SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 55989 / June 29, 2007

INVESTMENT ADVISERS ACT OF 1940
Rel. No. 2613 / June 29, 2007

INVESTMENT COMPANY ACT OF 1940
Rel. No. 27880 / June 29, 2007

Admin. Proc. File No. 3-12559

In the Matter of TRAUTMAN WASSERMAN & COMPANY, INC., GREGORY O. TRAUTMAN, SAMUEL M. WASSERMAN, MARK BARBERA, JAMES A. WILSON, JR., JEROME SNYDER, and FORDE H. PRIGOT	ORDER DENYING PETITION FOR INTERLOCUTORY REVIEW

I.

Pending before an administrative law judge are proceedings against Trautman Wasserman & Company, Inc., Gregory O. Trautman, Samuel M. Wasserman, Mark Barbera, James A. Wilson, Jr., Jerome Snyder, and Forde H. Prigot (together, "Respondents"). We issued an interim stay on April 17, 2007 to preserve the status quo ante of the matter while we considered the merits of three motions filed before the Commission. 1/ Having granted the first

1/ See Trautman Wasserman & Co., Inc., Order Granting Interim Stay, Admin. Proc. File No. 3-12559 (April 17, 2007).

two motions in separate orders, 2/ we now consider respondent Barbera's interlocutory request to dismiss the proceedings against him.

II.

The Order Instituting Proceedings ("OIP") in this case was issued on February 5, 2007 and alleged that Respondents engaged in late trading and deceptive market timing that resulted in numerous violations of the securities laws. The OIP authorized public administrative proceedings against Respondents pursuant to Section 15(b) of the Securities Exchange Act of 1934, Section 9(b) of the Investment Company Act of 1940, and Section 203(f) of the Investment Advisers Act of 1940. 3/ Cease-and-desist proceedings against Respondents under Section 8A of the Securities Act of 1933, Section 21C of the Exchange Act, and Section 9(f) of the Investment Company Act were also authorized. 4/

On March 13, 2007, the law judge granted an earlier application by the New York Attorney General ("NYAG"), made pursuant to Rule of Practice 210(c)(3), 5/ to stay the proceeding until the conclusion of parallel criminal proceedings against Scott A. Christian, who is expected to appear as a witness in this administrative proceeding, and respondent Wilson. However, the law judge lifted the stay by order dated March 23, 2007 in response to a motion by respondent Barbera in which he pointed out that the cease-and-desist provision in Exchange Act Section 21C(b) provides that "[t]he notice instituting proceedings . . . shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or later

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2/ See Trautman Wasserman & Co., Inc., Order Dismissing Cease-and-Desist Proceedings Against Barbera, Securities Exchange Act Rel. No. 55848, __ SEC Docket __ (June 1, 2007); Trautman Wasserman & Co., Inc., Order Granting Stay, Admin. Proc. File No. 3-12559 (June 1, 2007).

3/ 15 U.S.C. §§ 78o(b), 80a-9(b), 80b-3(f).

4/ 15 U.S.C. §§ 77h-1, 78u-3, 80a-9(f). The OIP seeks cease-and-desist relief under Securities Act Section 8A and Exchange Act Section 21C against Trautman Wasserman & Company, Inc.; under Securities Act Section 8A, Exchange Act Section 21C, and Investment Company Act Section 9(f) against Trautman, Wasserman, and Wilson; and under Exchange Act Section 21C against Snyder and Prigot. Cease-and-desist proceedings against Barbera under Securities Act Section 8A, Exchange Act Section 21C, and Investment Company Act Section 9(f) were dismissed. See Trautman Wasserman & Co., Inc., Order Dismissing Cease-and-Desist Proceedings Against Barbera, supra note 2. The proceedings instituted against Barbera pursuant to Exchange Act Section 15(b) and Investment Company Act Section 9(b) remain.

5/ 17 C.F.R. § 201.210(c)(3).

date is set by the Commission with the consent of any respondent so served." 6/ In her March 23 order, the law judge set a hearing date for all respondents of April 13, 2007, a date sixty days after Barbera was served with the OIP.

On March 28, 2007, the Division of Enforcement ("Division") notified the law judge by letter that it intended to file a motion with the Commission to withdraw those portions of the OIP that seek cease-and-desist relief against Barbera. On March 30, 2007, following a prehearing conference, the law judge denied the NYAG's request to reconsider her refusal to stay the case. However, the law judge noted in her order that all Respondents except Barbera objected during the conference to commencing the hearing within sixty days and that they voiced concerns that the April 13 hearing date would not allow them sufficient time to review the large number of documents they expected to receive from the NYAG and to prepare their defenses. The law judge ordered that the April 13, 2007 hearing be rescheduled to June 4, 2007.

