ADMINISTRATIVE PROCEEDING
FILE NO. 3-4724

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
JAY RUTLEDGE	:
(STEPHENSON, LEYDECKER & CO.)	:
	:

INITIAL DECISION

Washington, D.C.
August 19, 1976

David J. Markun
Administrative Law Judge

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APPEARANCES: Leroy V. Amen and Steven M. Gourley, Attorneys, San Francisco Branch Office, for the Division of Enforcement.

Kenneth M. Cristison, San Francisco, California, Attorney for Respondent.

BEFORE: David J. Markun, Administrative Law Judge.

This public proceeding was instituted by an order of the Commission dated August 20, 1975 ("Order"), pursuant to Sections 15(b) (15 U.S.C. 78o) and 19(h) (15 U.S.C. 78s) of the Securities Exchange Act of 1934 ("Exchange Act") to determine among other things whether Stephenson, Leydecker & Co. ("Registrant") wilfully violated, and whether Jay Rutledge ("Rutledge") and Thomas Howard ("Howard")[1/] wilfully violated or aided and abetted violations of, the net capital provisions of Section 15(c)(3) (15 U.S.C. 78o) of the Exchange Act and Rule 15c3-1 (17 C.F.R. 240.15c3—1) thereunder, the customers' special reserve account requirements of Section 15(c)(3) of the Exchange Act and Rule 15c3-3 (17 C.F.R. 240.15c3—3) thereunder, the books and records provisions of Section 17(a) (15 U.S.C. 78q) of the Exchange Act and Rule 17a-3 (17 C.F.R. 240.17a—3) thereunder, the failure to preserve records provisions of Section 17(a) of the Exchange Act and Rule 17a-4 (17 C.F.R. 240.17a—4) thereunder, the telegraphic-notice provisions of Section 17(a) of the Exchange Act and Rules 17a-11(a) (17 C.F.R. 240.17a—11(a)) and 17a-11(c) (17 C.F.R. 240.17a—11(c)) thereunder, the financial-condition reporting requirements of Section 17(a) of the Exchange Act and Rule 17a-5(n) (17 C.F.R. 240.17a—5(n)) thereunder, and the antifraud provisions of Section 10(b) (15 U.S.C. 78j (b)) of the Exchange Act and Rule 10b-5 (17 C.F.R. 240.10b—5) thereunder and to determine what, if any, remedial action is necessary in the public interest.

1/ Registrant and Howard, a vice president of Registrant during times here material, entered into settlements with the Commission. Exchange Act Release No. 12475, May 24, 1976, 9 SEC DOCKET 717, June 9, 1976.

A hearing was held in March, 1976, in San Francisco, California.

The findings and conclusions herein are based upon the record and upon observation of the demeanor of the witnesses. Preponderance of the evidence is the standard of proof applied.

Registrant, a California corporation, had been registered as a broker-dealer pursuant to Section 15(b) of the Exchange Act from January 1, 1936, until May 24, 1976, when its registration was revoked in accordance with the settlement referred to in footnote 1 above. During the period covered by the alleged violations, January 1, 1973 to December, 1974 (the "relevant period"), Registrant's office was located in Oakland, California. During the relevant period Registrant was a member of the National Association of Securities Dealers ("NASD") and was licensed by the State of California to conduct operations as a broker-dealer.

Respondent Jay Rutledge ("Rutledge"), 50, first became associated with Registrant in 1948, became a registered representative in 1949 and a principal in the late 1950s, and became Registrant's president on March 14, 1960. As president, Rutledge was responsible for Registrant's operations during the relevant period. He made the business decisions, directed the firm's policies, supervised the conduct and activities of employees, and had overall responsibility for the Registrant's books and records. Rutledge owned 100% of Registrant's stock. He is currently employed by Mason Brothers, investment dealers in Oakland, California.

