

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-4070

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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In the Matter of

WALL STREET CORPORATION OF AMERICA, INC.  
MARIE A. PETERSON  
THOMAS V. McCAUL, JR.

(B-10718)

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INITIAL DECISION

**FILED**  
MAY - 8 1973

SECURITIES & EXCHANGE COMMISSION

Edward B. Wagner  
Administrative Law Judge

May 8, 1973  
Washington, D. C.

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APPEARANCES: Joseph T. Robinson of the Miami Branch Office and  
John M. Kelly of the Atlanta Regional Office for the  
Division of Enforcement.

Guy K. Stewart, Jr. of Williams, Salomon, Kanner & Damion  
for Respondents Wall Street Corporation of America, Inc.  
and Marie A. Peterson.

Thomas V. McCaul, Jr., pro se.

BEFORE: Edward B. Wagner, Administrative Law Judge

This public proceeding was instituted by an order of the Commission, dated December 5, 1972, pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 (Exchange Act) to determine whether respondents willfully violated and willfully aided and abetted violations of the Exchange Act and rules thereunder as alleged by the Division of Enforcement (Division) and the remedial action, if any, that might be appropriate in the public interest.

The Order charged respondents with willfull violations of Section 17(a) of the Exchange Act and Rule 17a-5 thereunder in that no report of financial condition for the year ending December 31, 1971 had been filed within the time required by the rule. It also charged willfull violations of Section 17(a) and Rule 17a-3 in that ledgers, trial balances, and computations of aggregate indebtedness and of net capital pursuant to Rule 15c3-1 had not been made and kept current. Also charged were willfull violations of the net capital requirements embodied in Section 15(c)(3) and Rule 15c3-1 and willfull violations of Section 15(b)(5)(A) in that from January 31, 1972 to and including August 31, 1972 false and misleading X-17A-11 reports were filed with the Commission.

An evidentiary hearing was held in Miami, Florida January 8 through January 10, 1973.<sup>1/</sup> Respondents Wall Street Corporation of

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1/ The Commission had ordered an initial hearing on the question of whether Wall Street's registration as a broker should be suspended pending a determination of the revocation and other issues. A separate hearing on the interim suspension issue was dispensed with on motion of the Division based upon written undertakings by the respondents. In these undertakings respondents agreed to suspend operations pending final resolution of the proceedings.

America, Inc. and Marie A. Peterson were represented by counsel. Respondent Thomas V. McCaul, Jr. represented himself. The Division and the two respondents represented by counsel filed proposed findings, conclusions and briefs. McCaul made no filings. The Division filed a reply to respondents' filing. The findings and conclusions herein are based upon the preponderance of the evidence as determined from the record and upon observation of the witnesses.

#### Respondents

Wall Street Corporation of America, Inc. (Wall Street) became registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act on May 30, 1962.

Marie A. Peterson (Peterson) is the president and a director of Wall Street and owns 70 of its 159 outstanding shares. Peterson has been president of the firm since September, 1966 and during the period involved here was its chief operating officer and was in charge of its bookkeeping and back office operations.

Thomas V. McCaul, Jr. (McCaul) is vice-president and a director and stockholder of Wall Street.

#### Violations of Rule 17a-5

Wall Street has not to date filed a Form X-17A-5 for the year ending December 31, 1971 complying with applicable requirements. Respondents Wall Street and Peterson admitted in their answer that no such report had been filed within the time required by the rule, but alleged that no willfull violations of Rule 17a-5 or willfull

aiding and abetting of such violations had occurred. The material which was submitted early in 1972 was admittedly in "improper" form. (Tr. 317, 335). It was not certified by an independent accountant, was not accompanied by an oath or affirmation of a duly qualified officer, and was otherwise deficient. Peterson was the officer of Wall Street responsible for filing Form X-17A-5.

Peterson testified that she neglected to file the report because she was involved in a time-consuming law suit. However, she asked for no extension of time and was not too preoccupied to be active in the business during this period.

