ADMINISTRATIVE PROCEEDING
FILE NO. 3-3680

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	:
	:
SAMUEL H. SLOAN d/b/a SAMUEL H. SLOAN & CO.	:
(8-15750)	:

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SECURITIES & EXCHANGE COMMISSION

INITIAL DECISION

Washington, D.C.
April 24, 1973

Ralph Hunter Tracy
Administrative Law Judge

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(8-15750)	:	

APPEARANCES: Alan M. Rashes, Jerome M. Selvers and Thomas Beirne, of the New York Regional Office of the Commission for the Division of Enforcement.

Robert W. Taylor for Samuel H. Sloan and Samuel H. Sloan & Co.

BEFORE: Ralph Hunter Tracy, Administrative Law Judge

THE PROCEEDING

This is a public proceeding instituted by an order of the Commission ("Order") dated April 25, 1972, pursuant to Sections 15(b) and 15A of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether, as charged by the Division of Enforcement ("Division")[1/] Samuel H. Sloan ("Sloan") d/b/a Samuel H. Sloan & Co., ("Sloan & Co." or "registrant") willfully violated Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-1, 17a-3,4,5,10, and 11, thereunder, during various specified periods, and the remedial action, if any, that might be appropriate in the public interest.

The order included an allegation that on June 24, 1971, the U.S. District Court for the Southern District of New York had entered a consent decree temporarily enjoining respondents from violating certain of the foregoing counts.

Respondents were represented by counsel throughout the proceeding and proposed findings of fact and conclusions of law and briefs in support were filed by the parties.

The findings and conclusions herein are based upon the preponderance of the evidence as determined from the record and upon observation of the witnesses.

FINDINGS OF FACT AND LAW

Respondents

Sloan is the sole proprieter of Sloan & Co., 120 Liberty Street, New York, New York, which has been registered with the Commission as a

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1/ This Division was formerly the Division of Trading and Markets.

broker-dealer pursuant to Section 15(b) of the Exchange Act since May 10, 1970. Registrant has never been a member of the National Association of Securities Dealers ("NASD").

Injunctions Chargeable to Respondents

Section 15(b)(5)(C) of the Exchange Act provides that one of the bases for revocation of a broker-dealer's registration or the imposition of lesser sanctions is the existence of a described permanent or temporary injunction issued by a court of competent jurisdiction. 2/

The Order alleges, and the record establishes, that on June 24, 1971, the U.S. District Court for the Southern District of New York entered a consent judgment preliminarily enjoining Sloan & Co. and Sloan from conducting a business as a broker-dealer in securities at a time when Sloan & Co. or any other registered broker-dealer of which Sloan became a principal or controlling person was not in compliance with the Commission's net capital and bookkeeping rules. In addition, the Court ordered Sloan to engage the services of a certified public accountant to prepare a certified report of the firm's financial condition, as of June 30, 1971, to be in the Commission's possession no later than July 31, 1971.

2/ Section 15(b)(5)(C) provides as follows:

"(5) The Commission shall, after appropriate notice and opportunity for hearing, by order censure, deny registration to, suspend for a period not exceeding twelve months, or revoke the registration of, any broker or dealer if it finds that such censure, denial, suspension or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated --

* * *

(Continued on page 3)

Bookkeeping Violations

The record establishes that during the period from January, 1971 to April 25, 1972, registrant, as charged in the Order, committed a number of violations of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder by failing to maintain and to keep accurate and current certain required books and records.[3/] At the time of an inspection of the books and records of registrant conducted by a Commission investigator on January 12, and 13, 1971, a number of deficiencies existed. The general ledger disclosing assets, liabilities, income and expense, and capital account, was not current; no account record of bank balances or income and expenses was being kept; the firm's trading account, the fail to deliver and the fail to receive accounts were not current; the Sloan capital account was only posted to July 19, 1970; no trial balances had been prepared;[4/] and the stock record was not in compliance. Registrant was informed of these violations by Commission letter of January 14, 1971, and requested to submit a trial balance supported by certain specified schedules. On January

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(Footnote 2 continued)

> (C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, or dealer, or as an affiliated person or employee of any investment company, bank, or insurance company; or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security."

3/ Section 17(a) of the Exchange Act, as pertinent here, requires brokers and dealers to make and keep current such books and records as the Commission may prescribe as necessary and appropriate in the public interest or for the protection of investors. Rule 17a-3 specifies the books and records which must be maintained and kept current. Rule 17a-4 specifies the preservation of such records.

4/ Rule 17a-3(11) requires that "such trial balances and computations shall be prepared currently at least once a month."

18, 1971, registrant submitted what purported to be a trial balance but the Commission investigator testified that a net capital computation could not be prepared from it so on January 25, 1971, he returned to registrant's office and prepared a computation of net capital as of January 18, 1971, using whatever books and records available.

