companies relates to the perceived need for the information in order to fulfill regulatory responsibilities not directly related to our responsibilities under Section 13(f). At the same time, the Commission recognizes that investment companies should not be subject to unnecessary additional reporting burdens. Accordingly, the release adopting Rule 13f-1 states that

"The Commission will also give attention to the relationship of the quarterly reports on Form N-1Q filed by investment companies under the Investment Company Act of 1940 to the institutional investor disclosure program."

Question 6. The Office of the Chief Accountant has taken on added importance in recent years. Your opening statement reflects this new emphasis on the Commission's accounting functions. As you said on page 9, the Commission has "undertaken substantial new responsibilities designed to foster close and continuous communications between the Commission and professional accounting bodies." And you refer to new comprehensive reporting requirement to the Congress and so on.

(a) Why hasn't the Commission named a new Chief Accountant?

Answer. As you know, the Office of the Chief Accountant is currently undertaking expanded responsibilities which I believe are extremely important. Thus, selection of an individual to head that Office becomes a choice more critical than perhaps it has ever been before.

It is my view that this post should be filled by an individual chosen from outside the Commission's staff. I believe the candidate selected should combine a solid background in accounting with a broad perspective regarding the issues facing the profession, and a standing of sufficient stature to allow him to interact effectively with the leaders of the profession. Moreover, tenure in the post should be of a non-career nature so as to assure a continuing influx of fresh insight on the accounting issues facing the Commission. Unfortunately, it has proven most difficult to recruit an individual who meets these criteria, yet is free of any appearance of conflict of interest. The latter consideration has ruled out practicing members of the accounting profession and of necessity, recruiting efforts have focused on the academic community. Although there are outstanding individuals in this sector, it is difficult for them to make the commitment which would be required. One obstacle is that in the academic world it is usual for individuals, particularly those of advanced standing, to make professional commitments well in advance. Thus it is difficult for many to disengage from previous commitments in order to accept a government position. A further obstacle

is the financial sacrifice which most of these individuals would have to make in order to come to the Commission.

Please be assured that I accord this matter a high priority and shall continue to pursue it vigorously. In the meantime, I have great confidence in the ability of the Commission's Acting Chief Accountant, Clarence Sampson. Mr. Sampson has a wealth of experience in the accounting profession and with the Commission, is doing an excellent job of filling this post on an interim basis and is, in my judgment, qualified to serve as Chief Accountant but for my belief that this post should be filled by a non-career person. You may be sure that the important work of this Office is not being substantively penalized while the search continues for a Chief Accountant.

Question 6(b). Please explain how the Commission's Accounting Fellowship program operates.

Answer. The SEC Accounting Fellowship program is designed to appoint highly qualified professional accountants to the staff of the Office of the Chief Accountant for two-year non-renewable terms. Two fellows are selected each year, based on a selection process which includes review as well as personal interviews. To date, all accounting fellows have previously served at the manager level with public accounting firms; however, applicants are also sought from college accounting faculties and industry. Selected individuals are required to sever all ties with their prior employers before joining the Commission, and are subject to the conflict-of-interest laws applicable to Federal employees. They are not prohibited from returning to their former employer upon completion of their two-year appointment.

The program was initiated in 1972 in order to enhance the work of the Office of the Chief Accountant by bringing in professionals who can provide new perspective and innovative ideas to matters requiring the Office's attention as well as current experience. Work assignments are developed in accordance with the needs of the Commission and the personal qualifications of the fellows. These assignments typically include the study of accounting and disclosure issues or concepts, public announcement of the results of informal rule-making procedures (accounting series releases and staff accounting bulletins), and some evaluation of current reporting by registrants. Fellows work interchangeably with permanent staff except that they do not work on enforcement matters. Their work is done under the direction of the Chief Accountant or Deputy Chief Accountant. Accounting fellows also perform research, develop position papers, and speak to various governmental and private professional accounting groups.

Because of their prior experience with SEC rules and reporting matters, accounting fellows are able to make an immediate contribution to the work of the office. They have been an important factor in meeting the substantial new responsibilities of the Commission's accounting function.

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., April 17, 1978.

To : Senate Federal Spending Practices; Attn: Ms. Studley.

From : Rogelio Garcia, Analyst, Government Division.

Subject : Sunshine Act Meetings, March 24, 1977, March 31, 1978.

At the Subcommittee's request, we have tabulated the number and status of Sunshine Act meetings reported by forty-eight Federal agencies in the Federal Register between March 24, 1977, and March 31, 1978. (See Appendix A for the agencies involved and Appendix B for the pertinent provisions of the Sunshine Act.) Not all meetings held by these agencies were listed in the Register, since expedited meetings held under 5 USC 552b(b)(4) did not have to be reported.

