

SEC

*Protecting Investors*

Annual  
Report 2003

# About the SEC

## Vision

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The Securities and Exchange Commission (SEC) aims to be the standard against which federal agencies are measured. The SEC will strengthen the integrity and soundness of U.S. securities markets for the

benefit of investors and other market participants, and will conduct its work in a manner that is as sophisticated, flexible, and dynamic as the securities markets it regulates.

## Mission

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The mission of the Securities and Exchange Commission is to protect investors, maintain fair,

orderly, and efficient markets, and facilitate capital formation.

## Values

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In managing the evolving needs of a complex marketplace and in pursuing its mission, the Securities and Exchange Commission embraces the following values:

### Integrity

As the federal agency entrusted with enforcing and regulating the U.S. securities markets,

each member of the SEC staff has a personal responsibility to demonstrate the highest ethical standards to inspire confidence and trust in one another and in the public the agency serves.

### Fairness

As an agency with both regulatory and enforcement powers, the SEC must

treat investors and market participants fairly in accordance with the law. As an employer, the SEC must seek to hire and retain a diverse staff, and ensure that all decisions affecting employees and applicants are fair and ethical. As professionals, the staff must treat all others with respect and dignity.

### Accountability

The SEC staff embraces the responsibility with which it is charged. In carrying out its mission, the staff readily holds itself accountable to the public it serves and takes personal responsibility for achieving SEC goals.

### Resourcefulness

The SEC staff strives to work creatively, proactively, and effectively in assessing and addressing risk to the securities markets, the public, and other market participants. The staff is committed to finding flexible and innovative approaches to

the Commission's work and using independent judgment to explore new ways to fulfill the SEC's mission in the most efficient manner possible.

### Teamwork

The SEC recognizes that its success requires a diverse, coordinated team committed to the highest standards of trust, hard work, cooperation, and communication. The staff is committed to these values and is striving to work more effectively as a team—rather than as separate divisions or offices—and to coordinate more effectively with business, governments, and organizations in the U.S. and abroad.

### Commitment to Excellence

The SEC demands the highest standards of excellence, integrity, commitment and dedication from its staff. The investing public and the U.S. securities markets deserve nothing less.

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In this report, staff numbers are full-time equivalents.

# Policy Management and Administrative Support

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## Overview

*“This is a critical time for the agency and the way we address the challenges before us will determine not only where we go tomorrow, but for years to come. In many ways, it may be time for the SEC to go through a transition...and evolve into a much more efficient force, becoming quicker, more agile, and more proactive.”*

Chairman William H. Donaldson

31 executive and 374 operational staff:

- Established the policy and strategic direction for the agency.
- Implemented management reforms to improve the operational effectiveness of the SEC.
- Recruited and hired qualified candidates for SEC positions nationwide, and administered the compensation, benefits, and training for all of the agency’s employees.
- Fulfilled the information technology and telecommunications-related needs of a growing staff and workload, including 38 projects approved by the agency’s IT Capital Planning Committee.
- Developed a \$716.4 million operating budget for fiscal 2003, and managed the agency’s financial obligations, staffing levels, and fee collections.
- Administered the SEC’s procurements and contracts and maintained the agency’s facilities and equipment, including handling office relocations and the buildings’ physical security.

## Key Results

Issue	Result
Management Reforms	<p>The Chairman laid the groundwork for a new Office of Risk Assessment and Strategic Planning, which will lead efforts to identify and manage risks and market trends that affect the SEC's ability to fulfill its mission. The Chairman also created reports called "dashboards" that present regular snapshots of the agency's progress in meeting budget, staffing, and performance objectives.</p>
Allocating and Hiring New Staff	<p>After extensive reviews of the SEC's operations, the Chairman approved the allocation of more than 840 new staff positions among the various programs. The agency recruited aggressively to fill these positions, and retained two executive recruiting firms to help locate highly qualified accountants and other candidates. Notwithstanding these efforts, the SEC fell short of targets for fiscal 2003, and is redoubling efforts in this area for the next fiscal year.</p>
Pay-for-Performance	<p>The Commission implemented a new Pay-for-Performance program, which will reward employees for performance through merit-based salary increases.</p>

Issue	Result
Audited Financial Statements	The Commission developed and began to implement an aggressive plan to ready financial statements and systems for their first audit in 2004, pursuant to the Accountability of Tax Dollars Act of 2002. In 2003, the SEC strengthened financial management systems and expanded accounting staff to prepare the financial statements.
Staff Training	The Commission successfully launched the “SEC University,” a comprehensive redesign and expansion of the agency’s training and orientation programs. This effort includes a new e-learning program that offers more than 2,000 on-line courses in multiple disciplines.
Electronic Data Gathering, Analysis, and Retrieval System (EDGAR)	The modernized EDGAR system won two awards: the 2003 Enterprise Value Award from <i>CIO</i> magazine, and a 2004 Excellence.gov Award from the Industry Advisory Council’s eGov Shared Interest Group and the Federal CIO Council. The SEC also continued to enhance the EDGAR system, extending the hours for filings and deploying a website for filers to submit ownership reports electronically.

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Main Activities	Fiscal 2003	Fiscal 2002	% Change
Commission Meetings	111	83	+34%
Items Considered at Commission Meetings	917	907	+1%
Items Resolved by Commission through Seriatim Vote	398	331	+20%
Personnel Actions Processed	12,584	15,500	-19%
Recruitment Actions	746	830	-10%
Training Sessions Attended	4,803	7,300	-34%
Procurements (Contracts & Purchase Orders)	1,552	1,175	+32%
FOIA Requests Received	5,808	3,570	+63%
FOIA Appeals Received	76	85	-11%
Confidential Treatment Requests Received	15,259	14,150	+8%

## Policy Management

The Commission held 111 meetings in fiscal 2003, at which the Commission considered 917 matters related to the administration and enforcement of the nation's securities laws. The Commission also acted on 398 items through seriatim vote. Many of the most significant matters approved by the Commission are discussed in other chapters of this report.

The Chairman created a new structure within his office, splitting the former Chief of Staff role into three executive components:

1. *Managing Executive for Policy and Staff*, who has primary responsibility for assisting the Chairman with the initiation, review, and approval of all policy matters;

2. *Managing Executive for External Affairs*, who is responsible for external communications with Members of Congress, the press, the public, the business community, and other governmental entities; and

3. *Managing Executive for Operations and Management*, who has primary responsibility for assisting the Chairman with the initiation, review, and approval of the agency's operational management, risk assessment, and strategic planning efforts.

This new structure has been effective in providing greater leadership and more focused attention in each area that is vital to the agency's success.

One of the Chairman's major new initiatives is the creation of dashboards—management reports that present regular snapshots of the divisions' and major offices' progress in meeting budget, staffing, and performance objectives. The first dashboard, which covered all of fiscal 2003, presented a comprehensive picture of the SEC's six major divisions and offices, as well as information on the budget, staffing, and special initiatives of the agency as a whole. The dashboards will be reviewed at quarterly meetings attended by the Chairman, the Managing Executives, and the directors of the six major divisions and offices, where emerging problems will be identified, solutions discussed, and managers held accountable for the performance of their staff's activities.

After a thorough internal review of the Commission's internal structures and how the agency deals with risk, the Chairman proposed the creation of the Office of Risk

Assessment and Strategic Planning, designed to better enable the Commission to anticipate, identify, and manage emerging risks and market trends that threaten the Commission's ability to fulfill its mission. This initiative—the first of its kind at the Commission—will enable staff to analyze risks across divisional boundaries, focusing on early identification of new or resurgent forms of fraudulent, illegal, or questionable behavior or products. Operating under the "Doctrine of No Surprises," this initiative seeks to ensure that senior management at the Commission has the information necessary to make better, more informed decisions. Additionally, by creating a formalized risk assessment function, the agency will be better prepared to determine more quickly whether new business trends and industry practices warrant further SEC attention and to proactively adjust operations and resources to address these new challenges.

## Administrative Support

### Human Resources Management

#### *Expansion of the SEC Staff*

In February 2003, the Commission received authority to hire more than 840 new staff. The Chairman's Office conducted extensive reviews of each organization's mission, operations, and environment to determine how best to allocate these new staff. Based on these reviews, the Chairman's Office developed a plan to deploy new staff among the various divisions and offices, primarily in the enforcement, inspection, and disclosure review programs.

Once the new positions were allocated, the Chairman's Office led detailed reviews of the new organizational structures. The proposed new structures were evaluated by a review board composed of the major division and office directors. This process helped ensure that each office deployed new personnel effectively, with an appropriate number of accompanying supervisors.

The Office of Human Resources and Administrative Services (OHRAS), along with the SEC's other divisions and offices, moved proactively to recruit and hire highly qualified candidates to fill these positions. This effort was aided in July by the enactment of the Accountant, Compliance, and Enforcement Staffing Act of 2003, which streamlined the hiring process for new accountants, economists, and examiners. In addition, OHRAS awarded two contracts with executive recruiting firms

to assist us in locating first-rate job applicants, with a particular focus on the recruitment of accountants. The SEC hired 415 new staff in fiscal 2003, and will continue to recruit aggressively in 2004.

#### *Pay-for-Performance*

In 2003, the SEC implemented a new Pay-for-Performance System for all employees. This program consists of two components: a Performance Management System, a standardized and comprehensive assessment of each employee's accomplishments, and a Merit Pay System, which established new guidelines for awarding merit raises. This program represents a fair and balanced approach to evaluating employees and rewarding them for strong performance through salary increases.

#### *Staff Training*

The SEC launched the SEC University, a comprehensive redesign and expansion of the training and orientation programs. "SEC-U" will not only ensure that new employees learn their responsibilities and are firmly grounded in the agency's mission and values, but that all staff continue to build their knowledge of rapidly evolving markets. Through this initiative, the agency launched a new e-learning program with more than 2,000 on-line courses in a multitude of disciplines, expanded the in-house training activities of each division and office, and developed new ways

to keep staff up-to-date on industry practices.

The SEC also began building a management training curriculum that will address the developmental needs of managers at all levels of the agency. The first step of this new program was training for all managers on the SEC's new Pay-for-Performance System, covering both performance management and our new merit pay system.

#### *Benefits Enhancements*

In 2003, the SEC instituted a variety of new or expanded

benefits for employees. The enhancements included a new Life Cycle Account Program, increased transportation benefits subsidies, increased agency contributions to employees' health coverage, and a new student loan repayment program. These steps were taken under the authority of the Investor and Capital Markets Fee Relief Act, and, in conjunction with pay parity, have helped significantly lower staff attrition rates.

## Strategic Planning

In 2003, the Commission issued its 2004 Annual Performance Plan and 2002 Annual Performance Report, as required by the Government Performance and Results Act. In addition, the agency began work on the 2004-2009 Strategic Plan, scheduled for release in fiscal 2004.

Fiscal 2003 also was the first year that a portion of the SEC underwent an evaluation by the Office of Management

and Budget through its Performance Assessment Rating Tool (PART). The PART evaluation focused on the Full Disclosure program, which was generally found to be well-designed and well-managed. As it has with other federal regulatory agencies, the PART process highlighted the need to improve the agency's methods of measuring performance—an area of particular focus in preparation for the next PART review in 2004.

## Financial Management

#### *Audited Financial Statements*

The SEC developed and began executing a plan to ready its financial statements and systems for their first audit in 2004, under the authority of the Accountability of Tax Dollars Act. Because the agency cannot be audited by private firms over which it has regulatory responsibility,

the U.S. General Accounting Office (GAO) will serve as auditor. Preparations included forming several internal task forces focused on specific aspects of internal controls and financial management practices, strengthening financial management systems, and expanding accounting staff to prepare the financial statements.

### *Fee Collections*

The Commission deposited \$1.076 billion in fees in the U.S. Treasury, of which \$716.4 million was used to fund the

SEC. Of the total fees collected, 25% was from securities registrations; 74% was from securities transactions; and 1% was from tender offer, merger, and other filings.

## Filer Support

The modernized EDGAR system won the 2003 Enterprise Value Award from *CIO* magazine. As one award judge put it, EDGAR is “literally redefining the interface among the investor, the actual stock share issuer and the SEC.”

The EDGAR system also was one of the “Top 5” winners of the Excellence.gov award. A panel of judges representing government and industry examined more than 90 entries using the following criteria: (1) maturity of the governance model, (2) project innovation, (3) demonstrated measurable results, (4) project impact on the agency’s mission, and (5) degree in which the governance model is replicable to other organizations.

In 2003, the SEC took the initiative to enhance the EDGAR system further. As part of the Commission’s efforts to satisfy the requirements of the Sarbanes-Oxley Act, the agency developed a website that allows filers to submit ownership reports (Forms 3, 4, and 5) and financial certifications on-line. These steps have dramatically improved the access to ownership transactions data for investors around the world.

In addition, the Commission adopted rules to mandate the electronic filing of documents for all foreign issuers. The EDGAR system was enhanced to accept those filings and the hours of operation were extended to accommodate time zone differences for foreign issuers.

## Information Technology

### *Document Management*

The SEC conducted a requirements analysis for a new document management system, which will allow the electronic capture, search, and retrieval of investigative and examination materials. When completed, this project will have enormous benefits for the agency. The new system

would dramatically reduce the staff costs associated with managing, retrieving, and storing the millions of pages of documents we receive each year. In addition, the agency will enhance the disaster recovery and backup for enforcement and inspection files, the vulnerability of which was highlighted with the loss of the Northeast Regional Office in 2001.

### *Information Security and Disaster Recovery*

The SEC continued to strengthen its information technology security program to comply with the Federal Information Security Management Act. In 2003, the Office of Information Technology (OIT) enhanced its intrusion detection capabilities, improved incident response practices, trained the staff on security awareness, and began certifying and accrediting all major SEC applications.

OIT also enhanced disaster recovery and Continuity of Operations Plan (COOP) efforts, completing the planning and initial acquisition phases for two critical projects. First, the Alternate Data Center will relocate the agency's backup computer facilities from downtown Washington, D.C. to a separate location outside the city. Second, the new point-to-point system will allow data communication between SEC offices to continue even if the Washington, D.C. facilities are not operational.

### *Enterprise Architecture and Business Process Review*

As part of the SEC's review of its enterprise architecture, OIT conducted two critical analyses: a business function model linked to the Federal Business Model and an Information Resource Catalog that documents information on all applications. These exercises revealed that there has been considerable overlap in the information collected by the agency and uneven implementation of its tracking systems. To address

these issues, the staff began reviewing the SEC's filing and disclosure process, and will assess whether the agency gathers only the data necessary to perform its mission, collects the data in a useful format, and has the tools necessary to analyze the data.

### *Web-Based Technologies and Improved Access to Information*

In 2003, OIT implemented several enhancements to the web-based Bluesheet System. The project streamlined the process for targeting, requesting, and analyzing securities transaction data from broker-dealers, thereby reducing the number of requests to which a broker-dealer must respond. OIT also began a project to enable the broker community to submit Bluesheet data directly to the Commission without going through a third party, improving the timeliness and integrity of the data and reducing firms' compliance costs. This system will be implemented in 2004.

OIT also began a requirements analysis for a new case management system. The new system will incorporate information automatically from other Commission documents, eliminate duplicative data entry, reduce system maintenance and operating costs, and streamline search and report capabilities.

Finally, OIT implemented the Enterprise Data Resource database structure. This project provided a unified framework for the SEC's enterprise data and applications, discouraging

“stovepipe” systems. Several key systems were enhanced through this effort.

#### *Space and Facilities Management*

In 2003, the SEC continued to manage the construction of the new headquarters building near Union Station. The first building is projected to be completed in fiscal 2005, with staff occupancy to begin in early to mid-2005.

In addition, OHRAS managed a variety of other space-related projects to accommodate the significant increase in our staff. The agency renegotiated leases for additional space for the Salt Lake District Office, the Philadelphia District Office, the Fort Worth District Office, the Central Regional Office, and the office at 901 E Street in Washington, D.C.

#### *Physical Security and Disaster Recovery*

This year, the SEC undertook several initiatives to enhance the security of the agency’s facilities. The agency upgraded the headquarters access control system, distributing identification and access cards to all employees nationwide

and linking the access control system to a national database. In addition, a new Visitor Control Center was created at our Washington, D.C. headquarters and new visitor control and screening procedures were instituted at all three Washington area locations, including the installation of new x-ray machines and magnetometers. Finally, the agency integrated new security plans into the design specifications for the new headquarters building near Union Station.

Another major focus for 2003 was disaster recovery. The SEC revised COOP plans and will participate in an interagency disaster simulation exercise run by the Department of Homeland Security and the Federal Emergency Management Agency, scheduled for May 2004. The agency made arrangements to shelter personnel at SEC facilities for a short period, with food and water supplies, in the case of a disaster that prevents staff from leaving work. The agency also purchased new emergency communications equipment that will help core staff continue operations for some time if the need arises.

## Outlook for 2004

In 2004, the SEC expects to undertake the following initiatives:

- Proactively recruit, hire, and train qualified personnel to fill our remaining open positions.
- Develop a new risk assessment arm within the SEC that will identify and anticipate risks and market trends that threaten the agency’s ability to fulfill its mission.

- Complete an agency-wide effort to create a new results-oriented Commission strategic plan.
- Continue to manage the construction of the new headquarters building, ensuring its timely and quality completion.
- Complete preparations for audited financial statements, including generating quarterly financial statements, undergoing an audit of opening balances, and implementing any General Accounting Office recommendations, with the first Performance and Accountability Report scheduled to be issued in November 2004.
- Coordinate the PART review for two Commission programs: Full Disclosure and Prevention and Suppression of Fraud.
- Continue shaping a new document management system to capture, organize, analyze, search, and share large volumes of documents.
- Focus on the agency's information security, disaster recovery capabilities, and business continuity plans, finding better ways to protect mission-critical IT resources.
- Continue to integrate evolving systems into one agency-wide technical architecture, ensuring that new portals, web services, and data warehousing capabilities blend with the agency's other systems.

# Enforcement

## Overview

*“These days, the concept of effective enforcement necessarily includes ‘seeing around the corner.’ What that means to us is identifying trends, practices, and risks within our capital markets that could be exploited to the detriment of investors. Ideally, if we are able to spot these issues in their infancy, we can prevent them from growing into full-fledged, confidence-eroding scandals.”*

Stephen M. Cutler, Director  
Division of Enforcement

935 enforcement staff:

- Obtained orders in SEC judicial and administrative proceedings requiring securities violators to disgorge illegal profits of approximately \$900 million and to pay penalties of approximately \$1.1 billion.
- Sought orders barring 170 defendants and respondents from serving as officers or directors of public companies.
- Sought emergency relief from federal courts in the form of temporary restraining orders (TROs) to halt ongoing fraudulent conduct in 35 actions, and sought asset freezes in 39 actions.
- Filed 12 actions to enforce investigative subpoenas.
- Halted trading in securities of 13 issuers about which there was inadequate public disclosure.

In SEC-related criminal cases, prosecutors filed indictments, informations, or contempts against 246 individuals or entities.

## Key Results

Case	Result
Enron Cases	The Commission filed 7 separate actions against 14 individuals, 13 of whom have also been charged criminally; three financial institutions also included in the actions collectively have paid \$316 million to be returned to defrauded investors.
Research Analyst Cases	In cooperation with other regulators, the Commission obtained injunctions against 10 investment banks and 2 individual research analysts, and orders for payments totaling \$1.4 billion, including \$894 million in disgorgement and penalties (\$399 million of which will be paid to investors), \$432.5 million to fund independent research, and \$80 million to promote investor education.
Xerox Cases	The Commission brought fraud charges against Xerox's auditor; it also, in an action against 6 senior Xerox executives, obtained settlements resulting in injunctions, officer and director bars, payments totaling \$22 million, and bars for two executives from practicing as accountants before the Commission.

Main Activities	Fiscal 2003	Fiscal 2002	% Change
Civil Injunctive Actions	271	270	0%
Administrative Proceedings	365	281	+30%
Contempt Proceedings	42	47	-11%
Reports of Investigation	1	1	0%

## Significant Enforcement Actions

Many of the SEC's enforcement actions were resolved by settlement with the defendants or respondents, who generally consented to the entry of judicial or administrative

orders without admitting or denying the allegations against them. The following is a sampling of the year's significant actions.

### Financial Fraud and Disclosure

*SEC v. Brightpoint, Inc., et al.*<sup>1</sup> The Commission filed a civil enforcement action, and instituted four settled administrative proceedings, against American International Group, Inc. (AIG) and Brightpoint, Inc., as well as three former employees of Brightpoint, and one AIG employee, for their roles in fraudulently manipulating Brightpoint's earnings. All but one defendant settled the Commission's action. The Commission alleged that AIG sold a retroactive insurance policy to Brightpoint, allowing the company to cover-up \$11.9 million in losses sustained by one of its foreign subsidiaries. As a result, Brightpoint's 1998 financial statements overstated the company's net income before taxes by 61%. In connection with the settlements, AIG agreed to pay a civil penalty of \$10 million.

*SEC v. J.P. Morgan Chase & Co.*<sup>2</sup>; *In the Matter of Citigroup, Inc.*<sup>3</sup> The Commission filed and settled enforcement proceedings against J.P. Morgan Chase & Co. and Citigroup, Inc. for their respective roles in the manipulation of the financial statements of Enron Corp., and Citigroup's role in the manipulation of the financial statements of Dynegy Inc. The Commission alleged that the defendants engaged in complex structured finance transactions designed to help their clients inflate reported cash flow from operating activities, underreport cash flow from financing activities, and underreport debt. J.P. Morgan agreed, in a civil action, to an antifraud injunction and to pay \$135 million to settle the Commission's action over its conduct relating to Enron; and Citigroup agreed, in an administrative proceeding, to

a cease-and-desist order and to pay \$101 million to settle the Commission's action over its conduct relating to Enron and Dynegy.

*SEC v. Henry C. Yuen and Elsie M. Leung.*<sup>4</sup> The Commission filed a civil action against two former top executive officers of Gemstar-TV Guide International, Inc., Henry C. Yuen and Elsie M. Leung, alleging that they used a variety of tactics to overstate Gemstar's total revenues by at least \$223 million from March 2000 through September 2002, and that they reaped millions of dollars in financial gains from their fraudulent scheme because their compensation was tied to Gemstar's financial performance. Upon motion of the Commission pursuant to Section 1103 of the Sarbanes-Oxley Act of 2002, the court placed into escrow nearly \$38 million in cash payments that the company had previously agreed to pay the defendants. This litigation is ongoing.

*SEC v. Paul A. Allaire, et al.*<sup>5</sup> The Commission filed and settled a civil action against six former senior executives of Xerox Corporation, including its former chief executive officers Paul A. Allaire and G. Richard Thoman, and its former chief financial officer Barry D. Romeril, alleging that they engaged in a fraudulent scheme from 1997 to 2000 that misled investors about Xerox's earnings in order to polish its reputation on Wall Street and boost the company's stock price. The Commission alleged that the scheme involved the use of accounting devices that were not disclosed to investors, many

of which violated Generally Accepted Accounting Principles (GAAP), that were responsible for accelerating the recognition of equipment revenues by approximately \$3 billion and increasing pre-tax earnings by \$1.4 billion in Xerox's 1997-2000 financial results. In addition to injunctions, the defendants agreed to pay over \$22 million in civil penalties, disgorgement, and interest.

*SEC v. Kevin A. Howard, et al.*<sup>6</sup> The Commission filed two related civil actions against seven former top executives of Enron Broadband Services, Inc. (a wholly-owned subsidiary of Enron Corp.), Kevin A. Howard, Michael W. Krautz, Kenneth D. Rice, Joseph Hirko, Kevin P. Hannon, Rex T. Shelby, and F. Scott Yeager. In the first action, the Commission alleged that Howard and Krautz engaged in a scheme that involved the sham sale of certain assets to accelerate recognition of income, which resulted in Enron overstating its reported net income by \$111 million for the fourth quarter of 2000 and the first quarter of 2001. In the second action, the Commission alleged that Rice, Hirko, Hannon, Shelby, and Yeager engaged in a fraudulent scheme to, among other things, inflate the value of Enron stock through a series of false and misleading statements, and the omission of material information, in public statements about the technology, financial condition, performance, and value of Enron Broadband. This litigation is ongoing.

*SEC v. HealthSouth Corporation, et al.*<sup>7</sup> The Commission, in four related

civil actions, charged HealthSouth Corporation, its CEO and Chairman Richard M. Scrushy, and eight other HealthSouth officers and employees, with systematically overstating HealthSouth's earnings by at least \$1.4 billion since 1999. The Commission alleged that the defendants engaged in a scheme to falsify and misrepresent HealthSouth's financial results and thereby enrich themselves and keep their jobs. The Commission is seeking injunctions, officer and director bars, disgorgement of all ill-gotten gains and losses avoided, and civil penalties.

*SEC v. Merrill Lynch & Co., Inc., et al.*<sup>8</sup> The Commission filed a civil action against Merrill Lynch & Co., Inc. and four of its former senior executives, alleging that the defendants aided and abetted Enron Corp.'s earnings manipulation by engaging in two fraudulent year-end transactions in 1999. The transactions had the purpose and effect of overstating Enron's reported financial results by adding approximately \$60 million to its fourth quarter of 1999 income. Merrill Lynch agreed to pay \$80 million in disgorgement, penalties and interest, and to the entry of a permanent anti-fraud injunction. The four former Merrill Lynch executives named in the complaint, Robert S. Furst, Schuyler M. Tilney, Daniel H. Bayly and Thomas W. Davis, are contesting the matter.

*SEC v. Joel M. Arnold, et al.*<sup>9</sup> The Commission filed a civil action against eight current and former officers

and employees of Qwest Communications International, Inc., alleging that they inflated the company's revenues by approximately \$144 million in 2000 and 2001 in order to meet earnings projections and revenue expectations. The Commission's complaint alleges that the defendants artificially accelerated Qwest's recognition of revenue in two equipment sale transactions for its Global Business Markets unit. When Qwest and Global Business determined that Qwest was falling short of its quarterly revenue targets and would not achieve the projected growth for the quarters ending June 30, 2001 and September 30, 2000, the defendants bridged the revenue gap by fraudulently mischaracterizing these transactions. The Commission is seeking anti-fraud injunctions, officer and director bars, civil money penalties, and disgorgement of ill-gotten gains (including compensation, bonuses, and stock trading profits during the relevant period).

*SEC v. Andrew S. Fastow.*<sup>10</sup> The Commission filed a civil action against Andrew S. Fastow, the former chief financial officer of Enron Corp., alleging that Fastow and others used complex structures, straw men, hidden payments, and secret loans to create the appearance that certain entities funded by Fastow and others at Enron were independent of Enron. This allowed Enron to move its interest in these entities off its balance sheet when, in fact, those interests should have been consolidated into Enron's financial statements.

This was done, the Commission alleges, for self-enrichment and to mislead analysts, rating agencies, and others about Enron's true financial

condition. The Commission is seeking an injunction, officer and director bar, disgorgement of all ill-gotten gains, and civil penalties.

## Cases Involving Accountants and Auditors

*In the Matter of Thomas C. Trauger and Michael Mullen; In the Matter of Oliver Flanagan.*<sup>11</sup> The Commission instituted two related administrative proceedings against three individuals for their conduct in the alleged alteration and destruction of the working papers for Ernst & Young, LLC (E&Y) client NextCard, Inc. In the first proceeding, the Division of Enforcement alleged that Thomas Trauger, a former audit partner with Ernst & Young, LLC, directed Michael Mullen, an E&Y audit manager, to alter E&Y's work papers for the fiscal year 2000 audit of NextCard. In the second proceeding, settled at the time of institution, the Commission found that Oliver Flanagan destroyed certain audit working papers. Flanagan consented to an order denying him the privilege of practicing before the Commission, with the right to reapply after three years.

*In the Matter of Pricewaterhouse-Coopers LLP.*<sup>12</sup> The Commission instituted settled administrative proceedings against Pricewaterhouse-Coopers LLC (PWC) and Philip Hirsch, finding that PWC, through Hirsch, failed to comply with Generally Accepted Accounting Standards in connection with its audit of SmarTalk TeleServices, Inc.'s 1997 year-end financial statements. The Commission

also found that after PWC became aware of a class action shareholder lawsuit alleging fraud against SmarTalk, PWC made revisions to its working papers and discarded other documents relevant to its audit. PWC agreed to a censure, to significant remedial undertakings, and to pay a \$1 million penalty; and Hirsch agreed to an order denying him the privilege of practicing before the Commission, with the right to reapply after one year.

*SEC v. Kenneth Wilchfort, et al.*<sup>13</sup> The Commission filed and settled a civil action against two E&Y partners, Kenneth Wilchfort and Marc Rabinowitz, in connection with audits of Cendant Corporation, and its predecessor CUC International. The Commission alleged that the two partners aided and abetted Cendant's and CUC's violations of the reporting provisions of the federal securities laws by failing to detect that their financial statements were not presented in conformity with GAAP. In separate administrative proceedings, Wilchfort and Rabinowitz also consented to orders suspending them from appearing or practicing before the Commission as accountants, with the right to reapply after four years.

*SEC v. KPMG LLP, et al.*<sup>14</sup> The Commission filed a civil action against KPMG LLP and four KPMG partners—including the

head of the firm's department of professional practice—in connection with KPMG's audits of Xerox Corporation from 1997 through 2000. The complaint alleges that the defendants permitted Xerox to manipulate its accounting practices to close a \$3 billion

gap between actual operating results and results reported to the investing public. The defendants' actions inflated pre-tax earnings by approximately \$1.2 billion in Xerox's 1997 through 2000 financial results. This litigation is ongoing.

## Foreign Payments Cases

*In the Matter of American Rice, Inc., et al.*<sup>15</sup> The Commission issued a cease-and-desist order against American Rice, Inc. and three of its employees, Joseph A. Schwartz, Joel R. Malebranche, and Allen W. Sturdivant, finding that the employees participated in a scheme to illegally reduce American Rice's import taxes by approximately \$1.5 million on rice shipments to Haiti by paying at least 12 bribes to Haitian customs officials totaling approximately \$500,000, and that Schwartz improperly recorded the bribery payments as routine business expenditures.

*SEC v. Syncor International Corp.*<sup>16</sup> The Commission filed and settled enforcement proceedings charging Syncor International Corporation with violating the Foreign Corrupt Practices Act (FCPA). The Commission filed a civil action

alleging that several Syncor subsidiaries made a total of at least \$600,000 in illicit payments to doctors employed by hospitals controlled by foreign authorities. The Commission also issued an administrative order finding that Syncor violated the anti-bribery, books and records, and internal controls provisions of the FCPA, ordering Syncor to cease and desist from such violations, and requiring Syncor to retain an independent consultant to review and make recommendations concerning the company's FCPA compliance policies and procedures. Without admitting or denying the Commission's charges, Syncor consented to the entry of a final judgment in the federal lawsuit requiring it to pay a \$500,000 civil penalty and the Commission's issuance of its cease-and-desist order.

