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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES SECURITIES AND )  
EXCHANGE COMMISSION, )

Plaintiff, )

v. )

PETER J. WILSON, )

Defendant. )

**1:04CV2290**

**JUDGE GAUGHAN**

**COMPLAINT**

Plaintiff Securities and Exchange Commission (the "Commission") alleges:

1. This case involves a scheme to defraud by Peter J. Wilson ("Wilson"), a former NASD-licensed Series 7 General Securities Representative. From at least June 2003 through April 2004, Wilson engaged in a scheme to illegally profit from trading in the securities of at least five NASDAQ-listed and two American Stock Exchange ("AMEX")-listed issuers. In furtherance of his deceptive plan, after unusual upward spikes in the share prices and/or trading

volumes of the seven corporate issuers' stocks, Wilson telephoned corporate officers of the issuers at or about the time he traded the issuers' common stock, usually through the use of short sales. During these calls, Wilson used various aliases to disguise his true identity and to intentionally trick the corporate officers into believing that he was an employee of AMEX Stock Watch, NASD Stock Watch and/ or NASDAQ MarketWatch.

2. Under the guise of obtaining information for AMEX Stock Watch, NASD Stock Watch and/or NASDAQ MarketWatch, Wilson asked the corporate officers to provide explanations for their companies' unusually high share prices and/or trading volumes – information that was both material and nonpublic. During several of these telephone calls, the corporate officers notified Wilson that they had no explanation for the increased volatility of their companies' stock. Using this material nonpublic information, Wilson traded the companies' stock, often through the use of short sales, knowing that it was likely that the companies' stock prices would drop since the companies were not aware of events that would rationally support the recent price increase.

3. In all but one case, Wilson attempted to control the timing of a decrease in the price of the issuers' stock by telling the companies to issue press releases confirming that they had no explanation for the increased volatility of their shares. Two of the companies followed Wilson's demand and issued releases. Immediately following the issuance of these releases, the price of these two companies' stock dropped, providing the opportunity for Wilson to profit from his illegal scheme by short selling the companies' stock. While Wilson's trading following his fraudulent telephone calls to the seven issuers did not follow a consistent pattern, he was able to cover his short positions at a profit on certain trades.

4. Wilson also illegally attempted to control the share price of at least one issuer's stock by posting false and misleading information regarding that issuer on the Yahoo Finance internet message boards. In one such message, Wilson falsely stated that the issuer was being investigated for stock manipulation by the Commission.

5. By engaging in this conduct, Wilson violated Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 78q(a)], Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 thereunder [15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5].

### **JURISDICTION**

6. This Court has jurisdiction over this action pursuant to Section 20 of the Securities Act [15 U.S.C. § 77t(b)], Sections 21(d) and (e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d)(3)(A), 78u(e) and 78aa].

7. Venue lies in this Court pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa] because offers and sales of the securities at issue in this case took place in this judicial district, the defendant is an inhabitant of this judicial district, and certain of the acts and courses of conduct constituting the violations in this case occurred within this judicial district.

8. The defendant, directly or indirectly, made use of the means and instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange in connection with these acts, practices, and courses of business alleged in this complaint.

9. The defendant will, unless restrained and enjoined, continue to engage in the acts and practices alleged herein, or in acts and practices of similar purport and object.

### **THE DEFENDANT**

10. PETER J. WILSON, age 43, is a resident of Rocky River, Ohio – a suburb of Cleveland, Ohio. Wilson became licensed as a NASD Series 7 General Securities Representative in 1987. Wilson is currently self-employed as a sales consultant. For the past ten years he has been trading in numerous NASDAQ, AMEX and pink sheet securities from his home.

### **THE ISSUERS**

11. Metrologic Instruments, Inc. (“Metrologic”) is a New Jersey corporation headquartered in Blackwood, New Jersey. Metrologic designs, manufactures and markets imaging and scanning solutions. Metrologic common stock is traded on the NASDAQ stock market.

12. NVE Corp. (“NVE”) is a Minnesota corporation headquartered in Eden Prairie, Minnesota that develops and sells spintronics, a nanotechnology which utilizes electron spin. The company also licenses spintronic magnetic access memory technology. Through April 2004, NVE common stock was traded on the NASDAQ stock market.