Difficulties were encountered in compiling the number of meetings and their status because the reporting agencies failed to use a standard format not only to report meetings, but also to report cancellations and agenda alterations. These reporting practices, more fully described below, made it impossible to tabulate the exact number of meetings held and the status of those meetings. Since the agencies possess more exact information than that provided in the notices they submitted to the Register, it is likely that the statistics and status designations in the attached tables will differ somewhat from the information that will be provided by the reporting agencies.

NUMBER OF MEETINGS HELD

Tabulating difficulties arose when a notice in the Federal Register left vague whether one or more meetings were being held on a single day, or over a period of days. For example, some notices stated that open and/or closed meetings were being held, but failed to specify the number of meetings. One or more items that were to be considered were often listed by hour or hours in the morning and/or afternoon, and they were designated as either open or closed to the general public. In those instances, the number of meetings could be tabulated either by the number of hours cited, the half day or the full day. For this report, they were tabulated by the half day, so that two meetings were tabulated if there were sessions in the morning and the afternoon, but only one meeting was tabulated if there was only a morning or afternoon session, regardless of the number of hours cited.

However, when an agency clearly stated in the notice that one meeting was being held, only one meeting was tabulated even if it lasted all day. Similarly, if an agency noted that a meeting would be carried over to the following day, only one meeting was tabulated unless the second day's session extended to more than half a day. If it did, then two meetings were tabulated.

Obviously, a comparison of the number of meetings held by the various agencies is difficult, if not impossible, under the above circumstances, since some agencies listed several meetings on a given day while others listed only one meeting to cover an entire day's activities. Meaningful comparisons about the number of meetings held can be made only if the different agencies use the same criteria in determining what constitutes a meeting.

A second problem encountered in tabulating meetings resulted from the lack of adequate information given in cancellation notices reported in the Register. In order to properly adjust the tabulated figures, it was necessary to know if the cancelled meetings was open, closed or partially open/closed. However, when the cancellation notice failed to give the day the original notice had appeared or the status of the meeting, it was too time consuming to go back over the Register to find the original notice in order to delete the appropriately designated meeting from the tabulation. In such cases, the cancellation was ignored. However, since such cancellations were infrequent, the figures are not significantly affected.

A final difficulty arose when an agency tentatively scheduled a meeting, noting that it would be cancelled if an agenda was not prepared by the time the meeting was to convene. It was not always clear whether or not the meeting was held. Here again, because of the infrequency of this practice, these meetings were not tabulated.

DESIGNATION OF THE STATUS OF MEETINGS

(Open, Closed or Partially Open/Closed)

Notices in the Federal Register designate Sunshine Act meetings as either open, closed or partially open/closed. Open meetings are those that the general public can observe, while closed meetings are those from which it is excluded. Meetings designated "partially open/closed" are those in which only a portion of the meeting is open to the public. Open or closed portions could either be at the beginning, the middle or the last part of the meeting.

The status of all the meetings tabulated in this report could not be determined with 100 percent accuracy from the notices in the Register. First, although an agency reported in the Register that one of its meetings was open, under 5 USC 552b(d)(4) it could nonetheless close all or part of that meeting if it had the authority to close a majority of its meetings under 5 USC 552b(c)(4)(8)(9A) or (10) or any combination thereof. Under provision (d)(4), Occupational Safety and Health Review Commission, which listed 37 open meetings in the Register, closed 31 of those meetings without ever submitting a change of status notice to the Register. OSHRC did note the following after each meeting notice, however: "This meeting is subject to being closed by a vote of the Commissioners taken at the beginning of the meeting." It is likely that other agencies also changed the status of a meeting without reporting it in the Register.

Insufficient information in notices reporting the cancellation or addition of specific items to be considered at a previously scheduled meeting can also cause an inaccurate status designation. For example, the cancellation of an item from an agenda can result in changing a scheduled partially open/closed meeting into

a completely open or closed meeting. Similarly, the addition of an item to an agenda can result in changing a scheduled completely open or closed meeting into a partially open/closed one. However, if the cancellation or addition notice fails to give the status of the meeting or the day the original notice appeared in the Register, it is too time consuming to go back over the Register in order to make the correct adjustment in the tabulation. In such cases, the notice of change was ignored. Since it also occurred infrequently, however, the figures have been affected only marginally.

Finally, because of the method used to resolve the question of how many meetings should be tabulated when a notice was vague about the number that were being held on a particular day, it is probable that some meetings an agency might tabulate as completely open or closed will appear in this report as partially open/closed. This is most likely to occur in those instances in which half day sessions were tabulated in this report as only one meeting, but which the reporting agency might tabulate as more than one meeting.