Subsequent visits to registrant's office by another Commission investigator in March, April, May, June and August, 1971 disclosed that the books and records were not in compliance and on at least one occasion were not available for inspection. Furthermore, during the approximately sixteen month period charged in the Order it was necessary to average about three requests per month in order to obtain even the semblance of a trial balance from registrant.

Respondents argue that registrant "did maintain the books and records required under Section 17(a) and Rules 17a-3 and 17a-4." In support of this contention they assert that the testimony of the two Commission investigators concerning numerous violations of the record keeping rules was "so absolutely incredible as to defy understanding." However, the record does not support this contention. On the contrary, a careful review of their testimony, together with some 19 supporting exhibits, plus observation of their demeanor, leads to the conclusion that rather than being incredible their testimony was credible and worthy of belief.

The requirement that records be kept embodies the requirement that such records be true and correct.[5/] Compliance with the rule relating to

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5/ Lowell Niebur & Co., Inc., 18 SEC 471, 475 (1945)

maintenance of books and records is regarded as an "unqualified statutory mandate" dictated by a broker-dealer's obligation to investors to conduct its securities business on a sound basis.[6/]

Respondents' other principal argument is that there is no evidence that they willfully violated the record keeping requirements. The argument that any violation arising out of the failure to make and keep current registrant's books and records cannot be considered "willfull" is rejected. Willfullness for purposes of Section 15(b) of the Exchange Act does not require that a person know that he is breaking the law but only that he intended to do the act that resulted in the violation.[7/]

Upon consideration of all the circumstances it is found that Sloan, d/b/a Samuel H. Sloan & Co., willfully violated Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 thereunder as alleged in the Order.

Net Capital Violations

The Order charges that during the period from January 1971, until on or about January 31, 1972, with the exception of the month of March 1971, registrant willfully violated the net capital provisions of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder.[8/]

6/ Billings Associates, Inc., Exchange Act Rel. No. 8217, p. 8 (Dec. 28, 1967)

7/ Hughes v. SEC, 174 F.2d 969, 977 (C.A.D.C. 1949); Churchill Securities Corp., 38 SEC 856, 859 (1959); Thompson Ross Securities Co., 6 SEC 1111, 1122 (1940).

8/ Section 15(c)(3) of the Exchange Act, insofar as here pertinent, prohibits securities transactions by a broker-dealer in contravention of the Commission's rules prescribed thereunder providing safeguards with respect to the financial responsibility of brokers and dealers. Rule 15c3-1 provides, subject to certain exemptions not applicable here, that no broker or dealer shall permit his aggregate indebtedness to all persons to exceed 2,000% of his net capital computed as specified in the rule or have a net capital of less than $5,000.

The record clearly establishes that during the relevant periods registrant was in violation of the Commission's net capital requirements and that the additional capital required to bring it into compliance on the dates indicated was as follows:

Date	Per SEC	As Adjusted (a)
1-18-71	$28,016.70	No change
1-29-71	11,912.35	No change
2-26-71	15,961.36	No change
3-31-71	10,239.22 (b)	No change
6-30-71	24,222.03	19,221.96 (c)
7-31-71	70,864.99	70,064.99
8-31-71	16,588.73	15,789.33
9-30-71	11,529.69 (d)	10,729.69 (d)
10-8-71	8,345.49 (d)	7,545.49 (d)
10-29-71	18,253.50 (d)	12,453.50 (d)
11-30-71	9,810.10 (d)	4,010.79 (d)
12-31-71	13,480.42 (d)	4,557.22 (d)
1-31-72	718.23	

(a) As a result of a prehearing conference the Division furnished its net capital computations and supporting data to registrant's counsel who is, also, its accountant. Prior to the evidentiary hearing Division's representative and registrant's accountant arrived at the adjusted figures.

(b) The month of March originally showed net capital of $7,760.78. However, this included $18,000 of customer credit balance.

(c) Prepared pursuant to order of the Court which issued the temporary injunction. (Supra p.2).

(d) Does not include an alleged personal trading loss by Sloan which is in arbitration before the NYSE. Its inclusion would increase the net capital deficiency by $13,000 for each period.

Respondents do not contend that registrant was at all times in compliance with the Commission's net capital rules. Rather, they argue that at a conference with representatives of the Commission's New York Office on July 28, 1971, an agreement was reached whereby the registrant would cease doing a retail business but would be allowed to liquidate accounts

and transact personal business and that in accordance with this agreement registrant did cease doing business after July 28, 1971 and, therefore, could not be in violation of the net capital requirements after that date. In support of this argument they again attack the testimony of, and the evidence supplied by, the Commission investigators that Sloan was in fact actively engaged in consummating securities transactions after July 28, 1971. In addition, the argument is again advanced that any violation of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder was not willfull.