Under the above circumstances it is concluded that Wall Street willfully <sup>2/</sup> violated the reporting requirements of Section 17(a) of the Exchange Act and Rule 17a-5 thereunder and that Peterson willfully aided and abetted such violation.

#### Bookkeeping, Net Capital, and Section 15(b)(5)(A) Violations

Rule 17a-3 sets forth the bookkeeping rules for registered broker-dealers in great detail. Paragraph (2) of the rule requires a current ledger reflecting all assets and liabilities, income and expense and capital accounts. The record establishes that as of April, 1972 Wall Street's general ledger had not been posted for the

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2/ It is well-established that all that is necessary to establish that a violation was "willfull", in this context, is to show that the person in question intended to do the act which resulted in the violation. Hughes v. S.E.C., 174 F. 2d 969, 977 (D.C. Cir. 1949); Thompson Ross Securities Company, 6 S.E.C. 1111 (1940).

period from July, 1971 to March 31, 1972.

Peterson testified that she had been told by an unidentified member of the NASD that the trial balances which she was preparing on a monthly basis were a satisfactory substitute and that the lawsuit previously referred to took up so much of her time that she was unable to post entries in the general ledger. However, the trial balances were false and misleading, as found below.

The requirement of Rule 17a-3 that records be kept embodies the requirement that such records be true and correct.<sup>3/</sup> The latter requirement forms the basis for the Division's further charge of violation of Rule 17a-3 that Wall Street's trial balances and net capital computations were inaccurate for the period January 31, 1972 through August 31, 1972 in that assets were substantially overstated and liabilities substantially understated.

The record establishes that Wall Street's trial balances were inaccurate as stated below:

	<u>Assets Overstated</u>	<u>Liabilities Understated</u>
January 31, 1972	\$2,245.31	\$7,046.32
February 29, 1972	5,399.14	5,002.09
March 31, 1972	6,268.81	2,454.63
April 30, 1972	5,765.80	5,069.91
May 31, 1972	1,918.69	8,593.26
June 30, 1972	7,867.22	5,414.26

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<sup>3/</sup> Southern States Securities, 39 S.E.C. 728, 732 (1960); Lowell Niebuhr & Co., Inc., 18 S.E.C. 471, 475 (1945).

July 31, 1972	5,617.08	7,758.28
August 31, 1972	7,910.28	-

These discrepancies resulted from overstatement of assets in bank accounts and from failure to include commissions payable as a liability.

The record establishes that Wall Street's net capital computations were inaccurate for the period from January 31, 1972 through August 31, 1972 in that there were overstatements of Wall Street's net capital in the following amounts:

January 31, 1972	\$ 9,505.83
February 29, 1972	10,616.24
March 31, 1972	8,870.98
April 30, 1972	11,049.30
May 31, 1972	10,658.21
June 30, 1972	13,487.74
July 31, 1972	15,103.80
August 31, 1972	7,911.24

Wall Street's net capital computations for the period from January 31, 1972 through August 31, 1972 showed that the firm's aggregate indebtedness did not exceed 2,000 per cent of its net and that the firm had and maintained net capital of not less than \$5,000. In fact, the firm's aggregate indebtedness exceeded 2,000 per cent of its net capital and the firm maintained net capital of less than \$5,000.

Peterson prepared the trial balances and net capital computations in question and made or supervised the reconciliation of Wall Street's bank statements. Peterson must have known that the bank accounts were

materially overstated on the trial balances and net capital computations.

The record shows that Wall Street was in substantial violation of the net capital rule as follows:

<u>Date</u>	<u>Adjusted Net Capital (Deficit)</u>	<u>Minimum Net Capital Required</u>	<u>Capital Required to Comply With Rule 15c3-1</u>
1/31/72	(\$3,550.83)	\$5,000	\$ 8,550.83
2/29/72	( 5,527.24)	5,000	10,527.24
3/31/72	( 3,058.61)	5,000	8,058.61
4/30/72	( 3,959.30)	5,000	8,959.30
5/31/72	( 4,751.39)	5,000	9,751.39
6/30/72	( 7,576.93)	5,000	12,576.93
7/31/72	( 8,779.51)	5,000	13,779.51
8/31/72	( 1,330.01)	5,000	6,330.01

The parties stipulated that Wall Street had employed the mails to effect securities transactions on the last day of each of the above months. (Tr. 51).

