

SECURITIES REGULATION: SEC REITERATES
DECISION THAT ISSUERS OF VARIABLE ANNUITY
CONTRACTS ARE SUBJECT TO FEDERAL REGULATION
UNDER INVESTMENT COMPANY ACT OF 1940

THE IMMEDIATE consequence of the holding in *SEC v. Variable Annuity Life Ins. Co. of America*¹ (*VALIC*) was to subject the issuer of a variable annuity contract² to regulation under the Securities Act of 1933³ and the Investment Company Act of 1940.⁴ The practical implications for the future of this "hybrid"⁵ security could not be ascertained with any degree of certainty, however, until the scope of regulation was delimited by the Securities Exchange Commission itself. The recent Investment Company Act Release, *In re Prudential Ins. Co. of America*,⁶ provides that delimitation. In

¹ 359 U.S. 65 (1959). This case involved two corporations, Variable Annuity Life Insurance Company of America and Equity Life Insurance Company of America. Both corporations were subject to regulation by the insurance commissioners of the various states and particularly the District of Columbia. They offered for sale, in interstate commerce, variable annuity contracts, whereupon the SEC instituted action to enjoin further sale of such contracts without compliance with the registration provisions of the Securities Act of 1933, 48 Stat. 74, as amended, 15 U.S.C. §§ 77a-bbbb (1958), as amended, 15 U.S.C. §§ 77b-ddd (Supp. II, 1961) and the Investment Company Act of 1940, 54 Stat. 789, as amended, 15 U.S.C. § 80a (1958), as amended, 15 U.S.C. § 80a-2 to -39 (Supp. II, 1961). Both the district court, 155 F. Supp. 521 (D.C. 1957), and the court of appeals, 257 F.2d 201 (D.C. Cir. 1958), denied relief. The Supreme Court reversed and held that variable annuity contracts are securities within the meaning of the Securities Act of 1933 and issuers are subject to regulation under the Investment Company Act of 1940. The Court reasoned that such contracts are not insurance nor are issuers insurance companies within the meaning of the exemption provisions of the McCarran-Ferguson Act, 59 Stat. 33 (1945), as amended, 15 U.S.C. §§ 1011-15 (1958). See SEC Investment Company Act Release No. 2974, Feb. 25, 1960.

² In the conventional fixed-dollar life annuity, three factors are considered in establishment of rates and the amount of benefit paid, viz., mortality, investment, and expenses. These factors are fixed and guaranteed. The variable annuity contract fixes the mortality and expense elements but the investment factor is allowed to vary without guarantee. Although an annuitant is guaranteed a return of a certain number of units, the dollar value of the units will vary proportionately to the investment experience of the portfolio of securities in which the annuitant's premiums are invested. Johnson, *The Variable Annuity—Insurance, Investment, or Both?*, 48 GEO. L.J. 641, 644 (1960); SEC Investment Company Act Release No. 2974, Feb. 25, 1960; 2 ENCYCLOPAEDIA BRITANNICA 1 (1951).

³ 48 Stat. 74, as amended, 15 U.S.C. §§ 77a-bbbb (1958), as amended, 15 U.S.C. §§ 77b-ddd (Supp. II, 1961).

⁴ 54 Stat. 789, as amended, 15 U.S.C. § 80a (1958), as amended, 15 U.S.C. § 80a-2 to -39 (Supp. II, 1960).

⁵ For an excellent discussion of the dual characteristics of the variable annuity see Johnson, *supra* note 2.

⁶ SEC Investment Company Act Release No. 3620 (Jan. 22, 1963) [hereinafter cited as Investment Company Act Release No. 3620].

this decision, the Commission, by refusing a status exemption under section 3 (b) (2)⁷ of the Investment Company Act and by a discriminating use of its discretionary exemption power granted under section 6 (c),⁸ clearly establishes that federal regulation, in the area of investment risk, is supreme and all-inclusive.⁹

Prudential Life Insurance Company of America (Prudential) sought a declaration by the Commission that, as a prospective issuer of variable annuity contracts, it would not be subject to the Investment Company Act nor would the sale of such contracts result in the creation of any other entity subject to the act, notwithstanding the holding in *VALIC*. Prudential attempted to distinguish the holding in *VALIC* on the ground that the respondent corporations there concerned were engaged, *primarily*, in the sale of variable annuity contracts, whereas, Prudential is primarily engaged in the insurance business as defined in section 2 (a) (17)¹⁰ of the Investment Company Act. Prudential, therefore, asserted that as an insurance company it was specifically excepted from the definition of an "investment company" under section 3 (c) (3)¹¹ and thus not subject to SEC regulation.¹²

