ADMINISTRATIVE PROCEEDING FILE NO. 3-2039

UNITED STATES OF AMERICA Before the SECURITIES AND EXCHANGE COMMISSION

FILED

In the Matter of

THOMAS D. LEDWITH

SPEIRITIES & EXCHANGE OF THE STATE OF THE SPEIRITIES

JUN 13 1970

INITIAL DECISION

Washington, D. C. June 12, 1970

Sidney L. Feiler Hearing Examiner

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In the Matter of

THOMAS D. LEDWITH

INITIAL DECISION

APPEARANCES: Joseph M. Berl and Richard H. Kogan, Esqs., for the Division of Trading and Markets

Foley, Hickey & Currie, by John M. Foley, Esq., 70 Fine Street, New York, New York 10005, for Thomas D. Ledwith

BEFORE: Sidney L. Feiler, Hearing Examiner

I. THE PROCEEDINGS

These proceedings were instituted by order of the Commission pursuant to Section 15(b) of the Securities Exchange Act of 1934, as amended, ("Exchange Act") to determine whether certain allegations set forth in the order were true and, if so, what, if any, remedial action is appropriate in the public interest. The respondents named in the order are:

ANDREW B. DOTT
ROLAND F. BURNS
GEORGE J. WUNSCH
THOMAS D. LEDWITH
SAM J. RUTBERG
RUTBERG & COMPANY, INC.

Marine Midland Grace Trust Company ("Marine Midland") is a bank whose principal place of business is in New York City. Its Securities Clearance Department provides clearance facilities for securities transactions executed by certain customers. During the period here relevant, respondent Thomas D. Ledwith was head of this department and had the title of Assistant Treasurer and, later, Assistant Vice-President. As its title indicated, the function of this department did not include the making of trades. Its function was to complete the paper work in connection with trades negotiated by others, to receive in and deliver out the securities involved and to pay or receive money due.

Marine Midland is not itself a regular dealer or broker in government securities ("governments"). However, it does some trading in governments for its own portfolio and for customers. These

transactions are negotiated through a trading department at Marine Midland. Ledwith and the others in his department had no authority to engage in trading activities, nor were confirmations of transactions sent directly to the Clearance Department in normal business practice.

Morgan Guaranty Trust Company ("Morgan") is a bank maintaining its principal place of business in New York City. It is a dealer in governments and trades with Marine Midland but does not make use of the latter's clearance facilities. Respondent Roland F. Burns was a Vice-President of Morgan during the relevant period and the head trader of Morgan's Government Securities Department.

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He specialized in trading short-term governments. Burns was prohibited by Morgan from trading securities for his own account.

Malon S. Andrus, Inc. ("Andrus") is a dealer in governments and municipal securities. It regularly made use of Marine Midland's clearance facilities in transactions in municipal securities but did not use them for its transactions in governments. Respondent Andrew B. Dott was a trader of governments for Andrus between 1961 and 1967 and held the title of Vice-President. Respondent John G. Beutel was employed as a trader of governments at Andrus from 1961 to 1964.

^{1/} This designation is given to government bills having a maturity of one year or less.

Blyth & Company, Inc. ("Blyth") is a registered broker-dealer which maintains a department trading in governments. It has never made use of Marine Midland clearance facilities in connection with its transactions in governments. After Beutel left his employment at Andrus he was employed as a salesman and a trader in Blyth's Government Securities Department. During this period respondent George J. Wunsch was Beutel's supervisor.

Baxter & Co. is a registered broker-dealer which trades in governments. It maintained an inactive clearance account at Marine Midland during the relevant period. After Dott left the Andrus employment in 1967 he was employed at Baxter as a trader in governments.

As a result of the death of Dott and the acceptance by the Commission of offers of settlement submitted by other respondents, $\frac{2}{2}$ the sole remaining respondent is Thomas D. Ledwith.

In an allegation applicable to all respondents, the order states that from approximately January 1961 through April 1968, respondents singly and in concert willfully violated and willfully aided and abetted violations of the anti-fraud provisions of the

^{2/} Dott died before the commencement of the hearing herein. The offer of settlement by Wunsch was accepted by the Commission on October 7, 1969 and a sanction was imposed upon him (Sec. Exch. Act Rel. No. 8705). An offer of settlement by Burns was accepted on October 28, 1969 and a sanction was imposed upon him (Sec. Exch. Act Rel. No. 8731). Sanctions also were imposed upon Rutberg and Rutberg & Company, Inc. by the Commission after they submitted an offer of settlement (Sec. Exch. Act Rel. No. 8786, December 29, 1969).