## Regulation Fair Disclosure Cases

*In the Matter of Raytheon Company, et al.; In the Matter of Secure Computing Corporation, et al.; In the Matter of Siebel Systems, Inc.; Report of Investigation in the Matter of Motorola, Inc.*<sup>17</sup> The Commission instituted and settled three separate administrative proceedings against Raytheon Company

and its CFO Franklyn Caine, Secure Computer Corporation and its CEO John McNulty, and Siebel Systems, Inc., alleging violations of Regulation FD. The Commission alleged that the defendants disclosed material non-public information in violation of Regulation FD. The defendants each consented

to the entry of an order finding that they violated the periodic reporting provisions of the federal securities laws and Regulation FD, and ordering them to cease and desist from committing or causing any violations and future violations of these provisions. The Commission also filed and settled a related civil action against Siebel, concerning the same conduct, and Siebel agreed to an injunction

and to pay a \$250,000 civil penalty. Finally, the Commission issued a Report of Investigation concerning disclosures made by Motorola, Inc., that the Commission deemed to violate Regulation FD. The Commission issued the Report, rather than filing an enforcement proceeding against Motorola, because of Motorola's demonstrated reliance on counsel.

## Broker-Dealer Cases

*Analyst Research Global Settlement.*<sup>18</sup> The Commission, along with the New York Attorney General, the NYSE, and NASD, and other state securities regulators, filed and settled enforcement actions against Bear, Stearns & Co. Inc.; Credit Suisse First Boston LLC; Goldman, Sachs & Co.; Lehman Brothers, Inc.; J.P. Morgan Securities, Inc.; Merrill Lynch, Pierce, Fenner & Smith, Inc.; Morgan Stanley & Co., Inc.; Citigroup Global Markets, Inc., f/k/a Salomon Smith Barney, Inc.; UBS Warburg LLC; and U.S. Bancorp Piper Jaffray, Inc. The actions allege that from approximately mid-1999 through mid-2001 or later, all of the firms engaged in acts and practices that created or maintained inappropriate influence by investment banking over research analysts, and that the firms failed to manage the resulting conflicts of interest in an adequate or appropriate manner. In settling the actions against them, the firms agreed to make payment totaling \$1.4 billion for the following purposes:

- \$875 million in penalties and disgorgement, the federal portion of which will be put into a fund to benefit customers of the firms;
- \$432.5 million to fund independent research; and
- \$80 million to fund and promote investor education.

The regulators also filed and settled civil and administrative proceedings against Jack Grubman, a former managing director of Salomon Smith Barney, Inc. and the lead research analyst for Salomon's telecommunications sector, and Henry Blodget, a former managing director at Merrill Lynch and senior research analyst for Merrill's Internet sector for issuing fraudulent and misleading research reports. Both Grubman and Blodget agreed to an injunction, the respective

payment of \$15 million and \$4 million in penalties, a censure, and a permanent bar from associating with any broker, dealer, or investment adviser.

*In the Matter of Robertson Stephens, Inc.*<sup>19</sup> The Commission filed and settled a civil action against Robertson Stephens, Inc., a San Francisco-based brokerage firm and investment bank, relating to the firm's allocation of shares in initial public offerings (IPOs) during 1999 and 2000.

The Commission alleged that Robertson Stephens wrongfully obtained millions of dollars from over 100 customers by allocating shares of "hot" IPOs to these customers and receiving, in return, profits—in the form of excessive commissions or markdowns—made by these customers on their IPO stock. In addition to an injunction, Robertson Stephens agreed to pay \$23 million in disgorgement and a \$5 million civil penalty.

### Books and Records Violations, Fraudulent Reporting, and Unregistered Broker-Dealers

*In the Matter of Deutsche Bank Securities, Inc., et al.*<sup>20</sup> The Commission, along with the NYSE and NASD, filed and settled administrative proceedings against five broker-dealers for violations of recordkeeping requirements concerning e-mail communications. The Commission found that each firm—Deutsche Bank

Securities Inc.; Goldman, Sachs & Co.; Morgan Stanley & Co. Inc.; Salomon Smith Barney, Inc.; and U.S. Bancorp Piper Jaffray, Inc.—had inadequate procedures and systems to retain and make accessible e-mail communications. The firms consented to the imposition of fines totaling \$8.25 million (\$1.65 million per firm).

### Mutual Funds and Investment Adviser Cases

*In the Matter of Prudential Securities, Inc.; In the Matter of Robert Ostrowski, et al.*<sup>21</sup> The Commission instituted two related enforcement proceedings, the first a settled proceeding against Prudential Securities, Inc., and the second against Robert Ostrowski and Rees T. Harris, a registered representative and a supervisor associated with Prudential Securities, Inc. during the relevant period. In the litigated proceeding, the Division of Enforcement alleges that Ostrowski defrauded investors by selling them shares in certain classes of mutual funds without disclosing that less expensive share classes in the same mutual funds were

available, and that Harris failed reasonably to supervise Ostrowski. In the settled proceeding, the Commission found that Prudential had inadequate systems in place to effectively monitor and enforce its policies and procedures relating to sales of different classes of mutual fund shares. The Commission censured Prudential and ordered it to pay \$82,000 in disgorgement and interest, and \$300,000 in civil penalties, and to comply with certain remedial undertakings.

*In the Matter of Theodore Charles Sihpol, III.*<sup>22</sup> The Commission filed an enforcement action against

Theodore C. Sihpol III, a former broker at Banc of America Securities LLC (BAS) (a subsidiary of Bank of America Corporation), alleging that Sihpol played a key role in enabling certain hedge fund customers to “late trade” mutual fund shares.

The Commission also alleged that Sihpol falsified, altered, destroyed, or evaded the creation of books and records that BAS was required to create, maintain, and preserve. The action is pending before an administrative law judge.

## Insider Trading Cases

*SEC v. Peter J. Davis, Jr., et al.*<sup>23</sup> The Commission filed related enforcement actions arising from trading in U.S. Treasury 30-year bonds minutes before the Department of the Treasury announced that it would no longer issue such bonds. Peter Davis, the individual who misappropriated the Treasury Department information, Goldman Sachs & Co., and Massachusetts Financial Services Company agreed to pay over \$10.3 million to settle the Commission’s actions against them.

*SEC v. Martha Stewart, et al.*<sup>24</sup> The Commission filed an action against Martha Stewart, CEO of Martha Stewart Living Omnimedia, Inc., and Peter Bacanovic, a former registered representative associated with Merrill Lynch, alleging that Stewart sold stock in ImClone Systems, Inc. after learning material non-public information communicated from Bacanovic. The Commission is seeking injunctions, civil penalties, an officer and director bar against Stewart, and an order requiring Stewart and Bacanovic to disgorge, jointly and severally, the losses avoided by Stewart.

## Outlook for 2004

Our main objectives are to:

- Continue to maintain a presence in all major core areas of enforcement, including violative conduct in the financial services and mutual fund sectors, financial fraud, market manipulation, insider trading, and offering fraud;
- Expand Division proactive, forward-looking efforts.
- Continue our litigation program in the face of an increasing number of defendants choosing to litigate, the increasing

complexity of the Commission’s enforcement actions, the increase in emergency and subpoena enforcement actions, and the Commission’s efforts to increase sanctions imposed on defendants.

- Wherever practical, continue to seek to return recovered funds to defrauded investors; as a result of the “Fair Funds” provisions of the Sarbanes-Oxley Act, amounts paid as penalties may now also be used to reduce investor losses.

# International Affairs

## Overview

*“In short, this past decade has seen a tectonic shift in how securities regulators combat cross-border financial crime. In a sense, what we have now is a philosophy of collective security for regulators—we have the authority to view a threat to the integrity of foreign markets as a threat to our own. Those who commit financial crimes can run across borders, but they cannot hide.”*

Ethiopia Tafara, Director  
Office of International Affairs

20 International Affairs staff:

- Worked with foreign authorities to address cross-border securities fraud, including promoting international information-sharing agreements among foreign securities regulators and law enforcement agencies.
- Promoted internationally the strengthening and implementation of high quality securities regulation and accounting and auditing standards.
- Offered technical assistance to regulators of emerging securities markets.

## Key Results

Issue	Result
Cross-Border Enforcement Cooperation	The Commission gained seven new information-sharing partners through the International Organization of Securities Commission’s (IOSCO) Multilateral Memorandum of Understanding (MMOU).

Issue	Result
International Principles for Rating Agencies and Securities Analyst Conflicts of Interest	IOSCO developed international principles for regulators, self-regulatory organizations (SROs), industry associations, and firms to use when addressing securities analyst conflicts of interest and the activities of credit rating agencies.
Regulatory Dialogue with the European Union	We participated in ongoing financial markets dialogue where issues of mutual concern are discussed in order to better understand each other's system of regulation and explore areas of regulatory cooperation and convergence.
International Convergence on Accounting and Auditing Standards	We supported the convergence work underway among the International Accounting Standards Board (IASB), Financial Accounting Standards Board (FASB), and other national accounting standard setters that aims to facilitate cross-border investment by reducing differences in key accounting areas.
Implementation of the Sarbanes-Oxley Act of 2002	We spearheaded the Commission's dialogue with its foreign counterparts to resolve the cross-border issues raised by the SEC's implementation of the Sarbanes-Oxley Act.

Main Activities	Fiscal 2003	Fiscal 2002	% Change
International Policy Initiatives	96	45	+113%
Enforcement Requests to Foreign Jurisdictions	309	448	-31%*
Enforcement Requests from Foreign Authorities	344	353	-3%
Technical Assistance Requests	226	234	-3%

\*Between 1997 and 2002, enforcement requests to foreign jurisdictions increased, on average, 14% per year.

## Significant International Accomplishments

### Cross-Border Enforcement Cooperation

In 2002, IOSCO created a Multilateral Memorandum of Understanding, the first global multilateral information-sharing arrangement among securities regulators. The SEC was among the first signatories to the agreement, and, over the past year, the number of signatories has grown to include 23 other securities and derivatives regulators, including seven jurisdictions with whom the SEC had no prior bilateral information-sharing agreement. The MMOU has significantly enhanced the SEC's enforcement program by increasing the SEC's ability to obtain information from a growing number of jurisdictions worldwide. Moreover, the agreement has created incentives for jurisdictions that lack the legal ability to engage in effective information-sharing to enact legislation that will enable them to do so.

In addition to the 23 other signatories to the IOSCO MMOU, the SEC has bilateral information-sharing arrangements with over 30 other jurisdictions.

The following is a sampling of the year's major enforcement cases with significant international components.

*SEC v. Vivendi Universal.*<sup>25</sup> In September 2003, the SEC made an application under section 1103 of the Sarbanes-Oxley Act seeking a temporary order compelling Vivendi, a foreign private issuer, to place a \$23 million payment to the company's former CEO, Jean-

Marie Messier, in escrow, pending an SEC investigation into possible securities laws violations. Investigations by the SEC and by French authorities are continuing.

*In the Matter of Corpro.*<sup>26</sup> The Commission filed a complaint seeking an officer and director bar and injunctions against two officers of the Australian subsidiary of a U.S. issuer. The complaint alleged that the two officers committed fraud by falsifying invoices and ledgers, which resulted in the U.S. issuer misstating its financial results. The SEC cooperated with the Australian Securities and Investments Commission (ASIC) in the investigation, and ASIC brought complementary criminal charges against one of the individuals. Litigation on this matter is continuing.

*SEC v. Beacon Hill Asset Management LLC.*<sup>27</sup> On November 7, 2002, the Commission charged Beacon Hill Asset Management LLC, a hedge fund manager located in New Jersey, with a violation of the anti-fraud provisions of the Investment Advisers Act of 1940. Beacon Hill managed three feeder hedge funds—Bristol, Safe Harbor, and Milestone—as well as a master fund, an entity in the Cayman Islands through which the feeder funds conducted trading. The Commission's complaint alleges that Beacon Hill reported net asset values and corresponding returns to fund investors that it knew or should have known were materially overstated. The master fund is to be liquidated under Cayman

law, and the SEC and the Cayman Islands Monetary Authority are consulting on

the cross-border impact of the U.S. court proceedings.

### International Principles for Rating Agencies and Securities Analyst Conflicts of Interest

This past year, IOSCO, a multilateral group of securities regulators, developed guidance principles relating to the activities of credit rating agencies, and for addressing conflicts of interest affecting securities analysts. Both rating agencies and securities analysts are important market participants that can

assist investors by analyzing important market- and issuer-related information. The two sets of principles are designed to aid regulators, SROs, industry associations and firms themselves in developing oversight and control mechanisms to protect the integrity of both groups.

### Regulatory Dialogue

As part of implementation of the Sarbanes-Oxley Act, Commission staff, along with staff from other U.S. financial regulators, engaged in a dialogue with other global securities regulators to discuss ways of identifying SEC proposals that conflict with foreign laws or foreign stock exchange requirements. This dialogue took the form of public roundtables, bilateral and multilateral meetings, and an analysis of foreign comment letters. Where appropriate, and consistent with the spirit and intent of the Act, the SEC has made accommodations for foreign market participants, such as accepting, in place of

board audit committees, other corporate bodies which are independent of management and, under local rules, responsible for overseeing a company's outside auditors.

As part of this initiative, the SEC also engaged in an ongoing informal financial markets dialogue with the European Commission to discuss regulatory issues of mutual concern, enhance understanding of each other's system of regulation, and explore areas of regulatory cooperation and convergence in the development of high quality regulation.

### International Accounting and Auditing Oversight

This past year, the Office of International Affairs offered its continued support to the convergence work underway among the IASB, the FASB and other national accounting standard setters that aims to reduce differences in key accounting areas. We also promoted internationally the implementation of IOSCO's principles for enhanced auditor independence and oversight, and supported the creation

of a public interest oversight board over the standard setting work of the International Federation of Accountants. In addition, we worked with the Public Company Accounting Oversight Board (PCAOB) to address the concerns of foreign authorities regarding the international implications of the PCAOB's system for registering accounting firms.

## Technical Assistance

The Commission's technical assistance program helps emerging securities markets develop regulatory structures that promote investor confidence and capital formation. The program is multifaceted and includes training programs, review of foreign securities laws, and responses to specific inquiries from foreign regulators. The cornerstone of the Commission's technical assistance program is the International Institute for Securities Market Development, a two-week, management level training program covering the development and oversight of securities markets. In addition, the Commission

conducts a week-long Institute for Securities Enforcement and Market Oversight, covering techniques for investigating securities law violations and oversight of market participants.

During 2003, Commission staff participated in a range of overseas technical assistance and training initiatives, including: a regional disclosure and corporate governance training program in Estonia; a regional broker-dealer regulation program in Montenegro; capital markets and investor education training programs in India; and bilateral assistance initiatives in Colombia, Russia, and the Ukraine.

## Outlook for 2004

Our main objectives are to:

- Encourage significantly greater multilateral cooperation in the area of asset freezes and repatriation of assets.
- Contribute to developing an international consensus approach towards client identification and beneficial ownership requirements for securities market intermediaries.
- Coordinate increasingly complex cross-border enforcement assistance—both in requests made by foreign securities regulators and in requests the SEC makes of its foreign counterparts.
- Increase efforts towards regulatory convergence projects on international accounting principles and auditing standards.

# Investor Education and Assistance

## Overview

*“We passionately believe in the importance of educating all Americans so that they have the tools they need to make effective investment decisions. Effective investor education can help all Americans become better positioned to achieve personal financial security and reach their savings and investing goals.”*

Susan Ferris Wyderko, Director  
Office of Investor Education  
and Assistance

43 staff in the Office of Investor Education and Assistance and the regional and district offices:

- Received and handled 70,574 contacts from investors, providing individually tailored responses to questions and facilitating the resolution of investor complaints.
- Launched investor education initiatives and participated in dozens of educational events across the country, including seminars on investing, talks in public libraries, and panel discussions.

## Key Results

Issue	Result
Hedge Funds	We created a fake hedge fund website—Guaranteed Returns Diversified, Inc. (GRDI or “greedy”)—that educates investors about hedge funds and provides tips on how to avoid on-line fraud.

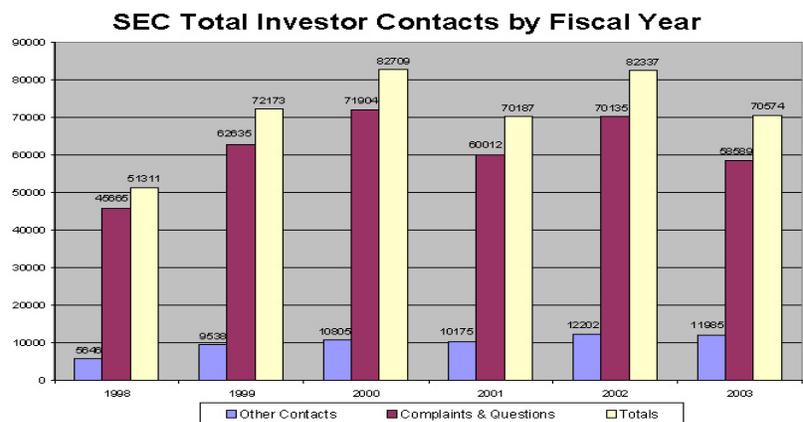
Issue	Result
Bankruptcy Media Campaign	We worked with media outlets and a national quotation service to warn investors about the dangers of investing in bankrupt companies.
Investor Outreach Through Public Libraries	We launched a new initiative to reach individual investors on a grass-roots level by working with public libraries nationwide.

Main Activities	Fiscal 2003	Fiscal 2002	% Change
Investor Complaints and Questions	70,574	82,337	-14%

## Complaint Trends

During the year, the SEC's investor assistance staff received 70,574 complaints and questions, a 14% decrease compared with fiscal year 2002. Nearly 40% of these contacts involved telephone

calls, a 5-point increase over last year. Approximately 42% came in electronically through our on-line investor complaint form or email, and the remainder included letters, faxes, and personal visits.



“Other contacts” includes repeat contacts, contacts with insufficient information to process, and contacts not within our jurisdiction.

Although complaints in most categories significantly declined during 2003, complaints concerning commissions and administrative fees rose by approximately 7% over

2002. In addition, complaints concerning corporate bankruptcy increased by 8%, entering our “top ten” list for the first time.

The ten most common complaints we received

during 2003 included:

	<b>Complaint Type</b>	<b>FY 2003 Totals*</b>	<b>FY 2002 Totals*</b>	<b>Change</b>
1	Misrepresentations	1,502	1,698	Down 12%
2	Fees, commissions, and administrative costs	1,428	1,331	Up 7%
3	Unsuitable recommendations	917	1,002	Down 8%
4	Transfer of account problems	840	1,031	Down 19%
5	Unauthorized transactions	837	990	Down 15%
6	Failure to follow customer's instructions	668	858	Down 22%
7	Failures to process/delays in executing orders	582	733	Down 21%
8	Bankruptcy	458	424	Up 8%
9	Errors/omissions in account records	436	580	Down 25%
10	Cold calling	431	429	N/A

\* During 2003, we changed to a new data recording system that includes secondary as well as primary complaint codes in our totals. For that reason, our 2002 totals appear higher than previously reported in our 2002 Annual Report.

As in years past, we received substantially more complaints about broker-dealers than any other type of entity (including issuers,

mutual fund companies, and transfer agents). The top five complaints against broker-dealers involved:

	<b>Complaints Against Broker-Dealers Only</b>	<b>FY 2003 Totals*</b>	<b>FY 2002 Totals*</b>	<b>Change</b>
1	Fees, commissions, and administrative costs	1,251	1,159	Up 8%
2	Misrepresentations	997	1,119	Down 11%
3	Unsuitable recommendations	791	845	Down 6%
4	Unauthorized transactions	687	857	Down 20%
5	Transfer of account problems	674	801	Down 16%

## Educational Campaigns

During 2003, we focused our educational resources on launching the following investor education campaigns:

- **Corporate Bankruptcy** — During 2003, we received numerous complaints from investors who purchased stock in bankrupt companies under the mistaken belief that the stock price would rise when the company emerged from bankruptcy. In each case, however, the company had announced in its plan of reorganization its intention to cancel its existing common stock and to issue *new* stock. We substantially revised our “Corporate Bankruptcy” brochure and partnered with a national quotation service to alert investors about the dangers of investing in bankrupt companies. This campaign received widespread media attention, including articles in mainstream financial magazines and nationally syndicated columns as well as interviews on business television programs and coverage on national nightly news shows.
  - **Hedge Funds** — During 2003, our markets witnessed a burgeoning interest in retail investment in hedge funds and funds of hedge funds. To alert investors to the potential risks of investing in these products, we coordinated with the National Association of Securities Dealers (NASD)
- to develop and distribute educational materials, including “Hedging Your Bets: A Heads Up on Hedge Funds and Funds of Hedge Funds.” In addition, as part of our ongoing effort to combat Internet fraud, we created a replica of a typical hedge fund scam site with a non-government URL. The website aims to reach individuals who tend to fall for on-line scams as well as those who do not frequent the SEC’s website. Investors who click on the “invest now” link reach a page that warns: “If you responded to an investment idea like this, you could get scammed.” The page also gives tips on how to spot potential frauds and provides links to key regulators.
- **Understanding Your Investments** — We issued a series of new investor publications that aim to give investors the tools they need to research their investments, assess their asset allocation, and better understand their investment choices. These include “Executive Compensation: A Guide for Investors, Information Matters,” and “Taking Stock: Getting Your Fiscal Act Together.” We also substantially revised “Invest Wisely: An Introduction to Mutual Funds and Mutual Fund Breakpoints.”
- During the spring of 2003, we expanded our efforts to reach

individual investors at the grass-roots level. Specifically, we launched a new initiative to educate public librarians about investor resources on the SEC's website and to use local libraries as nationwide distribution channels for our educational materials. We also executed a Memorandum of Understanding with the

U.S. Department of Defense to support DOD's efforts to promote financial literacy among members of the armed services and their families. In addition, throughout the year, numerous senior SEC officials participated in dozens of educational events, including programs targeted toward the elderly and minorities.

## Outlook for 2004

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Our key objectives are to:

- Continue to provide investors with prompt, accurate responses to their questions and complaints, using technology to improve our response time.
- Analyze our complaint data on a regular basis to spot trends and to shape and target our investor education campaigns.

Planned initiatives already underway include outreach efforts to combat affinity fraud, a joint project with NASD, the Securities Industry Association, and the Investment Company Institute to educate investors about mutual fund breakpoints and the launch of additional fake scam websites, including a fake Internet investment newsletter.

# Regulation of the Securities Markets

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## Overview

*“Today the Commission is at a crossroads in its oversight of the U.S. markets, and is faced with a range of decisions that will fundamentally impact the structure of our markets for years to come. Significant issues include: what it means to be an exchange; the self-regulatory model of market supervision; access to markets; and the proper regulatory framework for market data.”*

Annette Nazareth, Director  
Division of Market Regulation

146 staff in the Division of Market Regulation and 11 staff in the Office of Filings and Information Services:

- Supervised roughly 7,900 registered broker-dealers with approximately 94,900 branch offices and 664,100 registered representatives.
- Reviewed and approved the proposed rule changes of 13 registered exchanges, 2 securities associations, and 11 registered clearing agencies.
- Prepared for the Commission’s consideration rules and rule amendments under the Securities Exchange Act of 1934 (Exchange Act).
- Responded to 393 requests from securities professionals, issuers, and other market participants for exemptive relief or interpretive or no-action advice.
- Advised on significant enforcement actions and task forces.

## Key Results

Issue	Result
Analyst Conflicts of Interest	<p>The Commission adopted Regulation Analyst Certification (Regulation AC), which requires analysts to certify the truthfulness of their views and to disclose whether they have received compensation related to their views and recommendations expressed in research reports and public appearances.<sup>28</sup> We also approved, pursuant to the Sarbanes-Oxley Act of 2002, comprehensive self-regulatory organization (SRO) rules governing analysts' conflicts.<sup>29</sup></p>
Listed Company Corporate Governance	<p>The Commission approved the New York Stock Exchange (NYSE) and Nasdaq proposals requiring shareholders to approve all equity compensation plans, including those involving officers and directors, subject to limited exceptions.<sup>30</sup></p>
Bank "Dealer" Rules	<p>The Commission adopted rules implementing the statutory exceptions for banks from the definition of "dealer," under the Gramm-Leach-Bliley Act (GLBA).<sup>31</sup></p>
Mutual Fund Breakpoints	<p>The Division of Market Regulation partnered with the Office of Compliance, Inspections &amp; Examinations (OCIE) and the National Association of Securities Dealers (NASD) to formulate a comprehensive plan to address breakpoint overcharges by broker-dealers that sold front-end load mutual funds, which should result in a significant number of refunds to customers.<sup>32</sup></p>

Issue	Result
Rating Agencies	The Commission issued a report on the “Role and Function of Credit Rating Agencies in the Operation of the Securities Markets” and issued a concept release regarding “Rating Agencies and the Use of Credit Ratings Under the Federal Securities Laws.” <sup>33</sup>

Main Activities	Fiscal 2003	Fiscal 2002	% Change
SRO Proposed Rule Changes (# Closed)	813	717	+13%
SEC Rulemaking and Interpretive Proposals	13	19	-32%
Interpretive, Exemptive, and No-Action Request Letters (# Closed)	393	481	-18%
Telephone/Internet Inquiries for Guidance	18,000	16,000	+13%
Analysis of Proposed Enforcement Actions	565	536	+5%

## Securities Markets, Trading, and Significant Regulatory Issues

### Analyst Conflicts of Interest

On February 6, 2003, the Commission adopted Regulation AC, which requires that broker-dealers and associated persons obtain research analyst certifications regarding the truthfulness of their views and whether they have received any compensation related to their specific recommendations or views.<sup>34</sup> By requiring certifications of core standards of good conduct, Regulation AC should help promote the integrity of both research reports and public appearances by research analysts and also strengthen investor confidence in analyst recommendations.

On July 29, 2003, the Commission approved proposed rule changes filed by the NYSE and NASD designed to fulfill the mandates of Section 501 of the Sarbanes-Oxley Act.<sup>35</sup> The new rules address analyst conflicts by, among other things: (1) separating research analyst compensation from investment banking influence; (2) prohibiting analysts from participating in pitches or other communications for the purpose of soliciting investment banking business; and (3) prohibiting firms from retaliating against analysts for expressing views adverse to the firm’s investment banking business.

## Strengthening Financial Sector Resilience

The Commission continued to work with the trading markets and market participants to improve their resilience in the post-September 11 environment. In particular, the Commission issued a policy statement that sets forth general business continuity sound practices (including a next-day resumption goal) that should be implemented by the trading markets.<sup>36</sup> Additionally,

the Commission, along with the Federal Reserve Board and the Office of the Comptroller of the Currency, issued an “Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System,” which identified specific business continuity objectives for all financial firms and sound practices to ensure the resilience of the U.S. financial system.<sup>37</sup>

## Options Intermarket Linkage Plan

In 2003, the Commission approved several initiatives designed to more fully integrate the options market into the national market system. Among these initiatives, the Commission approved proposals to allow the Options Pricing Reporting Authority to calculate and disseminate a consolidated best bid or offer for the options market<sup>38</sup> and to permit the full implementation of the

Options Intermarket Linkage Plan.<sup>39</sup> The Commission also approved proposals by the Chicago Board Options Exchange, Inc.<sup>40</sup> and the Pacific Exchange, Inc.<sup>41</sup> designed to enhance intramarket competition at these exchanges by providing all market makers in a particular trading crowd the opportunity to automatically update their individual quotes in all series in a given options class.

## Liquidity Quote Service

The Commission approved the NYSE’s Liquidity Quote Service, which permits the Exchange to disseminate quotes that are at a specific price interval below the best bid or at a specific price interval above the best offer and reflect aggregated trading interest on

the Exchange.<sup>42</sup> Specifically, liquidity quotes could include orders on the specialist’s book, trading interest of brokers in the trading crowd, or the specialist’s interest, and are intended to show additional depth in the market for particular stocks.

## National Do-Not-Call Registry

In light of amendments to the Federal Trade Commission’s Telemarketing Sales Rule and its national Do-Not-Call Registry, the Division

worked with the NASD to conform its telemarketing rules to these more stringent federal standards.<sup>43</sup>

## Commodities Futures Modernization Act

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The Commission continued to implement the Commodities Futures Modernization Act in 2003. In November 2002, the Commission approved rules proposed by those national securities exchanges that are registered to trade security futures (Chicago Mercantile Exchange, NQLX, and OneChicago) that established margin requirements for security futures, which facilitated the

launch of security futures trading.<sup>44</sup> Specifically, the exchanges' rules set minimum initial and maintenance margin levels for security futures, adopted modified margin levels on strategy-based offsetting positions involving security futures, and established standards under which the exchanges' market makers can receive good faith margin treatment for their security futures positions.