The Division further charges that Wall Street willfully violated and Peterson willfully aided and abetted violations of Section 15(b) (5)(A) of the Exchange Act by filing false X-17A-11 reports which overstated bank balances and failed to show salesmen's commissions payable as liabilities. The record shows that liabilities in the form of commissions payable to salesmen were not reflected in the respective X-17A-11 reports for the period January 31, 1972 through August 31, 1972 in the following amounts:



January 31, 1972	\$3,907.51
February 29, 1972	5,002.09
March 31, 1972	3,340.36
April 31, 1972	5,069.91
May 31, 1972	3,936.47
June 30, 1972	5,414.26
July 31, 1972	5,420.45

The record demonstrates that bank reconciliations and cash in the X-17A-11 reports were overstated in the following amounts:

	<u>Bank Reconciliations</u>	<u>Cash</u>
January 31, 1972	\$8,014.00	\$5,433.97
February 29, 1972	5,071.45	5,431.37
March 31, 1972	6,526.17	8,385.83
April 30, 1972	5,475.20	5,743.72
May 31, 1972	6,281.96	6,575.48
June 30, 1972	7,573.70	5,867.22
July 31, 1972	7,000.00	7,296.52
August 31, 1972	2,000.00	5,702.21

These discrepancies were attributable to "deposits in transit" which were listed on the X-17A-11 reports which did not appear on Wall Street's office bank reconciliations and to outstanding checks which appeared on the office bank reconciliations which were not listed on the X-17A-11 reports. Wall Street's bank statements for subsequent months show that no actual deposits of what must be regarded as fictitious deposits in transit were ever made. "Deposits in transit" of \$5,941.85

and \$5,000 listed on the X-17A-11 reports never were made in the firm's bank accounts in so far as the record shows.

Peterson made or supervised the reconciliation of all bank statements and prepared or supervised the preparation of X-17A-11 reports during the period in question. Peterson had knowledge of the bank balances, deposits in transit, commissions payable and outstanding checks and it can only be concluded that she knowingly falsified the X-17A-11 reports.

The contentions of respondents Wall Street and Peterson, as presented in their written filing address themselves only to the net capital violations. The respondents argue that the Division's corrected net capital computations do not afford a basis for a conclusion that the rule was violated because: (1) they included as a liability, commissions payable, which should have been excluded;<sup>4 /</sup> (2) they exclude an alleged asset, \$5,400.00, which should have been included; (3) they are not based on Wall Street's books and records; and (4) they are at variance with Respondents' Exhibit 1, a broker-dealer inspection report for the period of six (6) months ended June 30, 1972.

With respect to the commissions payable to salesmen, respondents appear to question the Division accountant's contention that these

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<sup>4 /</sup> This contention, however, impacts not only the alleged violation of the net capital rule but also the charges with respect to the accuracy of the records kept pursuant to Rule 17a-3 and the charge that Section 15(b)(5)(A) was violated by the filing of false X-17A-11 reports.

amounts constituted liabilities. They state that "he did not know whether or not Wall Street was obligated to pay commissions to its salesmen before or after income from the sale of mutual funds was actually received." They do not, however, contend that the latter was the arrangement, and the record would not support a conclusion that it was. Wall Street's own records reflected these amounts as liabilities. The suggestion that appears in Peterson's testimony that an arrangement existed that certain salesmen would only be paid on the 15th of the month (Tr. 320,321) would have no effect upon when the liability had been incurred. Moreover, the record indicates that commissions payable remained unpaid on mutual fund purchases long after Wall Street had received the dealer discount (See Tr. 311-312; Res. Ex. 4).