Securities Acts in connection with the purchase and sale of govern- $\frac{3}{}$ / ments. It is alleged that in connection with and in furtherance of those transactions:

- 1. During the relevant period the respondents caused secret profits to be generated through a series of transactions in governments which were effected in a manner calculated and designed to avoid the risks otherwise inherent in such trading and whereby such secret profits accrued to respondents and to the detriment of Blyth, Morgan and other dealer firms;
- 2. During the said period, the respondents caused secret accounts to be established and maintained in evasion of applicable rules of certain of their employer firms and concealed their personal transactions in government securities;
- 3. The respondents caused such transactions to be effected for their personal benefit without complying with applicable rules and policies of certain of their employer firms, securities exchanges, and the National Association of Securities Dealers relating to personal securities transactions by employees of dealer firms;

^{3/} Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The composite effect of these provisions, as applicable here, is to make unlawful the use of the mails or interstate facilities in connection with the offer or sale of any security by means of a device or scheme to defraud or untrue or misleading statements of material facts, or any act, practice, or course of conduct which operates or would operate as a fraud or deceit upon a customer or by means of any other manipulative or fraudulent device.

- 4. During the relevant period, respondents caused governments held in the inventories of their employer firms to be sold to the secret accounts established and maintained by respondents and caused their employer firms to purchase the governments from such accounts without disclosing such transactions to their employer firms;
- 5. Respondents caused such transactions to be disguised and falsely represented such transactions to their employer firms as bona fide transactions between the firms which employed them and the firms at which they maintained their secret accounts so as to conceal their personal misuse of the inventories of their employer firms and to facilitate the execution of such transactions for their own behalf;
- 6. Respondents caused delivery of government securities involved in such transactions to be made to their secret accounts without obtaining any loans and without advancement or payment of any money by the respondents who maintained such accounts and who realized profits on such transactions, thus avoiding the necessity of capital otherwise required to finance such trading and avoiding compliance with practice and customs restricting the extension and maintenance of credit to finance trading in governments; and
- 7. During said period respondents caused certain false and fictitious entries to be made and entered on the books and records of their employer firms and of the firms at which respondents maintained their accounts for the purpose, among other things, of concealing the aforesaid activities.

It is further alleged in the order that in connection with the aforementioned activities and during the relevant period Dott, Burns, Wunsch and their associates established and maintained certain arrangements with Ledwith whereby:

- 1. Ledwith, in return for certain clearance and other payments, cleared government securities through secret accounts at Marine Midland for the benefit of Dott, Burns, Wunsch and their associates;
- 2. Dott, Burns, Wunsch and their associates (sometimes referred to hereinafter collectively as "the group") caused purchases and sales of governments to be made through secret accounts at Marine Midland administered by Ledwith to and from their employer firms and others in a predetermined and prearranged manner for the purpose of obtaining trading profits in such secret accounts, and in a manner designed to conceal the identities of the actual persons having a beneficial interest in such purchases and sales by designating such transactions and causing them to be designated on the books and records of Morgan and others as trades effected in the normal and ordinary course of business in the name and for the benefit of Marine Midland;
- 3. In clearing such transactions through Marine Midland,
 Ledwith caused Marine Midland to receive government securities from
 brokers, dealers, and others against payment by Marine Midland and
 the group was not charged with loans or with interest in connection
 with such payments by Marine Midland;

- 4. In clearing such transactions through Marine Midland,
 Ledwith caused Marine Midland to deliver governments to and against
 payment by Morgan and others, and Ledwith caused Marine Midland to
 credit the trading profits less certain clearance fees to personal
 checking accounts in Marine Midland maintained in the names of Dott
 and his associates;
- 5. Such trading profits were thereafter divided among Dott and other members of his group, and Ledwith received a portion of such profits.

It is also alleged that during the relevant period the respondents Dott, Wunsch, and Ledwith, singly and in concert, directly and indirectly, willfully violated and willfully aided and abetted violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder in that said respondents induced, procured and caused Blyth and Baxter, registered broker-dealers, to falsely reflect upon their books and records as transactions with Marine Midland certain transactions in governments, when in fact said transactions were

^{4/} Subsection (6) of Rule 17a-3 provides that every broker or dealer shall make and keep current

[&]quot;A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and, to the extent feasible, the time of execution or cancellation."

effected on behalf of and for the benefit of respondents Dott, Wunsch $\underline{5}/$ and their associates.

Ledwith entered a general denial of the allegations.

Pursuant to notice a hearing was held at New York, New York.