## Confirmation Letters

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In September 2003, the Division granted a limited exemption to Nasdaq from the contra-party disclosure requirement of the Exchange Act's customer confirmation rule (Rule 10b-10) for NASD members using SuperMontage's post-trade anonymity feature to execute trades on behalf of customers.<sup>45</sup>

In August 2003, the Division issued a limited exemption from Rule 10b-10 to Goldman, Sachs & Co., permitting it and its affiliated broker-dealers, upon the request of clients who have granted Goldman Sachs investment discretion over their accounts, to send these clients monthly statements in lieu of trade-by-trade confirmations of securities transactions.<sup>46</sup>

## Anti-Money Laundering/Patriot Act

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As part of the U.S. delegation to the Financial Action Task Force on Money Laundering (FATF), an inter-governmental anti-money laundering organization, the staff helped revise the "Forty Recommendations on Money Laundering" to strengthen international efforts to combat money laundering and terrorist financing.<sup>47</sup>

Together with the SROs and other federal regulators, the staff worked to ensure that

regulated entities implement vigorous compliance programs. In 2003, we contributed to broad-based interagency work to implement the USA PATRIOT Act, including rules affecting broker-dealers, mutual funds, and investment advisers.<sup>48</sup> On May 9, 2003, the Commission and the U.S. Department of the Treasury jointly issued final rules that require broker-dealers to implement reasonable procedures to verify

the identity of any person seeking to open an account, to the extent reasonable and practicable; to maintain records of the information used to verify the person's identity;

and to determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to broker-dealers by any government agency.<sup>49</sup>

## Arbitration and Mediation

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Division of Market Regulation staff collaborated with the Office of General Counsel (OGC) and the U.S. Office of the Solicitor General on the Commission's brief in *Howsam v. Dean Witter Reynolds*,<sup>50</sup> which addressed whether arbitrators or courts should resolve questions under an SRO time-limitation rule. The U.S. Supreme Court agreed with the Commission's position that arbitrators should resolve disputes under the applicable eligibility rule. The staff also formulated the

Commission's response to recently enacted California laws that affected arbitrations conducted within that state. The Division assisted OGC in preparing *amicus* briefs arguing that the California laws are preempted by federal law,<sup>51</sup> and also worked closely with the SROs on implementing rule changes to mitigate the effect of new California laws on their arbitration programs.<sup>52</sup>

## Credit Rating Agencies

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The Commission engaged in a number of initiatives relating to credit rating agencies. On January 24, 2003, the Commission submitted to the President and Congress a report on the role and function of credit rating agencies in the operation of the securities markets<sup>53</sup> in response to the congressional directive contained in Section 702 of the Sarbanes-Oxley Act of 2002.<sup>54</sup> To assist in the preparation of the report, the Commission held full-day public hearings on November 15 and 21,

2002.<sup>55</sup> The Commission also published a concept release on June 4, 2003,<sup>56</sup> seeking comment on a number of issues relating to credit rating agencies, including whether credit ratings should continue to be used for regulatory purposes under the federal securities laws. Further, on February 24, 2003, the Division of Market Regulation recognized Dominion Bond Rating Service Limited as a nationally recognized statistical rating organization.<sup>57</sup>

## Net Capital Developments

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On August 1, 2003, the Commission adopted amendments to the broker-dealer reporting requirements to allow a broker-dealer to send each of its customers certain net capital information only twice a year (instead of sending its full balance sheet and certain other financial information) if it makes its balance sheet available to its customers on the Internet and provides its customers with a toll-free number they can call to obtain a paper copy of the balance sheet (in case the customer does not have access to the Internet).<sup>58</sup>

On July 11, 2003, the Division issued a letter concerning the application of the financial responsibility rules when a third party agrees to assume responsibility for payment of a broker-dealer's expenses.<sup>59</sup> Such expense-sharing agreements could be improperly used as a basis for not recording expenses and liabilities on the broker-dealer's books and records. For purposes of broker-dealer recordkeeping requirements and the net capital rule, the letter set out the Division's view regarding the proper recording of broker-dealer expenses and liabilities, the proper treatment of capital contributions and withdrawals, and requirements for access to records, including those of unregistered entities.

On March 11, 2003, the Commission adopted amendments to the broker-

dealer customer protection rule to allow the Commission to expand the categories of assets a broker-dealer could use as collateral when borrowing securities from customers.<sup>60</sup> In addition, the Commission issued an order, pursuant to those rules, to allow broker-dealers to use many categories of securities they were not previously allowed to use as collateral when borrowing securities from customers.<sup>61</sup> The Commission also delegated authority to the Director, Division of Market Regulation, to expand the categories of assets a broker-dealer could use as collateral when borrowing securities from customers in the future.<sup>62</sup>

On May 22, 2003, the Commission published guidance to clarify certain issues relating to the broker-dealer books and records rules,<sup>63</sup> some of which were raised as a result of the amendments to those rules that were adopted by the Commission on October 26, 2001.<sup>64</sup>

On May 7, 2003, the Commission publicly clarified its views on the operation of its rule permitting broker-dealers to store required records in electronic form. Specifically, the Commission stated that broker-dealers may employ a storage system that prevents alteration or erasure of records for their required retention period.<sup>65</sup>

## Risk Assessment Program

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The Commission staff monitored the risk management capacities of the largest independent broker-dealers. The

staff also conducted a comprehensive review of the firms' internal management and aggregate market risk and credit risk profiles.

## Automation Review Policy Program

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Since the events of September 11th, our staff has worked to improve the ability of the markets, clearing organizations, and broker-dealers to respond to the threats they face in today's environment. These initiatives include updates in contingency plans, expanded audits of critical systems and communications lines, and

improvements in back-up facilities for core functions. In 2003, the staff performed 8 on-site inspections and issued 45 recommendations for improvements in information technology resources. In addition, staff attended 12 annual technology briefings presented by the exchanges and tracked systems problems.

## Outlook for 2004

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Our main objectives are to:

- Focus on the structure of the U.S. equities and options markets. Among the issues that we expect to consider are: (1) access to markets; (2) market data; (3) the self-regulatory model; and (4) the function of an exchange in the modern era.
- Focus on final implementation of the options exchanges' initiatives to create a consolidated order audit trail for surveillance purposes and to reform the Options Price Reporting Authority.
- Prepare for the Commission's consideration final rules, which were proposed on October 24, 2003, to establish two separate voluntary regulatory frameworks for supervising broker-dealers and their affiliates on a consolidated basis. If adopted, one proposal would establish an alternative method for broker-dealers that are part of a holding company that manages risks on a group-wide basis and whose holding company consents to group-wide Commission supervision to compute certain net capital charges. The second proposal would implement new Exchange

- Act provisions that create a statutory structure for the consolidated supervision of holding companies of broker-dealers and their affiliates.
- Continue work on initiatives designed to enhance market integrity and investor confidence, including:
    - o amendment of the rules governing short selling;
    - o adoption of final amendments to the rules governing issuer repurchases;
    - o implementation of the requirements of the Sarbanes-Oxley Act, including its statutory disqualifications provisions;
  - o development of the appropriate regulatory approach to credit rating agencies;
  - o continuation of our effort to strengthen and improve the operations of the U.S. clearance and settlement system; and
  - o development of an effective consolidated supervision program for broker-dealers and affiliates.
  - Prepare for the Commission's consideration proposed new or revised bank broker rules, mutual fund confirmation rules, penny stock rules, amendments to Form BD, and a registration rule for banks effecting transactions in security futures.

# Investment Management Regulation

## Overview

*“As is readily apparent, Chairman Donaldson has laid out an ambitious regulatory agenda in the investment management area. And it is a challenge we are committed to meeting.”*

Paul Roye, Director  
Division of Investment  
Management

167 staff in the Division of Investment Management and 21 staff in the Office of Filings and Information Services:

- Regulated over 8,000 mutual funds with assets of \$7 trillion and almost 8,000 investment advisers with assets under management of about \$20 trillion.
- Developed 16 rules designed to improve disclosure to investors and strengthen and modernize the regulation of investment companies and investment advisers.
- Issued a report on the “Implications of the Growth of Hedge Funds.”

## Key Results

Issue	Result
Sarbanes-Oxley Act of 2002	The Commission adopted rules tailored to mutual funds requiring CEO and CFO certification of shareholder reports, disclosure of codes of ethics, standards of professional conduct for attorneys, auditor independence, listing standards for audit committees, and disclosure of audit committee financial experts.

Issue	Result
Enhanced Fund Disclosure	The Commission approved rules requiring funds to disclose their proxy voting policies and voting records. Also, the Commission adopted rule amendments under which funds must present more balanced information in their advertisements, especially when discussing past performance. Finally, the Commission proposed amendments to substantially expand the disclosure contained in fund shareholder reports.
Fund and Adviser Operations	The Commission adopted rules under the USA PATRIOT Act requiring customer identification programs for mutual funds. New rule amendments will permit funds to conduct certain transactions with affiliates. The Commission proposed a rule requiring that funds and advisers have policies, procedures, and a designated officer all dedicated to ensuring compliance with the federal securities laws and regulations.
Hedge Funds	The staff concluded a comprehensive study on the implications for investors of the significant growth in hedge funds. This report provides an overview of the industry and recommends ways to improve hedge fund regulation and oversight.

Main Activities	Fiscal 2003	Fiscal 2002	% Change
New Portfolios Registered	2,536	2,110	+20%
Annual and Periodic Reports Reviewed	1,134*	0	--
Responses to Formal and Informal Requests for Guidance Completed	1,507	1,417	+6%
Requests for Exemptive Relief Completed	332	450	-26%
Rule Proposals Adopted by the Commission	16**	5	+220%

\* The Sarbanes-Oxley Act requires the staff to review financial information contained in annual reports to shareholders at least once during a three-year period.

\*\* Not including final action on one rule proposal from the Office of Public Utility Regulation.

## Significant Developments Related to the Investment Company Act

Total assets managed by investment companies at the end of fiscal 2003 equaled \$7.3 trillion, an increase of almost 16% from a year earlier. Much of this growth can be attributed to rising stock markets, with leading indices recording increases of between 22% and 52% over the prior year. The \$7.3 trillion managed by investment companies is almost

double the amount on deposit at commercial banks and is essentially equal to the financial assets at commercial banks. Mutual funds are the largest segment of the investment company industry. Over 53 million U.S. households, 48% of the total, own mutual funds. Mutual funds account for approximately 21% of all retirement assets and 45% of all 401(k) assets.

### Rulemaking

#### *Implementation of the Sarbanes-Oxley Act*

The Commission adopted a number of rules implementing the Sarbanes-Oxley Act with respect to registered investment companies. For example, the Commission adopted rules that require registered investment management companies to

file shareholder reports on new Form N-CSR, certified by their principal executive and financial officers.<sup>66</sup> Other rules covered provisions such as:

- Auditor independence requirements (Title II): This rule prohibits auditors from providing certain non-audit services; strengthens the requirements related

to conflict of interest standards, auditor partner rotation, and second partner reviews; and clarifies and enhances the relationship between the independent auditor and the audit committee.<sup>67</sup>

- Requirements for listed companies' audit committees (Section 301): This rule directs national securities exchanges and national securities associations to prohibit the listing of any security that is not in compliance with certain audit committee requirements.<sup>68</sup>
- Disclosure with respect to codes of ethics (Section 406): This rule requires a company to disclose whether it has adopted a code of ethics that applies to the company's principal executive officer and senior financial officers.<sup>69</sup>
- Disclosure of audit committee financial experts (Section 407): This rule requires a company to disclose whether it has at least one "financial expert" serving on its audit committee, and if so, the name of the expert and whether the expert is independent of management.<sup>70</sup>

### *Proxy Voting*

The Commission adopted amendments that require management investment companies to disclose how they vote proxies relating to their portfolio securities.<sup>71</sup> The amendments are designed to enable shareholders to

monitor investment companies' involvement in the governance of portfolio companies. They also require investment companies to disclose both the specific proxy votes they cast and the policies and procedures they use to determine how to vote the proxies.

### *Investment Company Advertising*

The Commission adopted rule amendments that will encourage investment companies to convey more balanced information in their advertisements to prospective investors, particularly with respect to past performance.<sup>72</sup> Among other things, the amendments require investment companies that advertise performance to provide investors via the Internet or a toll-free or collect phone number the fund performance figures for the most recent month-end. The amendments also eliminate the requirement that certain investment company advertisements contain only information for which the substance is included in the statutory prospectus.

### *Customer Identification Programs*

The Commission, the U.S. Department of the Treasury, and other federal financial regulators adopted rules to protect the U.S. financial system from money laundering, terrorist financing activity, and fraud.<sup>73</sup> Specifically, the rules require financial institutions to: (1) make a reasonable attempt to verify the identity of any person seeking to open an account; (2) maintain records of the information used to verify the person's identity;

and (3) determine whether the person appears on any list of known or suspected terrorists or terrorist organizations.

#### *Transactions of Investment Companies with Portfolio and Subadviser Affiliates*

The Commission adopted a new rule and several rule amendments related to transactions between investment companies and their affiliates.<sup>74</sup> The Investment Company Act contains a number of provisions that prevent persons who may be in a position to take advantage of an investment company from entering into transactions or arrangements with the investment company. These include prohibitions on affiliated transactions and joint transactions with affiliated persons. The rule and amendments eliminate the need for funds to obtain individual exemptive orders in circumstances that do not raise investor protection concerns.

#### *Research and Development Companies*

The Commission proposed and adopted a new rule providing certain bona fide research and development companies with a nonexclusive safe harbor from the definition of an investment company.<sup>75</sup> The rule enables the companies to determine their status under the Investment Company Act without the need to seek Commission orders.

#### *Compliance Program*

The Commission proposed a new rule to ensure that all investment companies have effective internal compliance programs.<sup>76</sup> If adopted, the rule would require that investment companies adopt and implement policies and procedures designed to prevent violation of the federal securities laws, review the effectiveness of those policies and procedures annually, and designate a chief compliance officer. The Commission also requested comment on several other ways to involve the private sector in promoting compliance with federal securities laws.

#### *Quarterly Portfolio Disclosure and Shareholder Reports*

The Commission proposed a variety of amendments to improve investment companies' periodic disclosure of their portfolio investments and costs.<sup>77</sup> These amendments would require mutual funds to disclose in shareholder reports the expenses borne by shareholders. Management investment companies would have to file a complete schedule of portfolio holdings with the Commission on a quarterly basis, rather than semi-annually as currently required. Management investment companies could include a summary portfolio schedule in their shareholder reports in lieu of a complete schedule, as long as the complete schedule is available on request. Finally, shareholder reports would need to include a tabular or graphic presentation of the investment company's portfolio holdings by identifiable categories.

## Exemptive Orders

The Commission issued 252 orders based on applications seeking relief from various provisions of the Investment Company Act. Some of the significant orders and related releases that the Commission issued in fiscal 2003 are discussed below.

- *Principal Protected Funds.* The Commission issued two orders allowing registered investment companies with a principal protection feature (that is, a feature designed to allow fund shareholders to obtain a return of at least their initial investment) to purchase the principal protection from their affiliates.<sup>78</sup>
- *Exchange-Traded Funds.* The Commission issued five orders granting exemptive relief to permit exchange-traded funds (ETFs)

based on equity securities indices.<sup>79</sup> The Commission also issued an order permitting the introduction of additional ETFs based on fixed-income securities indices.<sup>80</sup> Finally, the Commission granted an exemptive order allowing registered investment companies to purchase shares of certain ETFs in excess of statutory limits.<sup>81</sup>

- *Foreign Investing.* The Commission issued an order exempting certain registered investment companies from various prohibitions on affiliated transactions, in order to facilitate the companies' investment in Indian securities.<sup>82</sup> The exemption was intended in part to enable the funds to achieve certain tax efficiencies when they make such investments.

## Interpretive and No-Action Letters

Of the 15 interpretive and no-action letters issued by the division's Office of the Chief Counsel, some of the most significant related to the Investment Company Act and are discussed below.

- *Investments in European Union Investment Companies.* The staff stated that closed-end investment companies organized in the United States may invest in investment companies organized in the European Union in excess of the limits set by the Investment Company Act.<sup>83</sup>

- *Tuition Prepayment Plans.* The staff stated that it would not recommend enforcement action to the Commission under the Investment Company Act if a tuition prepayment plan did not register as an investment company. The plans offer prospective students the opportunity to lock in and prepay discounted rates at any participating private educational institution.<sup>84</sup>
- *Exchange Offers.* The staff concluded that a registered mutual fund may make an exchange offer on a specified delayed

basis, so long as the offer is consistent with the Investment Company

Act and is fully and clearly disclosed in the fund's prospectus.<sup>85</sup>

## Other

The Commission issued the staff's report entitled "Implications of the Growth of Hedge Funds."<sup>86</sup> The report provides basic information about hedge funds, an overview of the federal securities laws and regulations that affect hedge fund operations and their advisers, the nature of hedge fund investment

strategies, and the functions of their service providers. In addition, the staff discusses its concerns with various aspects of hedge funds and their regulation and recommends a number of regulatory alternatives. The Commission is currently considering the staff's recommendations.

## Significant Developments Related to the Investment Advisers Act

By the end of fiscal 2003, almost 8,000 investment advisers were registered with the Commission.

These advisers had assets under management of approximately \$20 trillion.

## Rulemaking

### *Proxy Voting*

As a companion to its mutual fund proxy voting rules, the Commission adopted a new rule that addresses proxy voting by investment advisers.<sup>87</sup> Under the new rule, an investment adviser that votes client securities must establish policies and procedures to ensure that it addresses conflicts of interest and votes in the client's best interest. The rule also requires the adviser to disclose information about these policies and procedures and ways that clients can obtain information on how their securities are voted.

### *Custody of Funds and Securities*

The Commission adopted amendments to modernize

the rules governing advisers' custody of client funds and securities.<sup>88</sup> The amendments enhance the protections afforded to clients' assets and harmonize the custody rule with current custodial practices. The amended rule requires investment advisers to maintain clients' funds and securities with a qualified custodian such as a broker-dealer or bank. If the qualified custodian sends quarterly account statements directly to clients, the adviser no longer would need to prepare quarterly account statements nor undergo an annual surprise examination of the client funds and securities in its custody. The amendments also clarify when an investment adviser has custody and therefore must comply with the rule.

### *Compliance Program*

The Commission proposed new rules and amendments to ensure that all investment advisers registered with the Commission have effective internal compliance programs.<sup>89</sup> If adopted, the proposal would require each investment adviser to adopt and implement policies and procedures reasonably designed to prevent violations of the Investment Advisers Act, review the effectiveness of those policies and procedures annually, and designate a chief compliance officer. The Commission also requested comment on several other ways

to involve the private sector in enhancing compliance with the federal securities laws.

### *Anti-Money Laundering Program*

We assisted the U.S. Treasury with its proposed rule to require investment advisers to establish anti-money laundering programs.<sup>90</sup> Promulgated under the authority of the USA PATRIOT Act, the proposed rule would prescribe minimum requirements for advisers' anti-money laundering programs and would task the Commission with examining certain advisers for their compliance.

### Interpretive and No-Action Letters

Among other actions in this area, the staff stated that it would not recommend enforcement action to the Commission if persons subject to certain disciplinary actions act as solicitors for registered

investment advisers under some limited circumstances. The staff also stated that it will no longer respond to related requests for no-action relief unless the requests present novel or unusual issues.<sup>91</sup>

## Significant Developments Related to the Public Utility Holding Company Act (PUHCA)

During fiscal 2003, the Commission issued a number of orders in response to the continuing turmoil in the utility industry, particularly in the electricity trading and merchant generation markets. Mergers and other consolidations continued at a slow pace, largely as a result of market conditions and the pendency of comprehensive energy legislation in Congress. While utility holding company systems continued to show interest in investing in non-utility activities, holding

companies have substantially reduced their ownership of foreign utility assets. By the end of the year, 58 public utility holding companies comprising 28 public utility holding company systems were registered under PUHCA. The registered systems consisted of 150 public utility subsidiaries, 176 exempt wholesale generators, 114 foreign utility companies, 4,606 non-utility subsidiaries and 703 inactive subsidiaries, for a total of 5,749 companies and systems with utility operations in 44

	<p>states. These holding company systems had aggregate assets of approximately \$623 billion and operating revenues of</p>	<p>approximately \$103 billion for the six-month period ending June 30, 2003.</p>
<p><b>Financing Authorizations</b></p>	<p>The Commission authorized registered holding company systems to issue \$55 billion of securities, a decrease of 66% from last year. This</p>	<p>amount included \$24 billion for investments in exempt wholesale generators and foreign utility companies.</p>
<p><b>Examinations</b></p>	<p>We examined 6 service companies, 6 parent holding companies, and 56 non-utility companies. The examinations focused on the companies' internal controls, cost determination procedures, accounting and billing policies, methods of allocating costs of services and goods shared</p>	<p>by associate companies, and quarterly and annual reports of the registered holding company systems. By identifying inefficiencies and misallocated expenses, these examinations resulted in savings to consumers of approximately \$44.5 million.</p>
<p><b>Orders and Other Matters</b></p>	<p>We issued numerous orders under PUCHA. Some of the more significant orders are described below.</p> <ul style="list-style-type: none"> <li>• <i>Allegheny Energy Inc.</i> The Commission issued orders involving Allegheny and its subsidiary, Allegheny Energy Supply Co. These companies experienced severe liquidity problems largely as a result of their decision in 2001 to expand into merchant generation and energy trading. The Commission authorized the companies to carry out various transactions even though their common equity ratios were below the ratio normally required of registered companies and their subsidiaries.<sup>92</sup></li> <li>• <i>Enron Corporation.</i> A public hearing was held on December 5, 2002 to determine whether Enron</li> </ul>	<p>satisfied the objective criteria for exemption under sections 3(a)(1), 3(a)(3), and 3(a)(5) of PUHCA. In February, the SEC's Chief Administrative Law Judge issued an initial decision denying Enron's applications.<sup>93</sup> Enron and others filed petitions for Commission review of the initial decision. This review is continuing.</p> <ul style="list-style-type: none"> <li>• <i>Xcel Energy, Inc.</i> The Commission authorized Xcel to declare and pay dividends out of capital and unearned surplus in an aggregate amount not to exceed \$152 million. Xcel's request was conditioned on its common equity ratio being at least 30% of capitalization.<sup>94</sup></li> <li>• <i>OPUR Online.</i> In August 2003, the Commission added a new component</li> </ul>

to its website, [www.sec.gov](http://www.sec.gov), that gives the public access to orders, pending applications, and notices. The website also contains

answers to frequently asked questions, information about registered holding companies, and a list of exempt holding companies.

## Outlook for 2004

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In 2004, we expect to undertake the following initiatives:

- Take a number of actions to address various trading abuses of mutual fund shares, such as late trading and market timing.
- Consider additional ways to bolster funds' and investment advisers' compliance policies and procedures to prevent violations of the federal securities laws.
- Enhance mutual fund fee and expense disclosure, by considering for adoption a number of rule proposals, including new shareholder report requirements that would enable investors to determine the amount of fees they paid on their fund investments and to compare fees paid in other funds.
- Improve prospectus disclosure of fund breakpoints and examine the disclosure of funds' portfolio transaction costs.
- Detail the information that should be reviewed and retained when fund boards consider contracts with investment advisers.

# Compliance Inspections and Examinations

## Overview

*“In the examination program, we pride ourselves on our ability to respond quickly when new and significant compliance issues suddenly appear. We have worked to reduce the turn-around time between first warning and full regulatory response.”*

Lori Richards, Director  
Office of Compliance Inspections  
and Examinations

We have 100 headquarters examination staff and 596 regional and district office staff conducting examinations. This staff is allocated to our respective functional programs approximately as follows: 399 for investment advisers and investment companies and 297 for broker-dealers, transfer agents, and self-regulatory organizations.

During 2003:

- Inspected 33 self-regulatory organization (SRO) programs.
- Examined 642 broker-dealers, 1,556 investment advisers, 265 investment companies, and 192 transfer agents.
- Conducted 12 special focus examination initiatives, including reviews of the safeguarding of customer records and information, mutual fund breakpoints, hedge funds, the “spinning” of initial public offering shares, best execution, variable annuities, bank loan participation funds and a program of joint examinations with state insurance regulators.
- In examinations of 92 broker-dealers, 55 investment advisers, 14 investment companies, and 9 transfer agents, we referred our findings to enforcement staff for possible further investigation and enforcement action.

## Key Results

Issue	Result
New Staffing	As a result of a budget increase, staffing levels for operations were increased significantly. We hired significant numbers of new examiners and began training them this year.
SRO Examinations	We identified needed improvements in regulatory programs at SROs, including with respect to programs for monitoring initial and continued listing of securities for trading, financial and operational surveillance and examinations of member firms, and in market surveillance and disciplinary programs.
Broker-Dealer Examinations	We identified compliance deficiencies including with respect to sales practices, suitability of recommendations, churning, cold calling, supervision, advertising, sales literature and other representations to investors, internal controls, books and records, net capital, compensation, safeguarding of customer funds and securities, and anti-money laundering procedures.

Issue	Result
Investment Company Examinations	We identified compliance deficiencies including with respect to registration and SEC filings, contractual arrangements, board of director activities, fidelity bonding, custody of customer funds, books and records, computation of net asset value, internal control procedures, investment policies for securities in the investment portfolio, money market requirements, best execution of portfolio trades, conflicts of interest, distribution activities and expenses, marketing and performance calculations, processing of fund share transactions, and anti-money laundering procedures.
Investment Adviser Examinations	We identified compliance deficiencies including with respect to SEC filings and reports, Forms ADV, brochure disclosure and delivery, custody of customer funds, books and records, financial condition, internal controls, advisory services, portfolio management, prohibited transactions, conflicts of interest, brokerage and execution costs, wrap fee programs, marketing and performance calculations, compensation and client fees.
Broker-Dealer Comprehensive Compliance	We initiated a series of comprehensive, enterprise-wide examinations in order to evaluate all facets of the organization's compliance program and overall culture.

Issue	Result
Examination Sweep of Mutual Fund Breakpoints	Together with the NASD and the NYSE, we initiated and completed an examination sweep of select broker-dealers to determine whether customers had been provided with discounts on mutual fund purchases. We reported the results publicly and found that one in three transactions had been overcharged.
Special Review of Hedge Funds	We conducted a review of hedge funds and registered funds of hedge funds, as well as their managers and brokers to identify regulatory, operational, and customer protection issues. This information assisted the Commission in its analysis of hedge fund issues.
Special Review of Structured Finance	Together with the bank regulators, we conducted examinations of 11 firms with significant activities in the structured finance area. Triggered by the Enron problems, these exam results will be used to produce guidance to prevent future problems.
Research Analyst Conflicts	Along with the Division of Enforcement, NASD, NYSE, and a number of states, we conducted a review of major investment banking broker-dealers' research analysts' practice of issuing favorable research reports in exchange for investment banking business. The review helped result in a \$1.4 billion global settlement that included, among other things, remedial measures to prevent analysts from being pressured by investment banking interests and to ensure customers have greater access to independent analyst recommendations.

Issue	Result
IPO Spinning	Together with the NASD and the NYSE, we conducted a special review of broker-dealers to identify regulatory and compliance issues associated with initial public offering “spinning” ( <i>i.e.</i> , quick re-sales of securities obtained in initial public offerings).
Best Execution	We continued to review the best execution practices of broker-dealers and investment advisers, including whether order-routing broker-dealers are effectively utilizing reports prepared pursuant to Rules 11Ac1-5 and 11Ac1-6 to ensure that customer orders are receiving best execution.
Variable Annuities	Together with the NASD, we conducted a special review of compliance practices in the sale of variable annuity products. The examinations focused on suitability, supervision, disclosure, and books and records and will serve as the basis for a report highlighting practices in these areas.
Safeguarding Customer Records & Information	We conducted a special review of major broker-dealers and fund complexes to evaluate their policies and procedures for preventing identity theft. We also conducted a series of joint examinations of financial complexes containing both insurance and securities firms. The examinations focused on privacy and the safeguarding of customer information.

Issue	Result
Review of Bank Loan Participation Funds	We conducted a special review of all bank loan participation funds to determine whether portfolio securities were accurately priced. As a result of this review, funds investing in these securities switched to a market-based pricing structure that should prevent future valuation problems.
Consolidated Options Audit Trail	We worked with options exchanges and other Commission offices on the design and implementation of a consolidated options audit trail that significantly enhances surveillance.

Main Activities	Fiscal 2003	Fiscal 2002	% Change
Examinations:			
Broker-Dealers	642	626	3%
Investment Advisers	1,556	1,570	-1%
Investment Companies	265	278	-5%
Clearing Agencies	3	3	0%
Transfer Agents	192	138	40%
SRO Programs	33	32	3%

## Discussion of Significant Accomplishments

During 2003, we made important contributions to investor protection by: identifying violations, deficiencies, and control weaknesses; prompting registrants to undertake quick remedial action by improving their internal controls to prevent recurrence of the problem; and referring serious violations to enforcement staff for possible further

investigation and enforcement action. We continued to identify deficiencies related to supervision; the accuracy of books and records; sales practices, including the suitability of recommendations; disclosure to investors; conflicts of interest; and the valuation of portfolio securities.

We enhanced our oversight methodologies through

several new initiatives. First, we enhanced our ability to respond quickly and decisively to new compliance issues by: increasing our use of technology; requesting extensive written information from firms to help determine which firms should be reviewed on-site; coordinating with other offices and divisions within the agency; and, when appropriate, redeploying staff. These steps allowed us to initiate, plan, conduct, and resolve several of our special examination reviews quickly after compliance problems came to our attention.

Second, we expanded our review of firms' internal controls, overall compliance systems, and risk profiles because our findings in these areas will help us assess the likelihood that firms will have future compliance

or control problems. Also, the increased complexity of registrant firms and the wider range of their business activities and operations has increased our need to effectively oversee multiple and disparate activities.

Third, we expanded our use of new types of expertise, such as the skills needed to review anti-money laundering programs and firms' programs to safeguard electronic records and information. We also continued our extensive in-house training program for all examiners.

Finally, we coordinated with the broker-dealer SROs, federal banking regulators, and state insurance and securities regulators. This effort has proved fruitful in improving how we work together and share expertise.

## Outlook for 2004

With the recent increase in examination resources, our primary objective for 2004 is to continue to enhance customer protection and compliance functions. Specifically, we expect to continue to enhance our methodologies for identifying firms that pose very high levels of compliance risk. We also expect to increase our use and analysis of overall risk assessment procedures to identify compliance risks.

Finally, we will continue to enhance our reliance on information technology.

We anticipate that the following areas will remain high priorities during 2004:

- Market Timing
- Late Trading
- Sales Practices
- Best Execution
- Performance Calculations
- Internal Controls/ Risk Management
- Anti-Money Laundering
- Wrap and Managed Accounts
- Variable Annuity and Mutual Fund Sales

# Full Disclosure

## Overview

*“We are working diligently to enhance disclosure of important financial information. If market forces are also brought to bear, I am confident that together we will achieve that desirable objective, and markets will be better informed and more efficient as a result.”*

Alan Beller, Director  
Division of Corporation Finance

341 staff in the Division of Corporation Finance and 92 staff in the Office of Filings and Information Services:

- Reviewed Securities Exchange Act of 1934 (1934 Act) annual report filings of 2,975 reporting issuers.
- Reviewed 370 initial public offerings, 30 exempt offering filings of small business issuers, and 180 new issuer 1934 Act registration statements.
- Completed all 12 rulemaking projects required under the Sarbanes-Oxley Act of 2002.
- Provided advice to filers and investors through 500 no-action letters regarding shareholder proposals, 650 other no-action and interpretive letters, and responses to over 3,400 written inquiries (including e-mails) and over 37,000 telephone inquiries.

## Key Results

Issue	Result
Internal Control Over Financial Reporting	The Commission adopted rules to require that annual reports of public companies include a report of management on the company’s internal control over financial reporting.