Respondent Thomas Howard ("Howard"), who, as indicated in footnote 1 above, has entered into a settlement with the Commission, was the only other

principal in the firm. Howard occasionally acted for Rutledge in the latter's absence, but, essentially, Howard had no administrative or executive responsibility. Rutledge and Howard both handled customers and accounted for most of the firm's production. During the relevant period the firm had only one other full-time registered representative (in Sacramento) and about five part-time registered representatives.

Antifraud Violations

A routine investigation of the Registrant by the NASD in May of 1973 suggested that during the early part of that year Registrant had on a number of occasions engaged in the "parking" of securities in order to give the false appearance that it was complying with California's $25,000 minimum net capital requirement. The record establishes that as of the end of the month in January, February, April, and May of 1973 Registrant would have failed to meet the $25,000 net capital requirement of California had it not recorded on its books on the last day of the month certain sales of securities out of firm's inventory that were subsequently cancelled, generally within a week's time. The making of these "sales" at month's end avoided the necessity for taking a 30% "haircut" on such securities and thus improved the ostensible net capital position of the firm. Some of the sales were to Rutledge himself or to Regent Corp. ("Regent"), an entity of which Rutledge was president and a controlling person. Other sales were to customers of Rutledge. The Division contends that all these sales were fictitious "parking" transactions resorted to by Registrant and Rutledge because of the firm's

precarious financial condition in an effort to give the appearance of compliance with California's net capital requirements. The Division urges that Rutledge gave no satisfactory explanation for continuing to retain as customers people who, according to him, cancelled these sales because the stocks had gone down, even though losses on some such sales were greatly disproportionate to what the firm had realized in commissions from such customers. While these circumstances raise a strong suspicion that what the Division contends was true as to such subsequently-cancelled sales to Rutledge's customers, it is concluded that the charge of fraud as to such sales has not been established by a preponderance of the evidence. The customers themselves did not testify as to their reasons for cancelling, and the testimony at the hearing of an NASD investigator as to what the customers had told him on the phone, years ago, unaided by any contemporaneous notes, was too fragmentary and imprecise to be the basis for a finding adverse to Rutledge. However, as to the subsequently-cancelled sales made to Rutledge and to Regent, the record establishes that these were parking transactions designed fraudulently to misrepresent the net-capital position of the Registrant. Rutledge had no satisfactory explanation for his or Regent's cancellation of these sales, and he conceded that they were made to avoid the "haircut". Subsequently-cancelled sales to either Rutledge or Regent were involved in the net-capital calculations for February and May, 1973. These fraudulent transactions, entered upon the books of the Registrant as if they had been legitimate, misled the regulatory and self-regulatory

bodies of the securities industry as well as customers of the Registrant concerning the financial condition of Registrant, and constituted violations of the antifraud provisions of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by Registrant and Rutledge.

Further violations of Section 10(b) and Rule 10b-5 by Registrant and Rutledge occurred during the period from December 1973 through April 1974, within which Registrant and Rutledge "kited" checks between Rutledge's personal checking account and Registrant's special reserve bank account for the benefit of customers. Registrant, with participation by Rutledge, falsely recorded checks from Rutledge on its books and records for purposes of the special reserve account computations required by Rule 15c3-3 four to eleven days before such checks were actually deposited in the special reserve account at the bank; additionally, on the same dates that Rutledge's checks were actually deposited (or, in one instance, 3 days thereafter) "return" checks in substantially the same amounts were drawn on Registrant's special reserve account in favor of Rutledge, as follows:

Date & Amt. of Deposit per General Ledger		Date Actually Deposited	Date & Amt. of "Return" Check to Rutledge	
12-31-73	$13,500	1-11-74	1-14-74	$14,400
1-31-74	10,500	2-5-74	2-5-74	10,400
2-15-74	25,300	2-22-74	2-22-74	25,350
2-28-74	15,850	3-4-74	3-4-74	15,875
3-15-74	11,800	3-20-74	3-20-74	11,825
3-31-74	9,300	4-5-74	4-5-74	9,325
4-15-74	6,000	4-22-74	4-22-74	6,050
4-30-74	4,200	5-7-74	5-7-74	4,150

