ADMINISTRATIVE PROCEEDING
FILE NO. 3-570

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of		
JAFFEE & COMPANY WILTON L. JAFFEE, JR.	(8-11472)	
GREENE & COMPANY IRVING A. GREENE ROBERT TOPOL BERNARD HORN	(8-702)	(Private Proceedings)
M. L. LEE & CO., INC. MARTIN L. LEVY	(8-8226)	

INITIAL DECISION

Washington, D.C.
August 26, 1968

Sidney Ullman
Hearing Examiner

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APPEARANCES: For the Division of Trading and Markets:

Donald N. Malawsky, William H. Joseph, Robert G. Willner and Michael Gettelman, Attorneys, New York Regional Office.

For the Respondents:

Donald J. Williamson and Melvin Katz of Weil, Gotshal & Manges, Attorneys for Greene & Company, Irving Greene, and Robert Topol.

Raphael P. Koenig of Koenig & Ratner, Attorney for Bernard Horn.

Eric M. Javits, David A. Goldstein, William J. Quinlan and John C. Moore III, of Javits & Javits, Attorneys for M. L. Lee & Co., Inc. and Martin L. Levy.

Jerome J. Londin of Carro, Spanbock & Londin, Attorney for Wilton L. Jaffee, Jr. and Jaffee & Company.

BEFORE: Sidney Ullman, Hearing Examiner

I. NATURE OF THE PROCEEDINGS

These private proceedings were instituted by the Commission by order and notice of hearing dated March 24, 1966 ("Order"), in which the Division of Trading and Markets ("Division") alleges violations by the respondents of provisions of the Securities Act of 1933 ("Securities Act"), the Securities Exchange Act of 1934 ("Exchange Act"), and of rules issued by the Commission under said statutes, during the period from about June 1963 to March 1964 (the "relevant period"). A hearing was held pursuant to Sections 15(b), 15A and 19(a)(3) of the Exchange Act, to determine whether the allegations are true and, if so, what remedial action, if any, is appropriate in the public interest.

The alleged violations took place in connection with a secondary distribution of the common stock of Solitron Devices, Inc. ("Solitron"), a New York corporation formed in 1959. Solitron filed with the Commission a Form S-1 registration statement on May 22, 1962, which, after amendments, covered an offering to the public by 34 selling stockholders of 107,000 shares of its 5¢ par value common stock. The offering constituted approximately 28 per cent of the company's 383,500 shares of outstanding common stock. The shares were to be offered through the respondent M. L. Lee & Co., Inc. ("Lee & Co."), a broker-dealer named as "exclusive agent", who would "coordinate and control all sales of the shares offered", and the shares were to be offered "in the proximate future . . . from time to time" at "the prevailing market price as reflected on the over-the-counter market at the time of such sale." The respondent

Wilton L. Jaffee, Jr. ("Jaffee"), was listed as a selling stockholder of 27,500 of the shares to be sold; other selling stockholders included all officers and directors of Solitron or their wives. The selling stockholders owned a total of 279,200 shares of the outstanding stock. Lee & Co. was to receive a commission of 5% of gross sales.

The acts and transactions which occurred during the relevant period in connection with the offer, sale and delivery of a portion of these registered shares and other shares of the same class are the basis for the charges asserted against the several respondents. 1/

In substance, the Order charged that during the relevant period:

(1) all respondents with the exception of Lee & Co. violated Section 5(b) of the Securities Act in transmitting or causing the transmission of the registered stock through the mails and in interstate commerce without its being accompanied or preceded by a prospectus. 2/

(2) all respondents violated Section 17(a) of the Securities Act, Sections 10(b) and 15(c)(1) of the Exchange Act,

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1/ Early in the hearing held in February and May 1967, the following amendments were made to the Order:

(1) without objection, the name of respondent Bernard Horn was changed from Bernard Horne, as originally in the caption.
(2) over the objection of counsel, discussed infra, the partnership "Jaffee & Leverton" was named as a participant in all of the alleged wrongful activities.

Following the close of the hearing, Martin L. Levy died, and as to him these proceedings are dismissed. He is not included in the term "respondents", as used hereafter.

2/ As pertinent here, Section 5(b) makes it unlawful to use the jurisdictional means to deliver a security with respect to which a registration statement has been filed "unless accompanied or preceded by a prospectus that meets the requirements of subsection (a) of Section 10" of the Securities Act.

and Rules 10b-5 and 15c1-2 thereunder, commonly known as the "anti-fraud provisions", in connection with the offer, sale and purchase of the stock;

(3) all respondents violated Section 10(b) of the Exchange Act and Rule 10b-6 thereunder in connection with their participation in the distribution of the Solitron stock; 3/ and

(4) respondent Jaffee & Co. violated Section 15(c)(1) of the Exchange Act and Rule 15c1-6 thereunder, aided and abetted by Jaffee, by participating in the secondary distribution of the registered stock without disclosure of that participation and interest. 4/

All respondents have denied the alleged violations.

During the course of the hearing a substantial amount of oral testimony was received, and large amounts of documentary material

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3/ Rule 10b-6, issued under Section 10(b), describes a "manipulative or deceptive device or contrivance" and, as pertinent here, makes it unlawful, with specified exceptions, for certain persons participating in a distribution to bid for or purchase the security or to engage in other activity which might artificially boost its price.

4/ Rule 15c1-6 defines the term "manipulative, deceptive, or other fraudulent device or contrivance" as used in Section 15(c)(1) to include, as pertinent here, the act of any broker designed to induce the purchase or sale by a customer of any security in the secondary distribution of which he is participating or is otherwise financially interested, unless he notifies the customer in writing of such participation or interest.

and transcript testimony which had been taken of respondents during the pre-hearing investigation were received in evidence. Following the hearing, proposed findings of fact, conclusions of law, and briefs were filed by each of the parties and a reply brief was filed by the Division. Thereafter, at the request of respondents, oral argument was held before me on May 6, 1968, with counsel for all parties participating. On the basis of the record in the proceeding, including the documentary evidence, the testimony of the witnesses, and the oral arguments, I make the following findings and conclusions.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

During the relevant period and apparently to the time of his death on February 6, 1968, Martin L. Levy was president and controlling officer of Lee & Co., a broker-dealer registered with the Commission since February 27, 1960, with offices in New York City. William R. Heilweil was the firm's secretary and a director, and owner of 5% of its stock. Lee & Co. employed three or four traders, including Heilweil, but the firm's trading in the registered Solitron stock was done for the most part by Heilweil, and to a lesser extent by Martin Levy. Lee & Co., a member of the National Association of Securities Dealers, Inc. ("NASD"), had participated in underwritings prior to October 11, 1962, the effective date of the Solitron registration.

Greene & Co. is a partnership with its principal place of business at 37 Wall Street, New York City, and has been registered

with the Commission as a broker-dealer since November 1944. Its business consists almost exclusively of trading as dealer for its own account with other brokers or dealers. The respondent Irving Greene ("I. A. Greene") has been a general partner of the firm and of its predecessor firm since 1929, and the respondent Robert Topol, his son-in-law, has been a general partner since 1952 or 1953. During the relevant period the respondent Bernard Horn was employed as a trader at Greene & Co. He was the firm's sole trader in the common stock of Solitron. Horn previously had been employed by a broker-dealer firm in which Jaffee was a partner, and the Division contends that as a result of the relationship between Jaffee and Horn, the latter, as trader for Greene & Co., became involved in transactions in Solitron stock which made Greene & Co. a participant in the distribution of the stock and party to some of the transactions constituting the basis for these proceedings. The Bank of North America, with its main office at New York City, had acted (with its predecessor) for over 30 years as clearing agent for the securities transactions of Greene & Co., from whom the Bank received instructions regarding purchase and sale transactions, performed record-keeping functions, and received and delivered out securities on purchase and sale transactions.

Jaffee was a partner in the broker-dealer firm of Jaffee & Leverton at 29 Broadway, New York City, during the relevant period, sharing profits equally with his partner, Morris Leverton. The

firm became registered with the Commission on May 19, 1963, by filing an application Form BD 30 days earlier. Thereafter, on January 29, 1965, a Form BD was filed as an "amendment" to the Jaffee & Leverton registration, and one of the issues raised in this proceeding involves the responsibility of Jaffee & Co. as a successor firm to Jaffee & Leverton. This "amended application" stated that it was being filed on behalf of Jaffee & Co., with its principal place of business also at 29 Broadway, New York City, and the name of the predecessor firm was stated as "Jaffee & Leverton." The amendment stated that Jaffee & Co. was "taking over substantially all of the assets and liabilities and continuing the business of a registered broker or dealer," namely, the "predecessor" firm, Jaffee & Leverton. It was signed on behalf of Jaffee & Co. by Kenneth Rich, as a general partner. Mr. Rich contributed 5% and Jaffee contributed 95% of the firm's assets.[5/] Jaffee's contribution was $195,000 in capital, in addition to his individually-owned seat on the New York Stock Exchange, valued at $200,000 as of October 31, 1965 in a financial statement filed later that year. On the basis of the foregoing facts, the Division argues that Jaffee & Co., although not in existence during the relevant period, can be charged with violations of Jaffee & Leverton, despite the fact that

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5/ Trading profits of the firm were split 90% to Jaffee; 10% to Rich. Another amendment filed December 28, 1967 indicates that Mr. Rich is no longer a partner in the firm, and that the present partners are Jaffee and Howard B. Herman. The amendment disclosed the firm's change of address to 50 Broadway, New York City.

Mr. Leverton was not a partner in Jaffee & Co. and the fact that Mr. Rich was not a partner in Jaffee & Leverton.