Although Prudential appears to have been confident that the primary nature of its business required its recognition and exemption as an insurance company, it must have been aware of the possible and far reaching effects of the *VALIC* release. There the Commission had stated that holders of variable annuity contracts,

⁷ This section essentially provides that an investment company shall not include any issuer which the Commission finds to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities. In conjunction with this section, Prudential further relied on § 3 (c) (3), which excepts an insurance company from regulation, and § 38 (a), which empowers the Commission to issue rules, regulations and orders necessary or appropriate to the exercise of its powers.

⁸ This section provides that the Commission may grant exemptions, conditionally or unconditionally, to the extent necessary or appropriate to the public interest, but consistent with protection of investors within the purposes and policy of the act.

⁹ "We hold that the variable annuity contracts create a relationship subject to the Act [O]ur decision follows from its fundamental intent and philosophy to provide certain protections to investors in precisely such 'liquid pools of the public savings entrusted to management to be invested' as that created under the contracts of the present case." Investment Company Act Release No. 3620, text at n.12.

¹⁰ Section 2 (a) (17) defines an insurance company as one "which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance . . . and which is subject to supervision by the insurance commissioner"

¹¹ In substance, this section excludes from the definition of an investment company "any bank or insurance company."

¹² Brief for Prudential Ins. Co. of America, pp. 87-89.

together with the proceeds of their payments, constituted an "investment company" separate and apart from the issuer and, as such, subject to the act.¹³ To meet this obstacle, Prudential asserted that application of this concept to the instant situation would result in the creation of a new type of entity without form, possessing wholly unknown attributes, and hence, lacking the organizational characteristics requisite for compliance with the mechanics of the regulation contemplated. In the alternative, Prudential requested, pursuant to section 6 (c) of the act, that exemptions be granted from various specific statutory provisions.¹⁴

The Commission conceded that Prudential, as an insurance company, was excepted from the definition of an "investment company," but in accordance with the *VALIC* release held that the mere sale of variable annuity contracts would result in the creation of a fund which would invest, reinvest, or trade in securities and therefore be an investment company subject to the act.¹⁵

On close analysis, the distinction drawn by the Commission between the two entities, Prudential and the investment fund, is illusory at best. Conceptually, of course, the "investment company" can be viewed as separate and distinct from the larger insurance entity, thus leaving the insurance endeavors of Prudential theoretically unimpaired by federal regulation. Practically, however, the nebulous quality of the "investment fund" entity permits compliance with regulation only through the utilization of the organizational framework of Prudential. The net result is that if an insurance company is to sell variable annuity contracts, its organizational and

¹³ SEC Investment Company Act Release No. 2974, February 25, 1960, text at n.29. However, as *VALIC* did not qualify within the meaning of § 3 (c) (3), it was *VALIC* itself which was required to register. This being the case, the Commission determined that to require separate registration of the "investment company" would be of no purpose. *Ibid.*

¹⁴ Although Prudential requested exemption from §§ 8-35 inclusive, Brief for Prudential Ins. Co. of America, pp. 140-71, the Commission confined its specific ruling to § 10 (affiliation of directors, officers, and employees), § 13 (changes in investment policy), § 15 (contracts of advisors and underwriters), and § 16 (board of directors, election). Sections 10, 13, 15, and 16, all relating generally to investor control, were critical to both the position of Prudential and the Commission. Prudential asserted that compliance with these provisions was irreconcilable with state regulation. On the other hand, the Commission considered these sections to be the heart of the act which could, in no way, be compromised. Other sections considered were § 17 (f) (securities required to be deposited in bank and access limited to three authorized persons), § 22 (d) (prohibition of discriminatory pricing), § 22 (e) (suspension of right of redemption), § 27 (a) (3) (deductible sales load), § 27 (c) (1) (required redeemable security), § 27 (c) (2) (deposit payments with custodian), § 30 (d) (exemption from accounting rules), and § 32 (transmission of records by officer derivatively sued).