Without the false entries of the checks from Rutledge as of the dates indicated in the left-hand column in the schedule next above, Registrant would have shown on its books substantial deficiencies (as it did in fact have) on each of such dates in its special reserve account, as will be shown more particularly below in a discussion of special reserve bank account violations. Respondent Rutledge urges that the lag between the deposit date as shown on Registrant's general ledger and the date of actual deposit is accounted for by the practice, as he testified, of his bookkeeper-cashier to accumulate checks for a number of days before presenting them to the bank for deposit. This testimony and argument by Rutledge are not credited or accepted for a number of reasons. Firstly, his bookkeeper-cashier, who testified at the hearing at the call of Respondent Rutledge, was not examined as to that alleged practice. Secondly, the bank was only a few blocks away, and it is not credited that deposit of Rutledge's checks was delayed other than by design as their deposit in the special reserve account was essential to bring the account up to the required amounts on the month-end or mid-month dates involved. Thirdly, Rutledge's demeanor when testifying was not such as to make his testimony on this point convincing. Lastly, the regularity with which the special reserve account required the infusions of funds from Rutledge (under the scheme, the infusions were only apparent, not real) makes it quite evident that during the period involved the special reserve account was chronically short of sufficient funds and that the delayed-deposit check-kiting scheme was simply a scheme devised to deceive the various regulatory agencies into believing that

Registrant was maintaining sufficient funds in its special reserve account in compliance with Rule 15c3-3.

Net Capital Violations

The record establishes that as of the dates indicated the Registrant had the following net capital deficiencies:

Date	Adjusted Net Capital	Net Capital Required by Rule 15c3-1	Net Capital Deficiency
5-31-74	$7,189	$15,000	$7,811
6-15-74	6,842	15,000	8,158
6-30-74	5,848	15,000	9,152
7-15-74	4,737	15,000	10,263

During the period May 31, 1974 to July 15, 1974, Registrant conducted business and effected transactions in securities (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) with customers.

Respondent Rutledge urges (assuming, arguendo, there were net capital violations) that he did not wilfully aid or abet Registrant's net capital violations because he and Registrant had a good faith belief that at the times involved Registrant had become entitled to the lower, $5,000 net capital requirement available under Rule 15c3-1 to a firm that clears through another broker-dealer on a "fully disclosed" basis and thereby does not itself hold any customers' securities or moneys. At the time of the net capital violations

found above, the applicable net capital rule as set forth in 17 C.F.R. provided in pertinent part as follows:

> §240.15c3-1 Net capital requirements for brokers and dealers.
> (a) No broker or dealer shall permit his aggregate indebtedness to all other persons to exceed 2,000 per centum of his net capital, and every broker or dealer shall have the net capital necessary to comply with the following conditions:
>
> * * *
>
> (2) If he became registered as a broker or dealer before August 13, 1971, and he does not come within the provisions of subparagraph (3) or (4) of this paragraph, he shall have and maintain net capital of not less than $15,000 commencing July 31, 1973, and $25,000 commencing July 31, 1974;
> (3) Notwithstanding the provisions of subparagraphs (1) and (2) of this paragraph, if he promptly transmits all funds and delivers all securities received in connection with his activities as a broker or dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers he shall have and maintain net capital of not less than $5,000 if he does not otherwise carry accounts of or for customers; and
>
> * * *

Also pertinent to an understanding of the mechanics for operating on a fully disclosed basis were certain provisions of then-applicable Rule 15c3-3, which at the time of the net capital violations provided in pertinent part as follows:

> §240.15c3-3 Customer protection — reserves and custody of securities.
>
> * * *
>
> (k) Exemptions.
>
> (2) The provisions of this section shall not be applicable to a broker or dealer:
>
> * * *

(ii) Who, as an introducing broker or dealer, clears all transactions with and for customers on a fully disclosed basis with a clearing broker or dealer, and who promptly transmits all customer funds and securities to the clearing broker or dealer which carries all of the accounts of such customers and maintains and preserves such books and records pertaining thereto pursuant to the requirements of §§240.17a-3 and 240.17a-4 of this chapter, as are customarily made and kept by a clearing broker or dealer.