Over the objection of counsel for Jaffee & Co. during the hearing, the Division was permitted to add the name of Jaffee & Leverton, the firm in existence during the relevant period, as a participant in the alleged wrongful activities (but not as a respondent herein). Much of the evidence with respect to trading in Solitron during the relevant period relates to trading of Jaffee & Leverton, and it was stipulated by counsel that although the name Jaffee or Jaffee & Co. appears on certain documents referring to broker-dealer transactions, the firm referred to is Jaffee & Leverton.

Counsel for Jaffee & Co. stated on the record that Jaffee & Leverton was no longer in existence, and this was not disputed by Division counsel. The latter argued, however, that since the Commission's broker-dealer registration file (8-11472) reflects that Jaffee & Co. is a successor firm, that there is an "identity of interest" between the two firms which would support the imposition of liability on Jaffee & Co.

The Commission's Rule 15b1-3 (formerly Rule 15b-4), relating to registration of brokers and dealers, provides:

> (a) In the event that a broker or dealer succeeds to and continues the business of another registered broker or dealer, the registration of the predecessor shall be deemed to remain effective as the registration of the successor for a period of 60 days after such succession: Provided, That an application for registration on Form BD is filed by such successor within 30 days after such succession.
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> (b) A Form BD, filed by a broker or dealer partnership which is not registered when such form is filed and which succeeds to and continues the business of a predecessor partnership registered as a broker or dealer, shall be deemed to be an application for registration, even though designated as an amendment, if it is filed to reflect the changes in the partnership and to furnish required information concerning any new partners.

The "amendment" mentioned above, filed by Jaffee & Co. on January 29, 1965, reflected the changes in the partnership by indicating that the partners were Jaffee and Kenneth Rich, and the "required information" concerning the respective backgrounds of both men appears to have been furnished. Under this Rule it should have been treated as an application.

I believe it must follow that Jaffee & Co. was a successor firm and not a continuation of the registrant Jaffee & Leverton; that although a new registration Form BD should have been filed and was not filed, there is no legal basis under the Commission's rules for imposing on Jaffee & Co. liability for the acts of the predecessor firm. Research, particularly of Commission decisions and the history and background of Rule 15b1-3 have not disclosed support for such liability. 6/

The Division argues in its reply brief that even though the two firms may be separate entities under New York law, ". . .these proceedings were brought against a particular registrant identified by its registration file number. . ." and that "As far as the Securities Exchange Act is concerned, Jaffee & Leverton and Jaffee & Co. are but a single registrant and findings may be made and sanctions imposed against the registrant, whatever its present form. A registrant can no more avoid sanctions by changing its form than by going out of business entirely. See W. T. Anderson, 39 S.E.C. 630 (1960)."

6/ The broker-dealer registration file reflects that on December 28, 1967, a similar "amendment" was filed (see n. 5, supra,) indicating that Rich is no longer a member of Jaffee & Co. and that the partners are Jaffee and Howard B. Herman.

The Anderson case holds that the registration of a broker-dealer who defrauds the public may be revoked in proceedings brought against it, even though subsequent dissolution proceedings are instituted by the registrant, and that the Commission's action cannot be frustrated by resort to dissolution and cessation of business prior to the institution of such proceedings. The case does not support the Division's argument. Cf., Burley & Company, 23 S.E.C. 461 (1946).

The Division's reply brief also urges that under Section 15(b)(5) of the Exchange Act, sanctions can be imposed against Jaffee & Co. based solely on findings herein against Jaffee, inasmuch as he is a "person associated with" Jaffee & Co., as defined in Section 15(b).[7/] The difficulty with the argument is that Section 15(b)(5), under which such proceeding may be brought, provides for "appropriate notice and opportunity for hearing," and the Order in this proceeding was not notice to Jaffee & Co. that Jaffee's association with it was or might be a basis for sanctions. I believe that disregard of these requirements would be a denial of due process.[8/] Accordingly, it is my view that these proceedings must be dismissed as against Jaffee & Co.

During the relevant period, a registered broker-dealer firm, Loeb, Rhoades & Co. ("Loeb Rhoades") (formerly "Carl M. Loeb, Rhoades & Co.") acted as clearing agent for Jaffee & Leverton, as it did for

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7/ Under Section 3(a)(18) a partner is a "person associated with" a broker or dealer. Section 15(b)(5) permits the Commission to impose sanctions on a broker or dealer if a person associated with it has wilfully violated any provision of the statutes or rules involved in this proceeding.

8/ Had a motion to amend the Order been made during the hearing, perhaps a different result would follow.

Jaffee & Co. after its formation and succession to the business of Jaffee & Leverton in January 1965. As clearing agent, Loeb Rhoades sent confirmations of transactions and received in and delivered out securities for Jaffee & Leverton. When the latter firm purchased or sold securities, whether for its own account or for the account of customers, the transaction would be reported to Loeb Rhoades' order room either by telephone or by written instructions, and Loeb Rhoades would mail a confirmation of the transaction to Jaffee & Leverton or to its customer. In addition, a comparison form would be sent by Loeb Rhoades to the broker-dealer on the opposite side of the transaction. When securities were being sold by Jaffee & Leverton, Loeb Rhoades made delivery of the certificates to the purchaser or to his broker.

Loeb Rhoades kept the account records of Jaffee & Leverton customers as part of its own account under a special identifying prefix, and code numbers in Loeb Rhoades' records reveal the customer of Jaffee & Leverton for whom the transaction or clearing was being effected.

Applicability of Rule 10b-6

As it pertains to Jaffee, the Commission's Rule 10b-6 under the Exchange Act, defining manipulative or deceptive devices or contrivances under Section 10(b) of that Act, prohibits any person on whose behalf a distribution of securities is being made, with certain exceptions, from using any means or instrumentality of interstate commerce or the mails, either alone or with one or more persons, to bid for or purchase for any account in which he has a beneficial interest, any security which is the subject of such distribution, or any security of the same class,

or to attempt to induce any person to purchase any such security until after he has completed his participation in such distribution. Important aspects of this proceeding involve a determination, which I reach, that Jaffee was participating in a distribution as a selling stockholder under the registration, and was a person on whose behalf a distribution was being made.[9/] His participation in the distribution continued, at the least, until such time as all of his registered shares would be sold, until which time he was prohibited from engaging in activities which the Commission deemed, when it promulgated the Rule, might disrupt an orderly market for the registered securities; and he was obliged to refrain from all activities prohibited by Rule 10b-6 as a manipulative or deceptive device or contrivance. In Hazel Bishop, Inc., 40 S.E.C. 718 (1961), a proceeding which, as here, also involved a "from time to time" or "shelf" offering by selling stockholders, the Commission took pains to point out the dangers inhering in such offerings in connection with possible violations of Rule 10b-6 and stated that each selling stockholder and any broker or other person acting for him is subject to the provisions of that Rule.[10/]

9/ Cf. Lum's Inc., Securities Act Release No. 4850 (December 21, 1966); Hazel Bishop, Inc., 40 S.E.C. 718 (1961); Bruns, Nordeman & Co., 40 S.E.C. 652 (1961), where the Commission said, at page 660: "The term 'distribution' as used in Rule 10b-6 is to be interpreted in the light of the rule's purposes as covering offerings of such a nature or magnitude as to require restrictions on open market purchases by participants in order to prevent manipulative practices." And see Billings Associates, Inc., Securities Exchange Act Release No. 8217, (December 28, 1967).

10/ See also the warnings concerning uncontrolled distributions of stock by the Commission's former Chairman Carey in Securities Act Release No. 4401, August 3, 1961.

A caveat in the Solitron prospectus indicated recognition of such uncertainties in the offering. It contained an indemnification agreement by the selling stockholders in favor of Lee & Co., including indemnification against any liability, among others, under the Securities Act. It provided that the selling stockholders "will offer the shares registered for sale solely through [Lee & Co.] as exclusive agent," and that they "will comply with the provisions of Rule 10b-6 as now in effect under the Securities Act of 1934." The prospectus also stated:

> "The selling stockholders (and each of them) and M.L. Lee & Co., Inc. may be deemed to be underwriters within the meaning of Section 2(11) of the Securities Act of 1933, as amended, and, accordingly, any profit realized by the selling stockholders (or any of them) and M.L. Lee & Co., Inc. upon sale of the shares offered hereby may be deemed to be underwriting compensation."

Jaffee's association with Solitron Devices began in the early days of the company's operations when he met its president, Benjamin Friedman, who was seeking additional capital for the company. Jaffee was impressed by Friedman's youth and vigor, his dynamism and his optimism for the company's potential, and more specifically, with the unique method Jaffee believed the company was then using to design and manufacture its products, including semi-conductors, or silicon rectifers. Jaffee's first investment was the purchase of 10,000 shares for $7,500 from Friedman. Additional purchases from Friedman and others followed, some at advancing prices. 11/ The purchases

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11/ During the relevant period in this proceeding the stock sold at a low of about $7 per share in July 1963 and at a high of approximately $25 per share in March 1964. The subsequent phenomenal rise in its price is almost a matter of common knowledge to persons familiar with the movement of "growth stocks" in recent years. The profitability of the company's operations and the expansion achieved since its formation in 1959 is perhaps one of the recent success stories of the electronics industry.

continued into the relevant period during which the distribution was being effected. The Order alleges that such purchases and other trading in the stock, as described below, are the consequence of concerted action taken by the several respondents, and the Division offered evidence in an effort to show that as a result of the former relationship ("employer-employee") between Jaffee and Bernard Horn, a scheme was devised whereby Horn, then a trader at Greene & Co., became an active trader for his firm in Solitron stock, went into the National Daily Quotation Service's "pink sheets", agreed to keep Jaffee apprised of the market, and that by engaging in such activities, among others, Greene & Co. became a participant in the distribution of the Solitron stock, although it was not named as such in the registration statement. The Division also contends that since Lee & Co., performing the functions of the underwriter in the distribution of the stock could not, without violating Rule 10b-6, bid for the stock in the pink sheets while engaged in the distribution, it aided and abetted the violations by extensive trading with Greene & Co. although it knew or should have recognized that the latter firm was participating in the distribution without having been named in the registration statement as participant or underwriter; also that its rather extensive trading with Jaffee & Leverton with knowledge that Jaffee was a selling stockholder constituted a manipulative device under the Rule. Thus, the Order charges that all of the respondents wilfully violated one or more of the several proscriptions of Rule 10b-6.