Issue	Result
Electronic Filing of Insider Reports	The Commission adopted rules that require the electronic filing of beneficial ownership reports filed by officers, directors and principal security holders under Section 16(a) of the 1934 Act, and also require issuers with corporate websites to post these reports.
SRO Listing Standards Relating to Audit Committees	The Commission adopted a new rule directing all national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the audit committee requirements established by the Sarbanes-Oxley Act of 2002.
Disclosure of Off-balance Sheet Arrangements in the Management's Discussion and Analysis (MD&A)	The Commission adopted amendments that require each company to disclose all material off-balance sheet arrangements in its MD&A.
Regulation G Addressing Financial Information Presentations Based on Methodologies not in Accordance with Generally Accepted Accounting Principals (GAAP)	The Commission adopted new Regulation G prohibiting material misstatements or omissions in the presentation of non-GAAP financial measures and requiring reconciliation to GAAP.
The Division reviewed filings under the Securities Act of 1933 and 1934 Act on a selected basis to monitor and enhance compliance with disclosure and financial statement requirements. These filings included those of new issuers	and issuers already reporting under the 1934 Act.  The Sarbanes-Oxley Act requires the Commission to review each reporting issuer at least once every three years. The Division is currently

refining its review procedures to comply with this provision of the Sarbanes-Oxley Act and to ensure Division resources are

directed toward those issuers, filings, or industries that most warrant review.

Main Activities	Fiscal 2003	Fiscal 2002	% Change
Reporting Issuer Reviews	2,975 <u>a/</u>	2,570 <u>b/</u>	+16%
New Issuer Reviews <u>c/</u>	550	950	-42%
Total Issuer Reviews	3,525	3,520	--

a/ 23% of the 12,830 reporting companies that filed annual reports.

b/ 19% of the 13,550 reporting companies that filed annual reports.

c/ Includes reviews of 1933 Act registration statements, 1934 Act registrations by companies not previously reporting under the 1934 Act, and Regulation A filings.

## Significant Rulemaking, Interpretive and Related Matters

### Management's Report on Internal Control over Financial Reporting

The Commission adopted rules implementing the requirements in Section 404 of the Sarbanes-Oxley Act to require that the annual reports of public

companies include a report of management on the company's internal control over financial reporting.<sup>95</sup>

### Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5

The Commission adopted new rules and amendments to require the electronic filing of beneficial ownership reports filed by officers, directors and principal security holders under Section 16(a) of the 1934

Act, and to require issuers with corporate websites to post these reports.<sup>96</sup> The new rules and amendments implement the requirements of Section 16(a)(4), as amended by Section 403 of the Sarbanes-Oxley Act.

### Standards Relating to Listed Company Audit Committees

The Commission adopted new 1934 Act Rule 10A-3 directing all national securities exchanges and national securities associations to prohibit the listing of any

security of an issuer that is not in compliance with the audit committee requirements established by the Sarbanes-Oxley Act.<sup>97</sup>

### Disclosure in MD&A Regarding Off-Balance Sheet Arrangements

The Commission adopted amendments, pursuant to Section 401(a) of the Sarbanes-Oxley Act, that require each company to describe all off-balance sheet arrangements

that may have a material current or future effect on financial operations of the company and to provide a table of its contractual obligations in the Management's Discussion and Analysis.<sup>98</sup>

### Disclosure Regarding Audit Committee Financial Experts and Company Codes of Ethics

The Commission adopted rules implementing Sections 406 and 407 of the Sarbanes-Oxley Act.<sup>99</sup> These rules require a company to disclose in its annual report whether the company has a corporate code of ethics and a financial expert on its audit committee. The rules also require a company to

make available to the public a copy of its code of ethics, or the portion of the code that applies to the company's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions.

### Insider Trades During Pension Fund Blackout Periods

The Commission adopted rules implementing the requirements in Section 306(a) of the Sarbanes-Oxley Act, which prohibits any director or executive officer of an issuer from directly or indirectly purchasing, selling, or otherwise acquiring or

transferring any equity security of the issuer during a pension plan blackout period that prevents plan participants and beneficiaries from engaging in transactions involving issuer equity securities held in their plan accounts.<sup>100</sup>

### Conditions for Use of Non-GAAP Financial Information

The Commission adopted new Regulation G and an amendment to the Form 8-K to implement the requirements in Section 401(b) of the Sarbanes-Oxley Act.<sup>101</sup> The new regulation prohibits material misstatements or

omissions that would make the presentation of a non-GAAP financial measure, under the circumstances in which it is made, misleading and requires reconciliation of that measure to GAAP.

### Disclosure Regarding Nominating Committee Functions and Communications Between Security Holders and Boards of Directors

The Commission proposed rule changes designed to strengthen disclosure requirements relating to the nomination

of directors and shareholder communications with directors.<sup>102</sup>

### Security Holder Director Nominations

The Commission proposed rules that would require companies to disclose in their proxy materials the names of nominees for director that

are submitted by certain shareholders, as well as certain information relating to those nominees.<sup>103</sup>

Proposed Conditional Exemption for Foreign Banks from Section 13(k) of the 1934 Act

The Commission proposed a rule that would exempt foreign banks, subject to certain conditions, from the insider

lending prohibition in Section 13(k) of the 1934 Act, as added by Section 402 of the Sarbanes-Oxley Act.<sup>104</sup>

## Small Business Initiatives

SEC/NASAA Conference Under Section 19(c) of the 1933 Act

We conducted the 20th annual federal/state uniformity conference in April 2003 in Washington, D.C. Commission officials met with representatives of the North American Securities Administrators Association,

Inc. and other regulators to discuss methods of achieving greater uniformity in federal and state securities regulation and maximizing the effectiveness of such regulation.

SEC Government-Business Forum on Small Business Capital Formation

We conducted the 22nd annual Government-Business Forum on Small Business Capital Formation. The Forum is the only government-sponsored national gathering for small

businesses that offers small businesses an opportunity to let government officials know how laws, rules, and regulations affect their ability to raise capital.

## Outlook for 2004

Our main objectives are to:

- Make recommendations to the Commission regarding final rules, if any, designed to strengthen disclosure requirements relating to the nomination of directors and shareholder communications with directors.
- Make recommendations to the Commission regarding final rules, if any, that would require companies to disclose in their proxy materials the names of nominees for director that are submitted by certain shareholders, as well as certain information relating to those nominees.
- Make recommendations to the Commission regarding final rules, if any, relating to current disclosure on Form 8-K.
- Make recommendations to the Commission regarding proposed rules regarding disclosure and filing requirements for asset-backed securities.
- Make recommendations to the Commission regarding proposed rules regarding Securities Act of 1933 reform.
- Continue to refine the Division's disclosure review process.

# Accounting and Auditing Matters

## Overview

*“Everything we do is live, and we can’t just take a timeout. We must keep up the pace, but the result—significant improvement in the quality of financial reporting and improved corporate governance—is worth the effort.”*

Donald Nicolaisen  
SEC Chief Accountant

31 staff in the Office of Chief Accountant:

- Provided extensive oversight of the formation and start-up activities of the Public Company Accounting Oversight Board (PCAOB), an entirely new mechanism to regulate the auditing profession.
- Oversaw activities of the Financial Accounting Standards Board (FASB), including the development of new accounting standards to respond to recent corporate scandals.
- Conducted and participated in 12 rulemaking initiatives in response to the provisions of the Sarbanes-Oxley Act of 2002, including initiatives on auditor independence, off-balance sheet disclosures, and pro forma disclosures.
- Led efforts towards improvement and convergence in accounting and auditing standards through the International Organization of Securities Commissions (IOSCO) and by encouraging the FASB and the International Accounting Standards Board (IASB) to coordinate their agendas and eliminate existing differences.
- Increased our monitoring of, and interaction with, international organizations that establish accounting, auditing, and independence standards.

## Key Results

Issue	Result
Regulation of the Accounting Profession	The Commission issued an order announcing its determination that the PCAOB, established by the Sarbanes-Oxley Act of 2002 to regulate auditors of public companies, is so organized and has the capacity to carry out its responsibilities imposed under the statute. <sup>105</sup>
Deletion of Obsolete/Duplicative Guidance	The Commission staff issued a Staff Accounting Bulletin that codifies interpretive guidance of previous bulletins that is consistent with current accounting literature and SEC rules. <sup>106</sup>
Oversight of the Accounting Standard-Setting Process	The Commission staff issued to Congress a study and report on the adoption of a principles-based accounting system in the United States. <sup>107</sup>

Main Activities	Fiscal 2003	Fiscal 2002	% Change
U.S. Accounting Standard-Setting Projects and Issues Monitored	75	60	25%
International Accounting Standards and Interpretations Monitored	20	8	150%
Quality Reviews of Accounting Firms Subject to SEC Oversight	4	0	NA

## Significant Financial Reporting Accomplishments

### Regulation of the Accounting Profession

During the year, the Office of Chief Accountant worked closely with the PCAOB during its start-up phase to ensure that it was ready to perform its duties within the time period established by the Sarbanes-Oxley Act. This included obtaining Commission approval of rules covering the PCAOB's bylaws, code of ethics, process for setting auditing standards, and registration of auditing firms.

We also worked closely with the Offices of the Executive Director and Economic Analysis (OEA) to develop the PCAOB's support fee and budget, which the Commission also approved.

The accounting staff continued to work with the Transition Oversight Staff of the American Institute of Certified Public Accountants (AICPA) on peer reviews of auditing

firms and to transition to the PCAOB's investigations. We led the development of the Commission's new rules on auditor independence in response to the Sarbanes-Oxley Act. Key provisions include new rules that prohibit a number of non-audit services from being provided by the auditor to its client, restrict compensation to audit partners from selling non-audit services, and require periodic rotation of audit partners.

The Commission staff issued a frequently asked questions (FAQ) document to address implementation questions received by the staff regarding the SEC's new independence rules. Among other issues, the FAQ clarified the requirements for audit committee consideration of all non-audit services to be provided and expanded the available guidance on partner rotation.

### Accounting Standards

The Commission issued a policy statement that recognizes the FASB as a designated private sector accounting standard setter, in accordance with criteria set forth in Section 108 of the Sarbanes-Oxley Act. This action reiterated the importance and usefulness of the private sector standard setting effort.

The accounting staff oversaw the FASB's work to develop new accounting standards for guarantees, consolidation of special purpose entities, and distinguishing liabilities from equity, all of which were

problems highlighted by Enron and other corporate scandals.

The Sarbanes-Oxley Act mandated that the Commission conduct a study of the adoption by the United States financial reporting system of a principles-based accounting system. Congress recognized that questions remained regarding how accounting standards are established. Office of the Chief Accountant staff worked with OEA to draft and issue a staff report on the approach to standard setting in the United States. This report describes the optimal approach to writing accounting

standards as one that would include clearly stated objectives, a framework of implementation guidance, and

no arbitrary scope exceptions or bright-line tests and makes recommendations about how to proceed.

## Commission's Disclosure Rules

We participated in rulemaking projects to enhance disclosures of off-balance sheet activities and the use of *pro forma* information. Registrants must now explain why they believe the *pro forma* information is useful and reconcile that information to information prepared under Generally Accepted Accounting Principles. These new requirements provide important new information to investors.

We also participated in rulemaking to require

registrants, beginning in 2004 or 2005 depending upon their size, to annually assess the effectiveness of their internal controls and report on that assessment in their annual report. This is the first time public companies will be required to report on their internal control effectiveness.

We worked with the PCAOB to develop standards to facilitate auditor reporting on management's evaluation of internal control effectiveness. These standards are expected to be issued in January 2004.

## International Accounting and Auditing Activities

During 2003, we worked with the FASB and IASB to identify and begin eliminating key differences between U.S. and international accounting standards.

The accounting staff also participated in efforts to provide public interest oversight of the International Federation of Accountants, which sets standards for audits performed outside of the United States.

Finally, the accounting staff increased resources devoted to working with IOSCO Standing Committee No. 1 (SC1) on multinational accounting, auditing, and disclosure. SC1 provided input on all IASB and IFAC proposed standards, and issued important documents about principles of management's discussion and analysis disclosures, auditor independence and auditor oversight.

## Outlook for 2004

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Our main objectives are to:

- Oversee the PCAOB's regulation of the accounting profession.
  - Monitor compliance with the Commission's independence requirements and continue to oversee the FASB's accounting standard-setting projects.
  - Keep pace with the increasing workload of the IASB and multiple accounting standards and interpretations undertaken as part of the convergence project with the FASB.
  - Increase monitoring and oversight of international auditing standards development and joint efforts with foreign regulators to strengthen auditor oversight and audit quality assurance.
- Complete a study and report for the President and Congress on the use of and financial reporting for off-balance sheet transactions and the special purpose entities (entities with specified limited powers) used to facilitate such transactions. This is the Chief Accountant's last remaining directive under the Sarbanes-Oxley Act.
  - Resolve an increasing number of complex accounting and reporting issues commensurate with the expected influx of foreign private issuer registrants using international financial reporting standards.

# Other Litigation and Legal Activities

## Overview

*“The Commission’s job is looking out for investors. This includes, particularly after the Sarbanes-Oxley Act, calling for greater accountability by all categories of gatekeepers, including securities firms, banks and other financial intermediaries. As Chairman Donaldson has regularly emphasized, the Commission would like to see high ethical and legal standards become part of the DNA of all participants in our financial markets.”*

Giovanni Prezioso  
SEC General Counsel

111 staff in the Office of General Counsel and 13 staff in the regional and district offices:

- Provided analysis and advice to the Commission on 1,481 enforcement recommendations and 303 rulemakings.
- Successfully defended the Commission in 131 judicial and administrative proceedings.
- Opened 331 litigation cases and closed 332 cases.
- Drafted 90 adjudicatory opinions and 21 substantive draft orders responding to motions.

## Key Results

Issue	Result
Sarbanes-Oxley Act	Played a lead role in coordinating the agency’s implementation of the landmark Sarbanes-Oxley Act of 2002, facilitating the adoption of 15 rules and the launch of the Public Accounting Oversight Board (PCAOB).

Issue	Result
Promulgation of Rules of Attorney Conduct	The Commission adopted rules establishing standards of professional conduct for attorneys appearing and practicing before the Commission.
Enactment of the Accountant, Compliance and Enforcement Staffing Act of 2003	Provided substantial technical assistance to congressional staff and drafted agency testimony on legislation designed to give the SEC streamlined authority to hire accountants, economists, and examiners.
<i>SEC v. Edwards</i>	Supreme Court, as urged by the Commission, agreed to review a court of appeals decision holding that an investment scheme is excluded from the term investment contract in the definition of security if the promoter promises a fixed rather than variable return.
<i>Domestic Securities, Inc. v. SEC</i>	Court of appeals, agreeing with the Commission, refused to set aside two Commission orders allowing implementation of NASDAQ's SuperMontage electronic trading system.

Main Activities	Fiscal 2003	Fiscal 2002	% Change
Litigation Cases:			
Opened	331	291	+14%
Closed	332	293	+13%
Adjudicatory Matters Completed	69	39	+77%
Advisory Memoranda on Enforcement Matters	1,481	1,419	+5%
Corporate Reorganizations:			
Disclosure Statements Reviewed	274	288	-5%
Disclosure Statements Commented On	171	204	-16%

## Significant Litigation Accomplishments

### Definition of a Security

The Supreme Court granted the Commission's petition for Supreme Court review in *SEC v. Edwards*<sup>108</sup> to decide whether an investment scheme is excluded from the term investment contract in the definition of security if the promoter promises a fixed rather than variable return or if the investor is contractually entitled to a particular amount or rate of return. In *SEC v. ETS Payphones, Inc.*,<sup>109</sup> the Court of Appeals for the Eleventh Circuit held that certain payphone sale/leaseback/buyback agreements were not investment contracts, and thus not securities, under *SEC v. W.J. Howey, Co.*,<sup>110</sup> which described an investment contract as "contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter" or a third party. The court of appeals ruled that because the lease payments were fixed

they did not constitute profits. The court further held that even if the fixed payments were profits, another element of the Howey test was not met because the lease payments were not derived from the efforts of others since they were contractually guaranteed.

In its brief in the Supreme Court, the Commission argued that the court of appeals' holding on fixed returns is wrong under the Howey decision, which specifically refers to income as being a form of profits and cites with approval decisions under state Blue Sky laws that involved fixed returns. In addition, the Commission argued that the alternative holding—that any profits involved were not derived from the efforts of others because they were contractually guaranteed—is wrong because the efforts of others language turns on whether, as represented to potential investors, it is the

investors or the promoters who are to manage the enterprise expected to generate the profits,

not on whether the profits are provided for by contract. The case is awaiting decision.

## Insider Trading

In *SEC v. Yun*,<sup>111</sup> a case involving the tipping of non-public material information by the spouse of a corporate insider and trading by the tippee, the court of appeals held, agreeing with the Commission, that a duty of confidentiality sufficient to support insider trading liability exists where there

is an express agreement to keep business information confidential or a history or practice of sharing business confidences. The court of appeals also held, disagreeing with the Commission, that a tipper benefit is required in cases brought under the misappropriation theory of insider trading.

## Duty to Disclose Information That Is Not Firm-Specific or Is Publicly Available

The Commission filed a friend of the court brief in *Kapps v. Torch Offshore, Inc.*<sup>112</sup> urging, in an action under Section 11 of the Securities Act of 1933 for untrue statements and omissions in a registration statement, that, contrary to the holding of the district court, it is not an absolute defense to an action under Section 11

that the omitted information is not specific to the firm issuing the securities or is publicly available. The Commission also argued that the disclosure of trends required by Item 303 of Regulation S-K is not limited to trends that are firm-specific or that are not available to the public.

## Securities Act Registration

Agreeing with a friend of the court brief filed by the Commission in *DeMaria v. Anderson*,<sup>113</sup> the court of appeals held that an issuer whose prospectus is subject to Rule 3-12 of Regulation S-X, which provides that no interim financial results are required from an issuer that has filed a registration statement containing an audited financial statement as of a date within 135 days, must nevertheless report interim financial results if the failure to do so would amount to a material omission rendering what has been disclosed false or misleading. The court of appeals also agreed with the Commission that even though information

in a printed prospectus is deemed part of the electronic prospectus filed under EDGAR, if the information is left out of the electronic prospectus, the fact that it is included in the printed version does not necessarily insulate the issuer from Section 11 liability. The court agreed with the Commission's position that liability could exist if the correct information might not be obvious to a reasonable investor, and that since a reasonable investor might only read the incomplete electronic prospectus, the correct information in the printed prospectus might not be obvious to a reasonable investor.

In *Stolz v. Daum*,<sup>114</sup> the Commission filed a friend of the court brief in response to a request from the court of appeals. The court asked for the Commission's views as to "what event triggers the running of the three-year period of repose established in [Section 13 of the Securities Act] with respect to liability created under [Section 12(a)(1) of the Act], which prohibits the

sale of unregistered securities." The Commission argued that the three-year period is triggered when the security is first bona fide offered to the public. The Commission further argued that the phrase bona fide offered to the public in Section 13 also means that the three-year period is not triggered while an offering is conducted as a private offering.

### NASDAQ's SuperMontage Trading Platform

In *Domestic Securities, Inc. v. SEC*,<sup>115</sup> the court of appeals denied a petition for review of two orders of the Commission pertaining to implementation of the NASDAQ's SuperMontage electronic trading platform. The petition, filed on October 7, 2002, was dismissed as untimely insofar as it challenged the "decrementation" feature of the National Association of Securities Dealers' (NASD)

rules for the trading system, which had been approved as final by the Commission on January 19, 2001. The court also affirmed as supported by substantial evidence the Commission's August 29, 2002 order, which held that SuperMontage could begin operation because the NASD had created the required Alternative Display Facility, rejecting the petitioner's claim that the ADF was not adequate.

### Antitrust Immunity

The Commission filed a friend of the court brief in *In re Initial Public Offering Antitrust Litigation*,<sup>116</sup> at the request of the district court, in which it argued that the antitrust laws are impliedly repealed, with respect to the conduct challenged in that case, due to the Commission's pervasive

regulation. This is so, the Commission argued, whether or not the conduct alleged to have violated the antitrust laws also violates the securities laws. The district court recently ruled in favor of the position urged by the Commission and dismissed the antitrust class action.<sup>117</sup>

## Securities Investor Protection Corporation Coverage

At the request of the court of appeals, the Commission filed a friend of the court brief in *In re New Times Securities Services, Inc. and New Age Financial Services, Inc.*,<sup>118</sup> a case involving the reimbursement of customers of a failed broker-dealer firm by the Securities Investor Protection Corporation (SIPC) under the Securities Investor Protection Act (SIPA). The firm sold customers fictitious securities, and the firm sent confirmations or account statements reflecting that the customers made securities purchases. The Commission argued that the customers' claims for reimbursement under SIPA

were claims for securities within the meaning of Section 9(a) of SIPA, and therefore entitled to SIPC coverage up to \$500,000, rather than a claims for cash, for which coverage is limited to \$100,000. The Commission also argued that the customers' claims for reimbursement under SIPA are measured not by the fictitious value of the security (and fictitious dividends on the security) set forth by the firm on the customers' account statements but, rather, by the amount of money paid by the customers to the firm to purchase the security. The appeal is pending.

## Arbitrations Conducted by Self-Regulatory Organizations

*In Mayo v. Dean Witter Reynolds, Inc.*,<sup>119</sup> the district court agreed with the Commission's position, expressed in a friend of the court brief, that California's recently adopted disclosure requirements for arbitrators, and companion rules providing for disqualification of arbitrators and vacation of an arbitral award if those requirements are not met, cannot be applied to securities arbitrations conducted by securities industry SROs. The Commission argued that, in light of the Commission's comprehensive oversight of the SROs under the Securities Exchange Act of 1934 (Exchange Act), only the Commission could decide what disclosure and disqualification standards are appropriate for the protection of investors in SRO arbitration, and can ensure that those standards are part of an effective national system. Thus, the

California requirements, as applied to SRO arbitration, are preempted by federal law. The court also agreed with the Commission that the California requirements are preempted by the Federal Arbitration Act. The Commission reiterated these views in two later cases, which are still pending.<sup>120</sup>

In *Howsam v. Dean Witter Reynolds, Inc.*,<sup>121</sup> the Supreme Court, agreeing with the position urged by the Commission in a friend of the court brief, held that arbitrators, rather than courts, should initially apply the six-year eligibility requirement of the NASD for arbitrations conducted under its Code of Arbitration Procedure. The six-year rule is the sort of procedural issue that should be decided by arbitrators where the parties' arbitration agreement does not state otherwise.

The Commission filed a friend of the court brief in *Smith v. Dean Witter Reynolds, Inc.*,<sup>122</sup> taking the position that, where an arbitration agreement provided that disputes between a securities firm and its customer would be settled by arbitration, the customer did

not lose the right to pursue in court, within the period allowed by the applicable statute of limitations, a claim that was ineligible for arbitration under the New York Stock Exchange's six-year eligibility requirement. The appeal is pending.

## Other

In *SEC v. McCarthy & SEC v. Vittor*, the Ninth Circuit and the Eleventh Circuit both allowed the Commission to bring summary proceedings under Section 21(e)(1) of the Exchange Act against persons who had not paid fines or restitution awards imposed by SROs and affirmed by the Commission.

In *Production of Work Product to the Commission Pursuant to a Confidentiality Agreement*, we filed four *amicus curiae* briefs explaining why corporations that produce work product to the Commission pursuant to a confidentiality agreement should not lose work product protection for documents produced.

## Significant Legal Policy Developments

The Office of the General Counsel played a key role in the implementation of the Sarbanes-Oxley Act. This Act created a new oversight board for the accounting profession, mandated new measures intended to promote auditor independence, added new disclosure requirements for public companies, and strengthened both civil and criminal penalties for securities fraud. It also contained numerous directives for the Commission to promulgate

rules and complete studies. During fiscal 2003, the Commission completed the bulk of the Act's required rulemakings and studies, with January 2003 being the most prolific month for rulemakings in Commission history. The Office of the General Counsel assisted in this effort by coordinating implementation and advising the Commission on complex legal and policy issues.

## Significant Adjudicatory Developments

During the year, the Office of the General Counsel prepared for the Commission final action on 90 substantive matters: 69 adjudicatory opinions and 21 orders resolving substantive motions. As a result of this effort, at fiscal year-end, the office's adjudication docket had no pending cases that had not been sent to the Commission from years prior to fiscal 2003. This effort will facilitate effective implementation of the time frame adopted by the Commission in its revision of the Rules of Practice.

### Opinions

During fiscal 2003, we prepared opinions for the Commission's consideration stating that:

- In administrative proceedings that follow the entry of a consent antifraud injunction, the Commission would rely on the factual allegations of the injunctive complaint in determining appropriate remedial action and would not permit a respondent to contest, or deny, those factual allegations (*Marshall E. Melton*).
- In proceedings under Commission Rule of Practice 102(e), the Division of Enforcement

must prove that an auditor respondent was reckless with respect to the violation of professional standards, not that the auditor engaged in a type of recklessness approximating an actual intent to aid the fraud being perpetrated by the audited company (*Michael J. Marrie*).

- An offer to purchase a class of securities from current shareholders cannot exclude shareholders who cannot provide the prospective purchaser with a proxy to vote at an upcoming shareholders' meeting (*WHX Corp*).

We also prepared three opinions for the Commission addressing what must be disclosed to investors or prospective investors regarding the risks pertaining to certain investment vehicles known as derivatives; the three opinions addressed a specific type of derivative that is related to interest rates known in the investment industry as an inverse floater (*Kenneth R. Ward/Fundamental Portfolio Advisers, Inc./Piper Capital Management, Inc*).

## Significant Bankruptcy Developments

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During fiscal 2003, the Office of the General Counsel was:

- Successful in persuading debtor companies to eliminate provisions in 36 plans that were designed to protect officers, directors, and other related persons from claims of public investors for violations of the federal securities laws.
- Successfully blocked 10 plans' provisions that would have resulted in the creation of shell companies.
- Prevented in 6 cases the improper use of the Bankruptcy Code exemption from Securities Act registration.

## Outlook for 2004

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Our main objectives are to:

- Advise the Commission on developments relating to the implementation of the Sarbanes-Oxley Act and other areas of heightened focus for the Commission, including market structure.
- Advise the Commission on enforcement, rulemaking, and legislative developments relating to recent allegations of misconduct in the mutual fund industry.
- Monitor progress on pending legislation concerning, among other things, enhancement of the Commission's enforcement authority, class action reform, bankruptcy and derivatives, Commission appropriations, and repeal of the Public Utility Holding Company Act of 1935.
- Assist the Commission in considering alternative "reporting-out" proposals for possible addition to the recently implemented attorney conduct rules.
- Bring additional proceedings under Section 21(e)(1) of the Exchange Act to obtain court orders requiring payment of fines and restitution awards imposed by SROs and affirmed by the Commission.
- Assist the Commission in matters implicating adjudicatory issues, including a new source of administrative appeals, the PCAOB.
- Continue to monitor the high level of bankruptcy activity due to the large backlog of cases and high level of new proceedings.

# Office of Economic Analysis

## Overview

*“The growth and automation of the financial markets makes it imperative that the Commission use quantitative methods to increase the productivity of the Commission’s surveillance and rulemaking programs. The staff of the Office of Economic Analysis apply the latest econometric methods to help identify issues that otherwise might go unnoticed.”*

Larry Harris  
SEC Chief Economist

20 staff in the Office of Economic Analysis:

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

## Key Results

Issue	Result
Implications of the Growth of Hedge Funds	We collected and analyzed hedge fund data in support of the Commission-issued staff report of hedge funds. In particular, we examined hedge fund operations, their service providers, and their interactions with investors and the markets.

Issue	Result
Sarbanes-Oxley Act Study	We produced a study on the “Adoption by the U.S. Financial Reporting System of a Principles-Based Accounting System” in collaboration with the Office of the Chief Accountant.
Market Structure Issues	We assisted the Division of Market Regulation on a variety of market structure issues, including trade-throughs, access fees, exchange registration, market data, the impact of locked and crossed markets, short selling, and position limits for narrow-based futures contracts.
Analytical Tools	We developed analytical tools that allow Commission staff to identify trends in certain filings and extract information from documents posted to the Internet.
Evaluation of Breakpoint Compliance by Funds and Broker-dealers	We analyzed the potential magnitude of the harm to investors by the misappropriation of mutual fund breakpoint discounts and assisted in the design of the NASD breakpoint-related survey.

Main Activities	Fiscal 2003	Fiscal 2002	% Change
Reviews of Commission and SRO Rules	124	118	+5%
Regulatory Flexibility Analyses	81	67	+21%
Memoranda and Reports	159	143	+11%
Advice on Regulatory and Enforcement Issues	596	480	+24%

## Economic Analysis and Technical Assistance

### Implications of the Growth of Hedge Funds

At the direction of the Commission, the Division of Investment Management (IM), Office of Compliance Inspections and Examinations (OCIE), and Office of Economic Analysis undertook a fact-finding mission aimed at reviewing the operations and practices of hedge funds. Our role in this study involved

providing analytical support and guidance to OCIE and IM and collecting and processing data from a survey of industry participants conducted by OCIE. In addition, we acquired commercial data on the hedge fund industry from numerous providers and performed detailed quantitative analyses.

### Study Pursuant to Section 108(d) of the Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act mandated that the Commission conduct a study of the adoption by the United States financial reporting system of a principles-based accounting system. Congress recognized that questions remained regarding the approach by which accounting standards are established. As directed by the Act, we conducted a study of the approach to standard-setting in the U.S. We found that standards established on either a rules-based or a principles-only basis are likely to lead to lower quality financial reports. More specifically, we found that, on the one hand, principles-only standards

may present enforcement difficulties because they provide insufficient guidance or structure for exercising professional judgment by preparers and auditors. On the other hand, we found that rules-based standards often provide a vehicle for circumventing the intention of the standard. The study concluded that principles-based standards strike an appropriate balance between these extremes. As a result of our study, the staff recommended that those involved in the standard-setting process more consistently develop standards employing a principles-based approach.

### Market Structure Issues

The economic analysis staff provided economic advice and guidance on a variety of market structure issues, including trade-throughs, access fees, exchange registration, market data, the impact of locked and crossed markets, short selling, and position limits for narrow-based futures contracts. We provided economic analysis and advice on the market efficiency and

limit order protection impacts of permitting trades to execute up to three cents outside the quote in certain exchange traded funds, pursuant to a temporary exemption. The staff assisted the Commission with its review of significant structural issues in the equity and options markets, including those related to access fees, distribution of market data revenues, short sale regulation,

and trading increments. We also provided support and analysis regarding issuer share repurchases, the Nationally

Recognized Statistical Ratings Organizations concept release, and the TRACE bond transaction reporting system.