13. SMTEK International, Inc. (“SMTEK”) is a Delaware corporation headquartered in Moorpark, California. SMTEK is in the business of manufacturing electronics hardware to serve original equipment manufacturers in the computer, telecommunications, instrumentation, medical industrial and aerospace industries. At all relevant times, SMTEK common stock was traded on the NASDAQ stock market.

14. Greenbriar Corporation (“Greenbriar”) is a Nevada corporation headquartered in Dallas, Texas. Greenbriar owns or leases retirement and assisted living communities. Greenbriar common stock is traded on the AMEX.

15. Arrhythmia International, Inc. (“Arrhythmia”) is a Delaware corporation headquartered in Fitchburg, Massachusetts. Arrhythmia is engaged in the licensing of medical software which acquires and analyzes data to aid in the treatment of potentially lethal arrhythmias. Arrhythmia common stock is traded on the AMEX .

16. Wheeling-Pittsburgh Corporation (“Wheeling-Pittsburgh”) is a Delaware corporation headquartered in Wheeling, West Virginia. Wheeling-Pittsburgh is engaged in the making, processing and fabrication of steel and steel products. Wheeling-Pittsburgh common stock is traded on the NASDAQ stock market.

17. Digital Recorders, Inc. (“Digital”) is a North Carolina corporation headquartered in Dallas, Texas. Digital manufactures and markets transit, transportation and law enforcement digital-communications and audio-enhancement systems. Digital common stock is traded on the NASDAQ stock market.

### **FACTUAL ALLEGATIONS**

#### **Wilson’s Fraudulent Scheme**

18. AMEX Stock Watch uses computer systems to detect, on a real-time basis, unusual price movements or volume changes in AMEX-listed securities that may suggest various types of trading abuses. NASDAQ MarketWatch facilitates regulatory oversight of the NASDAQ Stock Market on a real-time basis in order to maintain a level playing field for investors and to protect the integrity of the marketplace. NASDAQ StockWatch, a component of NASDAQ MarketWatch, provides real-time surveillance of company activity in the NASDAQ Stock Market. Employees from AMEX Stock Watch and NASDAQ MarketWatch routinely contact officers of regulated issuers to obtain information, including material nonpublic information, to assist them in identifying potential trading abuses.

19. Wilson was familiar with the function of AMEX Stock Watch and NASDAQ StockWatch and the telephone routine used by AMEX Stock Watch and NASDAQ StockWatch employees when contacting company officers.

20. From at least June 13, 2003, Wilson began impersonating employees of AMEX Stock Watch and NASDAQ MarketWatch, and using the AMEX Stock Watch and NASDAQ MarketWatch telephone routine, to obtain material nonpublic information from company officers at Metrologic, NVE, SMTEK, Greenbriar, Arrhythmia, Wheeling-Pittsburgh and Digital at the same time that he traded in the securities of these issuers.

**Metrologic Instruments, Inc.**

21. On June 12, 13, 16 and 17, 2003, Wilson pursued a short trading strategy in Metrologic stock.

22. On June 13, 2003 at approximately 1:52 p.m. (ET), Wilson telephoned the office of the President of Metrologic from his home telephone and identified himself falsely to the President's assistant as Paul Rosenthal from NASDAQ StockWatch. Wilson informed the assistant that he was calling regarding allegations of stock manipulation involving Metrologic, and asked to be connected to Metrologic's President. The assistant put Wilson on hold, but the call was disconnected.

23. Four days later, on June 17, 2003, at approximately 3:49 p.m. (ET), Wilson telephoned Metrologic's Vice President of Investor Relations and identified himself falsely as Joe Rosenthal of NASDAQ Stock Watch. Wilson informed Metrologic's Vice President of Investor Relations that there might be an investigation of stock manipulation involving Metrologic. Wilson then provided the Vice President with a phony telephone callback number,

and told him that he would call the President and Chief Financial Officer (“CFO”) of Metrologic on June 18, 2003.

