

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-12559

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
March 23, 2007

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In the Matter of	:	
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TRAUTMAN WASSERMAN & COMPANY, INC.,	:	ORDER LIFTING STAY AND SETTING HEARING DATE
GREGORY O. TRAUTMAN,	:	
SAMUEL M. WASSERMAN,	:	
MARK BARBERA,	:	
JAMES A. WILSON, JR.,	:	
JEROME SNYDER, and	:	
FORDE H. PRIGOT	:	

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The Securities and Exchange Commission (Commission) issued an Order Instituting Proceedings (OIP) on February 5, 2007, pursuant to Section 21C of the Securities Exchange Act of 1934 (Exchange Act), and other provisions of the securities statutes. On March 13, 2007, I granted a motion by the Attorney General for the State of New York (NYAG) and stayed the proceeding until September 12, 2007, based on the NYAG's representation that activities in this proceeding would jeopardize the criminal prosecution against one respondent. See 17 C.F.R. § 201.210(c)(3). The need for the stay is to be reassessed at a prehearing conference on September 12, 2007.

On March 21, 2007, Respondent Mark Barbera (Barbera) filed a pleading requesting reconsideration of the six-month stay, or certification of the ruling to the Commission for interlocutory review. 17 C.F.R. §§ 201.210(c)(3), .400(c)(2). Barbera lists eight reasons in support of his request.<sup>1</sup>

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<sup>1</sup> The eight reasons are: (1) This administrative proceeding could have been conducted against six respondents and not James A. Wilson, Jr. (Wilson), without prejudicing the parallel criminal case against Wilson. For example, Wilson could have been severed and the proceeding conducted under seal, except for the final determination; (2) The ruling underestimates the harm to Barbera in that no entity, as opposed to no regulated entity, will hire him "for a position for which he is well qualified pending final adjudication of the proceeding;" (3) The facts are distinguishable from prior cases where a stay has been granted; (4) This proceeding should be dismissed without prejudice; (5) A six-month stay is excessive; (6) The stay violates Barbera's right to a speedy trial because the Commission must have known about the parallel criminal proceeding when it issued the OIP, and it ordered that

On March 22, 2007, Barbera submitted a second request for a trial date no later than sixty days after service of the OIP citing Section 21C of the Exchange Act that states that a hearing in a proceeding brought under Section 21C shall be on a date “not earlier than 30 days nor later than 60 days after service” of the OIP unless an earlier or later date is set by the Commission with the consent of any respondent. The Commission’s files show Barbera was served with the OIP on February 12, 2007.

No other Respondent has requested that the hearing begin within sixty days.

In a reply filed on March 22, 2007, the Division of Enforcement (Division) finds no merit in Barbera’s positions.

### **Ruling**

The Commission has ordered that this proceeding be decided within 300 days. Rule 360(a)(2) of the Commission’s Rules of Practice provides that in a case where the Commission has ordered a 300-day timeline for an Initial Decision, the hearing shall be held approximately four months from the OIP. 17 C.F.R. § 201.360(a)(2).

However, Section 21C(b) of the Exchange Act, which takes precedence over the Commission’s procedural rules, provides that “[t]he notice instituting proceedings pursuant to subsection (a) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.”<sup>2</sup> Rule 161(b)(2) of the Commission’s Rules of Practice refers to the language of Section 21C(b) as a “statutory 60-day deadline” and “statutory 60-day period,” and it also provides that a respondent’s postponement request beyond 60 days is exempt from the Commission’s policy of strongly disfavoring postponement requests. The evidence is clear that Exchange Act Section 21C provides a respondent in a cease-and-desist proceeding the right to a hearing within sixty days.

For this reason, I will grant Barbera’s request and lift the six-month stay ordered on March 13, 2007. I will order a prehearing conference at 10:00 a.m EDT on Friday, March 30, 2007, at which we will agree on procedures that will lead to a hearing beginning on Friday, April 13, 2007 at 9:30 a.m. EDT in New York City or Washington, D.C. This ruling applies to all Respondents as it would be inefficient and impractical to conduct this hearing as to one of seven Respondents. I will also set due dates for Respondents’ Answers to the OIP

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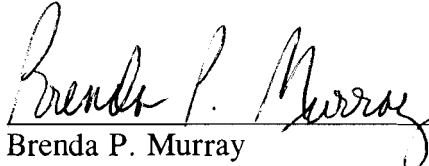
hearing would start not later than sixty days from service of the OIP; (7) The Commission denied the six respondents their due process right when it instituted the OIP knowing that Wilson was the subject of a criminal trial and that the government would almost certainly seek a stay of this proceeding; and (8) Rule 210(c)(3) violates the Equal Protection Clause of the Fourteenth Amendment by creating a presumption in favor of a stay and not recognizing the fundamental unfairness this causes to respondents who stand accused.

<sup>2</sup> Section 21C was part of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990; however, this issue appears to be one of first impression. Section 8A of the Securities Act of 1933, which is one of the authorities for the proceeding, contains the same language.

and for when the Division must make its investigative file available for inspection or copying.  
17 C.F.R. § 201.220, .230.

**Order**

The stay imposed on March 13, 2007, is LIFTED. A telephonic prehearing conference is ORDERED for 10:00 a.m EDT on Friday, March 30, 2007, and a hearing is ORDERED beginning Friday, April 13, 2007 at 9:30 a.m EDT. Respondents' Answers are due on Thursday, March 29, 2007, and the Division shall make its file available to the Respondents by Friday, March 30, 2007.

  
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Brenda P. Murray  
Chief Administrative Law Judge