On April 5, 2007, the Division stated in a letter to the law judge that, given her ruling to postpone the hearing until June 4, the Division had decided not to move the Commission to withdraw the cease-and-desist proceedings against Barbera. The same day, the NYAG notified the law judge by letter that Wilson and Christian had both entered guilty pleas in the NYAG's parallel criminal cases and that sentencing for both defendants was expected to be completed by June 25, 2007; 7/ the NYAG therefore asked that the administrative hearing be conducted no sooner than June 25, 2007. On April 6, 2007, Barbera filed a motion with the law judge arguing again that he was entitled to a hearing within sixty days of service of the OIP.

On April 9, 2007, the law judge issued an order denying the NYAG's request to postpone the hearing, stating that Wilson's guilty plea eliminated the NYAG's strongest support for a stay. The law judge therefore also ordered that the Division make its complete investigative file available to respondents. She also clarified that her postponement of the hearing date to June 4, 2007 was dependent upon the Division filing a motion to withdraw those portions of the OIP that sought cease-and-desist relief against Barbera. Her order stated that unless the Division filed such a motion by April 11, 2007, a hearing as to Barbera would begin April 13, 2007.

On April 10, 2007, the Division filed a motion before the Commission seeking to withdraw the cease-and-desist proceedings against Barbera, arguing that withdrawal of those proceedings would permit the Division to proceed against all respondents at one hearing, thereby

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6/ 15 U.S.C. § 78u-3(b). The cease-and-desist provisions in Securities Act Section 8A(b), 15 U.S.C. § 77h-1(b), and Investment Company Act Section 9(f)(2), 15 U.S.C. § 80a-9(f)(2), contain identical requirements.

7/ Court records indicate that sentencing of both defendants was, in fact, completed by this date. See People v. James A. Wilson, Jr., Indictment No. 01488-2006 (N.Y. Sup. Ct., N.Y. County, Crim. Term); People v. Scott A. Christian, No. 03409-2005 (N.Y. Sup. Ct., N.Y. County, Crim. Term).

avoiding substantial prejudice to the Division's case-in-chief. The same day, the law judge issued an order cancelling Barbera's April 13 hearing and confirming that a hearing as to all respondents would commence on June 4, 2007. Also on April 10, 2007, the NYAG filed a motion with the Commission requesting that these proceedings be stayed pending the outcome of its criminal cases against Wilson and Christian.

As noted above, on April 17, 2007, we issued an interim stay of these proceedings while we awaited the filing of any opposing and reply briefs. Barbera opposed both pending motions and in his opposition to the Division's motion simultaneously moved to dismiss the entire proceeding against him. We granted the Division's motion to dismiss the cease-and-desist proceedings against Barbera. 8/ We also granted the NYAG's motion, staying the proceedings until June 25, 2007 but requiring the Division in the interim to make its investigative file available to Respondents, with the exception of those documents identified as potentially prejudicial to the NYAG's criminal cases. 9/

III.

Commission Rule of Practice 400(a) provides that "[p]etitions by parties for interlocutory review are disfavored." 10/ The Commission adopted this language "to make clear that petitions for interlocutory review . . . rarely will be granted." 11/ When a law judge, prior to publication of the initial decision, issues a ruling in a case with which a party takes issue, the Commission will review that ruling "only in extraordinary circumstances." 12/ Where, as here, there is no ruling by the law judge to consider, the Commission will consider a party's interlocutory petition for review only if the petition meets the same stringent standard. For the reasons articulated below, we find that Barbera has not presented the Commission with sufficient reason to warrant our intervention at this early stage in the proceeding.

8/ See supra notes 2 & 4.

9/ Trautman Wasserman & Co., Inc., Order Granting Stay, supra note 2.

10/ 17 C.F.R. § 201.400(a). But cf. Rule of Practice 210(c)(3), 17 C.F.R. § 201.210(c)(3) (providing that the Commission may grant criminal prosecutorial authorities leave to participate in a proceeding on a limited basis for the purpose of requesting a stay during the pendency of a criminal investigation or prosecution arising out of the same or similar facts at issue in the administrative proceeding, and noting that, "[u]pon a showing that such a stay is in the public interest or for the protection of investors, the motion for a stay shall be favored").

