

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 8895 / February 14, 2008

SECURITIES EXCHANGE ACT OF 1934

Release No. 57328 / February 14, 2008

INVESTMENT COMPANY ACT OF 1940

Release No. 28153 / February 14, 2008

ADMINISTRATIVE PROCEEDING

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,**

Respondents.

**ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS
AND A CEASE-AND-DESIST ORDER
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, 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 JAMES A. WILSON, JR.**

I.

On February 5, 2007, the Securities and Exchange Commission (“Commission”) instituted public administrative and cease-and-desist proceedings pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Sections 9(b) and 9(f) of the Investment Company Act of 1940 (“Investment Company Act”) against respondents including James A. Wilson, Jr. (“Wilson” or “Respondent”).

II.

Respondent has submitted an Offer of Settlement (the “Offer”) 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 him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, 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 James A. Wilson, Jr. (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

Summary

1. This matter concerns a scheme to defraud mutual funds through late trading and deceptive market timing of mutual funds through Trautman Wasserman & Company, Inc. (“TWCO”), a registered broker-dealer. Between January 2001 and September 2003, TWCO accepted thousands of orders from its hedge fund customers to trade mutual funds after 4:00 p.m. ET, but executed the trades as though they had been received prior to 4:00 p.m. ET. In addition, TWCO employed deceptive tactics to evade mutual funds’ efforts to restrict TWCO’s hedge fund customers’ market timing of mutual funds. This illegal conduct generated significant revenues for TWCO and harmed mutual fund investors by diluting the value of their investment.

2. TWCO’s mutual fund trading department consisted principally of two registered representatives (“RRs”), Wilson and Scott A. Christian (“Christian”). Wilson directed the late trading and market timing schemes, and he personally accepted customers’ late trading orders. Christian handled day-to-day communications with customers, and he regularly accepted and entered late trades. In carrying out the fraudulent late trading scheme, Wilson and Christian created records falsely indicating that customers had placed trades before 4 p.m. Further, numerous mutual funds notified Wilson, Christian, and others at TWCO that frequent trading by TWCO’s customers exceeded restrictions in the mutual funds’ prospectuses, and the mutual funds instructed TWCO to stop permitting its customers to trade those funds. Wilson, Christian and others, acting at Wilson’s direction, then employed deceptive tactics to continue trading the mutual funds that had requested TWCO’s customers to stop.

Respondent

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

3. **Wilson**, age 37, is a resident of New York, New York. At all relevant times, Wilson was a RR associated with TWCO. Wilson holds Series 7 and 63 licenses.

Related Entity

4. **TWCO**, based in New York, New York, was at all relevant times a broker-dealer registered with the Commission.

Market Timing and Late Trading

5. Market timing includes (a) frequent buying and selling of shares of the same mutual fund or (b) buying or selling mutual fund shares in order to exploit inefficiencies in mutual fund pricing. Market timing, while not illegal per se, can harm other mutual fund shareholders because it can dilute the value of their shares. Market timing can also disrupt the management of the mutual fund's investment portfolio and cause the targeted mutual fund to incur costs borne by other shareholders to accommodate frequent buying and selling of shares by the market timer.

6. Rule 22c-1(a) under the Investment Company Act requires investment companies issuing redeemable securities, their principal underwriters and dealers, 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 net asset value ("NAV") next computed after receipt of an order to buy or redeem. Mutual funds generally determine the daily price of their mutual fund shares as of 4:00 p.m. ET. In these circumstances, orders received before 4:00 p.m. ET must be executed at the price determined as of 4:00 p.m. ET that day. Orders received after 4:00 p.m. ET must be executed at the price determined as of 4:00 p.m. ET the next trading day.

7. "Late trading" refers to the practice of placing orders to buy or sell 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. ET. Late trading enables the trader to profit from market events that occur after 4:00 p.m. ET but that 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 sell) mutual fund shares at prices set before the market moving information was released. Late trading violates Rule 22c-1(a) under the Investment Company Act. Late trading also harms shareholders, for instance, when late trading dilutes the value of their shares.