* * *

The Division argues, on the other hand, not only that Registrant and Rutledge were not entitled to the lower $5,000 net capital requirement available to a firm operating on a "fully disclosed" basis but that they misled the NASD and others into believing that they were operating on such basis and thus violated the antifraud provisions of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

On March 8, 1974, after earlier examinations by the NASD had disclosed that Registrant had for some time shown a history of losing money and had failed to make quarterly box counts or send out quarterly statements to customers because it could not afford the staff to do so, Rutledge was called in to the NASD offices to discuss the NASD's concern about the firm's lack of profitability and attendant problems.

The NASD officials expressed their views that Registrant was not financially capable of complying with the standard net-capital and the record-keeping requirements of the Commission, the NASD, and the State of California and recommended therefore that Registrant reduce its net-capital requirements and the demands on its personnel by clearing through another broker-dealer on a fully disclosed basis. The basic requirements for going

on a fully disclosed basis were outlined to Rutledge, who concurred in the recommendation to do so and confirmed his intention of doing so in a letter to the NASD of March 11, 1974.

On April 16, 1974, Registrant signed an agreement with Wedbush, Noble, and Cooke ("Wedbush") for clearing through Wedbush on a fully disclosed basis.

By form letter Registrant contacted its customers advising them of the arrangement with Wedbush and requesting them to authorize by their signature their agreement to the arrangement. The authorizations by customers were to be mailed directly to Wedbush. About half of Registrant's customers responded as requested, but many objected to having another broker-dealer in the picture and some did not respond at all.

Following the March 8, 1974 meeting in the NASD offices there were a number of phone and other contacts between NASD officials and Rutledge concerning the progress Registrant was making towards arranging to operate on a fully disclosed basis.

During an NASD examination of Registrant on May 15 and 16, 1974, Rutledge stated that Registrant was now doing business on a fully disclosed basis through Wedbush, that the firm had mailed out securities of 74 clients out of a total of about 160 clients who had securities in safekeeping, and that he would like to have all securities out by the end of May. Rutledge was told by the NASD official that until all customers' securities and moneys were out of the firm Registrant would remain subject to the requirement for maintaining a special reserve account for customers and to the $15,000 net capital requirement under SEC rules.

In light of all his contacts with the NASD officials following his March 8th meeting with them, Rutledge came to regard May 31st as his NASD-imposed "deadline" for getting customers' securities and moneys out of the firm. But the resistance some customers had shown to having Wedbush handle their securities and accounts as clearing broker for Registrant caused Rutledge to conclude that he would lose many of his customers if he insisted more forcefully that they agree to the Wedbush arrangement or if the firm mailed out to the customers their securities and money balances. In light of these pressures and perceived threats to the continued viability of Registrant, Rutledge and Howard, consulting only each other, hit upon a plan whose fatal flaw was that it exalted form over substance: if customers' securities had to be out of the firm by May 31st, Rutledge and Howard would accomplish this result by having each of them take "personal" custody of his respective customers' securities. Thus, Rutledge and Howard signed receipts for such customers' securities, and they were to hold them in their personal safety deposit boxes. Rutledge and Howard had no authorizations from their customers to act as their personal custodians nor did they advise them they so intended to act. (As it turned out, their personal safety deposit boxes were too small to hold all the securities and too remotely located to be convenient, and the securities eventually wound up being held in two boxes rented by Registrant in two separate banks in Oakland). The receipts signed by Rutledge and Howard were kept as part of Registrant's records. In addition, the securities thus "delivered" to Rutledge or to Howard were listed on the individual customers ledger sheets with the initials

of Rutledge or Howard adjacent thereto, as written in by the bookkeeper. "Delivery" of the securities to Rutledge or to Howard was similarly noted by the initials designations in the firm's "BOX OR VAULT RECORD".