The parties were represented by counsel. After the presentation of evidence an opportunity was afforded the parties to file proposed findings of fact and conclusions of law, together with briefs in support thereof. These filings were made. Upon the entire record the undersigned makes the following:

II. FINDINGS OF FACT AND LAW

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A. Arrangements for Secret Trading in Governments

Sometime in 1963 or perhaps earlier, Dott, Beutel and Burns, who were all expert traders in governments, agreed among themselves to trade that type of security for their own account. The group traded primarily in new issues of government bills. Routinely, announcement would be made by the Treasury on a Wednesday that an auction by sealed bids would be held the following Monday for a specific amount of bills with fixed maturity dates. Recognized

^{5/} The requirement that records be kept embodies the obligation that such records must be true and correct. Lowell Niebuhr & Co., Inc., 18 S.E.C. 471 (1945); Carter Harrison Corbrey, 29 S.E.C. 283 (1949); See Morris Luster, 36 S.E.C. 298 (1955). Weiss, Registration and Regulation of Brokers and Dealers (1965), pp. 43-44, and cases cited in footnote 19 therein.

^{6/} The findings as to these arrangements are based primarily on the testimony of Beutel and Burns whose testimony is credited. Ledwith's testimony was in substantial agreement with theirs as to the arrangements made and the mechanics by which these plans were effectuated.

banks and dealers in government securities could submit bids for this paper prior to 1:30 P.M. on the following Monday. The bids would then be opened, awards would be announced, and a "when issued" market would start on Tuesday morning, with settlement to be made on the succeeding Thursday.

The group took advantage of this situation in the following They would meet or communicate by telephone and jointly agree that a forthcoming issue seemed likely to have a price rise in the open market. If they came to agreement on this they would also decide which of their firms they would use to place a bid. A bid would be submitted for a specific amount of bills in the name of the firm they had selected and within the price range they had agreed If the bid was accepted, then at that point the firm had purchased the governments and was obligated to pay for them on the The group then, again in consultation, would following Thursday. agree to a sale of the governments out of the portfolio of the firm selected to an account which they controlled, from which they sold it to another dealer. There were variations in the procedures used, but the heart of the scheme was for the group to control the intermediate step and derive the profit from the resale.

In some cases securities were sold to the account of the group from the inventory of one of their employers and then resold at a higher price from that account back to the employer from whose inventory a sale had originally been made, sometimes in same-day transactions. In other cases a sale would be made to another employer of one of the group or to a third party. In all cases these transactions were arranged by members of the group acting as traders for their respective employers -- Dott or Beutel for Andrus, Beutel (after he joined Blyth in 1964) or Wunsch for Blyth, Dott (after he left the Andrus employment in 1967) for Baxter & Co., and Burns for Morgan.

These resales were all arranged as short-term transactions completed before the settlement date, so that at no time did they actually have to produce the principal sum involved in a trade, sometimes as high as \$8,000,000, but merely took the profit resulting from an exchange of paper. When and if the group decided to trade in outstanding bills the time limit was shorter, since settlement was required within 24 hours.

The composition of the group varied over the approximate five-year period it was in existence. Burns dropped out in August 1964 and rejoined Dott in 1967 and 1968. Others joined the group at different times for different trades. However, the original plan and method of operation remained the same.

To carry out their scheme the group had to keep the arrangement secret from their employers and regulatory bodies, both public and private. They also needed the close cooperation of someone who would make clearance facilities available to them. Ledwith was the person who furnished these necessary services.

Dott approached Ledwith sometime in 1963 and asked him whether $\frac{8}{}$ /he would clear personal trades for him. Ledwith agreed and set as a condition that Dott would have to "back up" the trades; that is,

^{8/} Ledwith gave detailed testimony on his arrangements with Dott and, later, Beutel. Apparently Dott made his arrangements with Beutel and Burns after he had spoken to Ledwith (Tr. p. 52), and it is clear that Ledwith furnished the sole clearance facilities they used.

Ledwith would not maintain a securities inventory for him but each purchase would have to be followed by a quick resale before settlement date (Tr. pp. 308-310). Ledwith also stated that he could not take care of unprofitable trades; that is, trades where bank funds would have to be advanced for some time. In actual operation, there were few such trades. Trading under the arrangement with Ledwith commenced sometime in 1963.