It has been concluded that the amounts in question were liabilities of Wall Street and should have been included.

With respect to the omitted \$5,400 asset, Peterson testified that she purchased the furniture and fixtures of the firm in August of 1971 with money loaned to her by her mother, and that this money in the form of cash was placed in an envelope in the firm's safety deposit box and that it was later deposited in the firm's bank account in September, 1972. The Division in its computations had recognized the alleged asset as belonging to the fund only after its deposit in the firm's bank account. The Division accountant testified that Peterson had earlier stated that she had placed a check - not cash - in the Wall Street safety deposit box and that at no time during the

pertinent period did her bank records show that she had sufficient moneys on deposit to cover a check in this account. It is further argued that it is unlikely that such an amount was available because firm checks were bouncing during this period and, that if such an account had been available, presumably Peterson would have used the money to cover those checks. It is also pointed out that no such item appeared on Wall Street's trial balances which Peterson prepared during the period.

It has been concluded that this item was properly omitted. Although it is found that cash in such an amount did exist and was loaned to Peterson by her mother, the circumstances recounted above, having in mind particularly the failure to set such an item forth on required accounting records and Peterson's own testimony that she was "holding it in reserve" compel the conclusion that, even if cash in this amount had been placed in the firm's safety deposit box, there were so many strings attached to it that it could not be regarded as an asset of the firm. (Tr. 325). It is noted that even if Wall Street is given credit for the \$5,400, net capital violations would still exist.

Forgiveness of commissions payable on August 31, 1972 by Peterson and McCaul cannot be given retroactive effect, and these amounts must be treated as liabilities of the firm prior to the date they were forgiven.

It is argued that in making its computations the Division did not in every instance consult all of Wall Street's records. However,

Wall Street records were the source of all of the Division computations, and, if any record not consulted would have made a difference, it was incumbent upon respondents to demonstrate that this was the case. They have not even attempted to do so.

Finally, respondents Wall Street and Peterson argue that the Division's proof lacks credibility because an inspection report prepared by the same Division accountant who testified in this proceeding reflected only one net capital violation. It was not, however, until after the report was prepared that the Division discovered the overstatements of assets and understatements of liabilities involved here.

It is, accordingly, concluded that, as charged by the Division, Wall Street willfully violated and Peterson willfully aided and abetted violations of Sections 17(a), 15(c)(3), 15(b)(5)(A) of the Exchange Act and Rules 17a-3, and 15c3-1 thereunder.

#### McCaul

The Division proposes that it likewise be concluded that McCaul willfully aided and abetted the above violations. McCaul, as previously stated is vice president, a director, and a stockholder of Wall Street. The Division urges that he be censured because, although not as directly involved in the violations as Peterson, he failed to take any action to prevent the violations. The record contains no information indicating the nature, if any, of his involvement in or

responsibilities with respect to the matters charged.

The undersigned concludes, as to McCaul, that the record does not support a finding that he willfully aided and abetted any of the violations charged.

### Constitutional Argument

Counsel for respondents Wall Street and Peterson contends that evidence acquired subsequent to August 1972 should not be considered because it was obtained in violation of constitutional rights under the fifth amendment. It is asserted that during the numerous <sup>5/</sup> inspections of Wall Street during the period from March 1972 through September 1972, Peterson was never advised of her rights under the fifth amendment, even after the Division had concluded in late August or early September that the Wall Street situation was serious. Peterson was not advised of her right to remain silent or to refuse to answer questions which might tend to incriminate her until October 26, 1972 when she appeared at the Miami Branch Office pursuant to subpoena to testify under oath.

Respondents cite U.S. v. Dickerson <sup>6/</sup> in support of their contention. <sup>7/</sup> The Dickerson case holds that the Miranda warnings must be given to

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<sup>5/</sup> There is a dispute as to the number of visits. Respondents contend they were 45 while the Division asserts that figure is closer to 25. The testimony of the Division accountant is credited over the testimony of Peterson in this matter, and the undersigned finds that there were approximately 25 visits.