In a telephone conversation on May 31, 1974 with an NASD official Rutledge reported either that all customers' securities and moneys were out of the firm's safekeeping (Rutledge's testimony) or that all customers' securities and moneys had been mailed out as of that date (the testimony of the NASD official). Rutledge did not disclose the "personal custody" arrangement.

At intervals between May 17, 1974 and June 14, 1974, an examiner from California's Department of Corporations made a routine examination of Registrant. At some time during the course of that inspection the investigator became aware that Registrant was "delivering out" securities and he asked to examine the delivery receipts to satisfy himself that the customer had signed for the securities. The inspector was shown a number of receipts that Rutledge and Howard had signed and was told of the arrangement under which Rutledge and Howard were purporting to take personal custody of customers' securities. The inspector was told that the securities involved were located in safe deposit boxes in Piedmont and Berkeley (under a half hour's driving time away); the securities were later brought in to the firm's offices for the inspector's examination.

The California investigator ultimately conveyed what he had learned about Rutledge's and Howard's custodial arrangement to an NASD examiner, and this in turn led to an unannounced visit to the Registrant's office in the afternoon of July 10, 1974, of an investigating group that included persons

from the NASD, the SEC, and California's Department of Corporations. Upon being asked about the whereabouts of customers' securities purportedly held in the personal custodianship of Rutledge and Howard, Rutledge somewhat vaguely responded that they were at various places in the "East Bay" area, including Piedmont and Berkeley, apparently attempting to preserve the fiction of personal custodianship by Rutledge and Howard. A box count of the securities by SEC personnel was therefore deferred until next morning, at which time it developed that the securities of which Rutledge was purported personal custodian were actually held in a safe deposit box of Registrant in a bank less than two blocks from Registrant. Similarly, the Howard-held securities of customers inventoried on July 12, 1974, turned out to be located in a safe-deposit box of the Registrant in another bank also less than two blocks from the Registrant. The box counts confirmed numerous securities belonging to 27 customers of Rutledge and 72 customers of Howard.

The effort to remove the securities from Registrant by having Rutledge and Howard take personal custody of them was of course totally ineffective legally since the same persons, i.e. principals of the Registrant, along with Registrant's bookkeeper-cashier, still had access to them. The customers were still exposed to the same risk from which the NASD had sought to protect them. The record indicates that Rutledge strongly suspected that the personal-custodianship concept wouldn't "wash", and that that was the reason he never sought approval of the plan in his numerous conversations with NASD officials about going on a fully disclosed basis. It is well settled that he who claims the benefit of an exemption has the burden of proving entitlement to

it. Thus Registrant never became entitled to the lower net-capital requirement of $5,000.

However, since Rutledge had the astuteness and caution to have the custodial arrangement reasonably adequately reflected in Registrant's books and records and under all the facts presented by this record, it is concluded that the Rutledge-Howard custodial arrangement and the representations Rutledge made concerning it and concerning the location of the securities involved did not constitute a fraudulent act, practice, or course of business, or otherwise violate the antifraud provisions. The lack of candor Rutledge exemplified and his failure to clear the custodial plan with the NASD are, however, facts that will be taken into account in assessing appropriate sanctions.

As an alternative defense to the findings of net capital violations, Rutledge argues that since he was the sole owner of Registrant, Rutledge's personal assets should properly have been considered as part of Registrant's assets for net capital purposes, citing In the Matter of George A. Brown d/b/a BROWN AND COMPANY, et al., 43 SEC 490 (1967). Rutledge's reliance upon Brown and Company is totally misplaced, since that proceeding involved a sole proprietorship, rather than a corporate entity like the Registrant. As the Commission stated at p. 497 (note 11) of the Brown decision:

> Of course a corporate registrant, even though it has a single shareholder, presents a different situation since the assets of the shareholder are not subject to the claims of customers and creditors of the registrant, and the latter's assets are not subject to the claims of the shareholder's personal creditors. Kenneth E. Goodman & Co., 38 S.E.C. 309 (1958).