In order to keep information about the transactions away from the regular trading department of Marine Midland, Ledwith agreed with Dott that confirmations would always be directed to Marine Midland, to his attention. The confirmations would also note a transaction between a firm, one of those employing one of the participants in the scheme, and Marine Midland, as principal. would be advised by Dott that a confirmation was coming over to him for a particular transaction. Ledwith would then issue the necessary paper instructions for the acceptance and processing of the confirma-The group then would decide on the next step and Ledwith would tion. be advised that a confirmation was being sent to Marine Midland for his attention, which would take the stock out of Marine Midland. Again, Ledwith would see that the paper work was accomplished and at the end of this part of the cycle a credit memorandum would be prepared for the result of the transactions, usually a profit. Dott would then

^{9/} Examples of this practice are: "Attn. Thomas Ledwith A.V.P." (Div. Ex. No. 39); "Attn: Mr. T. Ledwith, Asst. V.P." (Div. Ex. No. 40).

make disbursements to members of his group in equal amounts. In the early months Dott dealt directly with Ledwith on behalf of the group and credits on transactions were added to Dott's regular checking 10/20 account at Marine Midland. The papers relating to each transaction were placed in the file for the clearance account of Andrus at Marine Midland, although Andrus had no involvement in these transactions. While Dott's name would appear on some of the papers relating to a particular transaction, there was no file kept in his name which would show transactions executed on his behalf. Ledwith always charged a clearance fee on these transactions which went into the accounts of Marine Midland. However, these amounts were always listed as clearance fees paid by Andrus.

Beutel left the Andrus firm in 1964. While he was employed at Andrus he sat next to Dott and was able to cooperate with him on arranging trades for their mutual profit. As stated above, after Beutel left the Andrus firm he became a trader at Blyth. He opened a checking account at Marine Midland shortly thereafter. He then told Ledwith, according to his credited testimony, that he had opened the account and that he had discussed with Dott and agreed with him that if Dott were out of town or otherwise unavailable and something needed to be done, a particular transaction could be handled through his account, if Ledwith agreed. According to Beutel, Dott agreed to

^{10/} The mails were regularly used for the mailing of confirmations and credit memoranda.

this arrangement and Ledwith also agreed that Beutel's account could be used as the Dott account had been. Beutel further testified that he told Ledwith on that occasion that he and Dott had been trading together (Tr. pp. 91-95). Thereafter, transactions were credited on occasion to the Beutel account as well as to the Dott account and Ledwith would be told which account was to be credited on the particular transaction. Clearance charges imposed on transactions coming from Beutel were eventually listed as coming from the Baxter account (with whom Ledwith thought Beutel had an affiliation) and the papers relating to such transactions were placed in the Baxter file. The net profit from each transaction was shown in a credit advice sent to either Dott or Beutel and would show up later in their checking accounts as credit memoranda. Ledwith did not reveal these 12/ arrangements to any officials of the bank who were his supervisors.

B. Results of the Secret Trading in Governments

Neither Ledwith, Beutel nor Burns could give any exact number of transactions involved in the foregoing arrangements. The Division has submitted records of approximately 71 transactions which it alleges were part of the total executed for the group (Div. Ex. No. 72A-J). They date from July 1963 to April 1968. Beutel

^{11/} Beutel recalled an instance when he told Ledwith to credit Dott's account on a transaction supposedly his trade, intending that Dott have use of the money (Tr. p. 99).

^{12/} Neither Dott nor Beutel maintained a clearance account at Marine Midland. They had checking accounts. Burns had no account at the bank.

personally wrote confirmations for Blyth in 17 of these transactions as part of the trading operations for the group (Tr. pp. 109-110; Div. Exs. 33 BL thru 39 BL, and Div. Exs. 41 BL thru 50 BL). He testified that Burns participated in the profits in ten of those transactions. Burns testified that he participated in approximately 20 transactions with the group in the years 1962, 1963, 1964, with an average profit to himself in each transaction of \$400 to \$700 (Tr. pp. 211-213). Thereafter, he did not participate in any dealings with the group until January 1968 when he engaged in some joint dealings with Dott. They made 4 trades and Burns' share of the profits was \$842, \$745, \$750, and \$5,818 (Tr. pp. 213-215).

The profits on transactions executed in the name of Marine Midland which accrued to the benefit either of Dott or Beutel ranged from small amounts to over \$5,000 on individual transactions. Of the 71 transactions noted above, 52 had evidence of credit memos to Dott's checking account. These credits also are reflected in Dott's checking account at Marine Midland. (Div. Ex. No. 74). The checking account also has notations of four other credit memoranda, apparently for transactions similar to the ones noted above. The yearly totals for credit memoranda added to Dott's account are:

1963	\$ 9,468.39
1964	14,522.91
1965	6,037.51
1966	18,948.32
1967	22,405.62
1968 (5 mos.)	17,123.53

In the 71 transactions credit memos are attached in 13 transactions reflecting credits to Beutel. These credits totalling \$24,487.49 are

for transactions in 1966 and 1967 only. Dott's checking account reflects one debit memo for an unfavorable trade.