### Analytical Tools for Better Decision-making

During the year, we developed tools to be used by Commission staff as part of regular review of issuer filings. First, we developed a web-crawling software tool that allows staff members throughout the SEC to automatically collect data from any web-based source, including EDGAR. This tool helps staff to examine EDGAR

filings in real-time as they arrive. Second, we developed tools that allow for the electronic comparison of certain portions of issuer filings, such as the Management Discussion and Analysis filed as part of Form 10-K. This tool should assist the staff in classifying the quality of mandated disclosure of risks.

### Evaluation of Breakpoint Compliance by Funds and Broker-dealers

The economic analysis staff provided economic advice and guidance to IM and OCIE in evaluating breakpoint compliance by mutual funds and broker-dealers. We analyzed the potential magnitude of harm to investors by the misappropriation of mutual fund breakpoint discounts and assisted in

the design of the National Association of Securities Dealers' (NASD) survey. The NASD directed securities firms to conduct an assessment of their mutual fund transactions, using a statistically significant sample of the 2001 and 2002 transactions, from which overall performance was determined.

### Outlook for 2004

Our main objectives are to:

- Publish studies mandated by Congress, such as the Sarbanes-Oxley Act study of special purpose entities and a study of the impact of Section 31 fees on market participants and investors.
- Continue to advise the Commission and assist the staff by providing analysis in the areas of equity, debt and derivative securities market structure, disclosure, corporate governance, market

intermediaries, and investment management.

- Continue to work on applications that might aid our review processes, such as insuring that registrants are filing certifications required by the Sarbanes-Oxley Act of 2002. We expect that these techniques will allow the SEC to quickly obtain data from EDGAR that would not otherwise be easily available to us until the EDGAR filings are fully tagged.

## Endnotes

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- <sup>1</sup> *SEC v. Brightpoint, Inc., American International Group, Inc., Phillip Bounsall, John Delaney, and Timothy Harcharick*, Release No. AAER-1858 (Sept. 11, 2003); *In the Matter of Brightpoint, Inc.*, Release No. AAER-1854 (Sept. 11, 2003); *In the Matter of Phillip Bounsall*, Release No. AAER-1855 (Sept. 11, 2003); *In the Matter of Louis Lucullo*, Release No. AAER-1856 (Sept. 11, 2003); *In the Matter of American International Group, Inc.*, Release No. AAER-1857 (Sept. 11, 2003).
- <sup>2</sup> *SEC v. J.P. Morgan Chase & Co.*, Release No. AAER-1820 (July 28, 2003).
- <sup>3</sup> *In the Matter of Citigroup, Inc.*, Release No. AAER-1821 (July 28, 2003).
- <sup>4</sup> *SEC v. Henry Yuen and Elsie M. Leung*, Release No. AAER-1805 (June 20, 2003).
- <sup>5</sup> *SEC v. Paul A. Allaire, et al.*, Release No. AAER-1796 (June 5, 2003).
- <sup>6</sup> *SEC v. Kevin A. Howard, et al.*, Release No. AAER-1771 (May 1, 2003); *SEC v. Kevin A. Howard, et al.*, Release No. AAER-1738 (Mar. 12, 2003).
- <sup>7</sup> *In the Matter of HealthSouth Corporation, et al.*, Release No. AAER-1744 (Mar. 20, 2003); *SEC v. William T. Owens, et al.*, Release No. AAER-1750 (Apr. 1, 2003); *SEC v. Kenneth K. Livesay*, Release No. AAER-1752 (Apr. 4, 2003).
- <sup>8</sup> *SEC v. Merrill Lynch & Co., Inc., et al.*, Release No. AAER-1742 (Mar. 17, 2003).
- <sup>9</sup> *SEC v. Joel M. Arnold, et al.*, Release No. AAER-1726 (Feb. 25, 2003).
- <sup>10</sup> *SEC v. Andrew S. Fastow*, Release No. AAER-1640 (Oct. 2, 2002).
- <sup>11</sup> *In the Matter of Thomas C. Trauger and Michael Mullen*, AAER-1872 (Sept. 25, 2003); *In the Matter of Oliver Flanagan, Chartered Accountant* (Sept. 25, 2003).

- <sup>12</sup> *In the Matter of PricewaterhouseCoopers LLP*, Release No. AAER-1787 (May 22, 2003).
- <sup>13</sup> *SEC v. Kenneth Wichfort, et al.*, Release No. LR-18102 (Apr. 23, 2003).
- <sup>14</sup> *SEC v. KPMG LLP, et al.*, Release No. AAER-1709 (Jan. 29, 2003).
- <sup>15</sup> *In the Matter of American Rice Inc., et al.*, Release No. AAER-1710 (Jan. 30, 2003).
- <sup>16</sup> *SEC v. Syncor International Corp.*, Release No. AAER-1688 (Dec. 10, 2002).
- <sup>17</sup> *In the Matter of Raytheon Company, et al.*, Release No. 34-46897 (Nov. 25, 2002); *In the Matter of Secure Computing Corporation, et al.*, Release No. 34-46895 (Nov. 25, 2002); *In the Matter of Siebel Systems, Inc.*, Release No. 34-46896 (Nov. 25, 2002); *Report of Investigation in the Matter of Motorola, Inc.*, Release No. 34-46898 (Nov. 25, 2002).
- <sup>18</sup> *SEC v. Bear, Stearns & Co., Inc.*, Release No. LR-18109 (Apr. 28, 2003); *SEC v. Credit Suisse First Boston LLC*, Release No. LR-18110 (Apr. 28, 2003); *SEC v. Citigroup Global Markets, Inc.*, Release No. LR-18111 (Apr. 28, 2003); *SEC v. UBS Warburg LLC*, Release No. LR-18112 (Apr. 28, 2003); *SEC v. Goldman, Sachs & Co.*, Release No. LR-18113 (Apr. 28, 2003); *SEC v. J.P. Morgan Securities, Inc.*, Release No. LR-18114 (Apr. 28, 2003); *SEC v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, Release No. LR-18115 (Apr. 28, 2003); *SEC v. Lehman Brothers, Inc.*, Release No. LR-18116 (Apr. 28, 2003); *SEC v. Morgan Stanley & Co., Inc.*, Release No. LR-18117 (Apr. 28, 2003); *SEC v. U.S. Bancorp Piper Jaffray, Inc.*, Release No. LR-18118 (Apr. 28, 2003).
- <sup>19</sup> *In the Matter of Robertson Stephens, Inc.*, Release No. LR-17923 (Jan. 9, 2003)
- <sup>20</sup> *In the Matter of Deutsche Bank Securities, Inc.*, Release No. 34-46937 (Dec. 3, 2002).
- <sup>21</sup> *In the Matter of Prudential Securities, Inc.*, Release No. 34-48149 (July 10, 2003); *In the Matter of Robert Ostrowski, et al.*, Release No. 34-48150 (July 10, 2003).
- <sup>22</sup> *In the Matter of Theodore Charles Sihpol, III*, Release No. 34-48493 (Sept. 16, 2003).
- <sup>23</sup> *SEC v. Peter J. Davis, Jr., John M. Youngdahl, and Steven E. Northern*, Release No. LR-18322 (Sept. 4, 2003); *In the Matter of Massachusetts Financial Company*, Release No. IA-2165 (Sept. 4, 2003); *In the Matter of Goldman, Sachs & Co.*, Release No. 34-48436 (Sept. 4, 2003).
- <sup>24</sup> *SEC v. Martha Stewart, et al.*, Release No. LR-18169 (June 4, 2003).
- <sup>25</sup> *SEC v. Vivendi Universal*, Release No. LR-18352 (Sept. 16, 2003).
- <sup>26</sup> *In the Matter of Corrpro*, Release No. LR-18382 (Oct. 1, 2003).
- <sup>27</sup> *SEC v. Beacon Hill Asset Management LLC*, Release No. LR-17841 (Nov. 15, 2002).
- <sup>28</sup> Release No. 34-47384 (Feb. 20, 2003), 68 FR 9482 (Feb. 27, 2003).
- <sup>29</sup> Release No. 34-48252 (July 29, 2003), 68 FR 45875 (Aug. 4, 2003).
- <sup>30</sup> Release No. 34-48108 (June 30, 2003), 68 FR 39995 (July 3, 2003).

- <sup>31</sup> Release No. 34-47364 (Feb. 13, 2003), 68 FR 8686 (Feb. 24, 2003).
- <sup>32</sup> See <<http://www.sec.gov/news/press/2003-147.htm>>.
- <sup>33</sup> Release No. 33-8236 (June 4, 2003), available on the SEC website at <http://www.sec.gov/rules/concept/33-8236.htm>.
- <sup>34</sup> Release No. 34-47384 (Feb. 20, 2003), 68 FR 9482 (Feb. 27, 2003).
- <sup>35</sup> Release No. 34-48252 (July 29, 2003), 68 FR 45875 (Aug. 4, 2003).
- <sup>36</sup> Release No. 34-48545 (Sept. 25, 2003), 68 FR 56656 (Oct. 1, 2003).
- <sup>37</sup> Release No. 34-47638 (Apr. 7, 2003), 68 FR 17809 (Apr. 11, 2003).
- <sup>38</sup> Release No. 34-47231 (Jan. 22, 2003), 68 FR 4258 (Jan. 28, 2003).
- <sup>39</sup> See letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation, to Michael Ryan, Executive Vice President, Amex; Joanne Moffic-Silver, General Counsel and Corporate Secretary, CBOE; Kathryn Beck, Senior Vice President, General Counsel and Corporate Secretary, PCX; and Lanny Schwartz, Executive Vice President and General Counsel, Phlx, dated May 30, 2003. See also Release Nos. 34-43086 (July 28, 2000), 65 FR 48023 (Aug. 4, 2000) (order approving the Linkage Plan submitted by Amex, CBOE and ISE); 34-43574 (Nov. 16, 2000), 65 FR 70850 (Nov. 28, 2000) (order approving the PCX as participant in the Options Intermarket Linkage Plan); and 34-43573 (Nov. 16, 2000), 65 FR 70851 (Nov. 28, 2000) (order approving the Phlx as a participant in the Options Intermarket Linkage Plan).
- <sup>40</sup> Release No. 34-47959 (May 30, 2003), 68 FR 34441 (June 9, 2003).
- <sup>41</sup> Release No. 34-47838 (May 13, 2003), 68 FR 27129 (May 19, 2003).
- <sup>42</sup> Release No. 34-47614 (Apr. 2, 2003), 68 FR 17140 (Apr. 8, 2003).
- <sup>43</sup> Release No. 34-48390 (Aug. 21, 2003), 68 FR 51613 (Aug. 27, 2003).
- <sup>44</sup> Release Nos. 34-46792 (Nov. 8, 2002), 67 FR 69273 (Nov. 15, 2002) (SR-CME-2002-01); 46774 (Nov. 5, 2002), 67 FR 68895 (Nov. 13, 2002) (SR-NQLX-2002-02); and 46787 (Nov. 7, 2002), 67 FR 69059 (Nov. 14, 2002) (SR-OC-2002-01).
- <sup>45</sup> Letter regarding the Nasdaq Stock Market, Inc. (pub. avail. Sept. 26, 2003).
- <sup>46</sup> Letter regarding Goldman, Sachs & Co. (pub. avail. Aug. 14, 2003).
- <sup>47</sup> See <<http://www.FATF-GAFI.org>>.
- <sup>48</sup> See, e.g., Release No. 34-47752 (Apr. 29, 2003), 68 FR 25113 (May 9, 2003); 68 FR 23646 (May 5, 2003); 68 FR 23653 (May 5, 2003); and 67 FR 78383 (Dec. 24, 2002).
- <sup>49</sup> Release No. 34-47752 (May 9, 2003), 68 FR 25113 (May 9, 2003).
- <sup>50</sup> 537 U.S. 29 (2002).
- <sup>51</sup> *Mayo v. Dean Witter Reynolds, Inc.*, 258 F.Supp.2d 1097 (N.D. Cal. 2003); *NASD Dispute Resolution, Inc. v. Judicial Council of California*, 232 F.Supp.2d 1055 (N.D. Cal. 2002).
- <sup>52</sup> Release Nos. 34-46881 (Nov. 21, 2002), 67 FR 71224 (Nov. 29,

2002); 34-46816 (Nov. 12, 2002), 67 FR 69793 (Nov. 19, 2002); 34-46562 (Sept. 26, 2002), 67 FR 62085 (Oct. 3, 2002); 34-47872 (May 15, 2003), 68 FR 28869 (May 27, 2003); 34-48351 (Aug. 15, 2003), 68 FR 50822 (Aug. 22, 2003); 34-48711 (Oct. 29, 2003), 68 FR 62490 (Nov. 4, 2003); 34-47734 (Apr. 24, 2003), 68 FR 23351 (May 1, 2003); 34-48553 (Sept. 26, 2003), 68 FR 57494 (Oct. 3, 2003); and 34-48187 (July 16, 2003), 68 FR 43553 (July 23, 2003).

<sup>53</sup> See “Report on the Role and Function of Credit Rating Agencies in the Operation of the Securities Markets, as required by Section 702(b) of the Sarbanes-Oxley Act of 2002, U.S. Securities and Exchange Commission” (January 2003), located at <http://www.sec.gov/news/studies/credratingreport0103.pdf>.

<sup>54</sup> Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, §702(b), 116 Stat. 745 (2002).

<sup>55</sup> “The Current Role and Function of Credit Rating Agencies in the Operation of the Securities Markets, Hearings Before the U.S. Securities and Exchange Commission” (Nov. 15 and 21, 2002). Full hearing transcripts are available on the SEC website at <http://www.sec.gov/spotlight/ratingagency.htm>.

<sup>56</sup> Release No. 33-8236 (June 4, 2003), 68 FR 35258 (June 12, 2003).

<sup>57</sup> Letter from Annette L. Nazareth, Director, Division of Market Regulation, to Mari-Anne Pisarri, Pickard and Djinis LLP, regarding Dominion Bond Service Rating Limited (pub. avail. February 24, 2003).

<sup>58</sup> Release No. 34-48272 (Aug. 1, 2003), 68 FR 46446 (Aug. 6, 2003).

<sup>59</sup> Letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, to Elaine Michitsch, Member Firm Regulation, New York Stock Exchange, Inc. and Susan Demando, Director, Financial Operations, NASD Regulation, Inc. (pub. avail. July 11, 2003).

<sup>60</sup> Release No. 34-47480 (Mar. 11, 2003), 68 FR 12780 (Mar. 17, 2003).

<sup>61</sup> Release No. 47683 (Apr. 16, 2003), 68 FR 19864 (Apr. 22, 2003).

<sup>62</sup> Release No. 34-47480 (Mar. 11, 2003), 68 FR 12780 (Mar. 17, 2003).

<sup>63</sup> Release No. 34-47910 (May 22, 2003), 68 FR 32308 (May 29, 2003).

<sup>64</sup> Release No. 34-44992 (Oct. 26, 2001), 66 FR 55818 (Nov. 2, 2001).

<sup>65</sup> Release No. 34-47806 (May 7, 2003), 68 FR 25281 (May 12, 2003).

<sup>66</sup> Release No. IC-25914 (Jan. 27, 2003), 68 FR 5348 (Feb. 3, 2003).

<sup>67</sup> Release No. IC-25915 (Jan. 28, 2003), 68 FR 6006 (Feb. 5, 2003).

<sup>68</sup> Release No. IC-26001 (Apr. 9, 2003), 68 FR 18788 (Apr. 16, 2003).

<sup>69</sup> Release No. IC-25914 (Jan. 27, 2003), 68 FR 5348 (Feb. 3, 2003).

<sup>70</sup> *Id.*

<sup>71</sup> Release No. IC-25922 (Jan. 31, 2003), 68 FR 6564 (Feb. 7, 2003).

<sup>72</sup> Release No. IC-26195 (Sept. 29, 2003), 68 FR 57760 (Oct. 6, 2003).

<sup>73</sup> Release No. IC-26031 (Apr. 29, 2003), 68 FR 25131 (May 9, 2003).

- <sup>74</sup> Release No. IC-25888 (Jan. 14, 2003), 68 FR 3142 (Jan. 22, 2003).
- <sup>75</sup> Release Nos. IC-25835 (Nov. 26, 2002), 67 FR 71915 (Dec. 3, 2003) (proposed rule) and IC-26077 (June 16, 2003), 68 FR 37046 (June 20, 2003) (final rule).
- <sup>76</sup> Release No. IC-25925 (Feb. 5, 2003), 68 FR 7038 (Feb. 11, 2003).
- <sup>77</sup> Release No. IC-25870 (Dec. 18, 2002), 68 FR 160 (Jan. 2, 2003).
- <sup>78</sup> Societe Generale, *et al.*, Release Nos. IC-26063 (May 29, 2003) (notice) and IC-26081 (June 24, 2003) (order); Merrill Lynch Principal Protected Trust, *et al.*, Release Nos. IC-26164 (Aug. 20, 2003) (notice) and IC-26180 (Sept. 16, 2003) (order).
- <sup>79</sup> UBS Global Asset Management (US) Inc., *et al.*, Release Nos. IC-25738 (Sept. 18, 2002) (notice) and IC-25767 (Oct. 11, 2002) (order); BLDRS Index Funds Trust, *et al.*, Release Nos. IC-25772 (Oct. 17, 2002) (notice) and IC-25797 (Nov. 8, 2002) (order); Rydex ETF Trust, *et al.*, Release Nos. IC-25948 (Feb. 27, 2003) (notice) and IC-25970 (Mar. 25, 2003) (order); PowerShares Exchange-Traded Fund Trust, *et al.*, Release Nos. IC-25961 (Mar. 4, 2003) (notice) and IC-25985 (Mar. 28, 2003) (order); Fidelity Commonwealth Trust, *et al.*, Release Nos. IC-26166 (Aug. 22, 2003) (notice) and IC-26178 (Sept. 12, 2003) (order).
- <sup>80</sup> Barclays Global Fund Advisors, *et al.*, Release Nos. IC-26151 (Aug. 15, 2003) (notice) and IC-26175 (Sept. 8, 2003) (order).
- <sup>81</sup> iShares Trust, *et al.*, Release Nos. IC-25969 (Mar. 21, 2003) (notice) and IC-26006 (Apr. 15, 2003) (order).
- <sup>82</sup> Nicholas-Applegate Capital Management, *et al.*, Release Nos. IC-25876 (Dec. 23, 2002) (notice) and IC-25906 (Jan. 21, 2003) (order).
- <sup>83</sup> The France Growth Fund, Inc. (pub. avail. July 15, 2003).
- <sup>84</sup> Tuition Plan Consortium (pub. avail. Feb. 4, 2003).
- <sup>85</sup> Investment Company Institute (pub. avail. Nov. 13, 2002).
- <sup>86</sup> "Implications of the Growth of Hedge Funds" (Sept. 2003), available at <http://www.sec.gov/news/studies/hedgefunds0903.pdf>.
- <sup>87</sup> Release No. IA-2106 (Jan. 31, 2003), 68 FR 6585 (Feb. 7, 2003).
- <sup>88</sup> Release No. IA-2176 (Sept. 25, 2003), 68 FR 56692 (Oct. 1, 2003).
- <sup>89</sup> Release No. IA-2107 (Feb. 5, 2003), 68 FR 7037 (Feb. 11, 2003) (proposing release).
- <sup>90</sup> Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Investment Advisers (Apr. 28, 2003), 68 FR 23646 (May 5, 2003).
- <sup>91</sup> Dougherty & Company LCC (pub. avail. Mar. 21, 2003 and July 3, 2003).
- <sup>92</sup> Release Nos. 35-27579 (Oct. 17, 2002), 35-27652 (Feb. 21, 2003), 35-27701 (July 23, 2003).
- <sup>93</sup> See Initial Decision Release No. 222 (Feb. 6, 2003).
- <sup>94</sup> Release No. 35-27681 (May 29, 2003).
- <sup>95</sup> Release No. 33-8238 (June 5, 2003), 68 FR 36636 (June 18, 2003).
- <sup>96</sup> Release No. 33-8230 (May 7, 2003), 68 FR 25788 (May 13, 2003).
- <sup>97</sup> Release No. 33-8220 (Apr. 9, 2003), 68 FR 18788 (Apr. 16, 2003).
- <sup>98</sup> Release No. 33-8182 (Jan. 28, 2003), 68 FR 5982 (Feb. 5, 2003).
- <sup>99</sup> Release No. 33-8177 (Jan. 23, 2003), 68 FR 5110 (Jan. 31, 2003).
- <sup>100</sup> Release No. 34-47225 (Jan. 22, 2003), 68 FR 4338 (Jan. 28, 2003).

- <sup>101</sup> Release No. 33-8176 (Jan. 22, 2003), 68 FR 4820 (Jan. 30, 2003).
- <sup>102</sup> Release No. 34-48301 (Aug. 8, 2003), 68 FR 48724 (Aug. 14, 2003).
- <sup>103</sup> Release No. 34-48626 (Oct. 14, 2003), 68 FR 60784 (Oct. 23, 2003).
- <sup>104</sup> Release No. 34-48481 (Sept. 11, 2003), 68 FR 54590 (Sept. 17, 2003).
- <sup>105</sup> Release No. 33-8223 (Apr. 25, 2003), 68 FR 84 (May 1, 2003).
- <sup>106</sup> “Staff Accounting Bulletin No. 103, Update of Codification of Staff Accounting Bulletins” (May 9, 2003).
- <sup>107</sup> “Study Pursuant to Section 108(d) of the Sarbanes-Oxley Act of 2002 on the Adoption by the United States of a Principles-Based Accounting System” (July 31, 2003).
- <sup>108</sup> 123 S. Ct. 1788 (cert. granted April 21, 2003).
- <sup>109</sup> 300 F.3d 1281 (11<sup>th</sup> Cir. 2002).
- <sup>110</sup> 328 U.S. 293 (1946).
- <sup>111</sup> 327 F.3d 1263 (11<sup>th</sup> Cir. 2003).
- <sup>112</sup> No. 03-30227 (5<sup>th</sup> Cir.).
- <sup>113</sup> 318 F.3d 170 (2<sup>d</sup> Cir.).
- <sup>114</sup> No. 02-7680 (2<sup>d</sup> Cir.).
- <sup>115</sup> 333 F.3d 239 (D.C. Cir. 2003).
- <sup>116</sup> No. 01 CIV 2014 (S.D.N.Y.).
- <sup>117</sup> 2003 WL 22474835 (S.D.N.Y. Nov. 3, 2003).
- <sup>118</sup> No. 02-6166 (2<sup>d</sup> Cir.).
- <sup>119</sup> 260 F. Supp. 2d 979 (N.D. Cal. 2003).
- <sup>120</sup> *Credit Suisse First Boston Corp. v. Grunwald*, No. 03-15695 (9<sup>th</sup> Cir.); *Jevne, et al. v. Superior Court (JB Oxford Holdings, Inc., et al.)*, 2d Civ. No. B167044 (LASC Case No. SC 062784)(Cal. App.).
- <sup>121</sup> 537 U.S. 79 (2002).
- <sup>122</sup> No. 02-6158 (6<sup>th</sup> Cir.).

# Appendices

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# Commission Members and Principal Staff Officers

As of November 4, 2003

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## Commission Members

Term Expires June 5

<b>William H. Donaldson</b> , <i>Chairman</i>	2007
<b>Cynthia A. Glassman</b> , <i>Commissioner</i>	2006
<b>Harvey J. Goldschmid</b> , <i>Commissioner</i>	2004
<b>Paul S. Atkins</b> , <i>Commissioner</i>	2008
<b>Roel C. Campos</b> , <i>Commissioner</i>	2005

## Principal Staff Officers

**Managing Executive for  
Policy and Staff**  
Patrick Von Bargaen

**Division of Enforcement**  
Stephen M. Cutler, Director

**Managing Executive for  
Operations**  
Peter Derby

**Division of Investment  
Management**  
Paul F. Roye, Director

**Managing Executive for  
External Affairs**  
Laura Cox

**Division of Market  
Regulation**  
Annette L. Nazareth, Director

**Executive Director**  
James M. McConnell

**Office of the General  
Counsel**  
Giovanni P. Prezioso, General  
Counsel

**Division of Corporation  
Finance**  
Alan L. Beller, Director

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

**Office of Administrative Law Judges**

Brenda P. Murray, Chief  
Administrative Law Judge

**Office of Chief Accountant**

Donald T. Nicolaisen,  
Chief Accountant

**Office of Economic Analysis**

Lawrence E. Harris, Chief  
Economist

**Office of Equal Employment Opportunity**

Deborah K. Balducchi, Director

**Office of Filings and Information Services**

Kenneth A. Fogash, Associate  
Executive Director

**Office of Financial Management**

Margaret J. Carpenter,  
Associate Executive Director  
(Finance)

**Office of Human Resources and Administrative Services**

Jayne L. Seidman, Associate  
Executive Director  
(Administration/Personnel)

**Office of Information Technology**

Kenneth Fogash, Associate  
Executive Director (Information  
Technology) (Acting)

**Office of International Affairs**

Ethiopsis Tafara, Director

**Office of Investor Education and Assistance**

Susan Ferris Wyderko, Director

**Office of Legislative Affairs**

Jane O. Cobb, Director

**Office of Public Affairs**

Vacant

**Office of the Secretary**

Jonathan G. Katz, Secretary

## Biographies of Commission Members

Chairman  
William H. Donaldson



On February 18, 2003, William H. Donaldson became the 27<sup>th</sup> Chairman of the U.S. Securities and Exchange Commission, after being confirmed by the United States Senate.

As SEC Chairman, Mr. Donaldson is the chief regulator of America's securities markets and the chief enforcer of America's securities laws.

A graduate of Yale and Harvard Business School, and a Marine Corp veteran, Mr. Donaldson has spent more than 40 years at the highest levels of business, government, and academia. He was a co-founder and CEO of the international investment bank and stock research firm Donaldson, Lufkin & Jenrette; the founder of Yale University's School of Management, where he served as Dean and Professor of Management Studies; an Under Secretary of State in

the Nixon Administration and later counsel and special adviser to Vice President Rockefeller; the Chairman and CEO of the New York Stock Exchange; and Chairman, President, and CEO of Aetna.

Mr. Donaldson's career reflects an interest in nurturing and managing human and financial resources, through strategies that enhance productivity by encouraging mutual respect and cooperation between employees. As SEC Chairman, Donaldson is dedicated to holding accountable all those who have violated the public trust, demanding responsible corporate governance throughout the business and financial world, and strengthening America's market structure—making the securities markets more efficient, more transparent, and friendlier to all investors, particularly small investors.

Commissioner  
Cynthia A. Glassman, Ph.D.



Cynthia A. Glassman was appointed by President Bush to the U.S. Securities and Exchange Commission and sworn in on January 28, 2002.

Prior to being appointed Commissioner, Dr. Glassman spent over 30 years in the public and private sectors focusing on financial services, regulatory and public policy issues. She spent the first 12 years of her career at the Federal Reserve, first at the Federal Reserve Bank of Philadelphia and subsequently at the Board of Governors, where her positions included Chief of the Financial Reports Section and Special Assistant to Governor Henry C. Wallich. While at the Board of Governors, Dr. Glassman spent one year on assignment to the U.S. Department of the Treasury as Senior Economist in the Office of Capital Markets Legislation during the Carter Administration. Subsequently, she spent two years at Economists Incorporated, eight years at Furash & Company,

where she was the Managing Director of the financial services regulatory and public policy practices, and five years at Ernst & Young, in the Risk Management and Regulatory Practice and the Quantitative Economics and Statistics group.

Dr. Glassman taught economics at the University of Cambridge, England, where she remains as a Senior Member of Lucy Cavendish College. She has served on the Boards of the Federal Reserve Board Credit Union, the National Economists Club, Women in Housing and Finance, and the Commission on Savings and Investment in America, and was on the Executive Advisory Committee for the Bank Administration Institute's Certified Risk Professional Certification Program.

Dr. Glassman received her M.A. and Ph.D. in Economics from the University of Pennsylvania and her B.A. in Economics from Wellesley College.

Commissioner  
Harvey Goldschmid



Harvey J. Goldschmid is a Commissioner at the United States Securities and Exchange Commission. He is on leave from the Columbia University School of Law, where he serves as Dwight Professor of Law. He has served as Dwight Professor since 1984, and was an Assistant Professor (1970-71), an Associate Professor (1971-73), and a Professor of Law (1973-84) at Columbia. In 1998-99, Professor Goldschmid served as General Counsel (chief legal officer) of the SEC, and from January 1 to July 15, 2000, he was Special Senior Advisor to SEC Chairman Arthur Levitt.

Professor Goldschmid is the author of numerous publications on corporate, securities, and antitrust law. He is a frequent lecturer at national and international legal programs and seminars. He received the 1999 Chairman's Award for Excellence from the SEC, and several teaching awards, including Columbia Law School's Willis L.M. Reese Award for Excellence in Teaching in both 1996 and 1997.

From 1980-93, Professor Goldschmid served as a Reporter for the American Law Institute's Corporate Governance Project. From 2000-01, he served as Chair of the Nominating Committee, and in 1998, completed a term as Treasurer and a member of the Executive Committee (i.e., Board of Directors) of the Association of the Bar

of the City of New York, where Professor Goldschmid previously served as Chair of the Executive Committee, Chair of the Committee on Securities Regulation, and Chair of the Committee on Antitrust and Trade Regulation. He also has served as Chair of the Section on Antitrust and Economic Regulation of the Association of American Law Schools and as Founding Director of Columbia University's Center for Law and Economic Studies. He served in 1997-98 as a consultant to both the Federal Trade Commission and the SEC, and during this period, was a member of the Legal Advisory Committee (and Chair of its Subcommittee on Corporate Governance) of the New York Stock Exchange.

Professor Goldschmid received his J.D., magna cum laude, from the Columbia University School of Law in 1965 and a B.A., also magna cum laude, from Columbia College in 1962. He was Articles Editor of the Columbia Law Review and a member of Phi Beta Kappa. His publications include *Cases and Materials on Trade Regulation* (4<sup>th</sup> ed. 1997) (with Handler, Pitofsky, and Wood); *The Impact of the Modern Corporation* (1984) (with Bock, Millstein, and Scherer); *Business Disclosure: Government's Need to Know* (1979); and *Industrial Concentration: The New Learning* (1974) (with Mann and Weston).

Commissioner  
Paul S. Atkins



Paul S. Atkins was appointed by President George W. Bush to be a commissioner of the Securities and Exchange Commission on July 29, 2002. After serving as a commissioner for over one year, he was renominated by President Bush on September 3, 2003. He was reconfirmed by the Senate on Oct. 24, 2003.

Commissioner Atkins' 20-year career has focused on the financial services industry and securities regulation. Before his appointment as commissioner, he assisted financial services firms in improving their compliance with SEC regulations and worked with law enforcement agencies to investigate and rectify situations where investors had been harmed. The largest of these investigations involved the Bennett Funding Group, Inc., a \$1 billion leasing company that perpetrated the largest "Ponzi" fraud in U.S. history, in which more than 20,000 investors lost much of their investment. Assisting the company's court-appointed bankruptcy trustee, he served as crisis president of Bennett's sole surviving subsidiary. By stabilizing its finances and operations and rebuilding and expanding its business, Commissioner Atkins improved its share value for the remaining investors by almost 2000%.

From 1990-94, Commissioner Atkins served on the staff of two former chairmen of the SEC, Richard C. Breeden and Arthur Levitt, ultimately as executive assistant and counsellor, respectively. Under Chairman Breeden,

he assisted in efforts to improve regulations regarding corporate governance, enhance shareholder communications, strengthen management accountability through proxy reform, and decrease barriers to entry for small businesses and middle market companies to the capital markets. Under Chairman Levitt, he was responsible for organizing the SEC's individual investor program, including the first investor town hall meetings, an SEC consumer affairs advisory committee, and other investor education efforts, including the original *Invest Wisely* brochures regarding the fundamentals of the retail brokerage relationship and mutual fund investment.

Commissioner Atkins began his career as a lawyer in New York City, focusing on a wide range of corporate transactions for U.S. and foreign clients, including public and private securities offerings and mergers and acquisitions. He was resident for 2½ years in his firm's Paris office and admitted as *conseil juridique* in France in 1988.

A member of the New York and Florida bars, Commissioner Atkins received his J.D. from Vanderbilt University School of Law in 1983 and was Senior Student Writing Editor of the *Vanderbilt Law Review*. He received his A.B. from Wofford College in 1980 and was a member of Phi Beta Kappa. Originally from Lillington, North Carolina, Commissioner Atkins grew up in Tampa, Florida. He is married with three sons, aged 10, 7, and 3.

Commissioner  
Roel C. Campos



Roel C. Campos was nominated to the Securities and Exchange Commission by President George W. Bush on July 16, 2002 and confirmed by the Senate on July 25, 2002. He was sworn in as a Commissioner on August 22, 2002.

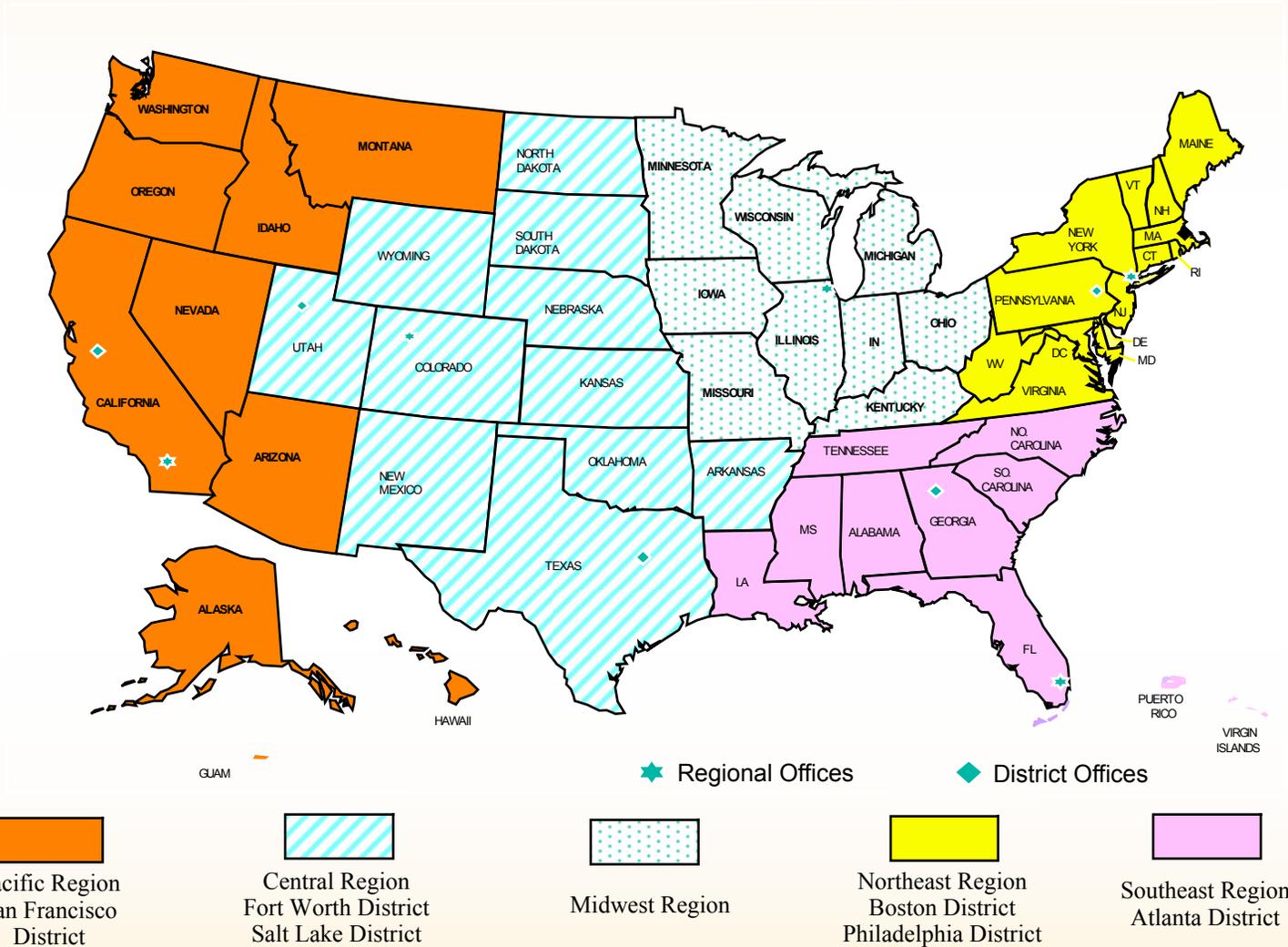
Prior to being nominated to the Commission, Mr. Campos was one of two principal owners of El Dorado Communications and served as an executive with the radio broadcasting company at its headquarters in Houston, Texas. Mr. Campos began his career, however, with the government, serving as an officer in the U.S. Air Force. For the next 15 years, he worked in Los Angeles, California for major law firms as a corporate transactions/ securities lawyer and litigator. Campos served in the government for a second time beginning in 1985 as a federal

prosecutor for several years in the U.S. Attorney's Office in Los Angeles. He successfully prosecuted complex and violent narcotics cartels. He also investigated and prosecuted major government contractors for fraudulent conduct. After being in private law practice for several years, he co-founded El Dorado Communications, Inc. Now, he has returned to the public sector.

Mr. Campos earned his J.D. from Harvard Law School (1979), his MBA from UCLA (1972) and his BS from the U.S. Air Force Academy (1971).

Mr. Campos was born in Harlingen, Texas, of Mexican-American parents. He married his high school sweetheart, Mini Villarreal, who now practices medicine in Houston, Texas. They have two boys, David, 16 and Daniel, 12.

# SEC Regional and District Offices



# Regional and District Offices

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# U.S. Securities and Exchange Commission

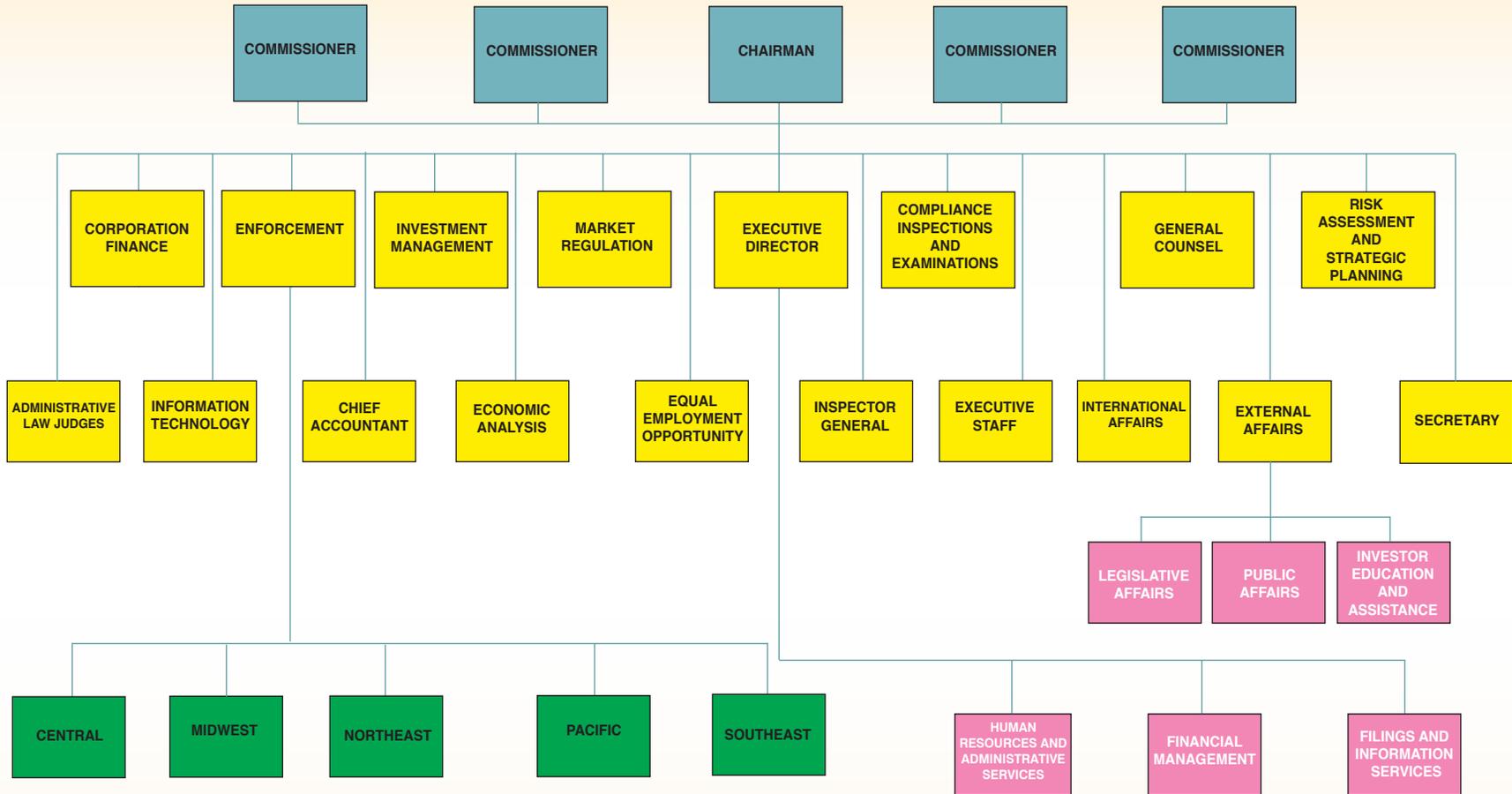


Table 1

**ENFORCEMENT ACTIONS INITIATED BY THE COMMISSION  
DURING FISCAL YEAR 2003 IN VARIOUS PROGRAM AREAS**

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

Primary Classification	Civil Actions		Administrative Proceedings		21A Reports		Total	% of Total Actions	
Securities Offering Cases	69	(287)	40	(50)	0	(0)	109	(337)	16%
Broker-Dealer Cases									
(a) Fraud Against Customer	16	(20)	59	(82)	0	(0)	75	(102)	
(b) Failure to Supervise	0	(0)	10	(18)	0	(0)	10	(18)	
(c) Government/Municipal Securities	0	(0)	1	(1)	0	(0)	1	(1)	
(d) Books & Records	0	(0)	0	(0)	0	(0)	0	(0)	
(e) Other	13	(54)	35	(49)	0	(0)	51	(103)	
Total Broker-Dealer Cases	32	(74)	105	(150)	0	(0)	137	(224)	20%
Issuer Financial Statement and Reporting Cases									
(a) Issuer Financial Disclosure	82	(214)	98	(122)	0	(0)	180	(363)	
(b) Issuer Reporting Other	7	(15)	11	(15)	1	(1)	19	(31)	
Total Issuer Financial Statement & Reporting Cases	89	(229)	109	(137)	1	(1)	199	(367)	29%
Other Regulated Entity Cases									
(a) Investment Advisers	15	(42)	48	(68)	0	(0)	63	(110)	
(b) Investment Companies	4	(5)	5	(9)	0	(0)	9	(14)	
(c) Transfer Agents	1	(3)	3	(6)	0	(0)	4	(9)	
(d) SROs	0	(0)	1	(1)	0	(0)	1	(1)	
Total Other Regulated Entity Cases	20	(50)	57	(84)	0	(0)	77	(134)	11%
Insider Trading Cases	37	(91)	13	(13)	0	(0)	50	(104)	7%
Market Manipulation Cases	15	(83)	17	(21)	0	(0)	32	(104)	5%
Delinquent Filings Cases									
(a) Issuer Reporting	1	(3)	10	(22)	0	(0)	11	(25)	
(b) Forms 3 & 4	0	(0)	0	(0)	0	(0)	0	(0)	
Total Delinquent Filings Cases	1	(3)	10	(22)	0	(0)	11	(25)	2%
Contempt Proceedings	42	(74)	0	(0)	0	(0)	42	(74)	6%
Newsletter/Touting	3	(9)	6	(6)	0	(0)	9	(15)	1%
Miscellaneous Cases	5	(8)	8	(11)	0	(0)	13	(19)	2%
Fraud Against Regulated Entities	0	(0)	0	(0)	0	(0)	0	(0)	0%
Corporate Control Cases	0	(0)	0	(0)	0	(0)	0	(0)	0%
<b>TOTALS</b>	<b>313</b>	<b>(908)</b>	<b>365</b>	<b>(494)</b>	<b>1</b>	<b>(1)</b>	<b>679</b>	<b>(1403)</b>	<b>100%</b>

**Table 2**  
**FISCAL 2003 ENFORCEMENT CASES**  
**LISTED BY PROGRAM AREA**

Name of Case	Release No.	Date Filed
<b>Broker-Dealer: Failure To Supervise</b>		
In the Matter of Dean Witter Reynolds Inc., et al.	34-46578	10/01/2002
In the Matter of U.S. Bancorp Piper Jaffray Inc.	34-46770	11/05/2002
In the Matter of Andover Brokerage, LLC, et al.	34-48338	01/22/2003
In the Matter of Mark Gilbert Platt, et al.	33-8275	06/18/2003
In the Matter of Prudential Securities Incorporated	34-48149	07/10/2003
In the Matter of Robert Ostrowski, et al.	34-48150	07/10/2003
In the Matter of Spear, Leeds & Kellogg, L.P.	34-48199	07/21/2003
In the Matter of Lehman Brothers, Inc.	34-48336	08/14/2003
In the Matter of SG Cowen Securities Corporation	34-48335	08/14/2003
In the Matter of UBS Painwebber, Inc.	34-48371	08/20/2003
<b>Broker-Dealer: Fraud Against Customer</b>		
In the Matter of Michael Ploshnick	34-46584	10/02/2002
In the Matter of Sidney A. Johnson, et al.	34-46749	10/30/2002
In the Matter of Salman Shariff	34-46773	11/05/2002
In the Matter of Dennis S. Herula	34-46799	11/08/2002
In the Matter of Thomas E. Hall	34-46945	12/04/2002
In the Matter of Vincent Caracciolo	34-47042	12/19/2002
In the Matter of Stephen H. Kaplan	34-47043	12/19/2002
In the Matter of Salvatore C. Marchiano	34-47044	12/19/2002
In the Matter of Christopher D. Panza	34-47047	12/19/2002
In the Matter of John J. Messina	34-47045	12/19/2002
In the Matter of Stacey Meyers	34-47046	12/19/2002
In the Matter of Christopher J. Richardson	34-40748	12/19/2002
In the Matter of John Tripp Sines, III	34-47049	12/19/2002
In the Matter of Stephen E. Sokoloff	34-47050	12/19/2002
In the Matter of Erika D. Whitman	34-47051	12/19/2002
SEC v. Sandra K. Simpson, et al.	LR-17928	01/09/2003
In the Matter of Kevin H. Goldstein, et al.	34-47187	01/15/2003
In the Matter of Eric Peremen	34-47247	01/24/2003
In the Matter of Igor Fleyshmakher a/k/a Isaac Flash a/k/a Isaac Marks	34-47246	01/24/2003
In the Matter of Stanslav Kaminsky	33-8187	01/29/2003

<b>Name of Case</b>	<b>Release No.</b>	<b>Date Filed</b>
SEC v. Todd M. Eberhard, et al.	LR-17969	02/05/2003
In the Matter of Robert E. Glazewski	33-8194	02/21/2003
In the Matter of Mathew A. Matz	33-8195	02/21/2003
In the Matter of Michael E. Hill	34-47509	03/17/2003
In the Matter of John Abresch	34-47655	03/18/2003
In the Matter of Robert C. Ingardia	34-47619	04/02/2003
In the Matter of Liberty National Securities, Inc., et al.	34-47674	04/14/2003
In the Matter of Kevin M. Devoto	34-47736	04/25/2003
SEC v. Bear, Stearns & Co., Inc.	LR-18109	04/28/2003
SEC v. Jack Benjamin Grubman	LR-18111	04/28/2003
SEC v. J.P. Morgan Securities Inc.	LR-18114	04/28/2003
SEC v. Lehman Brothers Inc.	LR-18116	04/28/2003
SEC v. Merrill Lynch, Pierce, Fenner & Smith, Inc.	LR-18115	04/28/2003
SEC v. U.S. Bancorp Piper Jaffray, Inc.	LR-18118	04/28/2003
SEC v. UBS Warburg LLC	LR-18112	04/28/2003
SEC v. Goldman, Sachs & Co.	LR-18113	04/28/2003
SEC v. Citigroup Global Markets Inc., f/k/a Salomon Smith Barney Inc.	LR-18111	04/28/2003
SEC v. Credit Suisse First Boston LLC, f/k/a Credit Suisse First Boston	LR-18110	04/28/2003
SEC v. Henery M. Blodget	LR-18115	04/28/2003
SEC v. Morgan Stanley & Co., Incorporated	LR-18117	04/28/2003
In the Matter of Baron Capital, Inc., et al.	34-47751	04/29/2003
In the Matter of Joseph Romeo	34-47853	05/01/2003
In the Matter of Tomer M. Yuzary	34-47788	05/02/2003
In the Matter of Aron O. Bronstein	34-47789	05/02/2003
In the Matter of Iosif Pak, a/k/a Joseph Pak, et al.	34-47790	05/02/2003
In the Matter of Robin Breitner, et al.	34-47797	05/05/2003
In the Matter of Patrick Boyce	34-47850	05/14/2003
In the Matter of Torin Greenspan	34-47854	05/14/2003
In the Matter of Gary Guirand	34-47855	05/14/2003
In the Matter of Anthony Lopresti	34-47851	05/14/2003
In the Matter of Todd Peterson	34-47852	05/14/2003
In the Matter of Vadim "Steven" Shapiro	34-47848	05/14/2003
In the Matter of James "Gennedy" Gaberkorn	34-47845	05/14/2003
In the Matter of R. Christopher Hanna	34-47931	05/27/2003
In the Matter of Dean J. Jupiter	34-47952	05/30/2003
SEC v. Thomas G. Brooks	LR-18168	06/03/2003
In the Matter of Dunyasha M. Yetts	34-47966	06/03/2003

<b>Name of Case</b>	<b>Release No.</b>	<b>Date Filed</b>
In the Matter of Edward Gurin	34-47976	06/04/2003
In the Matter of Jason Hunkler	34-48051	06/17/2003
In the Matter of Vivian Emily Hagen	34-48048	06/17/2003
In the Matter of Ann Marie Noel	34-48049	06/17/2003
In the Matter of Lillian M. Vinci	34-48050	06/17/2003
SEC v. William Clark Davis	LR-18227	07/09/2003
In the Matter of Daniel M. Coyle	34-48168	07/11/2003
In the Matter of Stephen H. Thomas	34-48270	08/01/2003
In the Matter of Robert Douglas Williams	34-48269	08/01/2003
In the Matter of Tiji Thomas	34-48268	08/01/2003
In the Matter of Kevin Kirkpatrick	34-48331	08/13/2003
In the Matter of Robert I. Spruill	34-48418	08/29/2003
In the Matter of Gregory P. Waldon	34-48419	08/29/2003
In the Matter of Robert F. Fox, et al.	34-48483	09/11/2003
In the Matter of Howard S. Singer	33-8292	09/25/2003
In the Matter of Shane Ferras	34-48567	09/30/2003
In the Matter of Larry R. Crowder, et al.	34-48572	09/30/2003
In the Matter of Rodney L. Hinkle	34-48574	09/30/2003
<b>Broker-Dealer: Government/Municipal Securities</b>		
In the Matter of Kenneth D. Ough	33-8141	10/29/2002
<b>Broker-Dealer: Other</b>		
SEC v. Russo Securities, Inc., et al.	LR-17834	11/12/2002
SEC v. Miriam Santos, et al.	LR-17839	11/14/2002
In the Matter of James Silver	34-46836	11/14/2002
In the Matter of David E. Morris	34-46837	11/14/2002
In the Matter of Peter C. Restivo	34-46867	11/21/2002
In the Matter of Cesare J. Iori, Jr.	34-46865	11/21/2002
In the Matter of Nicola A. Liantonio, Jr.	34-46866	11/21/2002
In the Matter of Peter Restivo, Inc. d/b/a U.S. Funding	34-46864	11/21/2002
In the Matter of Deutsche Bank Securities, Inc., et al.	34-46937	12/03/2002
In the Matter of D.H. Blair & Co., Inc.	34-47070	12/20/2002
SEC v. Russell W. Jones, et al.	LR-17909	12/23/2002
SEC v. Robertson Stephens, Inc.	LR-17923	01/09/2003
SEC v. Jordan Enterprises LLC, et al.	LR-17925	01/13/2003

<b>Name of Case</b>	<b>Release No.</b>	<b>Date Filed</b>
SEC v. Sheldon Maschler, et al.	LR-17929	01/14/2003
SEC v. Joshua M. Levine	LR-17930	01/14/2003
In the Matter of Bryan R. Brush	34-47303	01/31/2003
In the Matter of Sheldon Maschler	34-47321	02/06/2003
In the Matter of Michael McCarty	34-47325	02/06/2003
In the Matter of Jeffrey A. Citron	34-47323	02/06/2003
In the Matter of Moishe Zelcer	34-47324	02/06/2003
In the Matter of Aaron Elbogen	34-47327	02/06/2003
In the Matter of Erik Maschler	34-47322	02/06/2003
In the Matter of Heartland Securities Corporation	34-47326	02/06/2003
SEC v. Rocky Mountain Securities & Investments, Inc., et al.	LR-17976	02/10/2003
SEC v. Norman P. Rounds	LR-17989	02/19/2003
In the Matter of Kyle G. Kennedy	34-47403	02/25/2003
In the Matter of Jason T. Frazee	33-8209	03/18/2003
SEC v. Jason T. Frazee	LR-18040	03/18/2003
In the Matter of Leonard Sheehan	33-8208	03/18/2003
SEC v. Leonard T. Sheehan	LR-18040	03/18/2003
In the Matter of Niko G. Efstathiou	34-47601	03/31/2003
In the Matter of Harrison Securities, Inc., et al.	AAER-1754	04/07/2003
In the Matter of Daniel L. Springate	34-47640	04/07/2003
In the Matter of Anita Mills-Barry	34-47665	04/11/2003
In the Matter of Douglas W. Powell, et al.	34-47666	04/11/2003
SEC v. David A. Zwick, et al.	LR-18096	04/21/2003
SEC v. Ethan H. Weitz, et al.	LR-18121	04/30/2003
In the Matter of Donald E. Rhoades	34-47834	05/12/2003
In the Matter of Karyn Miller	34-47835	05/12/2003
In the Matter of Keith G. Greenberg	34-48213	05/28/2003
In the Matter of Douglas Faneuil	34-47973	06/04/2003
In the Matter of Richard P. Callipari, et al.	34-48288	08/05/2003
SEC v. Raymond L. Kotrozo, et al.	LR-18289	08/14/2003
In the Matter of John Delprince	34-48499	08/15/2003
In the Matter of James Hicks	34-48381	08/20/2003
SEC v. Terry Richard Martin, et al.	LR-18315	08/28/2003
Scott Alexander Gryskiewicz	34-48427	09/02/2003
In the Matter of Freedom Financial, Inc., et al.	34-48446	09/04/2003
SEC v. Brian P. Delaney, et al.	LR-18329	09/08/2003
In the Matter of Brian P. Delaney	34-48561	09/29/2003

<b>Name of Case</b>	<b>Release No.</b>	<b>Date Filed</b>
In the Matter of Nicole M. Shkedi	34-48562	09/29/2003
<b>Civil Contempt</b>		
SEC v. J. Scott Eskind	None	10/03/2002
SEC v. J. Scott Eskind, et al.	None	10/08/2002
SEC v. Big Country AGS, Inc., d/b/a/ AGS, Inc., et al.	None	10/11/2002
SEC v. Richard T. Taylor, et al.	None	10/11/2002
SEC v. Kenneth Roy Weare, et al.	LR-17804	10/21/2002
SEC v. Rajiv Vohra	None	10/25/2002
SEC v. International Heritage, Inc., et al.	LR-17832	11/08/2002
SEC v. Caterina Johnson	LR-17874	11/13/2002
SEC v. Kendyll R. Horton, et al.	None	11/20/2002
SEC v. W.J. Nolan & Co., Inc.	LR-17907	12/17/2002
SEC v. Anthony W. Blissett	LR-17948	01/06/2003
SEC v. Herral Dunbar, Jr., Individually and d/b/a Ghost International	LR-17915	01/07/2003
SEC v. Raymond M. Marker, et al.	LR-17949	01/14/2003
SEC v. U.S. Funding Corporation, et al.	LR-17947	01/23/2003
SEC v. Watch Hill Capital Management, LLC	None	01/29/2003
SEC v. Hitsgalore.com, Inc., et al.	LR-18052	02/13/2003
SEC v. Roger S. Chedester	None	02/25/2003
SEC v. Roc G. Hatfield	LR-18062	03/18/2003
SEC v. Dennis S. Herula	LR-18350	04/09/2003
SEC v. Mary Lee Capalbo	LR-18082	04/09/2003
SEC v. AEGIS Financial LLC	None	04/10/2003
SEC v. Henry C. Yuen, et al.	LR-18095	04/18/2003
SEC v. Alvis Colin Smith, Sr.	None	05/02/2003
SEC v. J. Scott Eskin	LR-18165	05/19/2003
SEC v. John A. Hickey, et al.	None	06/05/2003
SEC v. Philip Gratz, et al.	None	06/23/2003
SEC v. Philip R. Gratz	LR-18243	06/27/2003
SEC v. Delta Rental Systems, Inc., et al.	LR-18051	06/30/2003
SEC v. Douglas T. Fonteno	None	07/14/2003
SEC v. Metropolis Holdings, LLC, et al.	LR-18128	07/14/2003
SEC v. Hazel A. Horton	None	07/16/2003
SEC v. Earl Rutledge	None	07/21/2003
SEC v. Suburban Capital Corporation, et al.	None	07/23/2003
SEC v. David E. Ross, II	None	07/23/2003

<b>Name of Case</b>	<b>Release No.</b>	<b>Date Filed</b>
SEC v. Patrick M. Brody	None	07/28/2003
SEC v. George Carapella, et al.	LR-18272	07/30/2003
SEC v. Vladislav Steven Zubkis	None	08/13/2003
SEC v. Rodd Buckle	None	08/25/2003
SEC v. Edward Driving Hawk, Sr.	None	09/09/2003
SEC v. Geragos & Geragos, et al.	None	09/11/2003
SEC v. Laffer & Gottlieb, et al.	None	09/11/2003
SEC v. John A. Hickey	None	09/23/2003

### **Delinquent Filings: Issuer Reporting**

In the Matter of Greater Northwest Research & Development Group, Inc.	34-46754	10/31/2002
In the Matter of Hamilton Bancorp, Inc.	34-47004	12/16/2002
In the Matter of Hexagon Consolidated Companies of America, Inc.	34-47475	03/10/2003
In the Matter of Stansbury Holdings Corporation	34-47807	05/07/2003
In the Matter of The Children's Beverage Group, Inc.	34-48184	07/16/2003
In the Matter of RGW Acquisition Corporation I, et al.	34-48362	07/16/2003
In the Matter of Global Telemedia International, Inc.	34-48403	07/16/2003
SEC v. Quintek Technologies, Inc., et al.	LR-18268	08/01/2003
In the Matter of Cyrus Industries, Inc.	34-48523	08/14/2003
In the Matter of Investo, Inc.	34-48369	08/20/2003
In the Matter of Professional Transportation Group LTD., Inc.	34-48560	09/29/2003

### **Insider Trading**

SEC v. Thomas M. Gibson, et al.	LR-17767	10/03/2002
SEC v. Terry L. Kirch	LR-18314	10/07/2002
In the Matter of Michael Nicolaou	34-46608	10/07/2002
SEC v. Lionel P. Thotam	LR-17784	10/10/2002
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In the Matter of Kalman Renov	34-47074	12/20/2002
SEC v. Maxxon, Inc., et al.	LR-17911	12/30/2002
In the Matter of Peter C. Lybrand f/k/a Peter C. Tosto	LR-47313	02/05/2003
SEC v. Rhino Advisors, Inc., et al.	LR-18003	02/27/2003
SEC v. Rocky Mountain Energy Corporation, Inc., et al.	LR-18305	04/03/2003
SEC v. C. Jones & Company, et al.	LR-18092	04/11/2003
SEC v. Sierra Brokerage Services, Inc., et al.	LR-18088	04/14/2003
SEC v. Dean S. Thomassen	LR-18137	05/14/2003

