

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 61123A / December 7, 2009**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 2958A / December 7, 2009**

**INVESTMENT COMPANY ACT OF 1940**  
**Release No. 29067A / December 7, 2009**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13705**

**In the Matter of**

**SIMPSON CAPITAL  
MANAGEMENT, INC.,  
ROBERT A. SIMPSON, AND  
JOHN C. DOWLING,**

**Respondents.**

**CORRECTED  
ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTION 21C OF THE  
SECURITIES EXCHANGE ACT OF 1934,  
SECTIONS 203(e) AND 203(f) OF THE  
INVESTMENT ADVISERS ACT OF 1940,  
AND SECTION 9(b) OF THE INVESTMENT  
COMPANY ACT OF 1940, MAKING  
FINDINGS, AND IMPOSING REMEDIAL  
SANCTIONS AND A CEASE-AND-DESIST  
ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Simpson Capital Management, Inc. (“Simpson Capital”), Robert A. Simpson (“Simpson”), and John C. Dowling (“Dowling”) (collectively “Respondents”).

## II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. 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 Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Sections 203(e) and 203(f) of the Investment Advisers Act of 1940 and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

## III.

On the basis of this Order and Respondents’ Offers, the Commission makes the following findings:<sup>1</sup>

### Summary

1. Between May 2000 and September 2003, Simpson, the President and founder of Simpson Capital, a hedge fund manager, conducted a fraudulent scheme involving unlawful “late trading” in shares of mutual funds. Dowling, Simpson Capital’s head trader, began participating in the scheme in November 2000. Late trading refers to placing orders to buy, redeem, or exchange mutual fund shares after the 4:00 p.m. Eastern Time (“ET”) market close while still receiving the current day’s mutual fund price, or net asset value (“NAV”). Respondents’ late trading was part of a profitable investment strategy dependent upon the execution of mutual fund trades based on post-4:00 p.m. market information not reflected in the price they paid for the shares. Simpson profited through his investment in the managed funds, and Simpson Capital, which Simpson owns, received management and performance fees.

### Respondents

2. **Simpson Capital Management, Inc.**, founded by Simpson in 1998, is the investment adviser to two hedge funds: Simpson Partners, L.P. (“Simpson Partners”) and Simpson Offshore, Ltd. (“Simpson Offshore”) (collectively, the “Simpson Funds”). These funds operated under a master-feeder structure, in which Simpson Partners and Simpson Offshore invested nearly all of their assets in Simpson Master Investments, Ltd. The hedge fund clients paid Simpson Capital annual management and performance fees. From January 2000 to December 2003, the

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<sup>1</sup> 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.

assets under management ranged from \$128.7 to \$242.6 million. Simpson Capital has never been registered with the Commission.

3. **Robert A. Simpson**, age 48, resides in New York, New York. He is the founder, President, and Chief Investment Officer of Simpson Capital. At all relevant times, Simpson managed and directed the operations of the firm and was primarily responsible for all investment and trading decisions.

4. **John C. Dowling**, age 43, resides in New York, New York. From November 2000 to the present, Dowling has been employed with Simpson Capital as its head trader. At all relevant times, Dowling was responsible for research and daily trading execution.

### **Background-Late Trading**

5. The price of a mutual fund's shares is based on the value of the securities (and other assets) held by the mutual fund, and each fund is required by the Commission's regulations to calculate the value of the fund's holdings, or NAV, each trading day.

6. Rule 22c-1(a), [17 C.F.R. § 270.22c-1], adopted pursuant to Section 22(c) of the Investment Company Act of 1940, [15 U.S.C. § 88a-22(c)], requires any registered investment company issuing redeemable securities, its principal underwriter, any dealers in its shares, and any person designated in the fund's prospectus as authorized to consummate transactions in securities issued by the fund to sell and redeem fund shares at a price based on the current NAV next computed after receipt of an order to buy or redeem. The mutual funds in which the Respondents traded were registered investment companies subject to Rule 22c-1(a).

7. In accordance with the terms of their prospectuses, mutual funds, including those in which Respondents invested, generally determine the NAV of mutual fund shares as of the close of the major United States securities exchanges and markets (4:00 p.m. ET). Accordingly, orders received by the entities identified in Rule 22c-1 before 4:00 p.m. must be executed at the price determined as of 4:00 p.m. that day. Orders received by these entities after 4:00 p.m. must be executed at the price determined as of 4:00 p.m. the next trading day.

8. "Late trading" refers to the practice of placing orders to buy or redeem mutual fund shares after the time as of which a mutual fund has calculated its NAV (usually as of the close of trading at 4:00 p.m. ET), but receiving the price based on the prior NAV already determined as of 4:00 p.m. Late trading enables the trader to profit from market events that occur after 4:00 p.m. and are not reflected in that day's price. In particular, the late trader obtains an advantage -- at the expense of the other shareholders of the mutual fund -- when he learns of market moving information and is able to purchase (or redeem) mutual fund shares at prices set *before* the market moving information was released. Late trading harms innocent shareholders in mutual funds by diluting the value of their shares.