Ledwith testified that he did not know that there was any organized group dealing in governments for whom he was effecting clearances and that he thought he was accommodating Dott and, later, Beutel in some personal trades. He denied being a member of any trading group or receiving any personal compensation for his activities.

Both Beutel and Burns denied that Ledwith shared in the profits of the group or received any compensation for the trades he handled for Dott and Beutel. The only evidence to the contrary came from Richard Sherman, an official of the bank to whom Ledwith was to report for new duties on January 20, 1969. Prior to this time Ledwith had been relieved of his duties as Chief of the Securities Clearance Department and had gone on vacation. He returned to the Marine Midland office on Friday, January 17, 1969 at Sherman's request to discuss his new assignment and their future relationship. They left the Marine Midland offices together in the late morning and went to a tavern where they had drinks and an extended discussion. They continued the discussion at a second tavern until mid-afternoon when they parted company. They discussed many matters but according to Sherman at one period the conversation turned to Ledwith's situation as it was affected by the Commission investigation then in progress. According to Sherman, he asked Ledwith whether the latter had done anything wrong and Ledwith acknowledged that he had done

something wrong. Sherman then pressed him as to whether he had received any money for it and started by suggesting the figure of a couple of hundred thousand dollars and reducing it when Ledwith said that it was not that much, Ledwith finally indicating that it was less than \$5,000. (Tr. pp. 434-436, 439-440, 545-549). Ledwith testified that they both had a great deal to drink during their discussions and had no food and that he had no clear recollection of what was said during his conversation with Sherman. Sherman's testimony was corroborated by Robert B. Decker, an officer of the bank, who testified that he received a telephone call from Sherman and joined him at the second tavern to which Sherman had gone with Ledwith. Decker testified that Sherman told him that he was convinced that Ledwith was "involved" in the S.E.C. matters and that he was not sure if Ledwith got anything and that if he did it did not exceed \$5,000.

The undersigned credits Ledwith's testimony as corroborated by other evidence that much liquor was consumed during his conversation with Sherman and credits his testimony that he was not sober during a substantial part of the conversation. The undersigned also credits Sherman's testimony to the effect that Ledwith stated that he received something, "less than \$5,000," for his activities which were involved in the S.E.C. investigation then going on. There is no proof of any exact amount involved. It does definitely appear that Ledwith was not an equal participant in the group of the profits

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shared by them in specific transactions.

C. Contentions of the Parties, Conclusions

It is urged on Ledwith's behalf that the evidence does not establish that secret profits accrued to the other respondents to the detriment of the employers of members of the group and that the testimony of both Burns and Beutel, who appeared as witnesses in the proceeding, establishes that the original sales by the group from accounts of their employers to their clearance account at Marine Midland was always at a profit over original cost and that the prices that were paid were the current market prices.

While it is conceded by Ledwith that he agreed to clear transactions for Dott as a courtesy and, later, for Beutel, it is urged that there was no such arrangement with Burns, Wunsch or any others. It is asserted on behalf of Ledwith that Marine Midland benefited from these clearance transactions and that there was no risk of loss to it since Ledwith cleared only those transactions where there had been a resale and a profit realized and that since Dott and Beutel never were "long" on governments there was no necessity for financing the trades.

^{13/} It is asserted that Sherman was actuated by malice against Ledwith and the desire to see him removed from employment at Marine Midland. He was discharged after Sherman's report to Decker. However, in view of Sherman's immediate report to Decker and other surrounding circumstances the undersigned does not find evidence of any plot against Ledwith and credits Sherman's testimony to the extent indicated.

Reliance is placed on dealings Ledwith had had for a number of years with a customer of Marine Midland, Ralph Proctor. Proctor was a trader for certain dealers in government securities but bought and sold governments for his own account and maintained an account through which his trades were cleared at Marine Midland. Because of some dispute that Proctor had with the regular traders at Marine Midland, Ledwith made arrangements with him to mark his confirmations for the attention of Ledwith. This arrangement was open and fully known at Marine Midland and no objection was made to it. It is urged that Dott and Beutel, who were friends of Proctor, merely asked for the same type of accommodations from Ledwith and Ledwith followed an arrangement to which there had been no objection. It is also contended in this connection that the use of nominee names in the securities markets is not unusual and there was nothing wrong in Marine Midland trading in its own name for an undisclosed customer.

Ledwith, it is pointed out, was not an experienced trader in governments and since it was not unusual for a dealer to be trading in and out of securities on the same day, selling at one time, and buying at another, there was nothing in the course of tradings to alert Ledwith that there was anything wrong in the trades which he cleared.