<sup>6/</sup> 413 F. 2d 1111 (7th Cir. 1969).

<sup>7/</sup> Miranda v. Arizona, 384 U.S. 436 (1965).

a taxpayer under criminal investigation at the inception of the first contact with him after the case has been transferred to the Intelligence Division of the Internal Revenue Service.<sup>8/</sup> The case takes a broad view of what constitutes a situation in which coercion is involved; and the Court states:

"We understand the teaching of Miranda to be that one confronted with governmental authority in an adversary situation should be accorded the opportunity to make an intelligent decision as to the assertion or relinquishment of those constitutional rights designed to protect him under precisely such circumstances."<sup>9/</sup>

The Dickerson case is, however, limited to criminal investigations, and there is nothing to indicate that Peterson was in criminal focus. Most of the materials are books and records required to be kept pursuant to Section 17(a) of the Exchange Act. No privilege attaches to such evidence.<sup>10/</sup> Further, Section 17(a) of the Exchange Act provides that the books and records of a broker-dealer shall be subject to reasonable periodic examination, and no showing has been made that the inspections here were otherwise.

Respondents' constitutional argument is accordingly rejected.

#### Public Interest

The violations found herein are extremely serious and

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<sup>8/</sup> The jurisdiction of the Intelligence Division is limited to criminal investigations.

<sup>9/</sup> 413 F. 2d at 1116.

<sup>10/</sup> Shapiro v. U.S., 335 U.S. 1, 17-18 (1948).

continued over a substantial period. They involve important provisions of the Exchange Act. No substantial evidence has been offered to refute the Division's charges, and respondents' filing seems merely to contend - aside from the constitutional argument - that conceivably there may be evidence somewhere that exculpates respondents which the Division has been remiss in not discovering. On the record here it can only be concluded that Wall Street, and as its chief executive officer, Peterson intentionally prepared false trial balances and false computations of net capital, intentionally transacted business while in violation of the net capital rule, and intentionally furnished false and misleading information in reports filed with the Commission. The Division recommends revocation for Wall Street and a permanent bar for Peterson.

Peterson's testimony cites the time-consuming personal litigation in which she was involved as causing the break-down at Wall Street, points to the fact that she has been in the business over the past ten years, that no customers have been hurt, and states she has absolutely no desire to go into the securities business by herself in the future. She explains that in her view the record-keeping requirements are too complex and that she would prefer a role as a registered representative working with customers.

While it appears from the record herein that the supervised role Peterson prefers would be much more suitable, there is no basis for permitting her to assume that role at this point in time. On the contrary, a gross indifference to the requirements of the federal



securities laws to the point of intentional violation has been demonstrated.

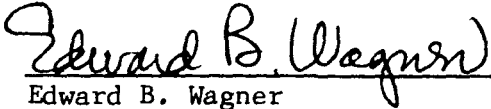
In view of the foregoing, it has been concluded that the registration of Wall Street as a broker-dealer should be revoked and that Peterson should be barred from association with any broker or dealer, except that after a period of two years she may be permitted to return to the securities business in an adequately supervised position. It is concluded that the two-year period will serve the purpose of adequately impressing upon Peterson the need for strict compliance with the securities laws in the future.

Accordingly, IT IS ORDERED that the registration of Wall Street Corporation of America, Inc. as a broker-dealer is revoked, and that Marie A. Peterson is barred from association with any broker or dealer, except that after two years from the effective date of this order Marie A. Peterson may become associated with a registered broker-dealer in a non-supervisory capacity upon an appropriate showing to the staff of the Commission that she will be adequately supervised.

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

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.<sup>11/</sup>

  
Edward B. Wagner  
Administrative Law Judge

May 8, 1973  
Washington, D. C.

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<sup>11/</sup> All proposed findings and conclusions submitted by the parties have been considered, as have their contentions. To the extent such proposals and contentions are consistent with this initial decision, they are accepted.