INFORMATION PROVIDED ABOUT PARTIALLY OR COMPLETELY CLOSED MEETINGS

In requiring federal agencies to submit notices to the Federal Register, the Sunshine Act makes only a general reference to "the subject matter of a meeting . . ." [5 USC 552b(e) (3)]. As a result, agencies have considerable latitude regarding the amount of information they provide about the subject matter, and this information varies greatly. Some agencies provide a brief description about the subject matter, while others cite only a general subject heading, i.e., personnel, enforcement, market surveillance, etc. In a few instances, agencies fail to provide any information about the subject matter of a meeting.

Some agencies also cite the exemptive provision authorizing them to close all or part of a meeting, although they are not required to do so in their notices to the Register. It should be noted, however, that some of the agencies that did not cite any provision for closing a meeting provided more information about the subject matter in their notices than did some of the agencies that cited such a provision.

No law review articles have been written on the implementation and operation of the Sunshine Act. To supplement the articles sent with the last report, we are enclosing two additional articles: *Sunshine—the Administrative Process: Wherein lies the Shade*, which appeared in the Summer 1976 edition of the *Administrative Law Review*, and *Government in the Sunshine: Opening Federal Agency Meetings*, which appeared in the Fall 1976 edition of the *American University Law Review*.

SUMMARY OF ACCOMPANYING TABLES

1. 48 agencies held a total of 2,177 Sunshine meetings between March 24, 1977, and March 31, 1978 (Table 1).

a. 1,049 meetings (48%) were completely open.

b. 1,128 meetings (52%) were completely or partially closed.

(1) 726 meetings (33%) were completely closed.

(2) 402 meetings (19%) were partially closed.

2. 36 out of 48 agencies held completely or partially closed meetings (Tables 1 and 2).

a. 15 agencies completely or partially closed 75% to 100% of their meetings.

b. 6 agencies completely or partially closed 50% to 74% of their meetings.

c. 9 agencies completely or partially closed 25% to 49% of their meetings.

d. 6 agencies completely or partially closed 5% to 24% of their meetings.

e. 12 agencies held only open meetings (10 of these agencies held an average of 5.4 meetings, 1 held 23 meetings and 1 held 40).

3. relative exemptive provisions [5 USC 552(b) (1) through (10)] were cited in 375 (33%) of the 1,128 notices of partially or completely closed meetings (agencies are not required to cite the exemptive provision in the Federal Register) (Table 1).

a. 16 of the 36 agencies holding completely or partially closed meetings cited an exemptive provision (Tables 1 & 3).

b. provision 10 (civil action or formal agency adjudication) was cited 190 times; provisions 8 (regulation of financial institutions) and 9A (premature disclosure/financial speculation) were each cited 120 times; provision 4 (trade secrets) was cited 106 times; provisions 9A and 9B (premature disclosure/

TABLE 2.—PERCENT OF MEETINGS COMPLETELY OR PARTIALLY CLOSED BY AGENCY

Agency	Percent	Number ¹	Agency	Percent	Number ¹
75 to 100 percent:			25 to 49 percent:—Con.		
CFTC.....	79	84 of 106.	FHLMC.....	44	7 of 16.
EEOC.....	89	40 of 45.	HSTSF.....	40	2 of 5.
FEC.....	93	67 of 72.	NCER.....	40	2 of 5.
FMC.....	75	43 of 57.	USCSC.....	28	5 of 18.
FRB.....	75	80 of 106.	USITC.....	42	32 of 76.
NLRB.....	75	6 of 8.	5 to 24 percent:		
NRPC.....	92	11 of 12.	CAB.....	18	22 of 121.
NSB.....	79	15 of 19.	FERC.....	18	7 of 38.
OSHRC.....	89	33 of 37.	FPC.....	5	2 of 37.
OPIC.....	100	6 of 6.	ICC ²	17	9 of 53.
PRC.....	78	29 of 37.	ICC ³	14	9 of 66.
RRB.....	93	13 of 14.	USPS.....	14	3 of 21.
RB.....	77	53 of 69.			
USPC.....	86	32 of 37.			
USRA.....	100	13 of 13.			
50 to 74 percent:					
FDIC.....	69	60 of 87.			
FTC.....	61	69 of 113.			
NTSB.....	51	30 of 59.			
NRC.....	55	99 of 181.			
SEC.....	56	117 of 209.			
USCCR.....	66	21 of 32.			
25 to 49 percent:					
CCC.....	29	2 of 7.			
CPSC.....	36	30 of 83.			
FCC.....	41	51 of 125.			
FHLBB.....	33	23 of 69.			