It is further urged on Ledwith's behalf that he had a threefold purpose in accommodating Dott and Beutel: (1) to realize clearance fees for the bank; (2) to establish and continue the good will of traders who might bring other significant business to Marine Midland; and (3) to accommodate two friends without incurring any risks to Marine Midland or himself, all of which were legitimate objectives. Finally, it is contended that Ledwith did not know that a group was operating in the trading of governments, that he was taken advantage of by his friends, and that transactions involved here were a small number of the many transactions handled by Ledwith every day in his department.

None of the members of the group which participated with Dott in the plan to trade governments for their own benefit by the use of their employers' inventories remain as active parties to this proceeding. Sanctions have been imposed by the Commission on all of 14/ them except Dott. However, it is evident that these individuals violated the anti-fraud provisions of the Securities Acts as alleged in the order. Keeping their plans secret from their employers, Dott, Beutel, and Burns, and other traders who participated in their activities from time to time, used the inventory of their employers in a

Sanctions were imposed by the Commission upon Beutel pursuant to offers of settlement submitted by him (Sec. Exch. Act Rel. Nos. 8634, 8635, June 26, 1969).

All the respondents originally named in this proceeding and others were parties to an injunctive proceeding instituted by the Commission based on allegations of violations of the Securities Acts having the same basis as the allegations in the instant proceedings. The parties named here and Beutel consented to the issuance of injunctions against them without admitting or denying the allegations of the complaint, Securities and Exchange Commission v. Dott. et al., U.S.D.C., S.D.N.Y., File No. 69, Civil Action No. 551; see S.E.C. Litigation Releases Nos. 4231 (February 13, 1969) 4304 (April 25, 1969) and 4411 (September 5, 1969).

careful plan designed to generate secret trading profits for themselves in transactions which were practically risk-free.

They controlled the price at which governments would be sold to their secret accounts at Marine Midland and also controlled the price at which these securities would be sold to another dealer, often the employer of one of the group. On paper these were all supposed to be transactions negotiated at arm's length, but actually the group worked closely together and participated on both sides of all the transactions necessary to generate profits for themselves. Their technique included use of the practice of free-riding by which they were able to arrange transactions for their benefit involving millions of dollars in securities without advancement of any of their own funds.

It has been urged that actually the employers of members of the group were not hurt because the group, using their expertise, arranged their dealings so that the employer-dealer from whose inventory they started the cycle of their transactions realized a profit and if an employer-dealer to whom they sold those government securities resold them, the latter sale also generated a profit. Relying on Beutel's testimony that all trades which were made out of employer-dealer's inventory were at market, it has further been urged that no profits were lost or denied these dealers. However, what members of the group withheld from their employers was the honest use of their expertise as

^{15/} Div. Exs. Nos. 72-A thru 72-J. These exhibits do not include the cost at which the employer-dealers acquired the governments involved but Burns and Beutel testified that the operations of the group had that result.

traders in governments for their employers. Having determined in the use of their best judgment that the securities in which they were interested were due to rise, they traded them out of the inventory of the employer of one of them at a price which they felt was lower than the securities would reach within a short time, and certainly before the settlement date. They then took advantage of a rise in the price of the securities to pocket the difference between the price they had originally arranged to be advanced for them by Marine Midland and the subsequent price at which they arranged to sell the securities. this did not involve the practice of interpositioning in its classic sense, that is, arranging a trade with a non-market-maker rather than a market-maker, thus incurring an unnecessary mark-up charge to a it did involve a practice somewhat akin to it in that the customer, group interposed themselves between the dealer-employer whose inventory they used and the best market for the securities which could have been obtained if the transaction had been arranged directly with the ultimate purchaser. Such price could have been obtained for the original employer-dealer if members of the group had acted in honest performance

^{16/} Thomson & McKinnon, Sec. Exch. Act Rel. No. 8310 (May 8, 1968);
George A. Brown, Sec. Exch. Act Rel. No. 8160 (Sept. 19, 1967);
Delaware Management Company, Inc., Sec. Exch. Act Rel. No. 8128
(July 19, 1967); Thomas Brown III, Sec. Exch. Act Rel. No. 8032
(February 8, 1967); H. C. Keister & Company, Sec. Exch. Act Rel. No. 7988 (November 1, 1966); W. K. Archer & Company, 11 S.E.C.
635 (1942), aff'd 133 F. 2d 795 (C.A.A. 1943); Folger, Nolan,
Fleming & Co., Inc., Sec. Exch. Act Rel. No. 8489 (January 8, 1969).

of the trust and discretion reposed in them. For these reasons and for other aspects of the plan which involve the deception of their employers, the concealment of the true nature of the transactions, the arrangement for and the use of secret accounts, the undersigned concludes that members of the group willfully violated the antifraud provisions of the Securities Acts as charged.