11/ Adoption of Amendments to the Rules of Practice and Delegations of Authority of the Commission, Exchange Act Rel. No. 49412, 82 SEC Docket 1744, 1749 (Mar. 12, 2004).

12/ Rule of Practice 400(a), 17 C.F.R. § 201.400(a).

In his petition, Barbera argues that "[t]he Division's pattern of improper behavior throughout this investigation and in prosecution of this OIP warrants dismissal" of the proceedings against him. Barbera alleges that this "pattern of improper behavior" is demonstrated by three things, which we discuss in turn. 13/

Barbera alleges that Division attorneys questioned three witnesses in on-the-record interviews in a manner that was "improper, over-the-top and intended to intimidate witnesses." Barbera adduced excerpts of transcripts of the testimony of respondents Forde Prigot and Jerome Snyder and a third witness not named as a respondent, which purportedly demonstrated that Division counsel engaged in questionable handling of witnesses. The Division, in turn, adduced an additional transcript excerpt that it claims demonstrates the opposite. Barbera has neither alleged nor shown how any of the Division's alleged misconduct resulted in prejudice to him, and our own review of the transcripts adduced thus far does not lead us to conclude that the Division's questioning of witnesses caused Barbera to suffer any prejudice. The testimony adduced does not indicate, and Barbera does not argue, that the witnesses made statements that were adverse to Barbera; nor does Barbera claim that any witness changed his or her testimony because of the Division's questioning. 14/ Barbera has not demonstrated either by analysis or citation to any legal authority that dismissal of the entire proceeding against him is the necessary or appropriate sanction even if such prejudice existed.

Barbera also alleges that the Division misled the law judge as to its intentions with regard to withdrawing the cease-and-desist proceedings against Barbera. He points out that the Division advised the law judge twice that it intended to "promptly file a motion with the Commission" seeking to amend the OIP and withdraw the cease-and-desist proceedings. Barbera argues that, in ultimately denying his request for an April 13 hearing date, the law judge placed "full reliance and trust" on the stated intention of the Division.

Our review of the record indicates that the law judge's March 30 order was unclear whether the Division's withdrawal of the cease-and-desist provisions was a predicate to her decision. The law judge herself recognized that her order may have lacked clarity on this point, noting in her April 9, 2007 order, "I apologize to the Division because my March 30, 2007 order

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13/ In a footnote to his motion, Barbera raises an additional argument. He notes, without further elaboration, that dismissal is warranted because "[t]he OIP, on its face, fails to allege facts demonstrating that Mr. Barbera acted with fraudulent intent or severe recklessness." We find no merit to this argument. The OIP alleges a number of facts that, if proven at the hearing, could support a finding that Barbera acted with scienter. See, e.g., ¶¶ 4, 31, 38, 40, 44, 60 - 64, Trautman Wasserman & Co., Inc., Order Instituting Proceedings, Admin. Proc. File No. 3-12559 (Feb. 5, 2007).

14/ We note, too, that neither Prigot nor Snyder have taken issue with the manner in which their testimony was taken.

was not clear that the cease-and-desist provisions must be stricken at least as to Barbera." 15/ The Division promptly filed its motion to withdraw the cease-and-desist proceedings after the law judge clarified her position. In any event, even if we accepted Barbera's characterization of the Division's conduct, Barbera has failed to explain, and we fail to see, why such conduct would warrant dismissal of the entire proceeding.

Barbera next argues that the Division engaged in improper conduct in connection with the institution of an investigation of his former counsel, Leon Borstein, by the Commission's Office of the General Counsel ("OGC") and by the subsequent subpoena of Borstein by the Division to appear as a witness against Borstein's current client, respondent Gregory Trautman. In his motion to dismiss, Barbera argues that the investigation and subpoena created a conflict of interest that "initially deprived and subsequently limited Mr. Barbera's access to counsel of his own choosing."

According to party filings, the alleged conflict between Barbera and Borstein apparently first arose on May 9, 2006, when two witnesses, Jeffrey and Lisa Augen, testified in interviews conducted by the Division that Borstein had attempted to tamper with their prospective testimony. In discussing this evidence, we express no view as to the ultimate veracity of the testimony, or to its admissibility or probative value in any proceeding. OGC contacted Borstein on January 17, 2007 and requested that he appear for an interview pursuant to Rule of Practice 102(e). 16/ Borstein withdrew from representing Barbera shortly before the OIP was filed in this matter on February 5, 2007. On April 13, 2007, the Division sent Borstein a letter

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15/ Barbera speculates that the law judge's apology was intended as a "polite rebuke" and to "soften the blow and her criticism." The language of the March 30 order does not support this speculation.