¹⁵ Investment Company Act Release No. 3620, text at n.30.

mechanical structure must now be adaptable to both state and federal regulatory measures.

Prudential, in its request for alternative relief, asserted, without elaboration, that if the specific exemptions were not granted, existing insurance companies would be denied the right to offer and sell variable annuity contracts to the public. Presumably, Prudential was committed to the proposition that the mechanics of both state and federal regulation would render issuance of the variable annuity impractical within the framework of existing organizational structure.¹⁶ In rejecting this argument and denying the greater part of the requested exemptions,¹⁷ the Commission noted that it had no reason to believe that the problems confronting Prudential would hinder other life insurance companies, nor was there any reason to believe that the states would be reluctant to aid dual statutory compliance by tailoring their statutes to the requisite criteria.

The variable annuity is a curious creature which, since its inception,¹⁸ has prompted varying opinions, from both within and without the insurance industry, ranging from undying praise¹⁹ to unlimited damnation.²⁰ No matter what the relative merits of the variable annuity may be, one particular characteristic is inherent in

¹⁶ Moreover, if it were necessary and possible to substantially alter the existing structure in order to enable compliance with dual regulation, Prudential was unwilling to do so. Brief for Prudential Ins. Co. of America, p. 131.

¹⁷ The Commission denied exemption from §§ 10, 13, 15, 22 (d), 22 (e), and 30 (d). The exemptions granted were basically technical in nature and apparently not critical to the general regulatory scheme envisioned by the Commission. Exemption was granted in regard to § 27 (c) (1) in that the Commission recognized that "the very nature of the variable annuity arrangement entails mortality assumptions . . . which would be adversely affected by the unilateral withdrawal of unliquidated units by an annuitant during the annuity [pay-out] period." Investment Company Release No. 3620, text at n.48. Exemption was also granted from § 27 (a) (3) in that "the percentage deducted from each purchase payment after the first year for sales load . . . is constant, with any decrease in the sales load being offset by a corresponding increase in additions to surplus." *Id.* text at n.52. Likewise granted was exemption from §§ 27 (c) (2), 17 (f), and 17 (f) (2) since the Commission felt that Prudential's safekeeping facilities and the proposed procedures for access "appear to provide adequate safeguards . . ." *Ibid.*

¹⁸ The variable annuity was first used when the College Retirement Equities Fund was organized in 1952 under a special New York law. This fund is not public in nature as its membership is limited. Day & Melnikoff, *The Variable Annuity As a Life Insurance Company Product*, 24 INS. COUNSEL J. 16 (1957). Probably the first use of the term "variable annuity" was made in Johnson, *The Variable Annuity*, 7 J. AM. Soc'y C.L.U. 67 (1952).

¹⁹ See, e.g., Day & Melnikoff, *supra* note 18; Johnson, *The Variable Annuity: What It Is and Why It Is Needed*, 1956 INS. L.J. 357; Kvernland, *Some Economic and Investment Aspects of Variable Annuities*, 1956 INS. L.J. 373.

²⁰ See, e.g., Haussermann, *The Security in Variable Annuities*, 1956 INS. L.J. 382; Long, *The Variable Annuity: A Common Stock Investment Scheme*, 1956 INS. L.J. 393.

its very definition: the risk of loss, or, benefit of gain, is with the purchaser of the annuity contract.²¹ Such a relationship renders the variable annuity subject to abuse comparable to that of the everyday mutual fund contractual plan²² and requires that the public be similarly protected. Although those who extol the virtues of the variable annuity talk, *inter alia*, in terms of guaranteed units, hedge against inflation, spreading mortality risk on a sound actuarial basis, and the advantages of using trained agency personnel to better serve the public,²³ such a facade of insurance terminology does not serve to obviate the need for adequate investor protection. Nor are state insurance laws designed to protect the purchasing public in such a context. These laws traditionally provide for regulation of contract terms, reserves, and permissible investments,²⁴ culminating in an overall purpose of assuring the financial solvency of the insurer, thus guaranteeing the performance of promises in the future.²⁵ Such a concept of regulation becomes circular and illusory when the obligation guaranteed is not measured in fixed dollars, but in fixed units which derive their value from the overall investment experience of a portfolio of securities.²⁶ Consequently, while these controls may prove satisfactory for normal banking and insurance activity, they are ill-fitted to protect an investor who is "asked to put his money in a scheme . . . on an equity basis."²⁷

All these factors are implicit in the Commission's denial of Prudential's alternative request for exemption from section 16 (a) and

²¹ Investment Company Act Release No. 3620, text at n.10; Haussermann, *supra* note 20, at 385.