In addition, apart from the lack of legal merit to this "de facto sole proprietorship" defense, the record in this proceeding contains no proof that Rutledge at the time of the net capital violations had any personal assets of a kind that could be taken into account for net capital purposes, and no effort was made to offer any such evidence. The defense is a shot-in-the-dark afterthought.

Special Reserve Bank Account Violations

During the period from December, 1973 through April, 1974, Registrant, aided and abetted by Rutledge, failed to maintain proper balances in its special reserve bank account as required by Rule 15c3-3, 17 C.F.R. 240.15c3—3, on and about the dates indicated as follows: 2/

Date of Computation	Balance Per General Ledger	Actual Balance Date of Computation	Balance Required	Deficiency
12-31-73	28,916.34	15,416.34	28,511.36	(13,095.02)
1-31-74	32,387.43	21,887.43	32,294.39	(10,406.96)
2-15-74	344,807.81	319,507.81	344,628.91	(25,121.10)
2-28-74	147,033.00	131,183.00	146,953.75	(15,770.75)
3-15-74	40,588.32	28,788.32	40,487.88	(11,699.56)
3-31-74	29,846.67	20,546.67	29,300.38	(8,753.71)
4-15-74	19,099.67	13,099.67	19,025.39	(5,925.72)
4-30-74	14,592.13	10,392.13	13,698.04	(3,305.91)

From December, 1973 through July, 1974, Registrant, aided and abetted by Rutledge, despite several warnings by the NASD, failed to make computations required by Rule 15c3-3 for each withdrawal from Registrant's special reserve bank account.

2/ See the discussion above, under the findings of antifraud violations, of the check-kiting activities engaged in by Registrant and Rutledge in an attempt to misrepresent the actual balances in the special reserve account.

Within the period from December, 1973 through about April, 1974, while Registrant, wilfully aided and abetted by Rutledge, wilfully did not have, and did not maintain, a proper special reserve bank account balance for the exclusive benefit of customers through deposits made therein, cash and/or qualified securities in amounts computed in accordance with the formula set forth in Rule 15c3-3a, Exhibit A, Registrant, wilfully aided and abetted by Rutledge, wilfully induced and attempted to induce the purchase and sale of securities (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange.

Respondent Rutledge's contention that Registrant was effectively operating as a sole proprietorship and that therefore his personal funds should be deemed to constitute a part of the special reserve account balance fails for the reasons discussed above in connection with the treatment of net capital deficiencies and for the additional reason that any personal funds of his had obviously not been deposited in the required special reserve bank account.

Books and Records Violations

As found above in connection with the antifraud violations involving "parking" of securities and check "kiting", Registrant, by entering false and fictitious entries into its books and records, wilfully violated Section 17(a) of the Exchange Act and Rule 17a-3 thereunder; and Respondent Rutledge, directly involved in such parking and kiting activities, wilfully aided and

abetted Registrant's books and records violations.

The record also establishes that Registrant wilfully violated Rule 17a-4 by failing to keep records of safe-deposit box counts conducted by the firm during the period from about May 1973 to about July 1974, and that Rutledge wilfully aided and abetted such violations.

Failure to File Required Reports and Notices

Respondent Rutledge does not dispute that the record establishes that Respondent wilfully violated and that Rutledge wilfully aided and abetted violations of Section 17(a) of the Exchange Act and Rule 17a-5(n), thereunder, by failing to provide its customers or to file with the Commission quarterly reports concerning Registrant's financial condition.

The record further establishes that Registrant wilfully violated, and that Respondent Rutledge wilfully aided and abetted violations of, Section 17(a) of the Exchange Act and Rules 17a-11(a) and 17a-11(c) thereunder, by failing to advise the Commission by telegraphic notice of the net capital deficiencies found herein and of the deficiencies in Registrant's books and records found herein.