As a selling stockholder on whose behalf a distribution was being made, Jaffee and any broker or other person acting for him, including Jaffee & Leverton, Greene & Co. and Lee & Co., were subject to the restrictions of Rule 10b-6, and to the possibility that he might be acting as an underwriter

of the distribution, 12/ although not named as such.

The evidence discloses that in or about February 1963, just prior to the relevant period, Jaffee discussed with Horn the advisability of Horn's participating in trading in Solitron stock for Greene & Co. 13/ Jaffee testified during the pre-hearing investigation that he believed he was getting what he considered "bad execution", so he asked Horn: "Would you go into the sheets in Solitron Devices and tell me if any stock comes in, what price is coming in, because I may want to buy it for my over-the-counter customer accounts." Horn obtained the consent of the partners of Greene & Co. to enter the pink sheets and trade the stock, representing that brokers and dealers were indicating interest in it. A direct telephone wire to Greene & Co. was installed at the offices of Jaffee & Leverton. Thereafter, Horn traded Solitron very actively, checked frequently with Jaffee on prices and trades, and engaged in transactions in the stock with Jaffee, himself. The trading activities are discussed in greater detail infra, in treating with the responsibility of Greene & Co. for violations of Rule 10b-6.

Jaffee was instrumental, either directly or indirectly,in inviting the attention of the Essex Fund, described as a small subsidiary of the Fidelity group of mutual funds, to Solitron Devices. He stated in his pre-hearing investigation testimony that he wanted Solitron stock to be owned

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12/ Rule 10b-6(c)(1) provides:
The term "underwriter" means a person who has agreed with an issuer or other person on whose behalf a distribution is to be made (A) to purchase securities for distribution or (B) to distribute securities for or on behalf of such issuer or other person or (C) to manage or supervise a distribution of securities for or on behalf of such issuer or other person.

13/ Admitted into evidence as background and history of the relationship between Horn and Jaffee with respect to Solitron stock but not as evidence of violations were Greene & Co. documents showing sales by Horn to Jaffee of Solitron shares as early as September 1962 and February 1963. This trading was insignificant in amount.

by intelligent buyers whose purchases of the stock would be based on realistic appraisal and evaluation rather than on an irrational or emotional basis which he believed motivated most people to buy stocks. He regarded himself as especially qualified in the evaluation of companies in the electronics field. He denied recommending purchase by the Essex Fund but stated that he suggested they "come down and look at the company." On July 25, 1963, a purchase of 500 registered shares of Solitron was made by the brokerage firm of Thompson & McKinnon from Lee & Co. for persons who were customers of Jaffee & Leverton and for Richard Farrer (100 shares), the electronics expert for the Fidelity group. On September 12, 1963, Jaffee & Leverton purchased from Lee & Co. for the Essex Fund 2,500 shares of registered stock, including 500 of Jaffee's shares. Thereafter, on October 24, 1963, 3,500 of Jaffee's registered shares were sold by Lee & Co. to Greene & Co. at $14 7/8 per share and these shares together with 500 of Jaffee's unregistered shares were purchased from Greene & Co. by Jaffee & Leverton for $15 per share. Still on the same day, Jaffee & Leverton sold these 4,000 shares to the Fund at $15 per share. With this transaction, if not earlier, Jaffee & Leverton agreed with Jaffee to distribute his shares and became an underwriter within the definition of Rule 10b-6(c)(1). See n. 12, supra; Cf. Lum's, Inc., Securities Act Release No. 4850 (December 21, 1966) at p. 8.

During the relevant period, Jaffee represented to Harold Charno, an employee of Jaffee & Leverton, that he considered Solitron a "good speculation" and that he liked the business in which the company was engaged, as well as its management. 14/ The efforts,

14/ Jaffee "turned over" to Charno several of his customers or accounts in which purchases of Solitron thereafter were made during the relevant period. Charno also handled transactions for other accounts of Jaffee during the latter's frequent and sometimes extended absences from the office, during which absences Jaffee would call the office several times a day and frequently would engage in extensive trading.

both in testimony and proposed findings submitted on behalf of Jaffee and Jaffee & Co., to convey the impression that Charno rather than Jaffee was a prime or generating force in Jaffee & Leverton's trading activity in Solitron are not credited. Jaffee had acted informally as a consultant to Solitron Devices on matters relating to its financial policies since 1960 and was called upon by management for advice from time to time. In January 1964 and until May 31, 1964, he was retained by the company as a financial consultant, at a fee of $750 per month. In the light of his knowledge of the company, his asserted or admitted expertise and his expressed enthusiasm for the potential of the stock, it is clear that Jaffee knew of and directed many, if not all of the activities of Jaffee & Leverton in the firm's purchases and sales of the stock. 15/

Jaffee's arrangements with Horn were a manipulative or deceptive device or contrivance. 16/ His purchases in his own account also violated

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15/ Jaffee's counsel argues that the Essex Fund purchase was an "unsolicited brokerage transaction" and as such was exempt under Rule 10b-6(5). Despite some evidence to the contrary, I find that it was induced by Jaffee. Even if it should be considered "unsolicited" and a "brokerage" transaction as to Jaffee & Leverton, Jaffee's arrangements violated Rule 10b-6. I do not regard counsel's citation of III Loss, Securities Regulation, 2d ed. at 1598 as covering this situation or as exempting Jaffee, personally, from the Rule.

Under the registration statement, Jaffee's registered shares were to be disposed of by Lee & Co. Although the circumstances and nature of the transaction were never adequately explained in the record, they show that the plan arranged by Jaffee violated Rule 10b-6 and its purpose, increased by 1/8 the price paid by the Fund, and violated the "exclusive agency" provided for in the registration statement.

16/ As the Commission said in Kidder Peabody & Co., et al., 18 S.E.C. 559 (1945) a case not entirely inapposite to the instant proceeding:

" "In an auction market, the placing of bids, though not met by sellers, may be as effective an influence on price as a completed sale. This is especially true where there is more than one bidder, where each bid creates a new and competitive situation."

Jaffee's arrangements with Horn, the consequent bids and increase in trading volume, and his transactions with Horn and others undoubtedly effected some increase in the market price, the extent of which was, of course, not measurable, except as indicated in the last sentence of n. 15, supra.

the Rule. During the relevant period Jaffee bought 7,610 shares of Solitron, including purchases of 3,500 shares from Lee & Co., 1,910 shares from Greene & Co. and 2,200 shares from other brokers and dealers. He purchased through Jaffee & Leverton from Lee & Co. for his own account 1,000 registered shares on January 15, 1964, 17/ and 2,500 registered shares on January 16, 1964, in two separate transactions.

Jaffee's individual or personal acts and transactions are adequate basis for the conclusion that he and Jaffee & Leverton participated in the distribution in violation of the prohibitions of Rule 10b-6. In addition to the shares bought by Jaffee, other purchases were made by Jaffee & Leverton from Lee & Co., Greene & Co. and other broker-dealers during the period by Morris Leverton and by employees such as Charno, Ross and Rich. These included purchases for the named individuals and for customers, including Jaffee's father and his uncle, in transactions with which Jaffee, himself, was not directly connected by the evidence. Some of the purchases were made in discretionary accounts. Thus, during this period, Jaffee & Leverton purchased a total of 35,676 shares of Solitron (including purchases for Jaffee, Jaffee & Leverton, and the individual employees of the firm) and according to the Division's computations from Loeb Rhoades' ledger copies of monthly statements which were sent to Jaffee & Leverton and from other records produced by Loeb Rhoades, Jaffee & Leverton sold 14,772 shares as agent for its customers during the period.

17/ This was part of a total purchase of 1,986 shares made on that date, 986 of which were purchased by Jaffee & Leverton for a foreign customer, DeL'Harpe Et Cie, in "Swiss Account No. 100". Mr. Leverton testified that this customer was one of his own accounts, and possibly he, rather than Jaffee, negotiated the transaction, even though it included 1,000 shares purchased for Jaffee.

Jaffee's registered shares were sold in substantial amounts by Lee & Co. between October 20, 1964 and December 1964, at prices ranging from $25 to $34 per share. Inasmuch as these sales occured subsequent to the relevant period, proof thereof was received not as evidence of violations of Rule 10b-6 or of any other violation, but as evidence which the Division urged in support of its contention that Jaffee was engaged in a distribution of the stock during the relevant period. As indicated above, I find that Jaffee was engaged in such distribution, but I do not consider these subsequent sales as probative evidence supporting that finding.