²² See Long, *supra* note 20, at 395.

²³ See generally Alvord, *Insured Pensions and Inflation*, 12 J. AM. Soc'y C.L.U. 339 (1958); Day & Melnikoff, *supra* note 18; Johnson, *supra* note 19.

²⁴ For a discussion of the nature and scope of state insurance regulation, see 1 RICHARDS, *INSURANCE* §§ 41-42 (5th ed. 1952); HUEBNER & BLACK, *LIFE INSURANCE* 518-24 (5th ed. 1958).

²⁵ See 359 U.S. at 77; 1 RICHARDS, *op. cit. supra* note 24 § 41.

²⁶ It should not be inferred that the exemption of insurance companies arises from the presence of adequate regulation in this area at the state level at the time the Investment Company Act became law. Insurance companies were specifically exempted by virtue of the fact that certain investment activity is a necessary ingredient of the industry. However, this type of investment activity is not subject to the abuses against which the act was directed, as the risk of investment experience is not with the policy holder, but is assumed by the insurance company. Moreover, it should be noted that the variable annuity contract was not in existence at the time the act became law and hence, could not have been within the contemplation of Congress. See, *e.g.*, 359 U.S. at 75-76 (Brennan, J., concurring); Investment Company Act Release No. 3620, text at n.14.

²⁷ 359 U.S. at 80 (Brennan, J., concurring).

other related investor control provisions.²⁸ The Commission reasoned that these sections constitute the very heart of the act²⁹ and to grant exemption here would be tantamount to exemption from the entire act.³⁰ The denial of exemption from those sections concerned with redemption, discriminatory pricing, and accounts and records,³¹ follows from the same reasoning in that effective investor control requires disclosure and protective regulation of management procedures. In dealing with each of the requested exemptions, the Commission has made a clear division: Although a rigid application of the act may not be necessary in all instances, the Commission will accommodate the issuer only where the exemption is of a technical nature and the protection of the annuitant, as an investor, will not be jeopardized.³²

The Commission's attitude is that statutory accommodation by the states, permitting dual compliance with federal and state laws, may in all probability be anticipated.³³ However, the wide differences in policy between the federal disclosure methods of regulation of investment and the state paternalistic system of insurance regulation make concession on the part of the states difficult and improbable.³⁴ It is not likely that the states have forgotten the epochal

²⁸ Section 16 (a) deals specifically with the election of directors. Other major sections relating to investor control are §§ 10, 13, 15, and 32. None of these sections were in issue in the VALIC release. SEC Investment Company Act Release No. 2974, Feb. 25, 1960.

²⁹ Investment Company Act Release No. 3620, text at n.36. In arriving at this conclusion the Commission said, "The effect of these sections is not only to place the power of control in the holders, but to prevent its usurpation by any others The purpose is not only to secure honesty and objective 'wisdom' in management, but to make it separately responsive to the wishes and judgment of those who depend upon its results." *Id.* at n.41. For similar reasoning see *Presidential Message vetoing H.R. 7482*, 100 CONG. REC. 21486 (1961), where it was pointed out that the basic principle of the Investment Company Act was to give investors a voice in the control of the company.

³⁰ "The granting of these exemptions would come close to reversing our holding on the principal application." Investment Company Act Release No. 3620, text at n.13.

³¹ 54 Stat. 824, 836, 15 U.S.C. §§ 22 (e), 22 (d), 30 (1958).

³² Investment Company Act Release No. 3620, text at n.12.

³³ New Jersey, itself, is an important insurance state where Prudential surely must have considerable influence. Yet it took five years for Prudential to convince the legislature of the need for bare enabling legislation. Brief for Prudential Ins. Co. of America, p. 27. See N.J. STAT. ANN. § 17:35A (Supp. 1961). Only a few other states have been willing to go this far. See, e.g., COLO. REV. STAT. ANN. §§ 72-2-14 to -18 (Supp. 1961); FLA. STAT. §§ 627.0975-.0979 (Supp. 1962); KY. REV. STAT. §§ 304.833-37 (1960).