All of respondents arguments are rejected. The registrant's trading record supports the Division's contention that registrant engaged in new business in July, August and September, 1971. During the month of August, 1971, registrant transferred a number of securities resulting from the transaction of new business to the brokerage firm of J.S. Love & Co., while representing to the Commission staff that such securities were in the possession of Sloan & Co.

In December 1971 and January, 1972, while in net capital violation, registrant applied to the National Quotation Bureau and had a number of securities listed in the pink sheets in an attempt to induce the purchase or sale of such securities while in violation of the Commission's net capital rules and while under a Court order enjoining such activities.

Sloan's disregard for the securities laws is well illustrated by his attitude towards the net capital requirements. In order to conceal registrant's true net capital situation he included as firm capital a $10,000 customer credit balance for January, 1971; $60,000 of customer's securities for February, 1971; and an $18,000 customer credit balance for

March 1971. For other periods he claimed a $10,000 gift from his mother, which was not supported; improperly valued shares of stock; failed to keep records from which a proper determination of net capital could be ascertained; procrastinated in the production of books and records in order to delay an accurate examination; and was uncooperative in producing trial balances and other financial information. His testimony in the proceeding concerning his activities and his alleged efforts to comply with the securities laws is not worthy of belief.

Registrant's inability to properly determine its financial condition flows, at least in part, from its failure to comply with Section 17(a) of the Exchange Act and Rules 17a-3, 17a-3(a)(11) and 17a-4 thereunder and well illustrates the Commission's repeated emphasis on the requirement that books and records be kept current and accurate as being at the heart of the regulatory scheme, particularly as it bears significantly on the ability to determine whether other types of violations have occurred.[9/] It is found that registrant and Sloan willfully violated the net capital provisions of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder.

Failure to File Required Reports

Under the provisions of Section 17(a) of the Exchange Act and Rule 17a-5 thereunder, registrant's Form X-17A-5 for the year 1970, was due to be filed no later than November 23, 1970 as of October 10, 1970. No X-17A-5 report was filed by registrant for 1970 and Sloan admits in his answer that he failed to file such report. Sloan & Co. did file an X-17A-5 report as of January 29, 1971, on March 31, 1971. However, this was treated as

9/ Pennaluna & Company, Inc., et al., Securities Exchange Act Release No. 8063 (April 27, 1967); Palombi Securities Co., Inc., et al., 41 SEC 266, 276 (1962); Midland Securities, Inc., et al., 40 SEC 333, 339-340 (1960); Olds & Company, 37 SEC 23, 26-27 (1956).

a 1971 filing and did not discharge Sloan from his obligation to file a report for 1970. Sloan testified that he was aware of the requirement to file a report on Form X-17A-5 for 1970 but that the only qualified accountant he was able to obtain to prepare the report was not able to because of his association with another broker-dealer.

That registrant cannot avoid the responsibility placed on it for filing an X-17A-5 report has been clearly expressed by the Commission in the case of John Munroe, 39 SEC 308 (1959) where it stated:

> "The obligations to file financial reports annually, as well as other obligations set forth in the Act and the rules and regulations thereunder, are imposed upon registrants directly and are non-delegable. A registrant can obtain all the assistance he needs from clerks, accountants, attorneys, and others but he cannot instruct anyone to see to it that he is brought into compliance with applicable rules and regulations and feel that he has thereby fully discharged his obligations."

Sloan admits that for the period from ~~April 30~~ January 1, 1971 to December 2, 1971, registrant failed to file a report of income and expenses with the Commission for the calendar year 1970 and thereby violated Section 17(a) of the Exchange Act and Rule 17a-10 thereunder. 10/

Sloan expresses no contention whatever concerning the alleged violation of Rule 17a-11 under section 17(a) of the Exchange Act. 11/ However, the record establishes that no telegraphic notice or report of financial

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10/ Rule 17a-10 provides that every broker or dealer registered pursuant to section 15 of the Exchange Act shall, not later than 120 days after the close of each calendar year, file a report of income and expenses and related financial and other information for such calendar year on Form X-17A-10.

11/ Rule 17a-11 provides that every broker-dealer subject to Rule 15c3-1 whose net capital at any time is less than the minimum required by any net capital rule to which he is subject shall give telegraphic notice of such deficiency to the Commission on the day it occurs and shall, within 24 hours thereafter, file a report of financial condition in accordance with details specified in the Rule.

condition was ever received from registrant.

Accordingly, it is found that Sloan and registrant violated section 17(a) of the Exchange Act and Rule 17a-11 thereunder, as alleged in the Order.