¹ First column is the number of meetings closed and the 2d column is the number of total meetings held.

² Indian Claims Commission.

³ Interstate Commerce Commission.

TABLE 3.—AGENCIES CITING EXEMPTIVE PROVISION (5 U.S.C. 552b(c) (1) through (10))

Agency	Provision cited	Times cited	Agency	Provision cited	Times cited
CAB.....	(2).....	1	NTSB—Continued	(10).....	4
	(3b).....	2	NRC.....	(1).....	26
	(7A).....	4		(2).....	3
	(9B).....	17		(3).....	1
	(10).....	3		(4).....	8
CFTC.....	(1).....	1		(5).....	1
EEOC.....	(6).....	22		(6).....	24
	(10).....	3		(9).....	39
FDIC.....	(2).....	7		(9B).....	8
	(4).....	3		(10).....	33
	(6).....	28	PRC.....	(2).....	2
	(8).....	27		(10).....	13
	(9A).....	27	SEC.....	(4).....	93
	(9B).....	5		(8).....	93
	(10).....	14		(9A).....	93
FRB.....	(6).....	27		(10).....	93
FTC.....	(10).....	2	USITC.....	(2).....	6
ICC ¹	(2).....	2		(5).....	1
	(6).....	1		(6).....	6
	(7A).....	1		(7).....	1
	(7B).....	1		(9).....	1
	(9B).....	1		(10).....	2
	(10).....	6	USPC.....	(6).....	1
NCER.....	(9B).....	2		(7A).....	1
NSB.....	(4).....	2		(10).....	17
	(6).....	2	USPS.....	(3).....	2
NTSB.....	(9B).....	3		(9B).....	2

¹ Interstate Commerce Commission.

TABLE 4.—TIMES EXEMPTIVE PROVISIONS TO CLOSE MEETINGS

Provision	Agency citing provision	Times cited
5 U.S.C. 552b:		
(c).....	CFTC/EEOC/FRB.....	50
(1).....	CFTC/NRC.....	27
(2).....	CAB/FDIC/ICC ¹ /NRC/PRC/USITC.....	21
(3).....	NRC/USPC.....	3
(3b).....	CAB.....	2
(4).....	FDIC/NSB/NRC/SEC.....	106
(5).....	NRC/USITC.....	2
(6).....	FDIC/ICC ¹ /NSB/NRC/USITC/USPC.....	62
(7).....	USITC.....	1
(7A).....	CAB/ICC ¹ /USPC.....	6
(8).....	FDIC/SEC.....	120
(9).....	NRC/USITC.....	40
(9A).....	FDIC/SEC.....	120
(9b).....	CAB/FDIC/ICC ¹ /NCER/NTSB/NRC/USPS.....	38
(10).....	CAB/EEOC/FDIC/ICC ¹ /NTSB/NRC/PRC/SEC/USITC/USPC.....	190

¹ Interstate Commerce Commission.

TABLE 5.—NUMBER OF LATE NOTICES, BY AGENCY (SEPT. 12, 1977–MAR. 31, 1978)

	Notice filed after meeting			Notice appeared after meeting			Notice appeared on day of meeting ¹			Total
	Open	Closed	Open/ closed	Open	Closed	Open/ closed	Open	Closed	Open/ closed	Total
CAB	10	7	1	9	3	1	9	10	3	36
CFTC	7	2	3	2	2	1	2	2	3	9
CPSC	4	5	1	6	4	1	11	4	3	14
EEOC	2	12	1	10	2	1	11	2	6	27
FCC	2	12	1	10	2	1	11	2	6	27
FDIC	5	1	1	6	14	1	1	1	1	14
FERC	5	1	1	6	4	1	8	1	1	14
FHLBB	1	1	1	1	3	1	1	1	1	4
FHLMC	1	1	1	1	1	1	1	1	1	4
FMC	2	1	1	3	1	1	2	1	1	4
FPC	2	1	1	3	1	1	3	1	1	5
FRS	2	2	1	2	2	1	2	1	1	5
FTC	2	2	1	2	1	1	4	1	1	6
ICC ²	2	2	1	2	1	1	1	1	1	4
NLRB	1	1	1	2	1	1	1	1	1	4
NTSB	2	4	2	8	3	1	3	1	1	5
NRC	1	1	1	2	1	1	1	1	1	4
PRC	1	1	1	2	1	1	1	1	1	4
RB	2	8	1	10	2	1	3	1	1	5
SEC	2	8	1	10	2	1	1	1	1	12
TVA	1	1	1	3	1	1	1	1	1	4
USCCR	1	1	1	3	1	1	1	1	1	4
USITC	1	1	1	3	1	1	2	1	1	4
Total	36	48	11	95	35	21	61	22	8	193

¹ Notice appeared in the Federal Register published the same day as the meeting.² 8 dealt with telephone conferences.³ Interstate Commerce Commission.