³⁴ The methods of the two systems are diametrically opposed to one another. Federal disclosure is premised on the concept that if all relevant facts are presented to the public and adequate machinery provided for exercise of democratic process, the

decision in *United States v. South-Eastern Underwriters Ass'n*,³⁵ and accordingly they will be wary of even the slightest federal encroachment in the area of insurance regulation. Moreover, if a state is willing to compromise its own legislative scheme, it would still seem inconsistent with the act for the variable annuitants to share their control over the investment fund with all other qualified policy holders of the company.³⁶

However, as the Commission's analysis shows, the legal relationships which arise from the sale of the variable annuity contract have both insurance and investment characteristics, and these characteristics are identifiable and severable.³⁷ Thus the very dichotomy which gives rise to the initial dual compliance problem also makes solution possible.³⁸ The difficulty lies in determining which solution best satisfies the needs of an insurance company, such as Prudential, and, at the same time permits substantial compliance with the act.³⁹

needed protection will be forthcoming. Insurance regulation, on the other hand, proceeds on the different premise that the dissemination of all relevant information to the public is not necessary. The state itself will act through its own agencies and insure that the public is not misled.

³⁵ 322 U.S. 533 (1944). In this case the Supreme Court overturned the seventy-five year old principle of *Paul v. Virginia*, 75 U.S. (8 Wall) 168 (1868), and held that insurance was commerce under the commerce clause of the Constitution and, therefore, interstate insurance business was subject to federal regulation. As a result of this holding the McCarran-Ferguson Act, 59 Stat. 33 (1945), as amended, 15 U.S.C. §§ 1011-15 (1958), was enacted. In § 1012 (b) it provided that "No act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance . . ."

³⁶ If the same board of directors were to control both the insurance company and the segregated investment fund account, it necessarily follows that the right to vote for these directors will be concurrently exercised by both the traditional type policy holder and the variable annuitant. As the Commission noted, the investment account would be "dedicated solely to the variable annuity contract holders and its assets will not be subject to claims of any other contract or policy holder of the company." Investment Company Act Release No. 3620, text at n.4. Consequently, the variable annuitants would be sharing control over investment management with 17,000,000 standard policy holders who have no interest in the fund.

³⁷ Investment Company Act Release No. 3620, text at n.15. See note 42 *infra*.

³⁸ Among available possibilities is the use of an unmanaged fund. This type of fund operates under a set investment policy whereby a certain percentage of incoming funds is invested in a predetermined security or securities. Consequently, the requirement of investor control over management becomes superfluous as management does not exist. However, such an arrangement lacks the flexibility and diversification required if the fund is to react promptly and proportionately to changes in the general economy. The employment of a subsidiary corporation was considered by Prudential but was discarded because of possible problems of conflict of interests, expense, and difficulty of integration within the desired framework of organization. A third possibility, the utilization of a separate investment company concurrently with a custody arrangement, is discussed in the text.

³⁹ Admittedly, from a practical standpoint, the solution proposed to meet the needs of the insurance company will have doubtful effect on actual management control.

In any event, it would appear that satisfaction of both criteria will require statutory amendment *and* the use of an investment fund which is in fact a separate entity, *a fortiori*, governed by a substantially independent board of directors.⁴⁰

The structure which appears to best lend itself to the problem is a separately organized investment company whose shares would be purchased with that portion of the investor's payments that are to go into the "Investment Account." These shares would be purchased by a custodian and held for the annuitant under the Prudential policy.⁴¹ Such a plan would substantially separate the investment characteristics from the insurance aspects of the annuity for *purposes of regulation* and, at the same time, allow the sale of an integrated plan through the established agencies of the insurance company.⁴² The requirement of investor control over management would be satisfied by having the custodian solicit the votes of the annuitants and then vote the shares according to the preferences indicated.

In the arrangement proposed, two basic variations are possible: An established fund entirely independent of the insurance business

Prudential will still be able to exert considerable pressure in proxy solicitation through a majority of affiliated directors although technical control of the proxy machinery will be in the hands of the custodian. One does not need a vivid imagination to envision how a custodian agreement could be drafted in order that such influence could be exercised. However, the Commission is committed to the disclosure method of regulation and if a device is provided which will allow the disclosure mechanism an opportunity to function, it would appear that such compliance would be sufficient.