Late Trading at TWCO

8. In 2000, principals at TWCO began attempting to set up a mutual fund trading operation at TWCO. TWCO recruited Wilson and Christian, who were at that time working at another broker-dealer. While interviewing for their positions at TWCO, Wilson and Christian learned that TWCO's clearing broker, Banc of America Securities, LLC ("B of A"), offered a mutual fund trading system that allowed mutual fund trades to be entered until 8:30 p.m. ET and

still be priced at the same NAV as orders submitted by 4:00 p.m. ET. A principal at TWCO, who managed TWCO's relationship with B of A, arranged meetings between Wilson, Christian, and B of A representatives so that they could discuss the mutual fund trading platform. After these meetings, Wilson and Christian realized that they could directly enter mutual fund trades into this system, thereby bypassing the B of A mutual fund desk.

9. TWCO then hired Wilson and Christian, and they began working at TWCO.

10. Soon after Wilson and Christian started working at TWCO in December 2000, TWCO retained a computer consultant to develop software for entering orders into the B of A trading system effectively on a large scale.

11. Although the B of A system allowed orders to be entered and processed as late as 8:30 p.m. ET, Wilson and Christian were aware that they were supposed to receive orders from customers by 4:00 p.m. ET in order to execute them at that day's price. For example, B of A's "Mutual Funds Processing" manual that B of A provided to TWCO required that: "All orders should be received and time stamped by the close of the NYSE, 4 PM EST."

12. Wilson and Christian then contacted their former market timing customers as well as other prospective customers to pitch the advantages of the market timing and late trading system that they were developing at TWCO. In return, Wilson extracted extra compensation for providing late trading. For example, on April 11, 2001, the manager of a hedge fund, Hedge Fund A, that was interested in late trading sent an e-mail to Wilson complaining that TWCO was "earning double what everyone else takes home on this business," and that "[y]ou currently earn 2% p.a. [per annum]." Further, the manager of Hedge Fund A complained that "[y]our facility for late trading is not the only one we have," and that "[i]n all the other cases, we pay 1% p.a." On April 11, 2001, Wilson sent an e-mail to Hedge Fund A's manager indicating that "**we are the only place to trade late past 530**" (emphasis in original), and "thus you have to pay more." On May 1, 2001, the hedge fund manager notified Wilson by e-mail that Hedge Fund A was sending funds to begin trading. The hedge fund manager described how the late trading would work as follows:

In essence, most of it will be done by you within certain parameters that we will give you each day. In the majority of cases, your decision point will be 5:30pm NY time. In a few cases, your decision point will be 6:30pm – I know, slave labor...whatever will you do working that late!

13. Wilson directed the daily operations of his and Christian's late trading and market timing business. At Wilson's direction, Christian and another TWCO employee entered tens of thousands of late trades for Wilson's customers. Moreover, Wilson directed Christian and the other employee to create false records, "for compliance reasons," intended to show that TWCO had received the customer's trading orders prior to 4:00 p.m. ET.

14. On a daily basis, customers sent tentative instructions to trade mutual fund shares to TWCO during the day, beginning at approximately 12 noon E.T. TWCO treated these trading instructions as order tickets. As the trading instructions came in, Christian would collect them, but

he would not enter the orders or time stamp the order tickets. Rather, Christian waited until shortly before 4:00 p.m. ET to time stamp the order tickets.

15. Christian sometimes forgot to time stamp the order tickets before 4:00 p.m. ET, resulting in some order tickets that were stamped after 4:00 p.m. ET. Wilson eventually gave Christian an alarm clock, which Christian set to go off shortly before 4:00 p.m. ET to remind him to stamp the order tickets. When the alarm went off, Christian and the other TWCO employee would time stamp the trading instructions. This practice made it appear as if TWCO received the instructions shortly before 4:00 p.m. ET.

16. However, Christian and the other employee did not enter the orders into the B of A mutual fund trading system when they time stamped the orders. Instead, between 4:00 p.m. ET and 6:30 p.m. ET, Wilson, Christian, or the other employee spoke with customers to get their final trading decisions.

