

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10682 / September 9, 2019

SECURITIES EXCHANGE ACT OF 1934
Release No. 86904 / September 9, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19427

In the Matter of

KENNETH WRUK

Respondent.

**CORRECTED ORDER INSTITUTING
CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933 AND SECTION
21C OF THE SECURITIES EXCHANGE
ACT OF 1934, MAKING FINDINGS, AND
IMPOSING A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Kenneth Wruk (“Wruk” or “Respondent”).

II.

In anticipation of the institution of these proceedings, 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, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C Of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

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

1. Wruk is 51 years old. He resides in both Lake Geneva, Wisconsin and Marco Island, Florida. Wruk is an unregistered individual who has actively invested in mutual funds using a market-timing strategy.
2. 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 if the market timer is exploiting pricing inefficiencies. 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.
3. Courts have found that the execution of certain practices to effectuate a market-timing strategy, such as using multiple accounts with the intent to deceive a fund into accepting a trade it would otherwise reject, can constitute fraud.
4. Mutual funds generally prohibit market timing, or – in order to limit market timing – have policies and procedures barring excessive and short-term trading. Excessive or short-term trading presents risks to a fund's long-term shareholders, including potential dilution in the value of fund shares, interference with managing a fund's portfolio investment strategies, taxable gains to remaining shareholders, and increased fund expenses. Frequently when funds determine that a particular account had engaged in excessive or short-term trading, the funds reject new buy orders from the account or block trading permanently.
5. On numerous occasions between at least 2013 and 2018, Wruk used deceptive means to engage in market timing in mutual funds that had adopted and disclosed policies and procedures that discouraged or were intended to prevent market timing or excessive and short-term trading. Specifically, he traded from multiple accounts that concealed his identity in connection with his market-timing strategy. Wruk created dozens of irrevocable trusts, naming his children as beneficiaries. With few exceptions, Wruk gave the trusts names that appeared to bear no relation to him. Wruk selected friends and relatives as trustees. Using these trusts and trustees, Wruk opened more than 100 trust accounts at various brokerages. Wruk was able to direct most communications from the brokerages to himself rather than to the trustees by creating and controlling email accounts with addresses similar to the names of the trustees.

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.

6. Wruk personally conducted all trading in these accounts and communicated with brokerages using the trustee email accounts as if he were the trustees. As a result, Wruk was able to retain control over all of the assets in the trusts while keeping the brokerages from detecting this control.

7. Wruk used these trustee accounts to engage in market timing. By using trust accounts with unrelated names, Wruk made it appear as if different individuals were making trades when, in fact, he controlled all of the trading activities in the trust accounts. By concealing the fact that he controlled so many accounts and by not trading excessively in any one account, Wruk was able to violate many funds' excessive and short-term trading prohibitions without detection.

8. From time to time, when funds did reject an account's buy orders or block trading in its entirety, Wruk would simply resume trading in a different trust account.

9. Through this conduct, Wruk purposefully made material misrepresentations or omissions, where he had a duty to speak, and employed a deceptive scheme in two ways:

- a. Wruk systematically used multiple trust accounts to conceal his identity and evade the mutual funds' detection of his excessive and short-term trading; and
- b. when buy orders in a particular account were rejected or blocked by a fund, Wruk used his other trust accounts to make the purchase, thereby misleading the mutual funds into believing that the buy orders were coming from an account holder whose trading had not been blocked.

10. As a result of the conduct described above, Wruk violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Wruk cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay disgorgement of \$1,839,333.00 and prejudgment interest of \$251,177.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act

Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$275,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Kenneth Wruk as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Robert J. Burson, Division of Enforcement, Securities and Exchange Commission, Chicago Regional Office, 175 W. Jackson Blvd., Suite 1450, Chicago, IL 60604.

C. 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, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he 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 Securities and Exchange Commission. 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 Respondent 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.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary