

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 57704 / April 23, 2008

INVESTMENT COMPANY ACT OF 1940
Release No. 28251 / April 23, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-12753

In the Matter of

**PRITCHARD CAPITAL
PARTNERS, LLC, THOMAS WARD
PRITCHARD, JOSEPH JOHN
VANCOOK, AND ELIZABETH ANN
MCMAHON,**

Respondents.

**ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER PURSUANT
TO SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTIONS 9(b) AND 9(f) OF THE
INVESTMENT COMPANY ACT OF 1940 AS
TO PRITCHARD CAPITAL PARTNERS,
LLC, THOMAS WARD PRITCHARD, AND
ELIZABETH ANN MCMAHON**

I.

On September 7, 2007, the Commission instituted public administrative proceedings pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Thomas Ward Pritchard (“Thomas Pritchard”), and public administrative and cease-and-desist proceedings pursuant to Sections 15(b) and 21C of the Exchange Act and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against Pritchard Capital Partners, LLC (“Pritchard Capital”), Joseph John VanCook (“VanCook”) and Elizabeth Ann McMahon (“McMahon”). Respondents Thomas Pritchard, Pritchard Capital, and McMahon (collectively, “Respondents”) have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept.

II.

Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

Summary

These proceedings arise out of the late trading of mutual fund shares, books and records violations and failure to supervise. From as early as November 2001 through approximately July 2003 (sometimes referred to herein as "the relevant period"), Pritchard Capital allowed some of its market timing customers, who provided 25% of the firm's revenue in 2003, to late trade mutual fund shares. Virtually all of the late trading occurred through Pritchard Capital's New York office and involved Joseph VanCook and Elizabeth McMahon, two associated persons in that office.² Pritchard Capital generally did not document the time that its mutual fund customers actually confirmed their trades. Thomas Pritchard, who was Pritchard Capital's principal owner, managing director and chief compliance officer during the relevant period, failed reasonably to supervise VanCook.

Respondents

1. Pritchard Capital is a Louisiana limited liability company that has been registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act since March 2000. Pritchard Capital is headquartered in Mandeville, Louisiana and, during the relevant period, had branch offices in New York, New York and Atlanta, Georgia. Subsequent to July 2003, Pritchard Capital established branch offices in Houston, Texas and Vienna, Virginia. During the relevant period, Pritchard Capital had customers that engaged in mutual fund trading through Pritchard Capital's New York office.

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

² On September 7, 2007, the Commission instituted public administrative and cease-and-desist proceedings against VanCook in connection with this matter, alleging that VanCook violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and aided and abetted and caused violations of Section 17(a) of the Exchange Act and Rule 17a-3(a)(6) thereunder and Rule 22c-1, promulgated under Section 22(c) of the Investment Company Act. Administrative Proceeding File No. 3-12753.

2. Thomas Pritchard, age 46, was a resident of Covington, Louisiana during the relevant period, and he is currently a resident of the Commonwealth of Virginia. He is the managing director and majority owner of Pritchard Capital. During the relevant period, Thomas Pritchard was also the chief compliance officer of Pritchard Capital.

3. McMahon, age 39, is a resident of Long Beach, New York. From approximately March 2001 through January 2004, McMahon was associated with Pritchard Capital in its New York office.

Background

4. Pritchard Capital opened its New York office and hired VanCook and McMahon in approximately March 2001. During his tenure at Pritchard Capital, VanCook was instrumental in building the firm's business among customers who traded mutual fund shares.

5. "Late trading" refers to the practice of placing orders to buy or sell mutual fund shares after 4:00 p.m. Eastern Time, the time as of which mutual funds typically calculate their net asset value ("NAV"), but receiving the price based on the NAV already determined as of 4:00 p.m. Late trading can enable the trader to profit from market events that occur after 4:00 p.m. but are not reflected in that day's price.

6. During the relevant period, Pritchard Capital allowed some of its mutual fund customers to late trade mutual fund shares. Virtually all of the late trading occurred through Pritchard Capital's New York office and involved VanCook and McMahon.

Late Trading

7. During the relevant period, Pritchard Capital entered its customers' mutual fund trades through an electronic Mutual Fund Order Entry System ("MFRS") operated by the broker-dealer through which Pritchard Capital cleared its trades (the "clearing broker-dealer"). Pritchard Capital had direct access to the MFRS system, through which mutual fund orders could be entered until 5:30 p.m. Eastern Time on any trading day in any of the funds available through the clearing broker-dealer. Mutual fund trades entered up until 5:30 p.m. would receive the NAV calculated as of 4:00 p.m. that day.

8. The clearing broker-dealer was a dealer within the meaning of Rule 22c-1(a) under the Investment Company Act because it had selling agreements with the mutual funds that were traded through the MFRS system.