9. Simpson and Dowling late traded through at least five broker-dealers, including Kaplan & Co. Securities, Inc., Wall Street Access, Pritchard Capital Partners, LLC and two other broker-dealers (collectively, the "Introducing Brokers").

10. The Introducing Brokers cleared their trades through a number of different broker-dealers, including Bear Stearns Securities Corp., Banc of America Securities LLC, JB Oxford & Co. and another broker-dealer (collectively, the “Clearing Brokers”).

11. The Introducing Brokers had direct access to the Clearing Brokers’ mutual fund trading platform known as the Mutual Fund Routing System (“MFRS”). In accordance with Rule 22c-1, various dealer agreements, and the terms of mutual fund prospectuses, in general, the Introducing Brokers were required to receive orders from clients such as Respondents to purchase, redeem, or exchange shares of a fund no later than 4:00 p.m. ET to be executed at that day’s NAV.

### **The Late Trading Scheme**

12. During the relevant time period, Simpson and Dowling, through Simpson Capital, placed more than 10,700 late trades in approximately 375 mutual funds. Both knew, or were reckless in not knowing, that late trading was improper, but nonetheless sought out broker-dealers, including the Introducing Brokers, who they knew would allow them to place trades after 4:00 p.m. and would ensure the trades received that day’s NAV.

13. Simpson was primarily responsible for all investment decisions at Simpson Capital and was assisted by Dowling, who executed trading instructions on behalf of Simpson Capital and, together with Simpson, orchestrated the late trading scheme. The Respondents’ late trading enabled the Simpson Funds to profit from market events, futures markets information, and other fluctuations that occurred after the market closed and, therefore, were not reflected in that day’s NAV. Simpson and Dowling monitored the futures markets and used news and other information disseminated after the market closed to make their trading decisions.

14. On the morning of each trading day, the Introducing Brokers would e-mail or fax to Simpson Capital a daily position sheet containing Simpson Capital’s available cash balance and mutual fund holdings, and a blank scenario sheet for Simpson Capital to list its proposed trades for that day. Generally, by 3:00 p.m. each day, Simpson or Dowling filled in proposed trades for the day on the scenario sheet and then e-mailed or faxed the scenario sheet to the Introducing Broker’s trading desk.

15. However, the proposed trades listed on the scenario sheets were only tentative trading instructions, and the Introducing Brokers were not authorized to execute them until Simpson or Dowling subsequently confirmed trades via telephone after 4:00 p.m.

16. After 4:00 p.m., and generally as late as possible, Simpson or Dowling telephoned or otherwise contacted the Introducing Brokers with instructions to execute, change, and/or cancel some or all of the proposed trades. Respondents did this with the understanding that all of the confirmed trades were to be executed at that day’s NAV.

17. Once the traders at the Introducing Brokers received Simpson and Dowling’s post-4:00 p.m. communication confirming Simpson Capital’s proposed trades, the traders entered the trades directly into the Clearing Firms’ MFRS platforms before the system cut off. In accordance with Simpson and Dowling’s instructions, the traders at the Introducing Brokers ensured that

Simpson Capital's trades received that day's NAV even though the trades were placed after 4:00 p.m. and thus should have received the next day's NAV.

18. Simpson Capital earned management and performance fees based on the value of the Simpson Funds, which was improperly inflated by their late trading. Simpson, in turn, earned individual profits from his own investment in the Simpson Funds.

19. As a result of the conduct described above, Respondents willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

#### 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 Section 21C of the Exchange Act, Sections 203(e) and 203(f) of the Advisers Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

- A. Respondent Simpson Capital is hereby censured.
- B. Respondents Simpson Capital, Simpson, and Dowling cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.
- C. Respondents Simpson and Dowling be, and hereby are, suspended from association with any investment adviser for a period of 12 months, effective on the second Monday following the entry of this Order.
- D. Respondents Simpson and Dowling are prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter for a period of 12 months, effective on the second Monday following the entry of this Order.
- E. Respondents Simpson Capital and Simpson shall be jointly and severally liable for disgorgement of \$6,100,000 and a civil money penalty of \$550,000. This sum shall be paid within 10 days of the entry of this Order to the Securities and Exchange Commission, and forwarded to the United States Treasury. If timely payment is not made, 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 the payor 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 Scott A. Thompson, Senior Trial Counsel, Securities and Exchange Commission, 701 Market Street, Suite 2000, Philadelphia, PA 19106.

F. Respondent Dowling shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$150,000 to the Securities and Exchange Commission, which shall be forwarded to the United States Treasury. If timely payment is not made, 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 the payor 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 Scott A. Thompson, Senior Trial Counsel, Securities and Exchange Commission, 701 Market Street, Suite 2000, Philadelphia, PA 19106.

G. All amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that they shall not, after offset or reduction in any Related Investor Action based on Respondents' payment of disgorgement in this action, argue that they are entitled to, nor shall they further benefit by offset or reduction of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Elizabeth M. Murphy  
Secretary