It is urged on behalf of Ledwith, in substance, that he did not know of the trading arrangements within the group, that he was imposed upon by Dott and Beutel, that he did not realize that any violations of the Securities Acts were taking place, and that he did not profit from these activities. There is a plethora of evidence that Ledwith realized that the assistance he agreed to give Dott and Beutel was extraordinary and that he took pains to conceal their transactions from officials of Marine Midland who were in a position to raise questions about the arrangements. By prearrangement, the transactions were channelled directly to Ledwith rather than through the Trading Department of Marine Midland. Ledwith knew Dott and Beutel socially and also knew their business connections and could see from the documents which came to him that they were dealing in transactions which involved their employers. While the names of Dott or Beutel were written in ink on some of the intermediate documents relating to transactions, all the documents were filed in the Andrus or Baxter clearance file

^{17/} George J. Wunsch, Sec. Exch. Act Rel. No. 8705 (October 7, 1969).

and the clearance charges imposed on each transaction were also listed as coming from those firms rather than from Dott or Beutel. While the credit memorandum sent to Dott or Beutel would correctly identify the basis on which they received credits, these were not documents which in the ordinary course of events would be brought to the attention of Ledwith's supervisors. Clerical employees at the bank would see these documents but were hardly in a position to question the person in charge of the Clearance Department on a matter for which they had no responsibility. Of course the basic documents relating to each transaction, the confirmations, carried no indication of the identities of the real parties in interest.

Ledwith's experience with the Ralph Proctor account at the bank offered no basis for his using that case as justification for the way he handled transactions for Dott and Beutel. Proctor had a regular clearance account at the bank where documents relating to his transactions could be found; his account fully evidenced the amounts of monies involved in his transactions and the net which accrued on them so that there was clear evidence of exactly what was being done for his benefit. The special problems relating to Proctor were well known to officials of Marine Midland. None of these factors existed in the case of Dott and Beutel. At the very least the services they requested Ledwith to perform for them were highly

^{18/} Since Proctor's trading was extensive, presumably his activities were known to his employers and conducted with due regard to their interests.

questionable and should have been checked with his superiors rather than executed by practices which concealed them. While Ledwith may not have been aware of the exact composition of the group, his dealings with Dott and Beutel should have alerted him that there was some form of cooperation between those two at least which continued while each was employed by a different firm. The course of the transactions, particularly the uniform method in which confirmations, both in buy and sell transactions, were handled also indicated that cooperation was coming from traders in other firms.

Substantial sums of Marine Midland were used in the process of clearing transactions for the Dott and Beutel accounts. It is urged that this was a normal and customary practice and that Marine Midland relied on clearance fees for its compensation for this accommodation. However, this was done for customers who maintained clearance accounts in their own names and Ledwith, according to his own testimony, would not have opened a new clearance account without permission from his supervisor. (Tr. pp. 313- 315).

The undersigned concludes that the evidence establishes that Ledwith extended services which were essential to the group in carrying out their plans to defraud their dealer-employers by well-planned deception. It is clear, as alleged in the order, that he aided and abetted the violations alleged therein. It is also

^{19/} Contrary to the contention urged, the transactions involved substantial sums and the profits shared by the group were considerable.

concluded that the evidence establishes that Ledwith had good reason to know that the transactions he was clearing were improper and that he shut his eyes to obvious indications of wrongdoing and willfully aided and abetted the violations found.

As previously pointed out it was an essential part of the plan which the group used to obtain secret profits for themselves that they arrange to have confirmations issued indicating buy and sell trades between dealers they had selected and Marine Midland, both apparently acting as principals and both apparently executing trades in the regular course of business. The true nature of the transactions as trades in which members of the group were on both sides of each trade and had a beneficial interest therein was concealed. The records of the broker-dealers involved in transactions with the group through the arrangements with Ledwith at Marine Midland were thus incomplete and false and misleading. The undersigned concludes that by his activities in furthering the plan, Ledwith also willfully aided and abetted violations of the record-keeping provisions $\frac{21}{2}$ of the Exchange Act and rules thereunder as alleged in the order.