Counsel for some of the respondents have urged that Jaffee's sale of unregistered stock was not a "distribution" and that the sale of the 3,500 registered shares could not involve him in a violation of Rule 10b-6 for the reason that the 3,500 shares constituted less than one per cent of all outstanding Solitron stock. A reading of Rule 154 under the Securities Act and the definition therein of the term "distribution" (on which respondents' argument is predicated), is clear indication that the Rule affords a broker's exemption from liability under the Securities Act for selling non-registered shares, where the facts come within the limitations of the Rule. 18/ Rule 154 is inapplicable to violations under Rule 10b-6

18/ Rule 154 provides, in part, that "[T]he term 'distribution' shall not be deemed to include a sale or series of sales of securities which, together with all other sales of securities of the same class by or on behalf of the same person within the preceding six months, will not exceed . . . [if traded over the counter] approximately 1 percent of the shares or units of such security outstanding . . ."

and the argument that it affords justification for the sales by Jaffee or by Jaffee & Leverton, or that the registration of the shares and their disposition by Lee & Co. was not a "distribution" within the meaning of Rule 10b-6 must be rejected without need for extended discussion. See Securities Act Release No. 4818, January 21, 1966; see also Whitney, Rule 10b-6: The Special Study's Rediscovered Rule, 62 Mich. L. Rev. 589, n. 3; Disclosure Requirements of Public Companies and Insiders, Practicing Law Institute (1967), at page 132. 19/

As a result of the arrangements made by Jaffee with Horn, their frequent communication on the price of the stock and their transactions, Horn's activity in trading Solitron on behalf of Greene & Co. was extensive, especially during certain portions of the relevant period, and Greene & Co. became an active market maker in the stock.

The Division contends that Greene & Co. became a participant in the distribution when its purchases from Lee & Co. increased substantially in September 1963. In July 1963 (beginning with its earliest purchase of registered shares on July 23) Greene & Co. purchased only 700 shares of the 4,800 registered shares sold by Lee & Co. to eight brokers or dealers. In August, 500 shares were sold by Lee & Co., 300 to Greene & Co., and 200 to another dealer. In September, however, Lee & Co. sold approximately 27,000 registered shares, of which approximately 26,300 were purchased by Greene & Co., and in October, Greene & Co. purchased all 3,800 registered shares sold by

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19/ Suggestion in the oral argument that under Rule 133 of the Securities Act there was no "distribution" is rejected without need for discussion.

Lee & Co. (These October sales included the 3,500 registered shares purchased by the Essex Fund but did not include 500 additional shares sold by Jaffee in that total transaction involving 4,000 shares.) The trading account and agency transaction records of Greene & Co. disclose that during the relevant period the company profited from Solitron trading to the extent of $23,514. From July 1963 through December 1963, Jaffee & Leverton bought 13,461 shares of Solitron in 35 transactions, 12,961 of which were bought from Greene & Co. in 34 transactions. During the entire period of the Order, Jaffee & Leverton purchased 16,765 shares from Greene & Co. The charts prepared by the Division from the records of respondents disclose that the certificates for 8,000 registered shares which Greene & Co. had purchased and received from Lee & Co. were delivered, in turn, to Jaffee & Leverton either on the same day or within one day of receipt from Lee & Co.

I conclude, as the Division contends, that with the trading of Greene & Co. in September 1963 that firm became a participant with Lee & Co. in the distribution of the shares. The partners of Greene & Co. (and Horn, of course,) knew that Jaffee was a selling stockholder, but nevertheless allowed Horn apparently unlimited authority to trade the stock, even with Jaffee & Leverton. 20/ As indicated below, Greene & Co. inserted bids in the pink sheets on every one of the business days during the relevant period. The cooperation between Horn and Jaffee in trading, the concentration of purchasing and selling between Jaffee & Leverton and Greene & Co., the transfer of certificates received from

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20/ Excluded from consideration as against Greene & Co. is the pre-hearing testimony of both Jaffee and Horn relating to their arrangements regarding Solitron. Such testimony was received only to the extent that it constituted admissions of the respective witnesses; it was not subject to cross-examination by counsel for Greene & Co. With the exception of Martin L. Levy, none of the named respondents testified at the hearing.

Lee & Co. to Jaffee & Leverton, together with the extent and nature of the transactions by Greene & Co. in September and October 1963, compel the conclusion that Greene & Co. was acting and bidding for a selling stockholder and was therefore subject to the prohibitions of Rule 10b-6. 21/ In Hazel Bishop, supra, at page 736, the Commission said:

> "The Commission's Rule 10b-6 under the Exchange Act prohibits, bids or purchases by any person who is an underwriter, prospective underwriter, a broker, dealer or other person who is participating in a distribution, or who is a person on whose behalf a distribution is being made. Each of the selling stockholders and any broker or person acting for any of them will be subject to the provisions of this rule."
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> * * * * *
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> "Underlining these specific requirements referred to above is the basic principle that any representation that a security is being offered 'at the market' implies the existence of a free and open market which is not made, controlled or artificially influenced by any person participating in the offering. Any activity which constitutes a violation of the anti-manipulative provisions mentioned or which is otherwise intended to stabilize, stimulate or condition the market would be inconsistent with the representation and would render the registration statement false and misleading."

Both I.A. Greene and Topol were responsible for supervising the firm's business. 22/ Topol was "more directly" in charge of the trading department and he occupied a seat near Horn's position in the trading room.

21/ The volume and nature of September and October 1963 purchases by Greene & Co. and the sales of the purchased stock, following immediately, constituted participation in the distribution, as did its participation in the 3,500 share transaction arranged by Jaffee on October 24, 1963. Its bids throughout the relevant period and its transactions in registered shares through January 31, 1964, indicate participation for at least the substantial portion of the relevant period. Cf. Bruns, Nordeman & Co., 40 S.E.C. 652, 660 (1961).

22/ In Reynolds & Co., et al., 39 S.E.C. 902 (1960) the Commission said at 917: ". . . willful violations are committed not only by the person who performed the misconduct but also by those who did not properly perform their duty to prevent it." See also Aldrich, Scott & Co., Inc., 40 S.E.C. 775 (1961).

However, despite the nature and volume of trading in Solitron by Greene & Co., the evidence does not indicate that either I.A. Greene or Topol intended to engage in activity which would in effect substitute the firm for Lee & Co. as the broker or dealer performing the distribution function. Horn's involvement in the Essex Fund transaction increased the price of the stock, but is not direct evidence of manipulative purpose. 23/ Horn was accommodating Jaffee, complying with his requests, and earning commissions from the trading. Although bids were inserted by Greene & Co. in the pink sheets on every one of the 184 business days during the relevant period, and although they were the high bid 22 times and were tied for high bid 78 times (competing with several other broker-dealers bidding from time to time during the period), I do not regard these bids alone as substantial circumstantial evidence of a purpose by Horn to defraud the public by manipulating the price of the stock. No pattern of manipulation by raising prices was found in the sale transactions by the Division's investigator-witness. As indicated above, it does not appear that Horn disclosed to either Greene or Topol the arrangements made with Jaffee. (It is noted, as respondents point out, that Greene & Co. had appeared in the pink sheets on Solitron in August 1962.)

Inasmuch as direct evidence of purpose to defraud can rarely be found in cases of this type, the courts and Commission frequently must and do rely upon circumstantial evidence not dissimilar

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23/ I am not convinced by the Division's contention and the purchase and sale prices submitted in support thereof, that Horn's sale transactions with Jaffee & Leverton disclose "favoritism" to Jaffee in the form of significantly lower prices than were charged other brokers or dealers.

from that which has been shown here in finding manipulative purpose. 24/ Despite the apparent frankness in the deposition testimony taken by Division counsel subsequent to the relevant period from Horn, Topol and I.A. Greene in the pre-hearing investigation, despite the absence of any evidence of fraudulent representations concerning the issuer or its business, or of the dictation by Jaffee of bid or asked prices to be inserted by Horn in the pink sheets, despite the absence of any of the many high-pressure type selling methods or devices frequently used in typical market manipulations, and despite the inherent and increasing intrinsic value of the Solitron shares and the growth of the company, among similar considerations, the circumstantial evidence discussed above and hereafter, including the extensive bidding in the sheets by Greene & Co., compel a finding of an arrangement by Jaffee and Horn to increase the trading and the price of the stock.

There are substantial distinctions between the facts of this case and such cases as Securities and Exchange Commission v. Scott Taylor & Co., 183 F. Supp. 904 (U.S.D.C., S.D.N.Y. 1959); Hennaluna & Company, Inc., Securities Exchange Act Release No. 8063 (April 27, 1967); F.S. Johns & Company, Inc., Securities Exchange Act Release

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24/ For example, in Halsey, Stuart & Co., Inc. et al., 30 S.E.C. 106 (1949), the Commission said:

> "There is not here (as indeed there rarely is) any subjective evidence of such a purpose. If found, it must, as in most cases, be inferred from the circumstances of the case." (footnote omitted).

Cf. S.E.C. v. Scott Taylor, 193 F. Supp. 904 (U.S.D.C., S.D.N.Y. 1959) at p. 908:

> "Landau acted in concert with Stevens and Scott Taylor to distribute . . . stock and to bid for it at the same time for manipulative purposes proscribed by Section 10-b. As might be expected in cases of this type, there is no direct evidence . . . to engage in this joint venture. But circumstantial evidence is competent to prove the necessary agreement."

No. 7972 (October 10, 1966) and other cases involving distributions of stock known or recognizable as worthless and distributed for the purpose of defrauding the public.

But, as urged by Division counsel at the oral argument following the hearing, such conscious purpose or specific intent is not essential to a conclusion that the activity and trading constituted violations of Section 10(b) and Rule 10b-6. Whether Horn knew, recognized, or intended that participation by Greene & Co. in the distribution to be conducted by Lee & Co. would make himself and Jaffee, Jaffee & Leverton and Greene & Co. willing participants or aiders and abettors in violations arising from that distribution is a difference in degree only, which affects sanctions but not responsibility for violations. See Sidney Tager, et al., Securities Exchange Act Release No. 7368 (July 14, 1964), aff'd sub nom Tager v. Securities and Exchange Commission, 344 F.2d 5 (C.A. 2, 1965), where the court upheld the Commission's findings of a willful violation of Section 10(b) and Rule 10b-6 (among others) because the respondent intentionally committed the acts which constituted the violation. Tager's contention that the violation was not willful because he had no understanding that his activities were manipulative was rejected, and the court said at page 8:

> "We find this argument wholly lacking in merit.
>
> It has been uniformly held that 'willfully' in this context means intentionally committing the act which constitutes the violation. There is no requirement

> that the actor also be aware that he is violating one of the Rules or Acts." Gilligan, Will & Co. v. SEC, 267 F.2d 461, 468 (2 Cir.), cert. denied, 361 U.S. 896, 80 S.Ct. 200, 4 L.Ed. 2d 152, (1959); Hughes v. SEC, 85 U.S. App. D.C. 56, 174 F.2d 969, (D.C. Cir. 1949); 2 Loss, Securities Regulation, 1310 n. 88 and cases cited therein."