17. Sometimes customers gave final trading instructions that were “cancellations” or partial cancellations of the tentative orders placed earlier in the day. Often, customers submitted wholly new orders that were not part of the tentative instructions they had submitted earlier in the day. Only then did Christian or the other employee enter the trading orders, without creating a new or modified order ticket reflecting the actual order or with the correct time stamp on the ticket.

18. TWCO routinely accepted mutual fund trading instructions for Hedge Fund A, as well as for two other hedge funds, Hedge Fund B and Hedge Fund C, well past 4:00 p.m. ET and often as late as between 5:00 and 6:45 p.m. ET. For these customers, virtually all the trading in mutual funds at TWCO consisted of late trading.

19. Wilson also personally took customers’ mutual fund orders to engage in late trading. For example, tape recordings made at Hedge Fund B of telephone calls indicate that Wilson accepted mutual fund orders at 4:41 p.m. ET on February 14, 2003, at 5:17 p.m. ET on September 27, 2001, and at 6:08 p.m. ET on December 18, 2001. After receiving these orders, Wilson then entered the trades so they could be executed at the same day’s NAV.

20. Further, Wilson was fully aware of the procedures that Christian and the other employee routinely used for executing late trades. For example, on February 14, 2003, at 4:41 p.m. ET, a trader at Hedge Fund B telephoned TWCO and said, “Hey, Jim, it’s [a representative of Hedge Fund B]. ... You got Scott or [the other employee] there to take some trades?” Wilson replied, “I can help you,” and proceeded to accept Hedge Fund B’s late trading decisions. Wilson then said, “Let me just read this back to you. I haven’t done this in a while so I don’t have any embarrassing situations.” On September 27, 2001 at 5:17 p.m. ET, the same representative of Hedge Fund B telephoned TWCO and asked for Christian. Wilson said that Christian had just stepped away, offered to take the order, and said he would “grab the sheets” off Christian’s desk, referring to the trading instructions sent by Hedge Fund B and time stamped by TWCO before 4:00 p.m. ET. Wilson proceeded to accept Hedge Fund B’s instructions as to which trades on the trading instructions it wished to confirm, cancel, or modify. Wilson concluded by telling Hedge Fund B’s representative that he could call with additional trading decisions until 5:30 p.m. ET.

21. Further, as evident from his April 11, 2001 email to Hedge Fund A quoted above (demanding higher fees because of the value of late trading), Wilson knew that TWCO's hedge fund customers benefited from the ability to late trade. Wilson knew that customers factored into their trading decisions after-hours news announcements and market conditions. For example, he knew from e-mails with Hedge Fund A that the hedge fund based its trading instructions on parameters for after-hours index futures prices that Hedge Fund A provided to TWCO.

22. At Wilson's direction, Christian and the other TWCO employee regularly helped customers follow calendars of corporate earnings announcements and relayed to customers information regarding notable developments after the market close. Further, Christian frequently provided customers shortly after 4:00 p.m. ET with newly-calculated mutual fund NAVs reflecting the current day's pricing. This allowed customers to compare the NAVs of mutual funds against after hours trading in stocks in those funds, and thereby compute with some degree of precision the actual trading profit they would make on a given late trade.

23. Wilson also persuaded TWCO's partners to establish a proprietary account with the firm's money to serve as the basis for a TWCO managed hedge fund. In late 2001, TWCO opened a mutual fund trading account, and TWCO ultimately deposited approximately \$500,000 into the account.

Wilson Directed TWCO's Deception of Mutual Funds That Sought To Curtail Market Timing

24. In March 2001, as TWCO began large-scale market timing for its customers, mutual fund complexes began notifying TWCO that the funds restricted or prohibited such transactions. For example, on March 16, 2001, a fund complex wrote Christian to warn him about excessive trading by customer accounts in one of the complex's mutual funds. The letter explained that excessive trading could hurt the mutual fund's performance and that the fund's prospectus therefore reserved to the fund complex the right to refuse an exchange request if there were more than two exchanges from the same fund in any three-month period. The letter notified Christian that "exchange activities in your client's account have become excessive and we are writing you in an effort to have you and your clients adhere to the guidelines stated in our Prospectus," and warned that further excessive trading would result in a trading freeze in the accounts.