9. The clearing broker-dealer supplied Pritchard Capital with written documentation explaining the MFRS system and listing the mutual funds with which the clearing broker-dealer had selling agreements. Among other things, that documentation states that "All orders should be received and time stamped by the close of the NYSE, 4 PM EST."

10. The prospectuses of the mutual funds that were subject to the late trading facilitated by Pritchard Capital contained disclosures stating that the mutual funds calculated their NAV either “at” or “as of” 4:00 p.m. Eastern Time and that an investor would receive the price next calculated after receipt of the order. Consistent with the requirements of Rule 22c-1 under the Investment Company Act, which requires that orders to purchase and sell mutual fund shares be priced at the next-calculated NAV, many of the prospectuses stated that orders received after the close of trading on the NYSE (generally 4:00 p.m.) would receive the public offering price next determined on the following business day. Some of the prospectuses even specified that the time that the broker or financial intermediary received the order “shall be” the time used for determining whether the investor received that day’s NAV.

11. Pritchard Capital’s customers were permitted to place mutual fund orders by e-mailing or faxing spreadsheets to VanCook and/or McMahan listing proposed or tentative trades. Some of the spreadsheets containing the tentative trades were specifically designated as “tentative” or “contingent” trades. Also, some of the trade sheets or e-mails transmitting the trade sheets expressly instructed Pritchard Capital to wait for the customer’s confirming call before entering the trades. The customer’s proposed trade order generally was date and time stamped when received, usually before 4:00 p.m. Eastern Time.

12. If a customer submitted tentative mutual fund trades, VanCook and/or McMahan would not actually execute the order through the MFRS system unless and until they received confirmation from the customer. The form of confirmation varied; some customers confirmed their trades by e-mail or facsimile and others confirmed by telephone. The individual at Pritchard Capital who received the trade confirmations would generally make notations on the tentative spreadsheet indicating which trades were to be executed and which were not. On many occasions, customers would wait until after 4:00 p.m. Eastern Time to either confirm trades with Pritchard Capital or to notify Pritchard Capital that they did not wish to do any of the trades previously submitted on the tentative trade sheet.

13. Pritchard Capital generally did not document the time of its customers’ final confirmations of tentative mutual fund trades.

14. VanCook and McMahan permitted some of Pritchard Capital’s mutual fund customers to buy or sell mutual funds after 4:00 p.m. Eastern Time, the time as of which funds typically calculate their NAV, thus resulting in some of the customers receiving the price based on the NAV already determined as of 4:00 p.m. Eastern Time.

15. One mutual fund trader (the “first trader”), who managed fourteen active market timing accounts at Pritchard Capital confirmed over 90% of his mutual fund orders after 4:00 p.m. and received the NAV calculated as of 4:00 p.m. on the day of the trades. The first trader engaged in over 2,600 mutual fund trades through Pritchard Capital during the relevant period. Both VanCook and McMahan told the first trader that he had to submit his final mutual fund orders by 5:00 p.m.

16. Another mutual fund trader (the “second trader”) managed seven market timing accounts at Pritchard Capital during the relevant period. From mid-November 2002 through mid-January 2003, the second trader experimented with a late trading strategy with VanCook. In approximately October or November 2002, the second trader was contemplating terminating his market timing business at Pritchard Capital. VanCook, in an effort to retain the business, proposed to the second trader a trading strategy whereby the second trader could submit mutual fund orders to Pritchard Capital before 4:00 p.m. and subsequently choose to cancel or allow those trades to go through any time up until 5:00 or 5:05 p.m. and still receive that day’s NAV. The second trader would decide to trade based on activity in the futures market between 4:45 and 5:00 or 5:05 p.m. VanCook told the second trader that there were other customers at Pritchard Capital that engaged in late trading.

17. VanCook and McMahon would also receive communications from additional customers after 4:00 p.m. placing, modifying or confirming mutual fund trades and would subsequently enter those trades into the MFRS system, knowing that those trades would receive the current day’s NAV.

Compensation

18. Pritchard Capital’s market timing customers contracted with the firm to provide mutual fund trading services in exchange for a negotiated wrap fee (generally 1.0% to 1.25%) and, in many cases, a \$25 per trade transaction fee.

19. During the relevant period, Pritchard Capital retained 50% of the wrap fees related to the business generated by VanCook.

Supervisory Failures

20. During the relevant period, Thomas Pritchard was responsible for developing supervisory policies and procedures at Pritchard Capital.