<b>Name of Case</b>	<b>Release No.</b>	<b>Date Filed</b>
SEC v. Concentrax, Inc., et al.	LR-18144	05/19/2003
In the Matter of Jerome E. Rosen	34-47908	05/22/2003
SEC v. Amplidyne, Inc., et al.	LR-18157	05/27/2003
In the Matter of Monty R. Myler	34-47967	06/03/2003
In the Matter of Matthew J. Benedetto	34-48404	06/03/2003
SEC v. Nathan A. Chapman, Jr., et al.	LR-18203	06/26/2003
In the Matter of Roger M. DeTrano	34-48114	07/01/2003
In the Matter of Robert B. Kessler	34-48139	07/08/2003
SEC v. Investment Technology, Inc., et al.	LR-18249	07/15/2003
In the Matter of Dwarka P. Rathi, et al.	34-48261	07/31/2003
In the Matter of Rajan Moondra	34-48260	07/31/2003
SEC v. Dwarka P. Rathi, et al.	LR-18266	07/31/2003
SEC v. Unistar Financial Services Corp., et al.	LR-18280	08/07/2003
In the Matter of Kevin Kirkpatrick	34-48331	08/13/2003
In the Matter of Castle Securities Corp., et al.	34-48370	08/20/2003
In the Matter of Steven Wise, et al.	33-8281	09/05/2003
SEC v. Kenneth P. D'Angelo, et al.	LR-18344	09/11/2003
SEC v. 2DoTrade, Inc., et al.	LR-18381	09/30/2003
<b>Miscellaneous</b>		
In the Matter of Siebel Systems, Inc.	34-46896	11/25/2002
SEC v. Siebel Systems, Inc.	LR-17860	11/25/2002
In the Matter of Raytheon Company, et al.	34-46897	11/25/2002
In the Matter of Secure Computing Corporation, et al.	34-46895	11/25/2002
SEC v. Paul E. Johnson	LR-17922	01/09/2003
In the Matter of Robertson Stephens, Inc.	34-47144	01/09/2003
SEC v. Global Airlines Corporation, et al.	LR-18055	03/31/2003
SEC v. Agora, Inc., et al.	LR-18090	04/14/2003
In the Matter of William L. Franklin	34-48440	09/04/2003
In the Matter of Malik Firoze	34-48441	09/04/2003
In the Matter of Charles C. Campbell	33-8283	09/08/2003
SEC v. Schering-Plough Corporation	LR-18330	09/09/2003
In the Matter of Schering-Plough Corporation, et al.	34-48461	09/09/2003
<b>Newsletter/Touting</b>		
In the Matter of Mark Schultz	34-47154	01/10/2003

<b>Name of Case</b>	<b>Release No.</b>	<b>Date Filed</b>
In the Matter of Wayne F. Gorsek	34-47269	01/28/2003
In the Matter of Lyndell F. Parks	34-47270	01/28/2003
In the Matter of Raylen Parra	34-47343	02/11/2003
SEC v. Samuel Aaron Meltzer	LR-17985	02/19/2003
In the Matter of Andrew L. Pope	34-47462	03/07/2003
SEC v. David Gane, et al.	LR-18286	08/13/2003
SEC v. Gabor S. Acs, et al.	LR-18307	08/21/2003
In the Matter of Scott Simon Fraser	34-48544	09/25/2003

### **Offering Violations**

In the Matter of John Christopher McCamey, et al.	34-46621	10/08/2002
SEC v. Homer T. Langrill, et al.	LR-17822	10/31/2002
SEC v. Jawsh Corporation	LR-17826	11/04/2002
SEC v. Network International Investment Corporation, et al.	LR-17827	11/05/2002
SEC v. California Autocare Corporation, et al.	LR-17844	11/15/2002
SEC v. Merchant Capital LLC, et al.	LR-17851	11/20/2002
SEC v. Keith Mohn, et al.	LR-17856	11/21/2002
SEC v. Thomas Fletcher & Co., Inc., et al.	LR-17857	11/22/2002
SEC v. Virtual Cash Card LLC d/b/a Virtual Cash, et al.	LR-17868	12/02/2002
SEC v. Leonard L. Zanello, Sr., et al.	LR-17886	12/10/2002
SEC v. Nutrition Superstores.com, Inc., et al.	LR-18270	12/10/2002
In the Matter of John Vailati	33-8159	12/10/2002
SEC v. U.S. Technologies, Inc., et al.	AAER-1695	12/19/2002
SEC v. eWealth Securities, Inc., et al.	LR-17906	12/19/2002
SEC v. William R. Kerr, et al.	LR-17908	12/20/2002
SEC v. Raymond M. Marker, et al.	LR-17910	12/23/2002
In the Matter of Jeffrey M. Goldberg	34-47776	12/23/2002
In the Matter of David Edwards, et al.	34-47121	01/03/2003
SEC v. James L. George, et al.	LR-17918	01/07/2003
SEC v. Dianna Blairtorbett a/k/a Dianna Blair Torbett, et al.	LR-18282	01/07/2003
SEC v. Asset Recovery and Management Trust, S.A., et al.	LR-17920	01/07/2003
In the Matter of Jean B. Leclercq, et al.	34-47183	01/14/2003
SEC v. Getanswers, Inc., et al.	LR-17933	01/15/2003
In the Matter of John W. Duffell III	34-47192	01/15/2003
SEC v. Premier Marketing and Investments, Inc., et al.	LR-17936	01/15/2003
SEC v. Dale Carone, et al.	LR-17939	01/16/2003
In the Matter of James F. Galaza d/b/a Falcon Financial Services, Inc.	34-47222	01/21/2003

<b>Name of Case</b>	<b>Release No.</b>	<b>Date Filed</b>
SEC v. Online Power Supply, Inc., et al.	LR-18337	01/21/2003
In the Matter of John L. Milling, Esq.	33-8189	02/03/2003
In the Matter of Albert Terranova	34-47329	02/06/2003
SEC v. National Investment Enterprises, et al.	LR-17974	02/07/2003
In the Matter of William E. Kraemer	34-47656	02/10/2003
SEC v. Marc David Shiner, et al.	LR-17977	02/10/2003
SEC v. Moller International, Inc., et al.	LR-17987	02/19/2003
SEC v. LaMesa Geoscience, Inc., et al.	LR-17990	02/20/2003
In the Matter of Eduardo Villar	34-47625	02/25/2003
SEC v. Robert A. Magnan, et al.	LR-18287	02/25/2003
SEC v. Manoucher Sarbaz, et al.	LR-18001	02/26/2003
SEC v. Kenneth B. MacQueen, et al.	LR-18005	02/27/2003
In the Matter of Jason LeDay	33-8198	02/28/2003
SEC v. North American Medical Products, Inc., et al.	LR-18028	03/11/2003
SEC v. Global Telecom Services LLC d/b/a Medical Disposal Devices, et al.	LR-18027	03/11/2003
In the Matter of Pattinson Hayton	AAER-1740	03/12/2003
In the Matter of Nicholas J. Julian, Jr.	34-47495	03/13/2003
SEC v. Louis W. Ratfield	LR-18262	03/14/2003
In the Matter of Discovery Capital Group, et al.	34-47519	03/18/2003
SEC v. Frank J. Custable, Jr., et al.	LR-18057	03/27/2003
In the Matter of Timothy J. Pinchin	34-47580	03/27/2003
In the Matter of Daniel C. Sanders	34-47579	03/27/2003
In the Matter of Kenneth Hooper	34-47595	03/28/2003
SEC v. Jack Calvin, et al.	LR-18056	03/31/2003
SEC v. Jeffrey L. Goldberg	LR-18073	04/01/2003
SEC v. Benjamin Rogatinsky, et al.	AAER-1755	04/03/2003
SEC v. Philip R. Gratz	LR-18094	04/18/2003
In the Matter of Alfredo Susi	34-47744	04/25/2003
In the Matter of Richard I. Balber	34-47747	04/25/2003
SEC v. Richard M. Ryan	LR-18124	05/07/2003
SEC v. Metropolis Holdings, LLC, et al.	LR-18301	05/08/2003
SEC v. K.C. Smith	LR-18130	05/12/2003
In the Matter of Paul Tetu	33-8235	05/14/2003
In the Matter of Justin Marvul	34-47846	05/14/2003
In the Matter of Michael Danilovich	34-47844	05/14/2003
SEC v. John Benjamin Stewart, Jr., et al.	LR-18141	05/16/2003
SEC v. Pension Plans of America, Inc., et al.	LR-18140	05/16/2003

<b>Name of Case</b>	<b>Release No.</b>	<b>Date Filed</b>
SEC v. Greenline Capital Corporation, et al.	LR-18151	05/20/2003
SEC v. Capital Holdings, LLC, et al.	LR-18166	06/02/2003
In the Matter of Kenneth P. Kasarjian	34-47962	06/02/2003
SEC v. Charles Bayne a/k/a Charles Taylor, et al.	LR-18172	06/04/2003
SEC v. Public Communication Services, Inc., n/k/a Sprawl.net.com, et al.	LR-18173	06/04/2003
In the Matter of IntellectExchange.com, Inc.	33-8237	06/04/2003
SEC v. Mary Patten, et al.	LR-18179	06/05/2003
SEC v. Philip J. Yoder	LR-18184	06/09/2003
SEC v. Hartcourt Companies, Inc., et al.	LR-18187	06/10/2003
In the Matter of Paul E. Brodhagen	34-48069	06/20/2003
SEC v. Jon A. Darmstadter	LR-18197	06/20/2003
In the Matter of Lloyd Benton Sharp	34-48071	06/20/2003
SEC v. Gary L. McNaughton, et al.	LR-18202	06/23/2003
In the Matter of Michael J. Wright	34-48077	06/24/2003
SEC v. EK-1, Inc., et al.	LR-18207	06/30/2003
SEC v. Discover Capital Holdings Corp., et al.	LR-18265	07/09/2003
In the Matter of Thomas J. Donahue	34-48147	07/09/2003
SEC v. Robert Snyder, et al.	LR-18228	07/10/2003
In the Matter of Arthur Ritchie	33-8253	07/16/2003
SEC v. Daniel D. Dyer, et al.	LR-18234	07/17/2003
SEC v. Going Platinum, Inc., et al.	LR-18239	07/18/2003
SEC v. Tecumseh Holdings Corporation, et al.	LR-18353	07/24/2003
SEC v. Glen W. Hilker, et al.	LR-18253	07/28/2003
In the Matter of Edward A. Durante	34-48300	08/07/2003
In the Matter of Darius L. Lee	34-48455	08/08/2003
In the Matter of Jeffrey D. Chandler	34-48349	08/14/2003
In the Matter of Randall Jordan	34-48346	08/14/2003
SEC v. Sherry L. Gibson	LR-18292	08/15/2003
In the Matter of Robert F. Broege, Jr.	34-48377	08/20/2003
In the Matter of Ihor A. "Gary" Humesky	34-48375	08/20/2003
In the Matter of Steven B. Rodd	34-48376	08/20/2003
In the Matter of Michael B. Rawdin, et al.	33-8270	08/20/2003
SEC v. Toks, Inc., et al.	LR-18309	08/25/2003
In the Matter of Larry T. Osaki, et al.	34-48415	08/27/2003
SEC v. Mohamed Wael Ibrahim Elzein, et al.	LR-18324	09/05/2003
SEC v. Blake A. Prater, et al.	LR-18336	09/10/2003
SEC v. Viatical Capital, Inc., et al.	LR-18346	09/11/2003

<b>Name of Case</b>	<b>Release No.</b>	<b>Date Filed</b>
SEC v. Vector Medical Technologies, Inc., et al.	LR-18348	09/12/2003
SEC v. John F. Turant, Jr., et al.	LR-18351	09/15/2003
SEC v. James Mulhearn, et al.	LR-18354	09/16/2003
SEC v. Ronald Stephen Holt, et al.	LR-18356	09/18/2003
In the Matter of Charles Bayne a/k/a Charles Taylor	34-48535	09/24/2003
SEC v. ACI, Inc., et al.	LR-18380	09/25/2003
SEC v. Sean Nevett	LR-18367	09/25/2003
SEC v. Daryle G. DesJardins, et al.	LR-18366	09/25/2003
SEC v. Craig J. Shaber, et al.	LR-18381	09/30/2003
<b>Self Regulatory Organization</b>		
In the Matter of Chicago Stock Exchange	34-48566	09/30/2003
<b>Transfer Agent</b>		
SEC v. Florida Stock Transfer, Inc., et al.	LR-17795	10/15/2002
In the Matter of Allen E. Weintraub, et al.	34-47002	12/16/2002
In the Matter of Alexis Stock Transfer, et al.	34-47058	12/19/2002
In the Matter of Continental Stock Transfer and Trust Company, et al.	34-47292	01/31/2003

**Table 3**  
**INVESTIGATIONS OF POSSIBLE VIOLATIONS OF THE ACTS**  
**ADMINISTERED BY THE COMMISSION**

Pending as of October 1, 2003 .....	2,302
Opened in Fiscal Year 2003 .....	910
Total .....	3,212
Closed in Fiscal Year 2003 .....	283
Pending as of September 30, 2003 .....	2,929
Formal Orders of Investigation	
Issued in Fiscal Year 2003 .....	254

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### **Right to Financial Privacy**

Section 21(h) of the Securities Exchange Act of 1934 [15 U.S.C. 78u(h)(6)] requires that the Commission “compile an annual tabulation of the occasions on which the Commission used each separate subparagraph or clause of [Section 21(h)(2)] or the provisions of the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401-22 (the RFPA)] to obtain access to financial records of a customer and include it in its annual report to the Congress.” During the fiscal year, the Commission issued 4 subpoenas based upon Section 21(h)(2)(C)(ii). Set forth below are the number of occasions on which the Commission obtained customer records pursuant to the provisions of the RFPA:

Section 1104 (Customer Authorizations)	27
Section 1105 (Administrative Subpoenas)	344
Section 1107 (Judicial Subpoenas)	39
Section 1109 (Delayed Customer Notice)	0

## Corporate Reorganizations

During 2003, the Commission entered its appearance in 50 new reorganization cases filed under Chapter 11 of the Bankruptcy Code (including 24 that were filed electronically) involving companies with approximately \$90 billion in assets and 400,000 public investors. Adding these new cases, the Commission was a party in a total of 157 Chapter 11 cases during the year, involving companies with approximately \$446 billion in assets and about one million public investors. During the year, 41 cases were concluded through confirmation of a plan, dismissal, or liquidation, leaving 120 cases in which the Commission was a party at year-end.

**Table 4**  
**Reorganization Proceedings Under Chapter 11**  
**of the Bankruptcy Code in Which the SEC Entered Appearance**

Debtor		District	FY Opened	FY Closed
Acme Metals Inc.	D.	DE	2001	
Acterna Corp.* 1/	S.D.	NY	2003	2003
Actrade Financial Tech., Ltd.*	S.D.	NY	2003	
Advanced Lighting Tech., Inc.	N.D.	IL	2003	
Adelphia Communications	S.D.	NY	2002	
Aileen, Inc.	S.D.	NY	1994	
Alford Refrigerated Warehouses, Inc. 1/	N.D.	TX	2002	2003
Alliance Entertainment Corp.	D.	NY	1997	
Allied Products Corp.	N.D.	IL	2001	
Angeion Corp. 1/	D.	MN	2002	2003
Apparel America, Inc.	S.D.	NY	1998	
Alterra Healthcare Corp.*	D.	DE	2003	
American Pad & Paper Co.	D.	DE	2000	2003
AMRESCO, Inc.	N.D.	TX	2001	
Armstrong World Industries, Inc.	D.	DE	2001	
ASD Group, Inc. 2/	S.D.	NY	2003	2003
Atchinson Casting Corp.	W.D.	MO	2003	
Autoinfo, Inc.	S.D.	NY	2000	
Baldwin Piano & Organ Co.	S.D.	OH	2001	
Bayou Steel Corp.	N.D.	TX	2003	
Biotransplant Inc.*	D.	MA	2003	
BK Entertainment, Inc.	D.	M	2001	
Bradlees, Inc.	S.D.	NY	1996	
Breed Technologies, Inc.	D.	DE	1999	
Broadband Wireless Inter. Corp.	W.D.	OK	2002	
Brunos, Inc.	D.	DE	1998	
Cable & Co. Worldwide, Inc.	S.D.	NY	1998	

**Table 4**  
**Reorganization Proceedings Under Chapter 11**  
**of the Bankruptcy Code in Which the SEC Entered Appearance**

Debtor	District		FY Opened	FY Closed
Chart Industries, Inc.* 1/	D.	DE	2003	2003
Chiquita Brands Inter., Inc. 1/	S.D.	OH	2002	2003
Cityscape Financial Corp.	S.D.	NY	1999	
CML Group, Inc.	D.	DE	2001	
Cold Metal Products, Inc.	N.D.	OH	2002	
Comdisco, Inc.	N.D.	IL	2001	2003
Concord Energy, Inc.	D.C	DE	1999	
Conseco, Inc., et al., Inc. 1/	N.D.	IL	2003	2003
Consolidated Freightways Corp.	C.D.	CA	2003	
Cooker Restaurant Corp.	S.D.	OH	2001	2003
Costilla Energy, Inc.	W.D.	TX	1999	
County Seat Stores, Inc.	S.D.	NY	1999	
Decision Link, Inc.	D.	NV	2002	
Digital Lighthouse Corp. 1/	D.	CO	2001	2003
DVI, Inc.*	D.	DE	2003	
Eagle Food Centers, Inc.	N.D.	IL	2003	
Encompass Services Corp.	S.D.	TX	2003	
Enron Corporation	S.D.	NY	2002	
EOTT Energy Partners, L.P.	S.D.	TX	2003	2003
Excelsior-Henderson Motorcycle Manufacturing	D.	MN	2000	2003
Factory Card Outlet, Inc.	D.	DE	1999	
FAO, Inc.*	D.	DE	2003	
Flooring America, Inc. 1/	N.D.	GA	2000	2003
Florsheim Group, Inc.	N.D.	IL	2002	
Friede Goldman Halter, Inc.	S.D.	MS	2001	
Furr's Restaurant Group, Inc.	N.D.	TX	2003	
Futurenet, Inc.	C.D.	CA	2001	
FWT, Inc.	N.D.	TX	1999	
Garden Botanika, Inc.	W.D.	WA	1999	
Genesis Worldwide, Inc.	S.D.	OH	2002	
Gentek, Inc.*	D.	DE	2003	
Genuity, Inc.*	S.D.	NY	2003	
Global Crossing, LTD	S.D.	NY	2002	
Graham-Field Health Prod., Inc.2/	D.	DE	2000	2003

**Table 4**  
**Reorganization Proceedings Under Chapter 11**  
**of the Bankruptcy Code in Which the SEC Entered Appearance**

Debtor	District		FY Opened	FY Closed
Great American Recreation, Inc.	D.	NJ	1996	
Heilig-Meyers Company	E.D.	VA	2000	
Homegold Financial, Inc.	D.	SC	2003	
Homeland Holding Corp. 1/	W.D.	OK	2001	2003
Horizon Pharmacies, Inc. 1/	N.D.	TX	2001	2003
Integrated Health Services, Inc. 1/	D.	DE	2000	2003
Integrated Telecom Exp., Inc.* 1/	D.	DE	2003	2003
Intellicorp, Inc.*	D.	DE	2003	
Jacobson Stores, Inc.	E.D.	MI	2002	
Kentucky Electric Steel, Inc.	E.D.	KT	2003	
Key3Media Group, Inc.* 1/	D.	DE	2003	2003
Kevco, Inc.	N.D.	TX	2001	
Kitty Hawk, Inc. 1/	N.D.	TX	2000	2003
Kmart Corp.	N.D.	IL	2002	
KNF Corp.	M.D.	PA	2001	
Krieger Financial Services, Inc.	S.D.	FL	2003	
Leap Wireless International, Inc.	S.D.	CA	2003	
Linc. Capitol, Inc.	N.D.	IL	2002	
Livent, Inc.	S.D.	NY	1999	
Loehmann's, Inc.	D.	DE	1999	
LTV Steel Co.	N.D.	OH	2001	
Manhattan Bagel Co., Inc.	D.	NJ	1998	
Marketing Specialists Corp. 1/	E.D.	TX	2001	2003
Med Diversified, Inc.*	E.D.	NY	2003	
Metals USA, Inc.	S.D.	TX	2002	2003
Michael Petroleum Corp.	W.D.	TX	2002	2003
MicroAge, Inc.	D.	AZ	2001	
Mirant Corp.	N.D.	TX	2003	
Mississippi Chemical Corp.	S.D.	MS	2003	
Molten Metals Technology, Inc.	D.	MA	2001	
National Energy Group, Inc.	N.D.	TX	1999	
National Equipment Serv., Inc.	N.D.	IL	2003	
National Steel Corp.	N.D.	IL	2002	
Northwestern Steel & Wire Co. 2/	N.D.	IL	2001	2003
NRG Energy, Inc.*	S.D.	NY	2003	

**Table 4**  
**Reorganization Proceedings Under Chapter 11**  
**of the Bankruptcy Code in Which the SEC Entered Appearance**

Debtor	District	FY Opened	FY Closed
NTELOS, Inc. 1/	E.D. VA	2003	2003
Oakwood Homes Corp.*	D. DE	2003	
Owens Corning Corp.*	D. DE	2003	
Pacific Gas and Electric Co.	N.D. CA	2001	
Panaco Inc.	S.D. TX	2002	
Paracelsus Healthcare Corp.	S.D. TX	2001	
Paul Harris Stores, Inc.	S.D. IN	2001	
Payless Cashways, Inc.	W.D. MO	2001	
Petroleum Geo-Services, Inc.*	S.D. NY	2003	
Philip Services, Corporation	S.D. TX	2003	
Philip Services, Inc.	D. DE	1999	
PHP Healthcare Corp.	D. DE	1999	
Pillowtex Corp.**	D. DE	2001	
Ponder Industries, Inc.	S.D. TX	1999	
Precept Business Services, Inc.	N.D. TX	2001	
President Casinos, Inc.	S.D. MS	2002	2003
Pride Companies, L.P. 1/	N.D. TX	2001	2003
ProMedCo Management Co.	N.D. TX	2001	
PSC, Inc.* 1/	S.D. NY	2003	2003
Rankin Automotive Group, Inc.	S.D. TX	2001	
Roberds, Inc.	D. DE	2000	
Safety-Kleen Corp. 1/	D. DE	2000	2003
Salant Corp.	S.D. NY	1999	
Sierra-Rockies Corp.	S.D. CA	2003	
SmarTalk Teleservices, Inc.	D. DE	1999	
Spinnaker Industries, Inc.	S.D. OH	2002	
Standard Automotive Corp.*	S.D. NY	2003	
Sterling Chemicals Holdings, Inc.	S.D. TX	2002	
Sterling Optical Corp.	S.D. NY	1992	
Stockwalk Group, Inc.	D. MN	2002	2003
Stone & Webster, Inc.	D. DE	2000	
Styling Technology Corp.	D. AZ	2001	
Superior Telecom, Inc.*	D. DE	2003	
Telehub Communications Corp.	N.D. IL	2000	
The Credit Store, Inc.	D. SD	2002	2003

**Table 4**  
**Reorganization Proceedings Under Chapter 11**  
**of the Bankruptcy Code in Which the SEC Entered Appearance**

Debtor	District	FY Opened	FY Closed
Thermadyne Holdings Corp.	N.D. IL	2002	
Tokheim Corp.*	D. DE	2003	
Touch America Holdings, Inc.	D. DE	2003	
Transportation Components, Inc. 1/	S.D. TX	2001	2003
TransTexas Gas Corp.	S.D. TX	2003	2003
TransWorld Airlines, Inc.	D. DE	2001	2003
Union Acceptance Corporation	S.D. IN	2003	
Uniprime Capitol Acceptance, Inc.	D. AZ	2001	
United Artist Theatre Company	D. DE	2001	
United Companies Financial Corp.	D. DE	1999	
Universal Seismic Assoc., Inc.	S.D. TX	1999	
US Airways Group, Inc. 1/	E.D. VA	2002	2003
USG Corp.	D. DE	2001	
Viskase Companies, Inc.	N.D. IL	2003	2003
Waste Systems, Int'l, Inc.	D. DE	2001	
Weblink Wireless, Inc. 1/	N.D. TX	2001	2003
Weirton Steel Corporation	N.D. WV	2003	
WestPoint Stevens, Inc.*	S.D. NY	2003	
Winco Corp.	C.D. CA	1998	
Wherehouse Entertainment, Inc.*	D. DE	2003	
World Access, Inc. 1/	N.D. IL	2001	2003
WorldCom, Inc.	S.D. NY	2002	
Worldwide Xceed Group, Inc. 1/	N.D. IL	2001	2003
Worldwide Medical Corp.*	D. DE	2003	
W.R. Grace & Co.	D. DE	2001	
WRT Energy Corp.	W.D. LA	1996	
XeTel Corp. 1/	W.D. TX	2003	2003
Xpeditor, Inc. 1/	N.D. IL	2001	2003

FY 2003:

Total Cases Opened: 50

Total Cases Closed: 41

- 1/ Chapter 11 plan confirmed.
- 2/ Debtor liquidated under Chapter 7.
- 3/ Case dismissed.

\* Case where the Commission has appeared electronically without a formal notice of appearance.

\*\* Inadvertently closed in FY 2002.

**Table 5**  
**UNCONSOLIDATED FINANCIAL INFORMATION FOR BROKER-DEALERS**  
**1998 – 2002 1/**  
**(\$ in Millions)**

	1998	1999	2000	2001	2002
<u>Revenues</u>					
Securities Commissions	\$ 36,695.9	\$ 45,937.4	\$ 54,106.7	\$ 44,763.8	\$ 45,001.1
Gains (Losses) in Trading and Investment Accounts	32,754.0	55,464.3	70,777.7	38,950.3	24,240.9
Profits (Losses) from Underwriting and Selling Groups	16,237.1	17,781.5	18,717.6	16,941.1	14,698.2
Margin Interest	12,732.5	15,246.7	24,546.9	13,911.5	6,439.9
Revenues from Sale of Investment Company Shares	14,845.0	16,687.6	19,394.9	16,396.4	15,654.9
All Other Revenues	121,699.9	115,692.0	161,949.4	149,132.8	115,775.9
Total Revenues	\$ 234,964.4	\$ 266,809.4	\$ 349,493.3	\$ 280,095.8	\$ 221,811.0
<u>Expenses</u>					
Registered Representatives' Compensation (Part II Only) 2/	\$ 24,974.1	\$ 29,048.7	\$ 33,191.0	\$ 29,950.8	\$ 27,388.6
Other Employee Compensation and Benefits	34,954.5	47,950.6	55,307.3	48,311.6	43,508.7
Compensation to Partners and Voting Stockholder Officers	5,098.0	4,737.7	6,707.8	5,247.4	3,973.9
Commissions and Clearance Paid to Other Brokers	10,326.5	13,488.3	15,522.7	14,043.4	15,003.9
Interest Expenses	98,095.4	87,508.3	131,877.2	98,947.2	56,401.6
Regulatory Fees and Expenses	896.3	1,040.8	1,366.7	1,550.9	1,383.0
All Other Expenses 2/	43,435.4	53,918.6	66,417.3	62,647.7	58,889.2
Total Expenses	\$ 217,780.2	\$ 237,693.1	\$ 310,390.0	\$ 260,698.9	\$ 206,549.0
<u>Income and Profitability</u>					
Pre-tax Income	\$ 17,184.2	\$ 29,116.3	\$ 39,103.3	\$ 19,396.9	\$ 15,262.0
Pre-tax Profit Margin	7.3%	10.9%	11.2%	6.9%	6.9%
Pre-tax Return on Equity	19.4%	27.8%	31.1%	13.8%	10.7%
<u>Assets, Liabilities and Capital</u>					
Total Assets	\$ 2,186,942.5	\$ 2,536,616.6	\$ 2,865,721.0	\$ 3,371,298.1	\$ 3,261,465.5
Liabilities					
(a) Unsubordinated Liabilities	2,037,162.4	2,363,222.6	2,663,758.3	3,158,257.2	3,050,039.2
(b) Subordinated Liabilities	54,447.1	59,425.0	64,362.3	68,693.6	69,434.0
(c) Total Liabilities	2,091,609.5	2,422,647.6	2,728,120.6	3,226,950.8	3,119,473.0
Ownership Equity	\$ 95,333.0	\$ 113,969.1	\$ 137,600.4	\$ 144,347.2	\$ 141,992.5
Number of Firms	7,685	7,461	7,258	7,002	6,768

Figures may not add due to rounding.

1/ Calendar, rather than fiscal, year data is reported in this table.

2/ Registered representatives' compensation for firms that neither carry nor clear is included in "other expenses" as this expense item is not reported separately on Part IIA of the FOCUS Report.

Source: FOCUS Report

**Table 6**  
**UNCONSOLIDATED ANNUAL REVENUES AND EXPENSES FOR BROKER-DEALERS**  
**DOING A PUBLIC BUSINESS**  
**1998 – 2002 <sup>1/</sup>**  
**(\$ in Millions)**

	1998	1999	2000	2001	2002
<u>Revenues</u>					
Securities Commissions	\$ 35,847.4	\$ 45,094.5	\$ 53,160.6	\$ 43,798.5	\$ 44,212.2
Gains (Losses) in Trading and Investment Accounts	28,978.9	48,917.9	60,720.3	33,566.5	20,090.4
Profits (Losses) from Underwriting and Selling Groups	16,237.1	17,780.7	18,718.0	16,941.2	14,697.5
Margin Interest	12,552.0	15,032.8	24,274.0	13,749.1	6,383.1
Revenues from Sale of Investment Company Shares	14,844.2	16,687.6	19,394.9	16,396.4	15,654.9
All Other Revenues	119,143.6	113,101.7	154,836.1	144,758.2	111,994.6
<b>Total Revenues</b>	<b>\$227,603.3</b>	<b>\$256,615.2</b>	<b>\$331,103.9</b>	<b>\$269,210.0</b>	<b>\$213,032.7</b>
<u>Expenses</u>					
Registered Representatives' Compensation (Part II only) <sup>2/</sup>	\$ 24,872.2	\$ 29,007.2	\$ 33,162.0	\$ 29,948.6	\$ 27,380.5
Other Employee Compensation and Benefits	34,180.3	46,856.4	53,356.7	46,967.1	42,398.2
Compensation to Partners and Voting Stockholder Officers	4,841.5	4,369.0	5,450.3	4,976.9	3,759.8
Commissions and Clearance Paid to Other Brokers	9,831.7	12,899.7	14,719.0	13,422.4	14,414.5
Interest Expenses	95,627.0	84,713.8	127,211.5	96,120.5	55,180.0
Regulatory Fees and Expenses	835.8	945.0	1,204.6	1,343.7	1,208.5
All Other Expenses <sup>2/</sup>	42,359.8	52,486.8	64,429.5	60,747.1	56,984.7
<b>Total Expenses</b>	<b>\$212,548.4</b>	<b>\$231,277.9</b>	<b>\$299,533.6</b>	<b>\$253,526.4</b>	<b>\$201,326.3</b>
<u>Income and Profitability</u>					
Pre-tax Income	\$ 15,054.9	\$ 25,337.3	\$ 31,570.3	\$ 15,683.6	\$ 11,706.4
Pre-tax Profit Margin	6.6%	9.9%	9.5%	5.8%	5.5%
Pre-tax Return on Equity	18.2%	26.1%	27.5%	12.3%	9.2%
Number of Firms	5,453	5,480	5,568	5,493	5,394

Figures may not add due to rounding.