25. In total, during the period March 2001 through April 2003, TWCO, Wilson, and Christian received 307 "kick out" letters from 40 mutual fund families that addressed trading activity in 113 accounts.

26. In response, Wilson and Christian attempted to deceive mutual fund companies and evade their restrictions. Wilson had learned many of these techniques from his hedge fund customers while Wilson was working at other broker-dealers. Wilson explained these techniques to Christian, and directed him to employ them.

27. Based on Wilson's instructions, Christian opened multiple accounts for TWCO's market timing customers and entered transactions using one of numerous RR numbers. Christian did this because he understood that mutual fund companies would be less likely to detect market

timing by a customer if the customer's trades occurred in numerous accounts with different account numbers, account names, or RR identification numbers.

28. More specifically, TWCO "cloned" accounts to evade mutual funds' restrictions. For example, a fund complex sent a letter to TWCO on February 22, 2002 concerning account number 70087, an account that TWCO maintained for Hedge Fund A, warning that the account was approaching the limit on exchanges. On March 4, 2002, Christian opened two new accounts, each with a new account number (70089 and 70110), for the same entity, and two days later entered a market timing trade in one of the mutual fund complex's mutual funds. Similarly, on June 4, 2002, the same fund complex sent to TWCO a letter imposing restrictions on trading by account number 70104, an account that TWCO maintained for Hedge Fund B. On June 7, 2002, Christian opened a new account for the same entity with a new account number (70139), and less than three weeks later began trading the fund complex's mutual funds using the new account.

29. Consistent with this deceptive practice, TWCO opened a total of 140 accounts for eleven institutional customers. These included 68 accounts for its customer Hedge Fund A; 35 accounts for Hedge Fund B; nine accounts for Hedge Fund C; 15 accounts for Hedge Fund D; and five accounts for Hedge Fund E.

30. Christian and others also established 16 different RR identification numbers at TWCO for use in mutual fund trading, as a means of evading restrictions imposed by mutual funds that tracked excessive trading through RR numbers.

Violations

31. As a result of the conduct described above, Wilson willfully violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer and sale of securities and in connection with the purchase or sale of securities. Among other things, Wilson participated in a scheme with TWCO's customers to defraud mutual funds and their shareholders by engaging in late trading. The late trading scheme involved implicit, material false representations that TWCO received trades from customers prior to 4:00 p.m. ET. Further, Wilson defrauded mutual funds and their shareholders when he and Christian misrepresented and concealed the identities of TWCO's RRs and customers, as well as the nature of their customers' market timing activity, from the mutual funds. Wilson acted knowingly and/or recklessly in engaging in these activities.

32. As a result of the conduct described above, Wilson willfully aided and abetted and caused TWCO's violations of Section 15(c) of the Exchange Act and Rules 10b-3 thereunder, which prohibit fraudulent conduct by brokers or dealers in connection with the purchase or sale of securities. Among other things, TWCO participated in a scheme with its customers to defraud mutual funds and their shareholders by engaging in late trading. The late trading scheme involved implicit, material false representations that TWCO received trades from customers prior to 4:00 p.m. ET. Wilson was well aware of this late trading scheme and he accepted late trades, solicited customers to late trade, gave false assurances to customers concerning the legality of late trading, and/or took other steps such as setting up customer accounts to be used for late trading. Further, Wilson defrauded mutual funds and their shareholders when he and Christian misrepresented and

concealed the identities of TWCO's RRs and customers, as well as the nature of their customers' market timing activity, from the mutual funds. Wilson and Christian used multiple RR numbers and accounts to market time mutual funds. Wilson acted knowingly and/or recklessly in engaging in these activities, and was otherwise generally aware that his conduct was wrongful.