21. Pritchard Capital and Thomas Pritchard supervised VanCook during the relevant period.

22. Pritchard Capital and Thomas Pritchard failed reasonably to supervise the activities of VanCook with a view to preventing his violations of the federal securities laws in that, among other things:

a. Thomas Pritchard failed reasonably to respond to red flags of potential late trading by VanCook. During his periodic visits to the firm’s New York office, Thomas Pritchard’s review of files focused on the trade blotters. He gave only a “cursory look” to mutual fund correspondence and trade ticket files. Because of Thomas Pritchard’s cursory review, he failed to recognize, and/or failed to respond appropriately to, red flags or indications of wrongdoing by VanCook. For example, many of the “trade ticket files” were designated as “tentative” or “contingent” trades. Some of the trade sheets or e-mails transmitting the trade sheets expressly instructed Pritchard Capital to wait for the customer’s confirming call before entering the trades. The contingent nature of the tentative trades, coupled with the ability to enter mutual fund trades as

late as 5:30 p.m. Eastern Time through the clearing broker-dealer's MFRS system, merited further inquiry into the potential for late trading; and

b. Pritchard Capital's written supervisory procedures did not contain policies or procedures reasonably designed to prevent or detect illegal late trading by VanCook.

Books and Records

23. During the relevant period, Pritchard Capital, acting through VanCook and McMahan, generally did not prepare conventional order tickets for its mutual fund transactions. Rather, the firm generally created order tickets for its mutual fund orders and trades by retaining the communication (if written or e-mailed) containing the actual or proposed mutual fund order with the time of receipt noted. Pritchard Capital also printed out a screen from the MFRS system that showed the order as entered on the MFRS system.

24. During the relevant period, Pritchard Capital, acting through VanCook and McMahan, failed to make and keep accurate and complete records regarding the terms and conditions of each mutual fund order and the modifications and cancellations of such orders in that, among other things:

a. In the case of tentative or proposed trades, the records evidencing orders frequently were not accurate reflections of the final order and did not clearly document the terms and conditions of the orders and any modifications or cancellations thereof.

b. From approximately May 2003 through July 2003, Pritchard Capital, acting through VanCook and McMahan, failed to make order tickets for mutual fund orders reflecting the time of receipt of such orders; and

c. In those instances, on or after May 2, 2003, where Pritchard time-stamped a tentative mutual fund order prior to 4:00 p.m. Eastern time and subsequently allowed the customer to confirm, cancel or modify that order after 4:00 p.m. Eastern time, without documenting the time of such confirmation, cancellation or modification, Pritchard Capital failed to document a required record.

Violations

25. As a result of the conduct described above, Pritchard Capital willfully violated Section 17(a)(1) of the Exchange Act and Rule 17a-3(a)(6) thereunder, which require that broker-dealers registered with the Commission make and keep current, for prescribed periods, certain books and records. Rule 17a-3(a)(6) requires that registered broker-dealers make and keep "[a] memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. The memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof; the account for which entered; the time the order was received; the time of entry; the price at which executed; the identity of each associated person, if any, responsible for the account; the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer

entered the order on an electronic system, a notation of that entry; and, to the extent feasible, the time of execution or cancellation.” Rule 17a-3(a)(6) was amended, effective May 2, 2003, to add the requirement to note the time an order was received from a customer.

26. As a result of the conduct described above, Pritchard Capital willfully aided and abetted and caused the clearing broker’s violations of Rule 22c-1, promulgated under Section 22(c) of the Investment Company Act, which provides that no registered investment company issuing any redeemable security, no person designated in such issuer’s prospectus as authorized to consummate transactions in any such security, and no principal underwriter of, or dealer in, any such security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

27. As a result of the conduct described above, Pritchard Capital failed reasonably to supervise, within the meaning of Section 15(b)(4) of the Exchange Act, and Thomas Pritchard failed reasonably to supervise, within the meaning of Section 15(b)(6) of the Exchange Act, in that they failed reasonably to supervise VanCook, a person subject to their supervision, with a view to preventing VanCook’s violations of the federal securities laws.

28. As a result of the conduct described above, McMahon caused the clearing broker’s violations of Rule 22c-1, promulgated under Section 22(c) of the Investment Company Act, which provides that no registered investment company issuing any redeemable security, no person designated in such issuer’s prospectus as authorized to consummate transactions in any such security, and no principal underwriter of, or dealer in, any such security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

29. As a result of the conduct described above, McMahon willfully aided and abetted and caused Pritchard Capital’s violations of Section 17(a)(1) of the Exchange Act and Rule 17a-3(a)(6) thereunder, which require that broker-dealers registered with the Commission make and keep current, for prescribed periods, certain books and records. Rule 17a-3(a)(6) requires that registered broker-dealers make and keep “[a] memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. The memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof; the account for which entered; the time the order was received; the time of entry; the price at which executed; the identity of each associated person, if any, responsible for the account; the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry; and, to the extent feasible, the time of execution or cancellation.” Rule 17a-3(a)(6) was amended, effective May 2, 2003, to add the requirement to note the time an order was received from a customer.

Respondents' Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Pritchard Capital and Thomas Pritchard and cooperation afforded the Commission staff by the Respondents.