Given the pace at which certain parties have importuned the law judge, and the tenor of their submissions, it is not surprising that one of the law judge's rulings may have been ambiguous. Moreover, our review of the pleadings related to the motions before us suggests that the law judge may have been burdened additionally by arguments that failed to articulate legal theories, cite relevant legal authority, or marshal relevant facts, and that introduced copious amounts of extraneous materials as exhibits. Such tactics are not an appropriate use of the Commission's adjudicatory processes, and we note that Rules of Practice 111 and 180, 17 C.F.R. §§ 201.111 and 201.180, grant the law judges wide latitude to regulate the course of the proceeding and the conduct of the parties and their counsel.

16/ 17 C.F.R. § 201.102(e). Rule 102(e) authorizes the Commission to deny persons temporarily or permanently the privilege of appearing or practicing before the Commission if they are found (i) not to possess the requisite qualifications to represent others; or (ii) to be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or (iii) to have wilfully violated the securities laws or regulations.

informing him that it intended to call Borstein as a witness in this matter seeking his testimony with regard to his communications with the Augens and with Gregory Trautman. 17/

Barbera argues in his moving papers that the Division is at fault for "causing" OGC to initiate an investigation into the allegations against Borstein. We note first that the Division did not "cause" the investigation. On the facts before us, it appears that the investigation was prompted by the Augens' statements. Moreover, OGC – not the Division – is the office charged with responsibility "for the conduct of administrative proceedings relating to the disqualification of lawyers from practice before the Commission." 18/ OGC discharges that responsibility by conducting an investigation and then making a recommendation to the Commission. We bear the ultimate responsibility for deciding whether to authorize Rule 102(e) proceedings against an attorney. 19/

With respect to Barbera's argument that he was "initially deprived" of counsel of his choosing, we note that respondents in Commission proceedings do not enjoy an absolute right to counsel of their original choosing when a conflict of interest with that attorney threatens the integrity of Commission processes. 20/ Although Barbera asserts that his "access to counsel" was limited, this assertion appears to be inconsistent with representations made by Barbera's current attorney, who has had access to Borstein and who has been in contact with Borstein, gathering information with which to prepare this motion. 21/

17/ On the facts before us here, it is not entirely clear that a conflict exists between Borstein and his former client, Barbera. The Augens' testimony adduced before us does not refer to Barbera; it focuses on alleged discussions with Borstein regarding his current client, Gregory Trautman. The Division's subpoena anticipates Borstein's testimony as to the "conduct and scienter of Mr. Trautman." The relationship between Borstein and Trautman, however, is not currently before us.

18/ 17 C.F.R. § 200.21(a).

19/ See Rule of Practice 200(a)(1), 17 C.F.R. § 201.200(a)(1).

20/ See Clarke T. Blizzard, Advisers Act Rel. No. 2032, 77 SEC Docket 1515, 1520 (Apr. 24, 2002) ("[W]e are sensitive to the rights of individuals to be represented by the attorney of their choice. However, this is not an absolute right. Here, the right to counsel of one's choice is outweighed by the necessity of ensuring that our administrative proceeding is conducted with a scrupulous regard for the propriety and integrity of the process.") (citing Wheat v. United States, 486 U.S. 153, 164 (1988)).

21/ For example, Barbera's current counsel represented in Barbera's reply brief that he contacted Borstein and asked him "what he said during his investigative testimony." Barbera's counsel deduced that Borstein's testimony is unlikely to be useful to the Division at the hearing and argues that the Division, therefore, has no motive to subpoena

(continued...)

In his reply brief, Barbera switched course and introduced new theories as to how the Division's conduct with respect to OGC's investigation and the Division's issuance of a subpoena harmed Barbera. Because these theories are raised for the first time in Barbera's reply brief, the Division has not had an opportunity to address them. Nevertheless, our review of these theories leads us to conclude that they lack merit.