24. When Wilson placed the call to Metrologic’s Vice President of Investor Relations on June 17, 2003, he had accumulated a short position of 2100 shares of Metrologic stock. On the morning of June 18, 2003, Wilson covered most of his short position in Metrologic, realizing illegal profits.

**NVE Corp.**

25. On June 23, 2003 at approximately 11:26 a.m. (ET), Wilson telephoned the Chief Executive Officer (“CEO”) of NVE and identified himself falsely as Joel Rosenthal from NASDAQ StockWatch. Wilson told NVE’s CEO that he was concerned about the strength of NVE’s stock and inquired as to whether NVE’s CEO had an explanation for the increase in share price. Wilson then instructed NVE’s CEO to issue a press release explaining the increase in NVE’s share price. NVE’s CEO did not comply with Wilson’s directive to issue a release.

26. Approximately twenty minutes after calling NVE’s CEO, Wilson began purchasing shares of NVE stock. By 12:54 p.m. (ET) Wilson had purchased 1800 shares of NVE. At approximately 1:23 p.m. (ET), Wilson sold all 1800 shares at a loss.

27. On June 26, 2003, at approximately 11:49 a.m. (ET), in a further attempt to affect the price of NVE’s stock, Wilson posted a message on the Yahoo Finance NVE message board suggesting that the Commission was investigating stock manipulation involving NVE – a suggestion for which Wilson had no factual basis, and which was untrue. Wilson held a short position in NVE of approximately 1600 shares when he posted this message.

28. The following day, June 27, 2003, Wilson posted another message on the Yahoo Finance NVE message board alleging falsely that he had contacted the SEC regarding an inquiry

into the trading of NVE. Approximately thirty minutes later, Wilson posted a third message on the same board falsely reporting that he did not hold either a long or a short position in NVE stock, and had come upon the information regarding the Commission's alleged investigation of NVE by performing due diligence. After making the posting, Wilson sold another 900 shares short. Approximately ninety minutes later, Wilson began covering his short position in NVE at a loss.

**SMTEK International, Inc.**

29. On October 13 and 14, 2003, Wilson pursued a short trading strategy in the securities of SMTEK.

30. On October 13, 2003, at approximately 3:10 p.m. (ET), Wilson telephoned the CFO of SMTEK from his home telephone and identified himself falsely as Jeff Rosenbloom from NASDAQ StockWatch. Wilson asked SMTEK's CFO about the increase in trading activity of SMTEK's stock, and suggested that SMTEK issue a press release explaining the increase in its trading activity. When SMTEK's CFO told Wilson that he wanted to consult with his attorney before issuing the press release, Wilson provided him with a phony telephone callback number.

31. By the time Wilson placed his 3:10 p.m. telephone call to SMTEK's CFO, he had established an 8,200 share short position in SMTEK's stock. Approximately ten minutes after the call concluded, Wilson sold short an additional 10,000 shares of SMTEK, achieving a total short position of 18,200 shares by 3:22 p.m. (ET). Approximately twenty minutes later, at 3:34 p.m. (ET), Wilson began covering his short sales by purchasing shares of SMTEK. By the close of trading on October 13, Wilson held a short position of 7,355 shares. Wilson continued



to cover his position on October 14, 2003, and had fully covered his short sales by approximately 2:14 p.m. (ET). Wilson lost money on these trades.

### **Greenbriar Corporation**

32. On October 15 and 16, 2003, Wilson pursued a short trading strategy in Greenbriar stock.

33. On October 16, 2003, at approximately 11:53 a.m. (ET), Wilson telephoned a representative of Greenbriar and identified himself falsely as either an AMEX or Stock Watch employee. Upon learning that the caller was from AMEX or Stock Watch, the representative promptly joined Greenbriar's President and CEO ("President/CEO") on the line with Wilson via conference call. Wilson asked if either the representative or Greenbriar's President/CEO knew the reasons for the spike in Greenbriar's trading volume and share price. Both Greenbriar's representative and its President/CEO told Wilson that they did not know the reason for the volatility of Greenbriar's stock. Wilson then instructed the representative and President/CEO to issue a company press release explaining that there was no explanation for the increase in Greenbriar's share price and trading volume. The representative and President/CEO immediately followed Wilson's instructions, drafted a two-sentence press release, and submitted it to Greenbriar's attorneys for approval. They also sent a draft to AMEX via facsimile for its review and sign off. When the representative and President/CEO did not receive a response from AMEX regarding the proposed release, they assumed that the release was acceptable. Greenbriar issued the press release on October 16, 2003 at 12:30 p.m. (ET).