In their brief respondents argue that registrant's report of income and expense required under Rule 17a-10 was filed on December, 2, 1971; that its financial report required under Rule 17a-5 for 1970 was filed on March 31, 1971, as of January 29, 1971 and marked "Amended"; that such reports were filed before the date of the Order and accepted by the Commission and, therefore, the alleged violations are merely technical in nature and the whole question becomes academic in view of the filings. Respondents do not address themselves to the alleged violation of Rule 17a-11.

There is no merit to respondents' contentions. The Commission has repeatedly expressed itself in no uncertain terms that "the requirement that annual reports be filed cannot be characterized as merely 'technical'",[12/] and that "the requirement that annual financial reports be filed on time and in proper form is a keystone of the surveillance of registered broker-dealers with which we are charged in the interest of affording protection to investors, and full compliance with it is essential".[13/]

Public Interest

Respondents' willfull violations require consideration of the sanctions which are necessary in the public interest. In this connection

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12/ Samson, Roberts & Co., Inc., Exch. Act Rel. No. 7593 (May 4, 1965); see, also, Family Funds of New York, Inc., Exch. Act Rel. No. 7358 (June 30, 1964); John J. Murphy, 38 SEC 430, 432 (1958).

13/ W.E. Leonard & Company, Inc., 39 SEC 726, 727 (1960); see Olds & Company, 37 SEC 23, 26-7 (1956).

the Division believes the conduct of respondents warrants a revocation of Sloan & Co.'s registration and a bar against Sloan's association with any broker-dealer. On the other hand, Sloan argues that no public interest can be served by extremely and severely sanctioning him or registrant, particularly since, he alleges, he has suffered a financial loss of $30,000 resulting from his July 28, 1971, agreement with the Commission to cease doing business. In any event, respondents urge, any violations found herein were not willfull.

The violations found to have occurred herein are numerous, serious and continued over an extended period of time. Each violation has been previously discussed in detail but the cumulative effect must be taken into account in considering appropriate sanctions to be applied for the protection of investors. This is particularly true here, where one person, Sloan, was at all times responsible for the conduct of registrant's business. In considering mitigating circumstances there is no evidence in the record as to Sloan's alleged loss and it appears to be merely a projection of what he was allegedly prevented from earning by not being allowed to conduct business while not in compliance with the securities laws and under Court order. This is a self-serving statement and is given no weight in the circumstances. As to the question of willfullness, this has previously been dealt with in this decision.[14/] All of the violations previously found herein are found to have been willfull. It is well established that a finding of willfullness under section 15(b) of the Exchange Act does not

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14/ See page 5 footnote 7 *supra*.

require an intent to violate the law and that it is sufficient that a respondent intentionally engage in conduct which constitutes a violation. 15/

The record of the registrant and Sloan, as evidenced by the violations found in this proceeding, reflects an unwillingness or a lack of capacity to operate as a broker-dealer in conformity with applicable laws and regulations. The impression imparted by Sloan through his actions as reflected by the record and his appearance as a witness is that of an individual who has no comprehension of what is required to properly manage a securities business. The fact that it was necessary for Commission staff members to make innumerable visits and inquiries in an effort to obtain compliance on the part of registrant; Sloan's uncooperative attitude towards such efforts; the necessity of a Court order and a proceeding in an endeavor to prevent violations inimical to investors indicate the unlikelihood that respondents will observe the Commission's rules applicable to the conduct of a broker-dealer business. Therefore, under the circumstances, it is concluded that the registration of registrant should be revoked and that Sloan should be barred from association with any broker-dealer. 16/

ORDER

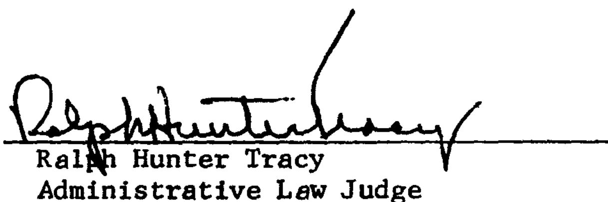
Accordingly, IT IS ORDERED that the registration as a broker-dealer of Samuel H. Sloan & Co. is revoked and that Samuel H. Sloan is barred from association with a broker-dealer.

15/ Dunhill Securities Corporation, Exch. Act Rel. No. 8563, p. 5 (July 14, 1969); Tager v. SEC, 344 F.2d, 5,8, (CA 2, 1965)

16/ It should be noted that a bar order does not preclude the person barred from making such application to the Commission in the future as may be warranted by the then-existing facts. Fink v. SEC (C.A. 2, 1969), 417 F.2d 1058, 1060; Vanasco v. SEC, (C.A. 2d, 1968) F.2d 349, 353.

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

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



Ralph Hunter Tracy
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17 To the extent that the proposed findings and conclusions submitted by the parties, and the arguments made by them are in accordance with the views herein they are accepted, and to the extent they are inconsistent therewith they are rejected.