In his reply, Barbera argues that, during the "Wells" process 22/ in August and September of 2006, the Division engaged in misconduct by purposefully concealing the alleged conflict of interest between Barbera and Borstein that had been raised by the Augens' testimony. The Division's failure to disclose the alleged conflict, Barbera argues, deprived him of the effective assistance of counsel generally because, Barbera believes, the Division must have viewed Borstein as "untrustworthy." According to Barbera, the Division omitted "any reference to Mr. Augen in the Wells call to avoid tipping off Mr. Borstein about the Augens' testimony and previewing the Division's belief that Mr. Borstein had engaged in witness tampering and obstruction."

Barbera's assertion is speculative. Even if we accepted it for the sake of argument, parties in adversarial proceedings may view with skepticism the position asserted by opposing counsel. In the absence of a clear showing of bad faith, courts must presume that all parties, and in particular government officials, conduct themselves in good faith. 23/ Barbera has not made any showing that the Division acted in bad faith.

Barbera also misconstrues the nature of the Wells process when he argues that he somehow was deprived improperly of the effective assistance of his counsel when the Division failed to refer to the Augens in inviting Barbera to submit a Wells filing. As the governing

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21/ (...continued)
Borstein as a witness other than to remove Borstein from the case. Whether Borstein's testimony is useful is an issue that the law judge will decide after having an opportunity to consider the testimony and its probative value in the full context of the proceeding.

22/ Title 17, Part 202 of the Code of Federal Regulations provides that persons involved in preliminary or formal investigations by the Commission may request that the Division inform them of the general nature of the investigation and "may, on their own initiative, submit a written statement to the Commission setting forth their interests and position in regard to the subject matter of the investigation." 17 C.F.R. § 202.6(c). The Division forwards such submissions to the Commission if it recommends that the Commission commence an enforcement proceeding. Id. This is known as the "Wells" process.

23/ See United States v. Chem. Found., 272 U.S. 1, 14-15 (1926) ("[I]n the absence of clear evidence to the contrary, courts presume that [public officers] have properly discharged their official duties."); Alaska Airlines v. Johnson, 8 F.3d 791, 795 (Fed. Cir. 1993) (stating that the presumption of good faith "stands unless there is 'irrefragable proof to the contrary'") (citing Torncello v. United States, 681 F.2d 756, 770 (Ct. Cl. 1982)).

regulations make clear, a person involved in an investigation may – but need not – submit a written statement to the Commission setting forth his position regarding the subject matter of the investigation. 24/ The Division may, in its discretion, "advise such persons of the general nature of the investigation . . . ." 25/ The Division was under no obligation to inform Barbera of every relevant allegation; the Division's decision during the Wells process to withhold information about certain facts, such as the Augens' testimony, does not give rise to any right or remedy. 26/ Barbera's right to notice of the charges against him commences only after proceedings are authorized and the OIP is issued. 27/ Barbera has retained new counsel to represent him in his defense of these proceedings, curing any alleged harm he may have suffered because of Borstein's alleged conflict. 28/ Even if Barbera had shown that he had been prejudiced by the alleged conflict between Borstein and himself, he has not demonstrated that the appropriate remedy for that prejudice is complete dismissal of the case against him.

24/ See 17 C.F.R. § 202.6(c).

25/ Id.

26/ Barbera cites United States v. Stringer, 408 F. Supp. 2d 1083, 1092 (D. Or. 2006), in support of his argument that the Division deserves chastisement "for taking advantage of a counsel's conflict of interest to the detriment and prejudice of individuals being investigated." However, Stringer is inapposite. The Stringer court found that, in certain circumstances, "[g]overnment interference with a defendant's relationship with his attorney may render the counsel's assistance so ineffective as to violate the defendant's Fifth Amendment right to due process of law." 408 F. Supp. 2d at 1092. However, this right is violated only when "'the intrusion substantially prejudices the defendant.'" Id., citing United States v. Irwin, 612 F.2d 1182, 1185 (9th Cir. 1980). As examples of government conduct that can cause such substantial prejudice, the Stringer court cites "using evidence gained through the interference against the defendant at trial, using confidential information pertaining to defense plans and strategy, causing the defendant to lose confidence in his or her attorney, and other actions intended to give the prosecution an unfair advantage at trial." 408 F. Supp. 2d at 1092-93. Barbera has not demonstrated that the Division engaged in any analogous conduct or that he suffered substantial prejudice as a result.