<sup>1/</sup> Calendar, rather than fiscal, year data is reported in this table.

<sup>2/</sup> Registered representatives' compensation for firms that neither carry nor clear is included in "other expenses" as this expense item is not reported separately on Part IIA of the FOCUS Report.

Source: FOCUS Report

**Table 7**  
**UNCONSOLIDATED BALANCE SHEET FOR BROKER-DEALERS**  
**DOING A PUBLIC BUSINESS**  
**YEAR-END, 1998 – 2002 1/**  
**(\$ in Millions)**

	1998	1999	2000	2001	2002
<u>Assets</u>					
Cash	\$ 27,219.1	\$ 30,915.7	\$ 33,472.4	\$ 50,722.9	\$ 47,710.9
Receivables from Other					
Broker-dealers	713,732.3	828,208.0	974,675.6	1,115,382.5	1,032,041.5
Receivables from Customers	135,249.8	205,904.5	203,704.3	177,944.3	132,739.7
Receivables from Non-customers	16,814.2	21,277.9	31,411.0	15,392.7	14,237.2
Long Positions in Securities and Commodities	469,526.9	529,931.2	614,927.6	775,941.9	789,608.2
Securities and Investments not Readily Marketable	8,651.0	10,566.6	9,845.9	10,486.6	9,729.6
Securities Purchased Under Agreements to Resell (Part II only) 2/	638,655.5	682,466.4	724,666.3	855,539.3	951,803.1
Exchange Membership	562.1	580.8	588.6	664.6	684.5
Other Assets 2/	84,060.9	79,596.8	120,788.9	212,798.3	135,646.5
<b>Total Assets</b>	<b>\$2,094,471.8</b>	<b>\$2,389,447.9</b>	<b>\$2,714,080.5</b>	<b>\$3,214,873.2</b>	<b>\$3,114,201.2</b>
<u>Liabilities and Equity Capital</u>					
Bank Loans Payable	\$ 46,524.7	\$ 58,190.5	\$ 80,745.4	\$ 75,897.2	\$ 51,369.7
Payables to Other Broker-dealers	314,940.5	415,101.0	473,215.1	562,210.8	466,809.3
Payables to Non-customers	36,306.8	40,916.5	50,748.0	56,710.4	60,817.5
Payables to Customers	238,677.3	282,996.0	359,818.6	391,358.5	349,781.6
Short Positions in Securities and Commodities	222,526.7	287,946.6	286,545.8	342,189.9	345,113.0
Securities Sold Under Repurchase Agreements (Part II only) 2/	923,300.4	973,524.9	1,092,436.3	1,282,754.8	1,405,679.3
Other Non-subordinated Liabilities 2/	169,472.6	166,699.4	182,476.9	306,860.4	242,125.0
Subordinated Liabilities	53,913.5	58,813.2	63,436.1	67,304.5	67,966.9
<b>Total Liabilities</b>	<b>\$2,005,662.4</b>	<b>\$2,284,188.2</b>	<b>\$2,589,422.2</b>	<b>\$3,085,286.3</b>	<b>\$2,989,662.2</b>
<b>Equity Capital</b>	<b>\$ 88,809.4</b>	<b>\$ 105,259.7</b>	<b>\$ 124,658.3</b>	<b>\$ 129,586.9</b>	<b>\$ 124,539.0</b>
Number of firms	5,453	5,480	5,568	5,493	5,394

Figures may not add due to rounding.

1/ Calendar, rather than fiscal, year data is reported in this table.

2/ Resale agreements and repurchase agreements for firms that neither carry nor clear are included in "other assets" and "other non-subordinated liabilities," respectively, as these items are not reported separately on Part IIA of the FOCUS Report.

Source: FOCUS Report

**Table 8**  
**UNCONSOLIDATED REVENUES AND EXPENSES FOR**  
**CARRYING/CLEARING BROKER-DEALERS 1/**  
**(\$ in Millions)**

	2001		2002		Percent Change 2001-2002
	Dollars	Percent of Total Revenues	Dollars	Percent of Total Revenues	
<b>Revenues</b>					
Securities Commissions	\$ 30,408.7	13.6%	\$ 31,034.5	18.3%	2.1%
Gains (Losses) in Trading and Investment Accounts	28,447.0	12.8	15,924.1	9.4	-44.0
Profits (Losses) from Under- writing and Selling Groups	16,209.3	7.3	13,827.9	8.1	-14.7
Margin Interest	13,749.1	6.2	6,383.1	3.8	-53.6
Revenues from Sale of Invest- ment Company Shares	8,672.7	3.9	8,076.0	4.8	-6.9
Miscellaneous Fees	14,087.1	6.3	13,576.7	8.0	-3.6
Revenues from Research	171.1	0.1	158.3	0.1	-7.5
Other Securities Related Revenues	88,622.3	39.8	61,901.0	36.5	-30.2
Commodities Revenues	5,652.2	2.5	6,530.6	3.8	NA
All Other Revenues	16,849.7	7.6	12,368.3	7.3	-26.6
Total Revenues	<u>\$222,869.2</u>	<u>100.0%</u>	<u>\$169,780.5</u>	<u>100.0%</u>	<u>-23.8%</u>
<b>Expenses</b>					
Registered Representatives' Compensation	\$ 29,948.6	13.4%	\$ 27,380.5	16.1%	-8.6%
Other Employee Compensation and Benefits	35,750.2	16.0	31,384.3	18.5	-12.2
Compensation to Partners and Voting Stockholder Officers	2,349.8	1.1	1,611.6	0.9	-31.4
Commissions and Clearance Paid to Other Brokers	5,899.0	2.6	6,077.5	3.6	3.0
Communications	5,851.6	2.6	4,954.3	2.9	-15.3
Occupancy and Equipment Costs	8,371.6	3.8	7,207.7	4.2	-13.9
Data Processing Costs	3,573.6	1.6	3,168.3	1.9	-11.3
Interest Expenses	94,365.3	42.3	54,440.0	32.1	-42.3
Regulatory Fees and Expenses	1,039.1	0.5	951.7	0.6	-8.4
Losses in Error Accounts and Bad Debts	699.3	0.3	509.1	0.3	-27.2
All Other Expenses	22,876.9	10.3	22,892.9	13.5	0.1
Total Expenses	<u>\$210,725.0</u>	<u>94.6%</u>	<u>\$160,577.9</u>	<u>94.6%</u>	<u>-23.8%</u>
<b>Income and Profitability</b>					
Pre-tax Income	\$ 12,144.2	5.4%	\$ 9,202.6	5.4%	-24.2%
Pre-tax Profit Margin	5.4%		5.4%		
Pre-tax Return on Equity	12.4%		9.2%		
Number of Firms	634		605		

Figures may not add due to rounding.

1/ Calendar, rather than fiscal, year data is reported in this table.

Note: Includes information for firms doing a public business that carry customer accounts or clear securities transactions.

Source: FOCUS Report

**Table 9**  
**UNCONSOLIDATED BALANCE SHEET FOR CARRYING/CLEARING**  
**BROKER-DEALERS 1/**  
**(\$ in Millions)**

	2001		2002		Percent Change 2001-2002
	Dollars	Percent of Total Assets	Dollars	Percent of Total Assets	
<b>Assets</b>					
Cash	\$ 46,931.2	1.5%	\$ 44,077.3	1.4%	-6.1%
Receivables from Other Broker-dealers	1,091,721.0	34.9	1,017,946.3	33.4	-6.8
(a) Securities Failed to Deliver	94,031.3	3.0	28,377.8	0.9	-69.8
(b) Securities Borrowed	949,334.2	30.3	939,412.8	30.8	-1.0
(c) Other	48,355.5	1.5	50,155.7	1.6	3.7
Receivables from Customers	177,944.3	5.7	132,739.7	4.4	-25.4
Receivables from Non-customers	14,568.5	0.5	13,431.1	0.4	-7.8
Long Positions in Securities and Commodities	737,335.1	23.6	758,946.7	24.9	2.9
(a) Bankers Acceptances, Certificates of Deposit and Commercial Paper	46,767.5	1.5	42,467.7	1.4	-9.2
(b) U.S. and Canadian Government Obligations	411,970.5	13.2	417,016.1	13.7	1.2
(c) State and Municipal Government Obligations	19,009.3	0.6	20,397.2	0.7	7.3
(d) Corporate Obligations	137,466.3	4.4	164,339.3	5.4	19.5
(e) Stocks and Warrants	81,395.3	2.6	70,755.0	2.3	-13.1
(f) Options	9,474.9	0.3	8,965.8	0.3	-5.4
(g) Arbitrage	15,763.9	0.5	15,129.1	0.5	-4.0
(h) Other Securities	15,483.8	0.5	19,510.5	0.6	26.0
(i) Spot Commodities	3.7	0.0	366.0	0.0	9791.9
Securities and Investments Not Readily Marketable Securities Purchased Under Agreements to Resell	855,539.3	27.3	951,803.1	31.2	11.3
Exchange Membership	573.0	0.0	597.8	0.0	4.3
Other Assets	196,591.6	6.3	119,672.3	3.9	-39.1
<b>Total Assets</b>	<b>\$3,130,511.0</b>	<b>100.0%</b>	<b>\$3,048,195.1</b>	<b>100.0%</b>	<b>-2.6%</b>
<b>Liabilities and Equity Capital</b>					
Bank Loans Payable	\$ 75,740.7	2.4%	51,233.5	1.7%	-32.4
Payables to Other Broker-dealers	536,412.7	17.1	454,490.1	14.9	-15.3
(a) Securities Failed to Receive	93,124.9	3.0	29,047.9	1.0	-68.8
(b) Securities Loaned	409,737.6	13.1	387,292.6	12.7	-5.5
(c) Other	33,550.1	1.1	38,149.5	1.3	13.7
Payables to Non-customers	55,551.8	1.8	59,771.0	2.0	7.6
Payables to Customers	391,358.5	12.5	349,781.6	11.5	-10.6
Short Positions in Securities and Commodities	324,947.7	10.4	331,817.7	10.9	2.1
Securities Sold Under Repurchase Agreements	1,282,754.8	41.0	1,405,679.3	46.1	9.6
Other Non-subordinated Liabilities	297,442.1	9.5	229,691.4	7.5%	-2.7%
Subordinated Liabilities	65,228.5	2.1	65,826.8	2.2	0.9
<b>Total Liabilities</b>	<b>\$3,029,436.8</b>	<b>96.8%</b>	<b>\$2,948,291.4</b>	<b>96.7%</b>	<b>-2.7%</b>
Equity Capital	\$ 101,074.2	3.2%	\$ 99,903.7	3.3%	-1.2%
Number of Firms	634		605		

Figures may not add due to rounding.

1/ Calendar, rather than fiscal, year data is reported in this table.

Note: Includes information for firms doing a public business that carry customer accounts or clear securities transactions.

Source: FOCUS Report

**Table 10**  
**MARKET VALUE OF EQUITY/OPTIONS SALES ON U.S. EXCHANGES <sup>1/</sup>**  
**(\$ in Thousands)**

	Total Market Value	Stocks <sup>2/</sup>	Warrants	Rights	Equity Options		Non-Equity Options <sup>3/</sup>	
					Traded	Exercised		
All Registered Exchanges for Past Six Years								
Calendar Year:	1997	6,855,461,663	6,559,348,106	616,256	27,363	104,535,151	76,475,307	114,459,480
	1998	8,662,523,260	8,307,341,289	740,879	73,341	140,260,828	85,290,488	128,816,435
	1999	11,131,739,431	10,680,428,325	677,469	256,984	260,293,772	56,857,793	133,225,088
	2000	14,341,711,034	13,690,731,156	488,103	122,822	481,440,134	23,268,706	145,660,113
	2001r	13,134,258,808	12,739,041,999	208,638	118,690	277,548,726	6,399,858	110,940,896
	2002	13,542,383,705	13,259,527,533	73,603	147,823	161,278,106	7,354,327	114,002,314
Breakdown of 2002 Data by Registered Exchanges								
All Registered Exchanges								
Exchanges:	AMEX	730,361,918	684,468,718	26,332	311	39,108,657	2,081,744	4,676,157
	BSE	301,278,684	301,278,684	0	0	0	0	0
	CHX	525,919,966	525,919,966	0	0	0	0	0
	CSE	818,570,881	818,570,881	0	0	0	0	0
	ISE	32,659,339	0	0	0	32,659,339	0	0
	NYSE	10,793,140,688	10,792,945,904	47,271	147,512	0	0	0
	PSE	97,830,254	75,749,157	0	0	21,904,108	176,990	0
	PHLX	85,884,601	60,594,223	0	0	22,014,613	228,959	3,046,806
	CBOE	156,737,374	0	0	0	45,591,390	4,866,634	106,279,350

Figures may not sum due to rounding.

<sup>1/</sup> Data on the value and volume of equity security sales is reported in connecti□

It covers odd-lot as well as round-lot transactions.

<sup>2/</sup> Includes voting trust certificates, certificate of deposit for stocks, and American Depositary Receipts for stocks but excludes rights and warrants.

<sup>3/</sup> Includes all exchange trades of call and put options in stock indices, interest rates, and foreign currencies.

Source: SEC Form R-31 and Options Clearing Corporation Statistical Report.

**Table 11**  
**VOLUME OF EQUITY/OPTIONS SALES ON U.S. SECURITIES EXCHANGES 1/**  
**(Data in Thousands)**

		Stocks 2/ (Shares)	Warrants (Units)	Rights (Units)	Equity Options		Non-Equity Options 3/ (Contracts)_
					Traded (Contracts)	Exercised (Contracts)	
All Registered Exchanges for Past Six Years							
Calendar Year:	1997	159,712,233	87,153	57,288	272,999	15,901	80,824
	1998	206,425,002	66,041	329,502	329,642	14,603	76,701
	1999	244,137,857	52,485	30,610	444,765	12,219	63,126
	2000	317,698,364	28,204	21,377	665,306	4,597	53,856
	2001r	371,484,857	27,091	49,779	722,680	1,613	58,582
	2002	481,393,569	20,948	36,884	709,784	1,285	70,674
Breakdown of 2002 Data by Registered Exchanges							
All Registered Exchanges							
Exchanges:	AMEX*	17,258,942	13,463	246	183,453	423	2,607
	BSE*	12,119,766	0	0	0	0	0
	CHX	24,043,684	0	0	0	0	0
	CSE*	45,947,955	0	0	0	0	0
	ISE	0	0	0	152,399	0	0
	NYSE*	376,740,632	7,485	36,638	0	0	0
	PSE	2,977,598	0	0	85,427	66	0
	PHLX*	2,304,922	0	0	84,935	115	4,021
	CBOE*	0	0	0	203,570	681	64,046

Figures may not sum due to rounding.

\* Data of those exchanges marked with asterisk covers transactions cleared during the calendar month; clearance usually occurs within five days of the execution of a trade. Data of other exchanges covers transactions effected on trade dates falling within the reporting month.

1/ Data on the value and volume of equity security sales is reported from January 1, 1975. It covers odd-lot as well as round-lot transactions.

2/ Includes voting trust certificates, certificate of deposit for stocks, and American Depositary Receipts for stocks but excludes rights and warrants.

3/ Includes all exchange trades of call and put options in stock indices, interest rates, and foreign currencies.

Source: SEC Form R-31 and Options Clearing Corporation Statistical Report.

**Table 12**  
**SHARE VOLUME BY EXCHANGES <sup>1/</sup>**  
**(In Percentages)**

Year	Total Share Volume (in Thousands)	NYSE	AMEX	CHX	PSE	PHLX	BSE	CSE	Others <sup>2/</sup>
1945	769,018	65.87	21.31	1.77	2.98	1.06	0.66	0.05	6.30
1950	893,320	76.32	13.54	2.16	3.11	0.97	0.65	0.09	3.16
1955	1,321,401	68.85	19.19	2.09	3.08	0.85	0.48	0.05	5.41
1960	1,441,120	68.47	22.27	2.20	3.11	0.88	0.38	0.04	2.65
1965	2,671,012	69.90	22.53	2.63	2.33	0.81	0.26	0.05	1.49
1970	4,834,887	71.28	19.03	3.16	3.68	1.63	0.51	0.02	0.69
1975	6,376,094	80.99	8.97	3.97	3.26	1.54	0.85	0.13	0.29
1980	15,587,986	79.94	10.78	3.84	2.80	1.54	0.57	0.32	0.21
1985	37,187,567	81.52	5.78	6.12	3.66	1.47	1.27	0.15	0.03
1990	53,746,087	81.86	6.23	4.68	3.16	1.82	1.71	0.53	0.01
1991	58,290,641	82.01	5.52	4.66	3.59	1.60	1.77	0.86	0.01
1992	65,705,037	81.34	5.74	4.62	3.19	1.72	1.57	1.83	0.01
1993	83,056,237	82.90	5.53	4.57	2.81	1.55	1.47	1.17	0.00
1994	90,786,603	84.55	4.96	3.88	2.37	1.42	1.39	1.42	0.01
1995	107,069,656	84.49	4.78	3.67	2.56	1.39	1.45	1.66	0.00
1996	125,922,577	85.95	4.29	3.37	2.40	1.28	1.29	1.42	0.00
1997	159,856,674	86.85	3.88	3.75	2.01	1.09	1.24	1.18	0.00
1998	206,820,545	86.67	3.71	4.57	1.92	0.79	1.52	0.82	0.00
1999	244,220,952	85.07	3.55	5.89	2.01	0.72	1.80	0.96	0.00
2000	317,747,944	83.64	3.76	7.58	1.28	0.70	1.78	1.27	0.00
2001	371,754,237	84.31	4.13	7.35	0.41	0.65	1.96	1.20	0.00
2002	481,451,401	78.26	3.59	4.99	0.62	0.48	2.52	9.54	0.00

<sup>1/</sup> Share volume for exchanges includes stocks, rights, and warrants; calendar, rather than fiscal, year data is reported in this table.

<sup>2/</sup> Includes all exchanges not listed individually.

Source: SEC Form R-31

**Table 13**  
**DOLLAR VOLUME BY EXCHANGES 1/**  
**(In Percentages)**

Year	Total Dollar Volume (in Thousands)	NYSE	AMEX	CHX	PSE	PHLX	BSE	CSE	Others 2/
1945	\$ 16,284,552	82.75	0.81	2.00	1.78	0.96	1.16	0.06	0.48
1950	21,808,284	85.91	6.85	2.35	2.19	1.03	1.12	0.11	0.44
1955	38,039,107	86.31	6.98	2.44	1.90	1.03	0.78	0.09	0.47
1960	45,309,825	83.80	9.35	2.72	1.94	1.03	0.60	0.07	0.49
1965	89,549,093	81.78	9.91	3.44	2.43	1.12	0.42	0.08	0.82
1970	131,707,946	78.44	11.11	3.76	3.81	1.99	0.67	0.03	0.19
1975	157,256,676	85.20	3.67	4.64	3.26	1.73	1.19	0.17	0.14
1980	476,500,688	83.53	7.33	4.33	2.27	1.61	0.52	0.40	0.01
1985	1,200,127,848	85.25	2.23	6.59	3.06	1.49	1.20	0.18	0.00
1990	1,616,798,075	86.15	2.33	4.58	2.77	1.79	1.63	0.74	0.00
1991	1,778,154,074	86.20	2.31	4.34	3.05	1.54	1.72	0.83	0.01
1992	2,032,684,135	86.47	2.07	4.28	2.87	1.70	1.52	1.09	0.00
1993	2,610,504,390	87.21	2.08	4.10	2.38	1.52	1.35	1.37	0.00
1994	2,817,671,150	88.08	2.01	3.49	2.09	1.34	1.31	1.68	0.00
1995	3,507,991,171	87.71	2.10	3.26	2.24	1.27	1.43	1.99	0.00
1996	4,511,779,836	88.91	1.91	3.01	2.03	1.19	1.32	1.63	0.00
1997	6,559,991,725	89.13	2.13	3.25	1.87	1.01	1.23	1.38	0.00
1998	8,308,155,509	87.57	3.37	3.93	1.79	0.79	1.58	0.98	0.00
1999	10,681,362,778	85.08	4.18	5.06	1.93	0.65	2.04	1.06	0.00
2000	13,691,342,081	81.93	5.53	7.58	1.19	0.62	1.87	1.26	0.01
2001	12,750,234,370	84.20	6.30	5.50	0.40	0.60	1.74	1.24	0.00
2002	13,259,748,959	81.40	5.16	3.97	0.57	0.46	2.27	6.17	0.00

1/ Dollar volume for exchanges includes stocks, rights, and warrants; calendar, rather than fiscal, year data is reported in this table.

2/ Includes all exchanges not listed individually.

Source: SEC Form R-31

**Table 14**  
**SECURITIES LISTED ON EXCHANGES 1/**  
**December 31, 2002**

EXCHANGE	COMMON		PREFERRED		BONDS		TOTAL SECURITIES	
	Number	Market Value (in Millions)	Number	Market Value (in Millions)	Number	Value 2/ (in Millions)	Number	Value (in Millions)
Registered:								
American	657	52,743.6	73	5,139.6	383	0	1,113	57,883.2
Boston	47	1,228.7	0	0	0	0	47	1,228.7
Cincinnati	0	0	0	0	0	0	0	0
Chicago	4	122.4	0	0	0	0	4	122.4
New York	2,102	9,094,437.0	336	25,302.0	1,173	0	3,611	9,119,739.0
Pacific	15	3,254.6	2	69.8	2	45.1	19	3,369.5
Philadelphia	2	325.1	4	54.0	0	0	6	379.1
<b>Total</b>	<b>2,827</b>	<b>9,152,111.4</b>	<b>415</b>	<b>30,565.4</b>	<b>1,558</b>	<b>45.1</b>	<b>4,800</b>	<b>9,182,721.9</b>

Includes Foreign Stocks:

New York	476	462,762.0	45	20,826.0	150	0	671	483,588.0
American	49	40,567.4	0	0	0	0	49	40,567.4
Boston	4	132.0	0	0	0	0	4	132.0
Chicago	0	0	0	0	0	0	0	0
Pacific	2	39.5	0	0	0	0	2	39.5
Philadelphia	0	0	0	0	0	0	0	0
<b>Total</b>	<b>531</b>	<b>503,500.9</b>	<b>45</b>	<b>20,826.0</b>	<b>150</b>	<b>0</b>	<b>726</b>	<b>524,326.9</b>

Figures may not sum due to rounding

1/ Excludes securities that were suspended from trading at the end of the year and securities that, because of inactivity, had no available quotes.

2/ Principal value for all exchanges, except Pacific (PSE). PSE could provide only market value. The American and New York exchanges no longer can provide market values for bonds.

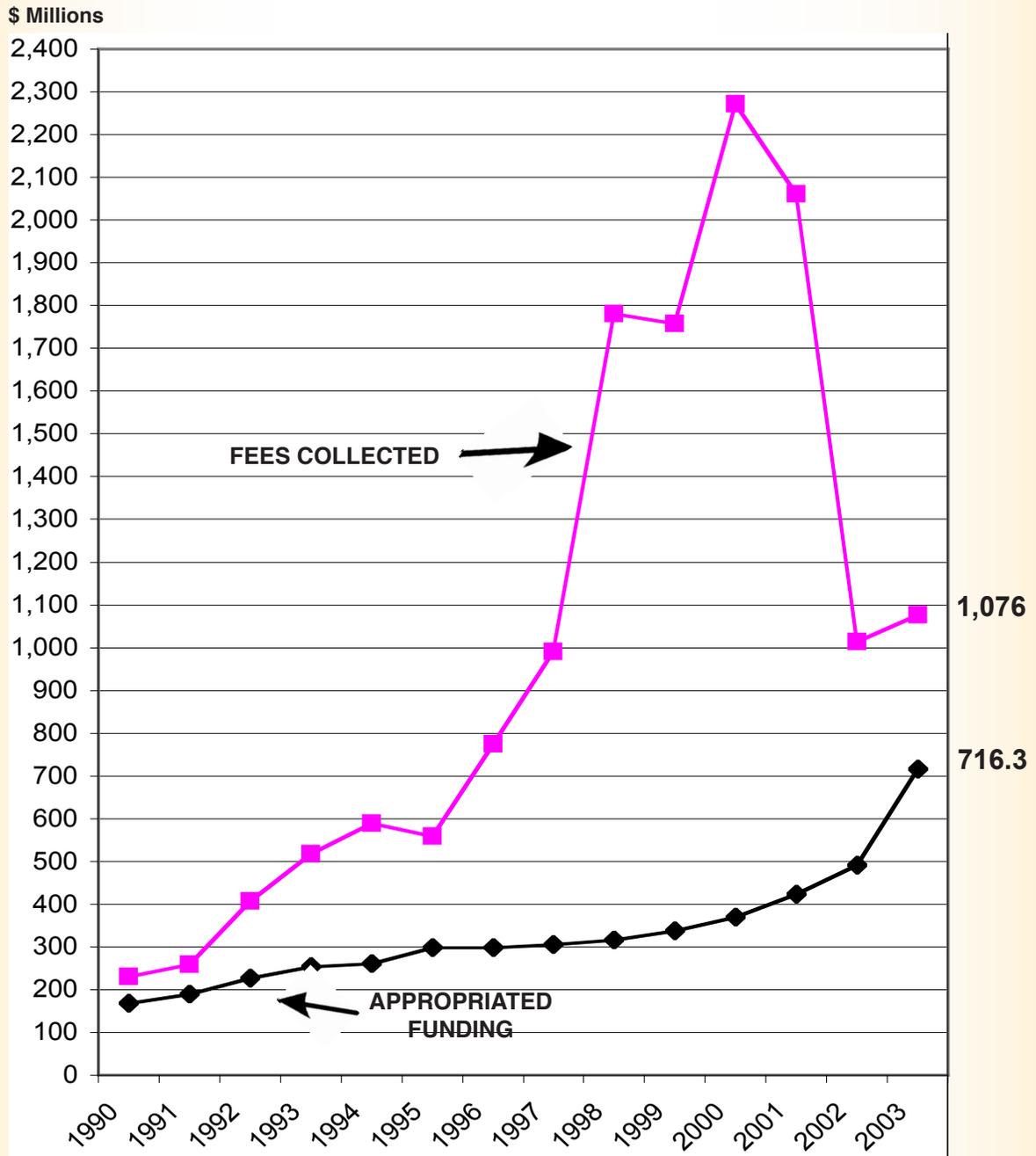
Source: SEC Form 1392

**Table 15**  
**VALUE OF STOCKS LISTED ON EXCHANGES**  
**(\$ in Billions)**

As of Dec 31	New York Stock Exchange	American Stock Exchange	Exclusively On Other Exchanges	Total
1940	\$ 46.5	\$ 10.1	\$ .....	\$ 56.6
1945	73.8	14.4	.....	88.2
1950	93.8	13.9	3.3	111.0
1955	207.7	27.1	4.0	238.8
1960	307.0	24.2	4.1	335.3
1965	537.5	30.9	4.7	573.1
1970	636.4	39.5	4.8	680.7
1975	685.1	29.3	4.3	718.7
1980	1,242.8	103.5	2.9	1,349.2
1985	1,882.7	63.2	5.9	1,951.8
1990	2,692.1	69.9	3.9	2,765.9
1991	3,547.5	90.3	4.3	3,642.1
1992	3,877.9	86.4	5.9	3,970.2
1993	4,314.9	98.1	7.2	4,420.2
1994	4,240.8	86.5	4.7	4,332.0
1995	5,755.5	113.3	6.8	5,875.6
1996	6,947.7	106.2	5.7	7,059.6
1997	9,413.1	131.3	3.6	9,548.0
1998r	10,384.8	149.7	4.7	10,539.2
1999	11,556.2	82.5	6.7	11,645.4
2000	11,633.0	94.4	4.7	11,732.1
2001	11,126.2	82.9	9.4	11,218.6
2002	9,119.7	57.8	5.2	9,182.7

Source: SEC Form 1392

Table 16  
**APPROPRIATED FUNDS vs FEES\* COLLECTED**



\* Excludes disgorgements from fraud actions.

**Table 17**  
**BUDGET ESTIMATES AND APPROPRIATIONS**

Action	Fiscal 1999		Fiscal 2000		Fiscal 2001		Fiscal 2002		Fiscal 2003	
	Positions	\$000	Positions	\$000	Positions	\$000	Positions	\$000	Positions	\$000
Estimate Submitted to the										
Office of Management and Budget	2,827	\$339,098	2,946	\$367,800	3,296	\$430,600	3,540	\$563,063	3,313	\$562,417
Action by the Office of										
Management and Budget	---	+2,000	+197	-7,000	-11	-7,800	-312	-125,163	+57	+4,483
President's Request	2,827	341,098	3,143	360,800	3,285	422,800	3,228	437,900	3,370	566,900 <sup>6/</sup>
Action by the House of										
Representatives	---	-17,098	---	-36,800	-50	-30,176	---	---	---	---
Subtotal	2,827	324,000	3,143	324,000	3,235	392,624	3,228	437,900	---	---
Action by the Senate	+274	+17,098	---	+46,800	+50	+97,028	+57	+76,147	+639	+183,604
Subtotal	3,101	341,098	3,143	370,800	3,285	489,652	3,285	514,047	4,009	750,504
Action by Conferees	---	-11,098	+50	-3,000	---	-66,852	-57	-76,147	---	-34,154
Annual Appropriation	3,101	330,000	3,193	367,800	3,285	422,800	3,228	437,900	4,009	716,350
Supplemental Appropriation	---	+8,175	---	+500	---	---	+125	+51,605 <sup>4/</sup>	---	---
Sequestration/Other	---	-458	---	---	---	---	---	-336	---	---
Use of prior year unobligated balances	---	+18,357 <sup>1/</sup>	+42	+14,100 <sup>2/</sup>	---	+4,472 <sup>3/</sup>	---	+25,943 <sup>5/</sup>	---	+705 <sup>7/</sup>
Total Funding Level	3,101	356,074	3,235	382,400	3,285	427,272	3,353	515,112	4,009	717,055

1/ Includes \$14,500 for EDGAR modernization and \$3,857 from prior year recoveries.

2/ Includes \$5,400 for EDGAR modernization and \$8,700 reprogramming.

3/ Represents spending authority for EDGAR modernization.

4/ Includes \$20,705 for 9-11 Disaster Recovery and \$30,900 (\$25,000 for 125+ positions and \$5,900 for OIT needs).

5/ Includes \$1,123 for EDGAR modernization and \$24,820 reprogramming for pay parity.

6/ Includes Amendment of \$100,000.

7/ Includes \$705 for EDGAR modernization.