Cf. Disclosure Requirements of Public Companies and Insiders, supra, and the reference to Rule 10b-6 at page 130:

> "Because of the difficulty of proof in this area the regulations under the 1934 Act resort to Herodian enforcement and prohibit certain transactions which could distort market values, even without proof of motive or even where improper motive is absent."

The activities in Solitron described above are covered by the purpose and intent as well as the language of Rule 10b-6 as "a manipulative or deceptive device or contrivance," as that term is used in Section 10(b) of the Act. The danger of creating an unwarranted impression of market activity which might facilitate sales at artificial prices inhered in the trading activities of Jaffee and his firm, of Horn and of Greene & Co., accompanied or assisted, as it was, by the continuing and persistent insertion by Greene & Co. of quotations in the pink sheets. Greene & Co. was purchasing for its own account, in which, of course, it had a beneficial interest, and it was active in inducing or attempting to induce others to

purchase the stock. 25/ Its activities were violative of Section 10 and Rule 10b-6. Cf. Billings Associates, Inc., Securities and Exchange Commission Release No. 8217, December 28, 1967; S.E.C. v. Scott Taylor & Co., 183 F. Supp. 904 (U.S.D.C., S.D.N.Y., 1959). The partners, as well as Horn, are responsible for such violations, as indicated by the cases cited in the margin at n. 22.

In Landau Co., et al., 40 S.E.C. 1119 (1962), a related proceeding to this last-cited Scott Taylor case, the Commission found that after Landau was asked by Scott Taylor's president "to go into the sheets for him", Landau inserted bids in the stock continuously for a period of four or five months, during which time Scott Taylor acquired a substantial amount of stock, mostly through Landau. Scott Taylor was engaged in a distribution of the stock, and the Commission found that Landau's continuous bids served not only to get the stock to Scott Taylor but also materially assisted Scott Taylor in distributing the stock to the public by providing the appearance of a market at artificially high prices,

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25/ I do not find it necessary to consider whether (apart from the question of the admissibility of the evidence against Greene & Co.), by reason of trader Bernard Horn's arrangement with Jaffee to go into the sheets and trade the stock and the activities which facilitated and accomplished that arrangement, Greene & Co. "agreed to participate" in the distribution of Jaffee's stock within the language of Rule 10b-6, inasmuch as participation itself is a violation. Concededly, no agreement to participate comparable to those made in formal selling groups was or could be made by Horn on behalf of his employer.

Similarly, it is not necessary to determine that Greene & Co. became an underwriter under the Rule 10b-6 definition by agreeing to purchase securities for distribution or to distribute securities on behalf of Jaffee. See n. 12 in the margin, for the definition of "underwriter" under Rule 10b-6. But see language in Lum's, Inc., supra, at page 8, suggesting that each purchase by Greene & Co. from Jaffee & Leverton may have constituted an agreement to distribute securities, thus making Greene & Co. an underwriter for Jaffee.

in clear violation of Rule 10b-6. The Commission rejected Landau's contention that he acted as a mere "trading house" for Scott Taylor, holding that he could not have been ignorant of the fact that Scott Taylor was engaged in a distribution of the stock to the public, and that, moreover, he became the principal instrumentality through whom stock was eventually distributed to the public. 26/ The above-mentioned sales by Greene & Co. to Jaffee & Leverton during the relevant period served, as in Scott Taylor, to get the stock to Jaffee & Leverton and to Jaffee. 27/

There are, as indicated above, substantial differences between the concerted activities of Landau and Scott Taylor and those of the respondents in this proceeding, including the absence here of false and fraudulent representations concerning the stocks being distributed, the absence of evidence that the bids of Greene & Co. were dictated by Jaffee, and the absence of the clear and obvious intent to defraud the public by picking up large amounts of worthless

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26/ The reputation and the business of Greene & Co. as traders dealing with other brokers and dealers who would eventually sell the stock to the public were known to all respondents in this proceeding. The shares acquired by Greene & Co. were disposed of without delay in practically every instance. The "distribution" would, of course, continue until the shares were bought by the ultimate purchaser. Lewisohn Copper Corp., 38 S.E.C. 226, 234 (1958); Oklahoma-Texas Trust, 2 S.E.C. 764, 769 (1939), aff'd 100 F.2d 888 (C.A. 10, 1939).

27/ Under the circumstances of the bidding and trading by Greene & Co., its transactions were not "essentially a trading operation" as urged by counsel for Greene & Co. The Commission's use of that language in Seaboard Securities Corporation, Securities Exchange Act Release No. 7967 (September 30, 1967) at n. 9, with reference to the facts of that case, where no distribution by selling stockholders (or others) was involved, is clearly inapplicable here.

stock, manipulating its price upward, 28/ and dumping it into the hands of the public. But these differences, among others, neither compel nor support a different result. For example, in Scott Taylor the Commission said at page 1125: "It is clear that Scott Taylor would have violated Rule 10b-6 if it had inserted bids for Anaconda Lead in the 'pink sheets'. Under the circumstances of this case, it was improper for Landau to submit bids for Scott Taylor and thereby accomplish indirectly what Scott Taylor could not do directly." In this respect, among others, the instant proceeding presents a parallel and comparable situation.

Emphasis by respondents, both in evidence and argument, is placed on the lack of any personal or social relationship between Horn and Jaffee, in order to refute the existence of any improper arrangement between them. While I do not discredit the lack of any significant personal relationship between the two men, the evidence of the improper arrangements described above is clear. I conclude that Jaffee's request that Horn go into the sheets and communicate with him regarding Solitron and the nature and extent of the subsequent active trading between Greene & Co. and Jaffee & Leverton together with Jaffee's other activities in trading the stock, reflect that his purpose in making the arrangements with Horn was to increase

28/ Despite the eventual success of Solitron Devices, it is not possible to determine to what extent the trading engaged in by Greene & Co. and by Jaffee & Leverton and Jaffee may have increased the price of the stock during these earlier years of the company's operations and accordingly defrauded the purchasers, regardless of whether they eventually sold at a profit. Certainly, the bidding and trading by Greene & Co. served to stimulate the market demand for Solitron stock, supported the wholesale market, and tended to fix price floors. Cf. Halsey, Stuart & Co., Inc., 30 S.E.C. 106 (1949) at 112 and 123.

trading activity and improve the price of the stock. 29/ In The Federal Corporation, 25 S.E.C. 227 (1947), 30/ where there was admittedly an increase in the price of a stock because of purchases made by a selling stockholder, the Commission said:

> "In fact, it appears to us that a prima facie case exists when it is shown that a person who has a substantial direct pecuniary interest in the success of a proposed offering takes active steps to effect a rise in the market for outstanding securities of the same issuer."

In the same case the Commission stated:

> ". . . the mere fact that the respondent did not immediately resell any of the 3,800 shares which it had purchased in the process of raising the market does not tend to rebut the inference of manipulative intent."

Counsel for Jaffee has argued that the disposition of only 3,500 of Jaffee's 27,500 registered shares during the relevant period indicates an absence of manipulative intent. 31/ I cannot agree, for, as stated above, Jaffee sold other shares of the same issue during that period. His retention of 24,000 registered shares throughout the relevant period when the market price of the stock was almost constantly increasing does not rebut the inference of

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29/ Jaffee's arrangements with Horn do not appear to be based on any altruistic motive toward Horn or Greene & Co. and they were not entirely consistent with Jaffee's expressed desire that the stock be purchased by sophisticated and knowledgeable investors such as the Essex Fund and its parent organization rather than by persons who purchased stock on impulse.

30/ The case involved Section 9(a)(2) of the Exchange Act, which relates to manipulation of securities registered on a national securities exchange.

31/ Jaffee's 27,500 shares in registration far exceeded the number of shares registered by any other selling stockholder.

manipulative intent which I draw from his arrangements and activities with Horn and others and from his purchases for his own account of 7,610 shares during the relevant period; and I do not agree that the retention of such shares negates the absence of design to increase the volume of trading in the stock and to improve its market price.

Conversely, although I neither disregard nor minimize the enthusiasm with which Jaffee regarded the stock, nor suggest that he did not believe or recognize that the shares would increase in value, I find that such design or intent existed and motivated Jaffee's activities. The transactions described above, and those of Jaffee & Leverton for which he is responsible, 32/ constitute wilful violations of Section 10(b) and Rule 10b-6. Jaffee also wilfully aided and abetted the violations of that section and rule by Jaffee & Leverton, 33/ by Greene & Co. and its partners, and by Horn, and also the violations by Lee & Co., as discussed below.

The Division asserts that Lee & Co. abdicated its responsibility to control the distribution of the registered shares and permitted Greene & Co., in effect, to become substituted for it as underwriter of the registration by reason of the

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32/ Jaffee's responsibility for the activity of Jaffee & Leverton in Solitron rests not only on his knowledgeability, claimed expertise and expressed enthusiasm regarding Solitron Devices and its stock, but also on his control position in Jaffee & Leverton. Cf. Pennaluna & Company, Inc., supra, at p. 10 and at p. 12, n. 21.