TABLE 6.—PERCENT OF LATE NOTICES, BY SELECTED AGENCY (SEPT. 12, 1977–MAR. 31, 1978)

Agency	Total meetings	Number late	Percent
CAB.....	69	36	52
FCC.....	65	27	42
FERC.....	38	14	37
CPSC.....	40	12	30
FDIC.....	47	14	30
NRC.....	110	15	14
FTC.....	65	9	14
SEC.....	103	12	12

¹ 8 of these notices dealt with telephone conferences.

APPENDIX A

AGENCIES INCLUDED IN THIS STUDY

1. Civil Aeronautics Board (CAB)
2. Commission on Federal Paperwork (CFP)
3. Commodity Credit Corporation (CCC, USDA)
4. Commodity Futures Trading Commission (CFTC)
5. Consumer Product Safety Commission (CPSC)
6. Copyright Royalty Tribunal (CRT)
7. Council on Environmental Quality (CEQ)
8. Equal Employment Opportunity Commission (EEOC)
9. Federal Communications Commission (FCC)
10. Federal Deposit Insurance Corporation (FDIC)
11. Federal Elections Commission (FEC)
12. Federal Energy Regulatory Commission (FERC)
13. Federal Home Loan Bank Board (FHLBB)
14. Federal Home Loan Mortgage Corporation (FHLMC)
15. Federal Maritime Commission (FMC)
16. Federal Power Commission (FPC)
17. Federal Reserve System, Board of Governors (FRS)
18. Federal Trade Commission (FTC)
19. Harry S. Truman Scholarship Foundation (HSTSF)
20. Indian Claims Commission (ICC)
21. Inter-American Foundation (IAF)
22. Interstate Commerce Commission (ICC)
23. Mississippi River Commission (MRC)
24. National Commission on Electronic Fund Transfers (NCEFT)
25. National Commission on Libraries and Information Service (NCLIS)
26. National Council on Educational Research (NCER)
27. National Labor Relations Board (NLRB)
28. National Mediation Board (NMB)
29. National Museum Services Board (NMSB)
30. National Railroad Passenger Corporation (NRPC)
31. National Science Board (NSB)
32. National Transportation Safety Board (NTSB)
33. Nuclear Regulatory Commission (NRC)
34. Occupational Safety and Health Review Commission (OSHRC)
35. Overseas Private Investment Corporation (OPIC)
36. Postal Rate Commission (PRC)
37. Railroad Retirement Board (RRB)
38. Renegotiation Board (RB)
39. Securities Exchange Commission (SEC)
40. Tennessee Valley Authority (TVA)
41. Uniformed Services University of the Health Sciences (USUHS)
42. United States Civil Service Commission (USCSC)
43. United States Commission on Civil Rights (USCCR)
44. United States Foreign Claims Settlement Commission (USFCSC)
45. United States International Trade Commission (USITC)
46. United States Parole Service (USPS)
47. United States Postal Service (USPS)
48. United States Railway Association (USRA)

APPENDIX B

PERTINENT SUNSHINE ACT PROVISIONS

Under 5 USC 552b(c), unless the agencies find that the public interest requires otherwise, meetings may be closed if they relate to one of the following exempt categories:

(1) national security matters that are specifically authorized and properly classified;

(2) internal personnel rules and practices;

(3) matters specifically exempted from disclosure by statute;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) formal censure and accusation of a crime;

(6) clearly unwarranted invasion of personal privacy;

(7) law enforcement investigatory records or information;

(8) information contained in or related to reports used by agencies responsible for the regulation or supervision of financial institutions;

(9) information the premature disclosure of which would: (a) lead to financial speculation or significantly endanger the stability of any financial institution; or (b) significantly frustrate implementation of a proposed agency action; or

(10) issuance of a subpoena; participation in a civil action or proceeding; or the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication made on the record.

Under 5 USC 552b(d)(4) an agency that is authorized to close a majority of its meetings under exemption (4), (8), (9A), or (10), can close a meeting at any time and need not submit a notice to the Federal Register.

Under 5 USC 552b(e)(3), agencies are required to submit to the Federal Register for publication "notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the proceeding, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting." (Subsection (d)(4) exempts some agencies from this provision.)