⁴⁰ The present enabling legislation does not provide for a variety of organizational arrangements, but confines the issuer of variable annuities to the use of a segregated account within the framework of the initial organization. Moreover, the concept of regulation of the variable annuity in New Jersey is fixed in terms of such an account. N.J. STAT. ANN. §§ 17.35A-6 to -10, -12 (Supp. 1961). For similar statutory provisions see, e.g., COLO. REV. STAT. ANN. §§ 72-2-14 to -18 (Supp. 1961); KY. REV. STAT. § 304.834 (3) (1960). In regard to the independence of the board of directors see 64 Stat. 1265 (1940), 15 U.S.C. § 80a-10 (1958).

⁴¹ A supplemental agreement similar to the type used by the contractual plans would be used. Such an agreement provides, *inter alia*, for forwarding of plans to investors, application of dividends, purchase of fund shares, sales and redemption of fund shares. In the case of a variable annuity contract, a number of these provisions would probably be duplicated in the contract.

⁴² The distinction that the investment and insurance characteristics are separated solely for purposes of allowing dual regulation without conflict is important. It must be recognized that the variable annuity contract is itself a security. The annuity contract represents something similar to the ordinary contractual plan. The mere fact that there is a preponderance of either investment or insurance characteristics is immaterial. The contract, in its entirety, involves investment of funds at the risk of the purchaser—the only characteristic relevant to the determination. The proposed plan provides no more than a mechanism by which the variable annuity contract can be offered to the public under non-conflicting dual regulation.

could be utilized, or, in the alternative, Prudential could create or purchase its own separate investment fund. Although the use of an already existing fund might appear to be the easier method, it is unlikely that such an arrangement would prove desirable for Prudential. The use of an established fund would preclude Prudential from determining initial investment policy and from using a name for the fund similar to "Prudential." Consequently, the task of integrating the plan would be made more difficult.⁴³ On the other hand, by the creation or purchase of its own fund, Prudential would remain in precisely the same situation as its present plan contemplates, save for the fact that the investor control provisions of the act would be satisfied.

Of course, this plan would require some form of statutory accommodation at the state level. The present enabling legislation of New Jersey and the other states that have acted in this area is not mechanically compatible with the device proposed.⁴⁴ All of these statutes are committed to the concept of segregated accounts within the framework of the insurance company and make no provision for a custody arrangement. To accommodate the system proposed, it would be necessary to provide for a custody arrangement which would replace the "investment fund" and also provide for a segregated "other assets" account consisting of that portion of the premium necessary to meet sales and administrative expenses, premium taxes, and to create a surplus for the support of the company's guarantees under the contracts. States without enabling legislation should have little or no problem drafting a compatible law *once committed* to the premise that such legislation is desirable.

Whatever the effect may be on the insurance industry, the Commission has given strong impetus to the *VALIC* release by recognizing the latent dangers inherent in the variable annuity. The nature of the variable annuity contract, when considered in the light of the motivating causes of the act⁴⁵ and its subsequent history, com-

⁴³ An important consideration to Prudential and other well established insurance companies who may desire to offer variable annuity contracts is the maintenance of their identity to the public. Moreover, the use of an established fund would require duplication in many areas of marketing, such as, literature, advertisement, and agencies.

⁴⁴ See note 40 *supra*.

⁴⁵ "Briefly summarized, these abuses were stated to be: (a) Failure to provide adequate, accurate, and specific information to prospective investors and stockholders; (b) portfolio management in the interests of managements and their affiliates, rather than that of shareholders; (c) unsound, misleading, and unsupervised accounting practices; (d) changing the character of the business without the consent of the share-

pels the result reached by the Commission. The burden of dual regulation may indeed prove inconvenient, if not prohibitive, to the sale of the variable annuity contract by the larger insurance companies, but the public will be afforded adequate protection—this should be the paramount consideration.

holders." Motley, Jackson, & Barnard, *Federal Regulation of Investment Companies Since 1940*, 63 HARV. L. REV. 1134, 1140 n.27 (1950). See 54 Stat. 789 (1940), 15 U.S.C. § 80a-1 (1958). See generally 1 LOSS, SECURITIES REGULATION 149-51 (2d ed. 1961).