33/ Jaffee & Leverton transactions accomplished by Leverton and employees not named in the Order are included in the above discussion despite the fact that in a more definite statement of November 3, 1966, the Division indicated that as to Jaffee & Co. the Rule 10b-6 violations were committed only by persons named in the Order. Subsequent to the amendment adding Jaffee & Leverton as a participant, no particulars or more definite statement were requested or given. The case was tried by the Division on the theory that Jaffee & Leverton was responsible for all trading done by the firm, and evidence of the transactions of Leverton and employees was introduced as acts of Jaffee & Leverton for which Jaffee was responsible. I do not believe Jaffee is prejudiced by the inclusion, in the figures relating to trading in Solitron, of those transactions in which Jaffee did not engage personally.

latter firm's extensive selling and trading of the shares. During the relevant period other brokers and dealers made a market in the stock, and it was traded or quoted in the pink sheets (at various times) by approximately twenty firms. Although Levy and Heilweil knew or were chargeable with knowledge that the trading of Lee & Co. with Greene & Co. in Solitron far exceeded its trading with any other firm, I find no basis for concluding that they should have assumed or suspected that such trading was a consequence of or pursuant to arrangements made by Horn with a selling stockholder. Nor do I believe that Lee & Co. can fairly be charged with responsibility for recognizing that Greene & Co. became a "participant" in the distribution under Rule 10b-6(a)(3). I find no evidence that Levy or Heilweil agreed with Jaffee, with Horn, or with any other person that Greene & Co. should trade or make a market in the stock, and conclude that the extent of the trading by Greene & Co. and its bidding in the pink sheets were not, under the circumstances, adequate or substantial evidence that Lee & Co. knew or should have known that Greene & Co. was "participating" in the distribution, as that term is used in Rule 10b-6. There is no evidence that the sales of Lee & Co. were not at the prevailing market price, in accordance with its agreement with the selling stockholders. Nor do I believe that the selling activity of Lee & Co. to Greene & Co. reflects intentional disregard or indifference to its obligations

under the registration statement or the securities laws, but conclude, rather, that Lee & Co. is not chargeable with wilfully aiding and abetting the participation by Greene & Co. in the distribution. This conclusion is reached despite the fact that many of the shares purchased by Greene & Co. from Lee & Co. were very soon thereafter sold by Greene & Co. to Jaffee & Leverton and were delivered to Loeb Rhoades as the latter's agent. There is no evidence that Lee & Co. personnel knew the nature of such subsequent transactions.

However, the registration statement and the proposed distribution for the selling stockholders were designed to provide a controlled disposition of the offered shares and to protect against manipulative practices. Under the circumstances described above, this design was not achieved. The caveats in the prospectus were part of the effort to have Lee & Co. accomplish the controlled and protected distribution. Nevertheless, Lee & Co. sold 7,586 registered shares to Jaffee & Leverton with knowledge that Jaffee was both a selling stockholder and a controlling partner in the broker-dealer firm. Of these shares, 3,500 were purchases by Jaffee in January 1964.

The proposed findings submitted on behalf of Lee & Co. urge that Levy "was not personally aware for whom Loeb Rhoades & Co. was buying" when it acted as clearing agent for Jaffee & Leverton in the latter firm's purchases.[34/] The "supporting" record citation refers to Levy's testimony relating to a single atypical transaction, which

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34/ Some of the records of Lee & Co. listed Loeb Rhoades as the purchaser rather than Jaffee & Leverton.

is also the last of the five sales made to Jaffee & Leverton over a period of two months beginning January 15, 1964. I do not accept the proposed finding. Levy, and of course, Heilweil (who transacted most of the Solitron trades) knew that these sales were made to Jaffee & Leverton, and that Loeb Rhoades was merely clearing for that firm. 35/ On January 15, 1964, Lee & Co. "sold" to Loeb Rhoades the 1,986 registered Solitron shares mentioned above, of which 1,000 were purchased by Jaffee and 986 by Jaffee & Leverton's foreign client, a transaction negotiated in all probability by Lee & Co. with Morris Leverton. On the same day, Lee & Co. sold to Morris Leverton 100 shares of registered stock, and "sold" to Loeb Rhoades another 100 shares, and on the following day 2,000 and 500 shares, in separate transactions. On February 11, 1964, another 200 shares of the registered stock were sold to Morris Leverton, and on March 13, 1964, 3,000 shares were "sold" to Loeb Rhoades. The designation "Loeb Rhoades", where reflected on records of Lee & Co. in the above transactions, was intended only as clearing agent for Jaffee & Leverton. This was, of course, known to Lee & Co. at the time of each trade, and Jaffee & Leverton was named as the purchasing firm on the comparison slips thereafter sent to Lee & Co. by Loeb Rhoades. As indicated, the trades were made not with Loeb Rhoades personnel but with Jaffee & Leverton personnel. I find that Lee & Co., with the knowledge of both Levy and Heilweil, participated in and aided and abetted the Rule 10b-6

35/ Levy's personal knowledge becomes to some extent academic because of the dismissal of charges against him. But if Levy did not know that his firm was selling to Jaffee & Leverton, this would reflect an abdication of his responsibility to supervise the distribution. He did not, in fact, delegate this responsibility to Heilweil; his testimony discloses that he supervised and participated actively in the distribution.

violations by Jaffee and by Jaffee & Leverton and that its violations were wilful. Gearhart & Otis v. S.E.C., 348 F.2d 789 (C.A.D.C., 1965); Crow, Brourman & Chatkin, Inc., Securities Exchange Act Release No. 7839, March 15, 1966.

Respondents, with the exception of Horn, contend that the Division has offered no proof of the use of the mails or of means or instrumentalities of interstate commerce in the transactions described above (or in those discussed below relating to other violations). On the contrary, some of the transactions of Jaffee & Leverton and Greene & Co. in Solitron during the relevant period were with firms outside of New York State; telephone calls (both intrastate by all respondents 36/ and interstate by Jaffee) were a commonly used means of checking on market prices and transactions in Solitron; the pink sheets, used by Greene & Co. and Lee & Co. in connection with their bidding 37/ and by all respondents in their trading, were mailed to the broker-dealer firms; confirmations, comparison slips and other documents, including checks in payment for purchased stock at times were mailed by the respondent firms and by the respective clearing agents for Greene & Co. and Jaffee & Leverton; 38/ the

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36/ See Myzel v. Fields, 386 F.2d 718, 727 (C.A. 8, 1967, cert. denied 390 U.S. 951 (1968) on the existence of jurisdiction under Section 10(b) of the Exchange Act where intrastate calls are made.

37/ Lee & Co., unable during the distribution to insert the usual "Bid" and "Asked" quotes in the pink sheets, inserted only "BW" or bids wanted.

38/ In Pereira v. United States, 347 U.S. 1 (1959) at pages 8-9 the Court said:

> "Where one does an act with knowledge that the use of the mails will follow in the ordinary course of business, or where such use can reasonably be foreseen, even though not actually intended, then he 'causes' the mails to be used."

evidence indicated that the confirmations of Greene & Co. were usually mailed to their customers, that its clearing agent mailed Solitron stock, with drafts for collection attached, to purchasers who were "out of town"; and that Lee & Co. sent all of its confirmations by mail. Federal jurisdiction has been clearly established under all pertinent sections of both the Securities Act and the Exchange Act. 39/

Violations of Section 15(c)(1) and Rule 15c1-6.

The Order, as amended, charges that Jaffee & Leverton wilfully violated the above section and rule, aided and abetted by Jaffee.

Section 15(c)(1) prohibits a broker or dealer from using the mails or means of interstate commerce

> "to effect any transaction in, or to induce the purchase or sale of, any security . . . by means of any manipulative, deceptive, or other fraudulent device or contrivance."

Rule 15c1-6 defines such term as used in the section to include

> "any act of any broker who is acting for a customer . . . designed to effect with or for the account of such customer any transaction in, or to induce the purchase or sale by such customer of, any security in the primary or secondary distribution of which such broker or dealer is participating or is otherwise financially interested unless such broker or dealer at or before

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39/ Cf. Little v. U.S. 331 F.2d 287 (C.A. 8, 1964) cert. denied 379 U.S. 834; Beckwith v. U.S., 367 F.2d 458 (C.A. 10, 1966).

As the Division points out in its reply brief, Section 15(b)(4) of the Exchange Act enacted in August 1964 dispenses with the need for proving, as to the registered broker-dealers, the use of the mails or interstate means with regard to the violations under that Act. The change in law may be applied retroactively. M.G. Davis & Co., Inc. v. Cohen, 252 F. Supp. 402 (S.D.N.Y.), aff'd 369 F.2d 360 (C.A. 2, 1966).

> the completion of each such transaction, gives or sends to such customer written notification of the existence of such participation or interest."

Recommendations for the purchase of Solitron were made by and on behalf of Jaffee & Leverton to its customers (sometimes together with recommendations of other stocks), and, of course, other acts of Jaffee & Leverton and Loeb Rhoades using interstate means were taken to effect transactions in Solitron. The evidence indicates that none of the customers who purchased Solitron were informed by anyone either at the broker-dealer firm or by Loeb Rhoades personnel, that Jaffee was engaged in a secondary distribution or that Jaffee & Leverton was participating in or was financially interested in the distribution. No instructions to furnish such information to customers were given by Jaffee either to personnel in Jaffee & Leverton or to Loeb Rhoades.

I conclude that since Jaffee & Leverton was participating in and was otherwise financially interested 40/ in the secondary distribution, that the section and rule were violated, and that Jaffee wilfully aided and abetted such violation.

40/ The financial interest of Jaffee in the distribution should constitute a sufficient financial interest in the broker-dealer firm of which he was a partner. Moreover, see Securities Exchange Act Release No. 1411 (October 7, 1937) to the effect that

> ". . . it is unimportant whether the firm effecting the distribution owns the security, has it under option, is acting as agent for some principal, or is merely a member of a selling group so long as financial interest exists on the part of such firm in effecting such distribution." (underscoring supplied). The next paragraph the Release makes a distinction between a partner of a firm having merely a financial interest in a security and having a financial interest in the distribution of the security.