Undertakings

30. Ongoing Cooperation by Pritchard Capital. Pritchard Capital undertakes to cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in this Order. In connection with such cooperation, Pritchard Capital has undertaken:

- a. To produce, without service of a notice or subpoena, any and all documents and other information reasonably requested by the Commission's staff;
- b. To use its best efforts to cause its employees to be interviewed by the Commission's staff at such times as the staff reasonably may direct;
- c. To use its best efforts to cause its employees to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and
- d. That in connection with any testimony of Pritchard Capital to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Pritchard Capital:
 - i. Agrees that any such notice or subpoena for Pritchard Capital's appearance and testimony may be served by regular mail on its counsel, Thomas K. Potter, III, Esq., Burr & Forman LLP, 700 Two American Center, 3102 West End Avenue, Nashville, TN 37203; and
 - ii. Agrees that any such notice or subpoena for Pritchard Capital's appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

In determining whether to accept Pritchard Capital's Offer, the Commission has considered these undertakings.

31. Ongoing Cooperation by Thomas Pritchard. Thomas Pritchard undertakes to cooperate fully with the Commission in any and all investigations, litigations or other proceedings

relating to or arising from the matters described in this Order. In connection with such cooperation, Thomas Pritchard has undertaken:

- a. To produce, without service of a notice or subpoena, any and all documents and other information reasonably requested by the Commission's staff;
- b. To be interviewed by the Commission's staff at such times as the staff reasonably may request and to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and
- c. That in connection with any testimony of Thomas Pritchard to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Thomas Pritchard:
 - i. Agrees that any such notice or subpoena for his appearance and testimony may be served by regular mail on his counsel, Thomas K. Potter, III, Esq., Burr & Forman LLP, 700 Two American Center, 3102 West End Avenue, Nashville, TN 37203; and
 - ii. Agrees that any such notice or subpoena for Thomas Pritchard's appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

32. Thomas Pritchard shall provide to the Commission, within thirty (30) days after the end of the nine-month suspension described below, an affidavit that he has complied fully with the sanctions pertaining to him, as described in Section IV. below.

33. In determining whether to accept Thomas Pritchard's Offer, the Commission has considered his undertakings.

34. Ongoing Cooperation by Elizabeth McMahan. McMahan undertakes to cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in this Order. In connection with such cooperation, McMahan has undertaken:

- a. To produce, without service of a notice or subpoena, any and all documents and other information reasonably requested by the Commission's staff;
- b. To be interviewed by the Commission's staff at such times as the staff reasonably may request and to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and

c. That in connection with any testimony of McMahon to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, McMahon:

- i. Agrees that any such notice or subpoena for her appearance and testimony may be served by regular mail on her counsel, John D. Tortorella, Esq., Marino Tortorella PC, 437 Southern Boulevard, Chatham, New Jersey 07928-1488; and
- ii. Agrees that any such notice or subpoena for McMahon's appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

In determining whether to accept McMahon's Offer, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that Respondent Pritchard Capital:

- A. be, and hereby is, censured.
- B. cease and desist from committing or causing any violations and any future violations of Section 17(a)(1) of the Exchange Act and Rule 17a-3(a)(6) thereunder and Rule 22c-1 under the Investment Company Act.
- C. shall, within thirty (30) days of the entry of this Order, pay disgorgement of \$55,000 and prejudgment interest of \$17,011.94 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Pritchard Capital as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Katherine S. Addleman, Regional Director, Securities and Exchange Commission, 3475 Lenox Road, NE, Suite 1000, Atlanta, GA 30326-1232.
- D. shall, within thirty (30) days of the entry of this Order, pay a civil money penalty in the amount of \$50,000 to the United States Treasury. If timely payment is not made, additional

interest shall accrue pursuant to 31 U.S.C. § 3717. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Pritchard Capital as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Katherine S. Addleman, Regional Director, Securities and Exchange Commission, 3475 Lenox Road, NE, Suite 1000, Atlanta, GA 30326-1232.

Accordingly, pursuant to Sections 15(b) of the Exchange Act, it is hereby ORDERED that Respondent Thomas Pritchard:

A. be, and hereby is, suspended from association in a supervisory capacity with any broker or dealer for a period of nine months, effective on the second Monday following the entry of this Order.

B. shall, within thirty (30) days of the entry of this Order, pay a civil money penalty in the amount of \$50,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Thomas Pritchard as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Katherine S. Addleman, Regional Director, Securities and Exchange Commission, 3475 Lenox Road, NE, Suite 1000, Atlanta, GA 30326-1232.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that Respondent McMahan:

A. be, and hereby is, censured.

B. cease and desist from causing any violations and any future violations of Section 17(a)(1) of the Exchange Act and Rule 17a-3(a)(6) thereunder, and from committing or causing any violations and any future violations of Rule 22c-1 under the Investment Company Act.

By the Commission.

Nancy M. Morris
Secretary