27/ See 5 U.S.C. §§ 551, 554 (stating that persons are entitled to notice of an agency hearing, including the matters of fact and law asserted, in an agency adjudication, which is defined as an agency process resulting in an order of final disposition); Rule of Practice 200(a), 17 C.F.R. § 201.200(a) ("Whenever an order instituting proceedings is issued by the Commission, appropriate notice thereof shall be given to each party to the proceeding . . . .").

28/ Borstein informed the Commission on February 9, 2007 that "[s]hortly before the Order [Instituting Proceedings]" he had resigned from representing Barbera. Barbera's current counsel appeared on the service list of a Division filing on February 14, 2007.

Barbera raises other issues in his reply brief that were not introduced in his original motion and that the Division has not had an opportunity to address. He alleges that the Division withheld "critical information" about the request for a stay filed by the NYAG; specifically, he notes that the Division had been producing some Trautman Wasserman documents to respondents in a related case, Warren Lammert, 29/ and therefore should not have opposed disclosure of those same documents to the respondents in this case. Barbera also alleges that for a total of four business days in March and six business days in April, the Division "flouted" the law judge's order to produce its entire investigative file.

These allegations fail to offer support for his argument that the proceedings against him must be dismissed. It is not clear from the record that the Division espoused contrary positions regarding the release of documents in the current case and in the related Lammert case. 30/ Moreover, given the volume of available discovery in the Division's investigative file and the pace and number of motions and orders filed in this case regarding discovery and other matters, the record does not demonstrate that the Division acted in bad faith with respect to making its investigative file available to Respondents. In addition, Barbera has not shown how the alleged Division misconduct harmed him. 31/ We stayed the proceeding until June 25, 2007 with the exception that the Division must make its entire investigative file available to Respondents, but

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29/ Admin. Proc. File No. 3-12386 (OIP filed July 31, 2006).

30/ In order to clarify which documents the NYAG sought to protect from disclosure pursuant to its stay request, we issued an order to the respondents in this case and in the Lammert case, as well as to the NYAG and the Division, directing them to advise us as to what documents had been made available to respondents in both cases and what documents the NYAG sought to temporarily sequester. See Warren Lammert and Trautman Wasserman & Co., Inc., Order Directing Additional Briefing, Admin. Proc. File Nos. 3-12386, 3-12559 (Apr. 27, 2007). We determined that the NYAG does not generally object to sharing the Trautman Wasserman file with both sets of respondents, but seeks to protect from disclosure a "small segment" of documents in the Division's file that have not yet been disclosed to any respondent, disclosure of which the NYAG believes could prejudice its criminal cases. The Division does not appear to have misrepresented its position, which was generally to support the NYAG's request for a stay in whatever capacity the NYAG believed would best protect its cases from prejudice.

31/ See Rule of Practice 230(h), 17 C.F.R. § 201.230(h) (providing that, if the Division is required to make available to respondent a witness statement and fails to do so, "no rehearing or redecision of a proceeding already heard or decided shall be required unless the respondent establishes that the failure to turn over the statement was not harmless error").

for the small segment of materials the NYAG identified as potentially prejudicial to its parallel criminal cases. 32/

In sum, based upon our review of Barbera's motion and accompanying documentation, we find that Barbera has not shown that any of the alleged misconduct he attributes to the Division warrants dismissal. Barbera argues that the "pattern of misconduct justifies a dismissal of all allegations against Mr. Barbera," suggesting that although no single incident of alleged misconduct may be enough to support his motion, the aggregate of many such incidents might be sufficient. However, Barbera has not shown that any single example of alleged misconduct, even if it occurred as he alleges, resulted in any harm at all; thus, even if we consider his allegations in the aggregate, Barbera still has not demonstrated any prejudice to himself, much less that such prejudice is sufficient to justify the extreme remedy of dismissal of all proceedings. We find that Barbera has not presented the Commission with a sufficient basis to overcome the substantial disfavor with which we view interlocutory motions, especially during this early stage of the proceeding. We therefore deny Barbera's petition to dismiss the proceedings instituted against him pursuant to Exchange Act Section 15(b) and Investment Company Act Section 9(b).

Accordingly, it is ORDERED that Barbera's interlocutory motion to dismiss the administrative proceedings against him is denied.

By the Commission (Chairman COX and Commissioners ATKINS, CAMPOS, and NAZARETH; Commissioner CASEY not participating).

Nancy M. Morris
Secretary

32/ See Trautman Wasserman & Co., Inc., Order Granting Stay, Admin. Proc. File No. 3-12559 (June 1, 2007).