Violation of Section 5(b) of the Securities Act

Section 5(b)(2) provides, in effect, that it is unlawful to cause to be carried through the mails or in interstate commerce any security with respect to which a registration statement has been filed, "for the purpose of sale or for delivery after sale, unless accompanied or preceded by a prospectus that meets the requirements of subsection (a) of section 10" of the Securities Act.

The evidence indicates that Lee & Co. sent a prospectus to Greene & Co. with every delivery of registered Solitron stock, and as stated above, Lee & Co. is not charged with the violation of this section. But the evidence is entirely clear that neither Greene & Co. nor its clearing agent sent prospectuses to purchasers from Greene & Co., either with confirmations of sale or comparisons, and that none were sent when the stock was delivered pursuant to the sales or at any other time. Somewhere within the Greene & Co. organization there was a failure to take the necessary steps to insure compliance with this requirement. Whether the responsibility was that of Horn to insert some notation on order tickets (which he did not do), or whether it was the cashier's responsibility to take the required action when the prospectus was received from Lee & Co., or whether the initial responsibility rested elsewhere in the firm, is not clear from the evidence. It is clear, however, that no prospectuses were sent and that the section was wilfully

violated. 41/ Under the principles discussed above treating with the responsibility of I.A. Greene and Robert Topol, it follows that both partners wilfully aided and abetted the violations by not properly performing their duties to prevent them. 42/ See n. 22, supra.

I do not find adequate probative evidence that Horn had the responsibility within the Greene & Co. organization for taking action which would insure or accomplish compliance with the section, and I make no findings against him on this charge.

Conversely, the evidence indicates that neither Jaffee & Leverton nor its clearing agent sent prospectuses to the firm's customers with confirmations or comparisons, or with the delivery of the securities, or at any other time. It follows that Jaffee & Leverton wilfully violated the section, and under the same principles of responsibility mentioned with regard to the partners of Greene & Co., that Jaffee wilfully aided and abetted violations. The exemption provided under Section 4(1) of the Securities Act is not available. Jaffee & Leverton acted as a dealer within the broad definition in the Securities Act and is not exempt. I conclude, also that it was an underwriter of the distribution within the definition of Section 2(11), as a person who "participates or has a

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41/ Section 4 of the Securities Act provides certain exemptions from the provisions of Section 5, reading, in part:

"The provisions of Section 5 shall not apply to -- (1) transactions by any person other than issuer, underwriter or dealer."

Inasmuch as Greene & Co. acted as a dealer in its transactions in Solitron, the exemption is not applicable. The term "dealer" is defined in Section 2(12) of the Act as "any person who engages either for all or part of his time, directly or indirectly, as agent, broker or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person."

42/ That Greene's sales were with one exception to dealers does not exculpate the firm from responsibility. The prospectus would provide notice to such dealers (apart from the notice afforded by the listing in financial publications) that the issue was in registration and that their customers should receive a prospectus.

participation in the direct or indirect underwriting" of a distribution by an issuer. The selling stockholders were an "issuer" under this section, since they "directly or indirectly" controlled Solitron Devices. As stated above, they owned 279,200 shares of the 383,500 shares of outstanding Solitron stock at the time of the filing. This percentage was not substantially changed in subsequent amendments to the registration statement which continued its effectiveness. And as also stated above, all officers and directors or their wives were included in the selling stockholder group. Cf. R.V. Klein Company, 40 S.E.C. 417 (1960); N. Hinsker & Co., Inc., 40 S.E.C. 283, 288 (1960).

Counsel for respondents Greene & Co. and the partners, and counsel for Jaffee urge that the Division failed to sustain the burden of proof with respect to these violations, inasmuch as no customers who had purchased the stock from either of these firms were produced to testify that they had not received a prospectus. Counsel did not refute, with proof to the contrary, the direct and circumstantial evidence presented by the Division to the effect that neither of the broker-dealer firms, nor their respective clearing agents, sent prospectuses to purchasers of the stock. I believe the Division's evidence is entirely sufficient to sustain its initial burden that stock was delivered to customers of both firms, not accompanied or preceded by a prospectus.

Further argument is made by counsel for Jaffee that many of the purchasers of the stock bought Solitron previously from other brokers or dealers, and that they may be presumed to have received prospectuses in the earlier purchases. The argument is founded on a position stated in Securities Act Release No. 828 (June 4, 1936), to the effect that if a purchaser of the securities involved had previously received a copy

of the prospectus from a source other than the seller, Section 5(b)(2) does not require the seller to deliver another prospectus prior to or at the time of delivery. The difficulty with the argument is, firstly, that it assumes, but does not prove, that there was delivery of a prospectus to those persons who had made prior purchases; secondly, that many purchasers from Greene & Co. and from Jaffee & Leverton were not shown by the evidence to have made prior purchases of the stock from other brokers or dealers.

The argument advanced by respondents to the effect that neither respondent was an "issuer, underwriter, or dealer" has been discussed and rejected above.

Respondents have failed to sustain their burden of proving an exemption from the requirements of the Act. 43/ And contrary to the contention of respondents, the terms of an exemption from the Act are strictly construed against one who claims it, for the Act must be construed in a way which will effectuate its purpose. 44/

Because of the agency relationship between Jaffee & Leverton and Loeb Rhoades, counsel for Jaffee also argues against a finding of "wilfulness". He points out that all Solitron shares purchased by customers of Jaffee & Leverton were delivered to Loeb Rhoades, who, in turn, made delivery to the purchasers, and he asserts that a Division

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43/ The burden of proving an exemption from the requirements of the Act rests on the one who claims it. Securities and Exchange Commission v. Ralston Purina Co., 346 U.S. 119 (1953). And with respect to Section 5(b)(2), see I Loss, Securities Regulation, 2d ed., p. 250: "But it is still clear that the burden of proving concurrent or earlier delivery of a full prospectus is on the seller."

44/ Securities and Exchange Commission v. Joiner Leasing Corp., 320 U.S. 344, 353 (1943); Securities and Exchange Commission v. Sunbeam Gold Mines Co., 95 F.2d 699 (C.A. 9, 1938).

witness testified that no one at Jaffee & Leverton was shown to have had knowledge either of the identity of the vendors of the shares or knowledge that the shares were part of a registration. He concludes, in effect, that it cannot be said that Jaffee & Leverton or Jaffee wilfully failed to deliver a prospectus merely because Loeb Rhoades failed to perform its responsibility to transmit prospectuses which it received from Lee & Co., and that Jaffee and Jaffee & Leverton were unaware of the fact that Loeb Rhoades had received registered shares for delivery. Firstly, counsel misconstrues, in part, testimony of the Division's witness given in response to questions by counsel for Greene & Co. The questions and response indicate that no one at Greene & Co. appears to have known, from the comparisons or other documents received from Loeb Rhoades, the identity of customers for whom Jaffee & Leverton was purchasing shares from Greene & Co. The witness also testified that he drew no inference that brokers purchasing registered stock from Lee & Co. knew the name of the shareholder whose stock was being sold and thereafter delivered to Loeb Rhoades. But a disclaimer of knowledge by Jaffee and by Jaffee & Leverton that the shares of Solitron which were being purchased by Jaffee & Leverton from Lee & Co. for its customers (or for its own account or that of Jaffee) were shares registered in the distribution in which Jaffee was involved cannot be credited.

Nor is it possible for Jaffee or Jaffee & Leverton to avoid the charge of "wilfulness" by disclaiming responsibility for the failure of Loeb Rhoades to send the prospectus to Jaffee & Leverton customers. Loeb Rhoades was an agent engaged to perform important

operations for Jaffee & Leverton, but there is no evidence that Jaffee or any person connected with Jaffee & Leverton gave instructions or maintained surveillance designed to prevent the violation which occurred here. 45/ I cannot accept the suggestion that the responsibility for complying with the law was delegable.

Counsel for Jaffee also urges that according to the record "Loeb Rhoades delivers securities by hand" and that no showing was made of any use of the jurisdictional means in the delivery of the registered shares. As indicated above in the discussion of the use of jurisdictional means, sales were made by Jaffee & Leverton outside the State of New York, and the exhibits indicate that scores of sales of Solitron were made within the relevant period to customers who were far removed from the "lower Manhattan area" or "mid-town New York." A witness from Loeb Rhoades testified that securities would be delivered by hand to firms in the "lower Manhattan area" or those in a "mid-town New York area." The clear implication of his testimony is that all other deliveries of Solitron certificates were made by mail. I conclude that the use of jurisdictional means in the delivery of Solitron was established.

45/ Carelesness, negligence and failure to understand requirements of the securities laws have not precluded findings of "wilful" violations. Cf. Kennedy, Levy & Co., 41 S.E.C. 843 (1964); Sterling Securities Company, 39 S.E.C. 487; Mayflower Associates, Inc., 38 S.E.C. 110 (1957).

The clearing agent for Greene & Co. testified that his bank would never assume such responsibilities as obtaining additional prospectuses from Lee & Co. where only one had been received, or even the function of sending out any prospectuses to customers of Greene & Co.

Violations of the "anti-fraud" Provisions

The Order contains the broad charge that all respondents (and, as amended, Jaffee & Leverton) wilfully violated and aided and abetted violations of the "anti-fraud" provisions of the securities laws and rules thereunder by conduct including:

1) arranging with Greene & Co. to bid for, and make a market in Solitron, and participate with Lee & Co. in the distribution;

2) violating the provisions of Section 10(b) of the Exchange Act and Rule 10b-6; and

3) failing to disclose to purchasers and prospective purchasers of Solitron the above-mentioned arrangements and violations.