^{20/} Tager v. S.E.C., 344 F. 2d 5, 8 (2nd Cir. 1965), affirming, Sidney Tager, Sec. Exch. Act Rel. No. 7368 (July 14, 1964); Accord, Harry Marks, 25 S.E.C. 208, 220 (1947); George W. Chilian, 37 S.E.C. 384 (1956); E. W. Hughes & Company, 27 S.E.C. 629 (1948); Hughes v. S.E.C., 174 F. 2d 969 (C.A.D.C. 1949); Shuck & Co., 38 S.E.C. 69 (1957); Carl M. Loeb, Rhoades & Co., 38 S.E.C. 843 (1959); Ira Haupt & Company, 23 S.E.C. 589, 606 (1946); Van Alstyne, Noel & Co., 22 S.E.C. 176 (1946); Thompson Ross Securities Co., 6 S.E.C. 1111, 1122 (1940); Churchill Securities Corp., 38 S.E.C. 856 (1959). See generally Loss, Securities Regulation, (1961 Ed.), Vol. II, pp. 1309-1312 (1969 Supp.), Vol. V, pp.3368-3374.

^{21/} George J. Wunsch, supra.

III. CONCLUDING FINDINGS, PUBLIC INTEREST

It has been found that Ledwith willfully aided and abetted violations of the anti-fraud provisions of the Securities Acts and applicable rules thereunder and also willfully aided and abetted violations of the record-keeping requirements of the Exchange Act, and applicable rules.

It is provided in the Exchange Act (Section 15(b)(7)), in relevant part, that the Commission may, after hearing, by order censure any person, or bar or suspend any person from being associated with a broker or dealer, if the Commission finds that such censure, barring, or suspension is in the public interest and that such person has willfully aided and abetted violations of the Securities Acts. It is alleged in Ledwith's behalf that he has already suffered a great deal because of his involvement in the activities discussed herein. He has been discharged from his position at Marine Midland where he was employed for 40 years. While he is now employed in the securities business, his employment is at a much lower compensation than he previously earned and his function is to work on an "error account" where he attempts to complete broken trades. is represented that he has no dealings with the public and does not extend credit, trade securities or have any clearance responsibilities. It is urged that it would be an extreme hardship to bar him completely from any employment in the securities field, which is his only source of income. It is also contended that such a sanction would be disproportionate to those imposed on members of the group, including Burns who received a period of suspension.

The violations found were most serious and illustrate how activities of persons in positions of trust and responsibility can, for a time, frustrate both statutory rules and regulations and procedures of employers designed to protect trading activity in securities. The statutory provisions and rules violated were key provisions of the Securities Acts designed to protect investors and the public interest. The statutory provisions relating to the imposition of sanctions evidence the recognition that individuals other than broker-dealers or their employees may be able to interfere seriously with the operations of the securities markets, and sanctions should be imposed upon such violators in appropriate cases. undersigned concludes that the evidence establishes that Ledwith, disregarding the responsibilities of his position, willfully aided a group in misusing facilities at his employer bank to aid a fraudulent trading scheme. It is concluded that in view of his failure to appreciate his responsibilities to the securities market that it is necessary in the public interest to insure that he not have an opportunity to again engage in any of the unlawful activities found here. However, in view of the considerations urged in his behalf it is further concluded that the public interest does not require that he be completely barred from any participation in the securities industry if appropriate safeguards are imposed. Accordingly, it will be ordered that this respondent be barred from any association with a broker or dealer, provided that after a period of three months application may be made to the Commission for approval of his

employment in the securities business with adequate assurance, both as to his assignment and supervision, against a recurrence of the violations found herein.

IV. ORDER

It has been found that the respondent, Thomas D. Ledwith, has willfully violated provisions of the Securities Acts and applicable rules thereunder and that certain sanctions should be imposed upon him in the public interest and for the protection of investors.

Accordingly,

IT IS ORDERED that pursuant to the provisions of Section 15(b)(7) of the Exchange Act said respondent, Thomas D. Ledwith, is barred from association with a broker or dealer, provided that after a period of three months application may be made to the Commission for approval of his employment by a broker or dealer upon assurance as to his assignment and supervision, against a recurrence of the violations found herein.

Pursuant to Rule 17(b) of the Commission's Rules of Practice a party may file a petition for Commission review of this initial decision within fifteen days after service thereof on him. This initial decision, pursuant to Rule 17(f) shall become the final decision of the Commission as to each party unless he files a petition for review pursuant to Rule 17(b) or the Commission, pursuant to Rule 17(c), determines on its own initiative to review this initial decision as to him. If a party timely files a petition

to review or the Commission takes action to review as to a party, $\frac{22}{}$ this initial decision shall not become final as to that party.

Sidney L. Feiler Hearing Examiner

Washington, D. C. June 12, 1970

^{22/} All contentions and proposed findings have been carefully considered. This initial decision incorporates those which have been found necessary for incorporation therein.