33. As a result of the conduct described above, Wilson willfully aided and abetted and caused violations of Rule 22c-1, as adopted under Section 22(c) of the Investment Company Act. Rule 22c-1 prohibits dealers in a mutual fund's shares, among others, from executing a trade in that mutual fund's shares at that day's NAV if the trade was received after the time as of which the mutual fund has calculated that day's NAV (e.g., 4:00 p.m. ET). TWCO's clearing firm, B of A, had dealer agreements with the primary underwriters of several mutual funds that were late traded by TWCO's customers. B of A sold and redeemed fund shares at prices not based on the current NAV next computed after receipt of an order to buy or redeem to facilitate the late trading engaged in by these customers. Thus, B of A willfully violated Rule 22c-1, as adopted under Section 22(c) of the Investment Company Act. Wilson substantially assisted this violation. Wilson and his subordinates received numerous orders for trades in those mutual funds after 4:00 p.m. ET, yet entered the trades in the B of A system such that they would receive the current day's NAV. Wilson acted knowingly and/or recklessly, and was otherwise generally aware that his conduct was wrongful. Thus, Wilson willfully aided and abetted and caused B of A's violations of Rule 22c-1.

34. As a result of the conduct described above, Wilson willfully aided and abetted and caused TWCO's violations of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder, which require registered brokers and dealers to make and keep current certain specified books and records, including a memorandum of each brokerage order and other instruction given or received for the purchase or sale of a security. Rule 17a-3 was amended effective May 2, 2003 specifically to require brokers and dealers to note on the memorandum the time at which the order was received. Specifically, Wilson directed Christian and other TWCO employees to create falsified books and records by time stamping order tickets prior to 4:00 p.m. ET to create the appearance that customers made final trading decisions prior to 4:00 p.m. ET. Moreover, although customers routinely made their trading decisions after 4:00 p.m. ET, no TWCO employee created an order ticket reflecting this post-4:00 p.m. ET order. As a result of this conduct, from May 2, 2003 through September 2003, TWCO failed to maintain order tickets that accurately reflected the time that TWCO received customers' final trading decisions. Wilson substantially assisted this conduct. Specifically, Wilson directed Christian and other TWCO employees to time stamp order tickets prior to 4:00 p.m. ET to create the appearance that customers made final trading decisions prior to 4:00 p.m. ET. Wilson knew that the customers did not make their final trading decisions at the time reflected on the order tickets.

Undertakings

35. Respondent undertakes to cooperate fully with the Commission in any and all investigations, litigations or other proceedings brought by the Commission relating to or arising from the matters described in the Order and agrees:

- a. To comply with any and all reasonable requests by the Commission's staff for documents or other information;

b. To be interviewed at such times as the Commission's staff reasonably may direct;

c. To appear and testify in such investigations, depositions, hearings or trials as the Commission's staff reasonably may direct; and

d. That in connection with any (i) testimony of Respondent to be conducted by testimony session, deposition, hearing or trial, or (ii) requests for documents or other information, that any notice or subpoena for such may be addressed to Respondent's counsel, and be served by mail or facsimile.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Wilson's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, 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:

A. Respondent Wilson cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

B. Respondent Wilson cease and desist from causing any violations and any future violations of Sections 15(c) and 17(a) of the Exchange Act and Rules 10b-3 and 17a-3 thereunder, and from committing or causing any violations and any future violations of Rule 22c-1, as adopted under Section 22(c) of the Investment Company Act;

C. Respondent Wilson be, and hereby is barred from association with any broker or dealer, and is 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;

D. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order;

E. IT IS FURTHER ORDERED that Respondent shall, within 10 days of the entry of this Order, pay disgorgement of \$534,160 and prejudgment interest of \$145,840 to the Securities and Exchange Commission. 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 James A. Wilson, Jr. 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 Kay L. Lackey, Associate Regional Director, Securities and Exchange Commission, New York Regional Office, 3 World Financial Center, New York, NY 10281; and

F. IT IS FURTHER ORDERED that Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$120,000 to the Securities and Exchange Commission. 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 James A. Wilson, Jr. 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 Kay L. Lackey, Associate Regional Director, Securities and Exchange Commission, New York Regional Office, 3 World Financial Center, New York, NY 10281.

By the Commission.

Nancy M. Morris
Secretary