Enforcement

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

What We Did

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

Enforcement Actions Initiated

	FY95	FY96	FY97	FY98	FY99
Civil Injunctive Actions	171	180	189	214	198
Administrative Proceedings	291	239	285	248	298
Contempt Proceedings	23	32	14	15	29
Reports of Investigation	1	2	1	0	0
Total	486	453	489	477	525

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

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

Significant Enforcement Actions

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

Offering Cases

Internet Cases

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

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

Microcap Cases

SEC v. Lawrence J. Penna, et al.[3] The Commission charged the former owners of Investors Associates, Inc. and the former co-owner of its most active branch with obtaining illegal profits totaling over $33 million between 1995 and 1997 by underwriting fraudulent public offerings of securities of five companies and manipulating the market prices of those securities. The scheme involved the securities of issuers eligible for a NASDAQ SmallCap listing. The defendants consented to the entry of injunctions and to orders requiring the payment of a total of $43.3 million as disgorgement.

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

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

SEC v. Hartley T. Bernstein.[5] Hartley T. Bernstein, an attorney, obtained over $500,000 by selling securities shortly after the IPOs of five companies for which the defendant's law firm acted as counsel. Bernstein acquired unregistered securities of four companies whose IPOs were being underwritten by Sterling Foster & Co., Inc., and of an additional company whose IPO was co-underwritten by VTR Capital, Inc. and Investors Associates, Inc. Bernstein consented to the entry of an injunction and to an order requiring him to pay a civil penalty of $40,000. In a parallel criminal proceeding, he agreed to pay an additional $850,000 in restitution for his role in the fraud.

Financial Disclosure Cases

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

$2.5 million for programs to further awareness and education among accountants about independence requirements.

SEC v. Garth H. Drabinsky, et al.;[7] *In the Matter of Livent Inc*.[8] Senior officers, directors and members of the accounting staff of Livent, Inc. engaged in a financial fraud between 1990 and 1998. The Commission's action against these employees alleged that Livent, a theatrical producer, made at least 17 false filings with the SEC in which the company materially overstated the results of its operations and its financial condition. In addition, the Commission's complaint alleged that five of the Livent employees engaged in insider trading of Livent securities while in possession of material, nonpublic information about the fraud. Four of the defendants consented to the entry of injunctions; the civil action was pending as to the other defendants at the end of the fiscal year. In a related administrative proceeding, Livent consented to the entry of a cease and desist order.

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

Insider Trading Cases

SEC v. Brett S. Henderson, et al.[10] Brett S. Henderson, a 24-year old former analyst for Morgan Stanley Dean Witter & Co., and Richard F. Randall, a 27-year old school teacher, engaged in an insider trading scheme between September 1998 and July 1999, in which Henderson repeatedly tipped material, nonpublic information about Morgan Stanley clients to Randall. The defendants generated illegal profits of approximately $54,000 by trading through Randall's online brokerage account in the stock or options on stock of Broadcom Corp., Netscape Communications Corp., I2 Technologies, Inc., Manugistics Group, Inc., Xylan Corp., Broadcast.com Inc., Abacus Direct Corporation, Sequent Computer Systems, Inc., and Egghead.com, Inc. This case was pending at the end of the fiscal year.

SEC v. Cassano, et al.[11] The complaint alleging insider trading violations by 25 individuals in advance of the IBM takeover of Lotus Development Corporation named the largest single group of insider traders in the SEC's history. After an initial tip by Lorraine K. Cassano, a former IBM secretary, to her husband, material, nonpublic information about the proposed takeover spread rapidly through a network or relatives, friends, co-workers and business associates. Illegal trading by the defendants generated profits of more than $1.3 million. Five of the defendants consented to the entry of injunctions and orders requiring the payment of disgorgement and civil penalties. This case was pending as to the other defendants at the end of the fiscal year.

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

Municipal Securities

In the Matter of Kidder, Peabody & Co. Incorporated.[13] Kidder, Peabody & Co., a broker-dealer, proposed a reinvestment agreement to the city of Tampa, Florida, that would ostensibly have permitted the city to realize a higher rate of return on certain escrowed bond proceeds, without generating yields in excess of those permitted by federal tax laws. Because tax regulations required a minimum of three bidders to carry out the agreement, Kidder and another broker-dealer arranged for the submission of two artificially low bids. This permitted Kidder to obtain the agreement for $1.3 million, some $3 million less than its actual value. The less than fair value payment had the effect of artificially lowering the yield from the city's bonds (a form of "yield burning"). Kidder made false representations to Tampa about the bidding process and the value of the agreement. In addition, in subsequent purchases and sales of securities under the agreement, Kidder and the other broker-dealer realized profits of nearly $3.5 million. Kidder consented to the entry of a cease and desist order by which it was required to disgorge $1,676,673.08 plus prejudgment interest.

In the Matter of the City of Miami, Florida, et al.[14] The Commission instituted proceedings against Miami, Cesar Odio, Miami's former city manager, and Manohar Surana, its former director of finance and assistant city manager. The Commission alleged that the respondents committed fraud in the offer and sale of approximately $126 million in municipal bonds. The case involved three separate offerings in 1995. Official statements distributed to investors in the offerings failed to disclose Miami's true financial condition, including a substantial decline in cash flow that raised the possibility that the city would be unable to meet its operating expenses and debt service in 1995. Miami's Comprehensive Annual Financial Report for fiscal year 1994, distributed to broad segments of the investment community, also failed to disclose the city's deteriorating financial condition. This case was pending at the end of the fiscal year.

Self-Regulatory Organizations

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

Broker-Dealer Cases

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

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

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

Investment Adviser and Investment Company Cases

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

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