Wilfulness of Violations

Respondent Rutledge urges that most of the violations, if found, were not wilful, relying upon the Commission's recent decision in In the Matter of International Shareholders Service Corporation, 9 SEC DOCKET 497, May 11, 1976 (Exchange Act Release No. 12,388, April 29, 1976). Rutledge's reliance upon

International Shareholders is misplaced. There the Commission found that the respondents' violations, involving sales of unregistered securities, were not wilful because: respondents believed the intrastate exemption was available; the issuer, not the respondents, had engaged in the out-of-state sales of securities that in fact and in law made the exemption unavailable; and the entire factual circumstances were not such as, in the Commission's judgment, indicated that the respondents there knew or should have known that the intrastate exemption was unavailable. In this proceeding, in marked contrast, the violations all involve activity in which Rutledge directly participated and of which he had full knowledge, e.g. the antifraud violations, or a failure to act when the duty to act was clearly known to him[3/] and devolved upon him, e.g. the failure to file quarterly reports of financial condition. All violations by Rutledge found herein were therefore wilful. Tager v. S.E.C., 344 F. 2d 5, 8 (1965).

Public Interest

In considering what sanctions ought to be imposed upon Respondent Rutledge it is pertinent to consider that he has been in the securities busines since 1948 and that before 1973 he had never personally been the subject of any proceeding or inquiry by any regulatory body. Further, it is relevant in this connection that the violations by Rutledge were committed not for any

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3/ Rutledge's testimony that he was unaware of the requirement for keeping records of box counts is not credited in view of his many years' experience as a principal.

direct personal gain or profit but in a futile and misguided effort to keep alive a dying firm in which he had followed his father in the business but which he had never been able to raise to a high level of profitability. Respondent also properly points to the lack of any losses to customers; but this factor is offset in part by the fact that customers' securities and moneys were at risk over a considerable period because of the violations.

While the violations committed or aided and abetted by Respondent Rutledge are in part violations of a kind that the Commission has termed "managerial in nature",[4/] the facts that they involved active fraud in the parking and check kiting activities and involved Rutledge's direct and knowing participation or inaction serve to make them especially serious and to make them something more than "managerial" in nature. Therefore it is concluded that Rutledge should be permanently barred from occupying a supervisory or proprietary position in the securities industry. The further question is whether the public interest requires a permanent bar in every capacity, as the Division urges, or whether a temporary suspension of his right to engage in the securities business in a non-proprietary and non-supervisory capacity will suffice. As the Commission said in Shapiro (footnote 4 above) "[o]ur purpose is not to punish Shapiro, but 'to protect the public interest from future harm at his hands.'" In addition, of course, the deterrent effect of sanctions upon the future conduct of others is a legitimate consideration. Based upon the foregoing considerations and upon the whole record, it is

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4/ See In the Matter of JEROME H. SHAPIRO, Exchange Act Release No. 12615, July 12, 1976, at p. 5.

concluded that a 3 month bar from all participation in the securities industry coupled with a permanent bar from the industry in a supervisory or proprietary capacity is required and adequate to protect the public interest.

Accordingly, IT IS ORDERED as follows: Jay Rutledge is hereby barred from association with any broker or dealer, Provided, however, that after a period of 3 months he may apply to become associated with a broker-dealer in a non-proprietary, non-supervisory capacity.

This order shall become effective in accordance with and subject to Rule 17(f) of the Commission's Rules of Practice, 17 C.F.R. §201.17(f).

Pursuant to Rule 17(f), this initial decision shall become the final decision of the Commission as to each party who has not, within fifteen (15) days after service of this initial decision upon him, filed a petition for review of this initial decision pursuant to Rule 17(b), unless 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 for review, or the Commission takes action to review as to a party, the initial decision shall not become final with respect to that party.5/

David J. Markun
Administrative Law Judge

April 19, 1976
Washington, D.C.

5/ All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties, and the arguments made by them, are in accordance with the findings, conclusions and views stated herein they have been accepted, and to the extent they are inconsistent therewith they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented. To the extent that the testimony of various witnesses is not in accord with the findings herein it is not credited.