Inasmuch as I have found that Jaffee and Horn made the arrangements discussed above and that Greene & Co. and Jaffee & Leverton participated in the underwriting and distribution, and that Rule 10b-6 was violated by the several respondents to the extent and in the manner discussed, it follows that the anti-fraud provisions of the securities acts were wilfully violated by those activities and by the persons involved in them. 46/ It follows also that the failure to amend the registration statement to include the broker-dealers as participants or underwriters was a violation of the anti-fraud provisions, as were the offers and sale of Solitron without disclosure of such participation. 47/

46/ Scott Taylor, supra; Bruns, Nordeman & Company, supra; Pennaluna & Co., Inc., supra.

47/ Bruns, Nordeman & Company, supra, at p. 659. See I Loss, supra, at pp. 300 and 301, regarding the materiality of disclosing "so vital a part of the picture" as the names of the underwriter (s). And at p. 301: "When the underwriter is changed or additional underwriters are obtained after the effective date, the Commission requests a post-effective amendment without benefit of a prior undertaking."

The registration statement was amended and its effectiveness continued by filings dated October 11, 1963, and June 30, 1964, which did not, of course, indicate the participation of Greene & Co. or Jaffee & Leverton.

Although Lee & Co. was not charged with failure to deliver a prospectus with or prior to the delivery of the stock certificates, it is here included with all other respondents in a charge that the prospectus under which the stock was sold was false and misleading. 48/ I adopt the Division's contention that Lee & Co. and Greene & Co. wilfully violated the anti-fraud provisions, aided and abetted by I.A. Greene, Robert Topol, Horn, and Jaffee, in selling under a registration statement without the required amendments, and in failing to disclose material facts to purchasers. The same conclusion follows with regard to the failure to amend the registration statement to reflect the Rule 10b-6 violations resulting from the bidding and purchasing by Greene & Co., Jaffee & Leverton and Jaffee during the distribution. Halsey, Stuart & Co., Inc., 30 S.E.C. 106 (1949), at 125, 126.

Public Interest and Sanctions: Mitigative Factors

The Division urges that in view of "the serious nature of the violations of the securities laws as shown [in its post-hearing documents] it is in the public interest" to impose the following sanctions:

> Greene & Co. (and Jaffee & Co.): suspension from registration with the Commission for not less than 10 days;

48/ Although I found that Lee & Co. was not chargeable with knowledge that Greene & Co. was a participant in the distribution, whatever value such "exculpation" might possibly have for Lee & Co. is negated by my finding that it is chargeable with responsibility for the participation of Jaffee & Leverton.

I.A. Greene and Robert Topol: suspension from association with a broker-dealer for not less than 15 days;

Bernard Horn and Jaffee: suspension from association with a broker-dealer for not less than 45 days;

Lee & Co.: suspension from registration with the Commission as a broker-dealer for not less than 5 days. 49/

The Division also requested that each of the individual respondents be required to apply to the Commission for permission to again be associated with a broker-dealer.

Respondents contend that although no violations were committed, if any should be found it would not be in the public interest to impose sanctions. They point out, in mitigation, the excellent records of some of the respondents over long periods of engagement in the securities business without prior charges of violations.

Counsel for Greene & Co. points out that I.A. Greene has been engaged in the securities industry for over 50 years and "has never been named a respondent in any regulatory proceeding. . . ." Counsel asserts that although Greene & Co. was a respondent in a proceeding which resulted in 1950 in a Commission decision 50/ which imposed no sanction on the firm and "also dismissed Greene [& Co.] from that proceeding", that proceeding should in no respect now be held against Greene & Co. or I.A. Greene, 51/ since the proceeding involved action by "a former partner of Greene & Co. who acted in reliance on a written

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49/ The Division had requested that Martin L. Levy be suspended from association with a broker or dealer for not less than 30 days.

50/ S.T. Jackson & Company, Inc., et al., Securities Exchange Act Release No. 4459 (June 23, 1950).

51/ Topol was not a member of Greene & Co. at that time.

representation that the stock involved was freely tradable and thus need not have been registered . . . ." Although the facts as stated appear to be accurate and are not refuted by the Division, it is noted that Greene & Co., along with others, was found to have violated the registration provisions of the Securities Act in the sale of unregistered control stock. But because no "fraudulent conduct" by Greene & Co. was found, the Commission stated that it was not deemed appropriate in the public interest to impose remedial sanctions, and dismissed the proceedings as to that respondent. I do not believe that the records of Greene & Co. and I.A. Greene should be considered as less than excellent, despite that proceeding and the finding of the Commission.

Counsel also points out that Topol has been in the securities business since 1948 and has never been charged with a violation of the securities laws.

My attention has not been invited in the record to any proceeding in which Lee & Co. was found to have violated any provision of the securities laws. Its counsel urges the inappropriateness of sanctions against his client in this proceeding, which he refers to as a "test case" with regard to the applicability of Rule 10b-6 to "shelf registrations." Although the argument goes too far, it is consistent with and part of an argument made by all parties with respect to the extent to which the broker-dealer community has remained ill-informed regarding the meaning, scope and applicability of Rule 10b-6. Counsel refer

to the recommendations of The Report of Special Study of Securities Markets 52/ to the effect that because of widespread misunderstandings or uncertainties among broker-dealers, the Commission should take appropriate steps to clarify the application of Rule 10b-6 in connection with various forms of "shelf" registration, among other situations. Some of the counsel also cite Whitney, Rule 10b-6: The Special Study's Rediscovered Rule, supra, with respect to the difficulties in recognizing the applicability of the rule in many situations. 53/

Insofar as Lee & Co. is concerned the Rule 10b-6 violation involved no agreement or understanding to increase prices, stimulate trading, or defraud purchasers. And the violation by Lee & Co. of Rule 10b-6 constitutes the substantial part or basis of its improper activities, including its violation of the anti-fraud provisions. I conclude that the suspension of registration with the Commission as a broker-dealer for 5 days is appropriate in the public interest.

The direct involvement of Greene & Co. in the Rule 10b-6 violation and consequently in the violation of the anti-fraud provisions, together with its violation of Section 5(b) of the Securities Act, require the imposition of sanctions. Although I believe the uncertainties in the applicability of Rule 10b-6 must be given recognition, the violations of Greene & Co. were serious. I have taken into

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52/ Special Study, Pt. 1, 559. H.R. Doc. No. 95, 88th Cong., 1st Sess. (1963).

53/ At page 572, former Commissioner Whitney states:

> "To the extent the broker-dealer community, which must live under and with the rule -- sweeping prohibition and all -- is confused or ill-informed, the rule has not served its intended functions in that the protections for the interest of investors, so painstakingly developed, are not achieved, and the goal of reasonable certitude in the 'rules of the game' is not within the reach of the players."

consideration, with respect to all respondents, the argument that Solitron was a security which rose in price over a long period of time because of the intrinsic value of the company, and that probably no purchaser has suffered a market loss. 54/ Nevertheless, I conclude that it is necessary and appropriate in the public interest that Greene & Co. should be suspended from registration as a broker-dealer for 5 days, and that I.A. Greene and Robert Topol should be suspended from association with a broker-dealer for 10 days.

Jaffee's failure to abide by the stockholders' agreement with Lee & Co. to offer the registered shares for sale solely through Lee & Co. exemplified the kind of disruption of the over-the-counter market which the registration statement was designed to prevent. I mention this to indicate the relative seriousness of his offense, not to exaggerate the effect which it had on Solitron stock. Whether or not he recognized that he was violating Rule 10b-6 in his arrangements with Horn in his purchases and in the activities of Jaffee & Leverton, the fact is he knew or certainly should have known that such activities were improper. In addition, the violations of Section 5(b) of the Securities Act, of the anti-fraud provisions, and of Section 15(c)(1) of the Exchange Act and the Rule thereunder, must be evaluated. I have considered his counsel's argument that sanctions against Jaffee are not appropriate in the public interest,

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54/ Cf. Lum's, Inc., supra.

and the fact that there is no evidence that Jaffee had previous difficulty with the Commission. Nevertheless, I conclude that it is appropriate in the public interest that Jaffee be suspended from association with a broker-dealer for a period of 30 days.

Horn's participation with Jaffee may have involved a somewhat lesser degree of his recognition of the seriousness of his activities. In any event, Horn was not found to have violated Section 5(b) of the Securities Act and was not charged with a violation of Section 15c1-6 of the Exchange Act. It is my view, after consideration of the fact that no evidence of prior securities law violations has been offered, that it is appropriate in the public interest that Horn be suspended from association with a broker-dealer for a period of 20 days, and that following the expiration of the suspension period he should not be associated with a broker-dealer except in a non-supervisory capacity, under such supervision as the Commission shall deem appropriate. 55/

Accordingly, IT IS ORDERED that Greene & Co. be suspended from registration with the Commission for 5 days and that Irving A. Greene and Robert Topol each be suspended from association with a broker-dealer for a period of 10 days; that M.L. Lee & Co., Inc. be suspended from registration with the Commission as a broker-dealer for 5 days; that Wilton L. Jaffee, Jr. be suspended from association with a broker-dealer for 30 days; and that Bernard Horn be suspended from association with a broker-dealer for a period of 20 days, and that following the expiration of the suspension period he shall not be associated with a broker-dealer except in a non-supervisory capacity, under such supervision as the Commission shall deem appropriate.

55/ All proposed findings and conclusions submitted by counsel for the parties have been considered, as have their respective arguments. To the extent that the proposed findings and conclusions are in accord with the views set forth herein, they are accepted, and to the extent they are inconsistent therewith they are rejected.

IT IS FURTHER ORDERED that as to Jaffee & Company and Martin L. Levy the proceedings be and they are hereby dismissed.

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

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

Sidney Ullman
Hearing Examiner

August 26, 1968