

REPLY FROM SECURITIES AND EXCHANGE COMMISSION

SECURITIES AND EXCHANGE COMMISSION,
Washington, March 17, 1965.

HON. JOHN E. MOSS,
Chairman, Foreign Operations and Government Information Subcommittee, Committee on Government Operations, House of Representatives.

DEAR MR. CHAIRMAN: This is in response to the inquiries in your letter of February 12, 1965, concerning the operation of section 3 of the Administrative Procedure Act, 5 U.S.C. 1002, with respect to the activities of this Commission. In addition to the answers below, we are providing copies of the Commission's recent comments to the Committee on Government Operations on H.R. 5012, which provide additional information relevant to the subject inquiries.

1. Congress has assigned to this Commission the responsibility of administering the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, and the Investment Advisers Act of 1940. The Commission's functions under these statutes to which section 3 of the Administrative Procedure Act, 5 U.S.C. 1002, applies include rulemaking, adjudication, and examination of the various filings made with the Commission by private persons such as registration statements relating to public offerings of securities, broker-dealer registrations and reports and issuer reports. The Commission also has certain advisory functions to the courts in corporate reorganizations under chapter X of the Bankruptcy Act; the Commission adopts no substantive rules, opinions, or orders thereunder within the meaning of section 3 of the Administrative Procedure Act.

As shown more fully below and in the attached comment on H.R. 5012, the Commission makes public all of the information required by section 3 to be public and keeps private only materials permitted by that section or other statutes to be nonpublic.

2 (a), (b), (c), and (d). Descriptions of the Commission's central and field organization, statements of the general course and method by which its functions are channeled and determined, substantive rules, statements of general policy, interpretations, and amendments to the foregoing are published in the Federal Register, the Code of Federal Regulations (17 CFR Parts 200-286), and in pamphlet form and as individual releases made available to the public.

Changes in the above-described material are published in the Federal Register promptly upon adoption, are reflected in the supplements to and revisions of the Code of Federal Regulations, and are promptly distributed as individual releases, copies of which are included in pamphlet copies of rules and are also distributed by commercial publishers.

2(e). Pursuant to rule 25(c) of the Commission's Rules of Practice, 17 CFR 201.25(c), all final opinions, orders and rules, including rules that are addressed to and served upon named persons in accordance with law, are released for general public publication except where confidential treatment has for good cause been directed by the Commission. As rule 25(c) provides, copies of such material are published, mailed out on request and made available for public inspection. See attached comment on H.R. 5012 at page 2. Normally rules addressed to named persons take the form of "orders" entered on "opinions" rendered in proceedings conducted under various provisions of the Public Utility Holding Company Act of 1935 or the Investment Company Act of 1940. Such opinions, together with the Commission's other opinions, are published for general distribution and in bound volumes.

3. As described in answer 2(e), supra, pursuant to rule 25(c) of the Commission's Rules of Practice 17 CFR 201.25(c), all final opinions and orders are published, except where confidential treatment has for good cause been directed by the Commission. These are widely distributed. Interim opinions and orders are published or made available for public inspection in all except nonpublic proceedings. The Commission maintains public reference rooms where the public may examine all public documents; a detailed description of the material and the manner in which it is made available is published in 17 CFR 200.80.

4. As described in detail in the attached comment on H.R. 5012 at pages 2, 3, and 9, certain proceedings and opinions and orders therein are nonpublic. These include proceedings pursuant to specific statutory provisions requiring confidential treatment of documents filed by members of the public and certain proceedings of a disciplinary nature, where the unfairness of adverse