34. Wilson held a 4,000 share short position in Greenbriar's stock when he placed the call to Greenbriar's representative on October 16, 2003. Less than fifteen minutes after the conclusion of the call, Wilson added 1,600 shares to his short position, bringing his total short

position in Greenbriar stock to 5,600 shares. After Greenbriar issued its press release at 12:30 p.m. (ET), its share price dropped and Wilson covered his 5,600 share short position, realizing illegal profits.

**Arrhythmia Research Technology, Inc.**

35. From December 8, 2003 through December 10, 2003, Wilson engaged in a short trading strategy in Arrhythmia stock.

36. On December 9, 2003, at approximately 3:47 p.m. (ET), Wilson telephoned Arrhythmia's CFO and identified himself falsely as Steve Rosenberg from NASD Stock Watch. Wilson informed Arrhythmia's CFO that he was calling regarding the increase in Arrhythmia's share price, and instructed him to have Arrhythmia issue a press release explaining the reason for the increase. At the time Wilson placed this call he held a 1,900 short share position in Arrhythmia stock.

37. Within ten minutes of calling Arrhythmia's CFO, Wilson began making covering purchases. By 9:43 a.m. (ET) on December 10, 2003, Wilson had covered his entire short position, realizing illegal profits.

**Wheeling-Pittsburgh Corporation**

38. On December 22, 23 and 24, 2003, Wilson pursued a short trading strategy in the securities of Wheeling-Pittsburgh.

39. On December 23, 2003, at approximately 10:26 a.m. (ET), Wilson placed a telephone call to Wheeling-Pittsburgh's CFO and identified himself falsely as Paul Rosenberg from NASD Stock Watch. During this call, Wilson asked Wheeling-Pittsburgh's CFO why his company's stock price was going up. The CFO told Wilson that he did not know the reason for Wheeling-Pittsburgh's share price increase, but explained that an article was released in early

December 2002 which stated that 2003 would be a good year for steel stocks. Wilson told the CFO that Wheeling-Pittsburgh should issue a press release explaining the reasons for the share price increase “because people could get hurt.”

40. Wilson held a 7,800 share short position in Wheeling-Pittsburgh when he placed the December 23, 2003 telephone call to Wheeling-Pittsburgh’s CFO. Within forty minutes after the conclusion of the call, Wilson added 200 shares to his short position, bringing his number of short shares in Wheeling-Pittsburgh to 8,000. Approximately three hours later, Wheeling-Pittsburgh had not complied with Wilson’s request to issue a press release. At approximately 1:54 p.m. (ET), Wilson began covering his short position at a loss. By the close of business on December 23, 2003, Wilson had reduced his short position to 3,000 shares.

41. After the market closed on December 23, 2003, Wheeling-Pittsburgh issued a press release explaining that it did not know the reason for the increase in its share price. On the morning of December 24, 2004, the day after Wheeling-Pittsburgh issued its press release, the price of its stock dropped.

42. Wilson completed his covering purchases on December 24, 2003 between 11:03 a.m. and 11:56 a.m. (ET). In total, Wilson lost money on his short trading strategy in Wheeling-Pittsburgh from December 22 through December 24, 2003, despite the drop in Wheeling-Pittsburgh’s share price on the morning of December 24.

#### **Digital Recorders , Inc.**

43. On April 12, 2004, Wilson pursued a short trading strategy in Digital stock.

44. On April 12, 2004, at approximately 10:09 a.m. (ET), Wilson placed a call to Digital’s CFO that was answered by Digital’s Chairman and CEO. During the call Wilson identified himself falsely as an employee of NASDAQ, told Digital’s Chairman and CEO that he

was “concerned” that the company’s stock was trading high, and asked whether there was any news or undisclosed information that the market should know about. Digital’s Chairman and CEO told Wilson that apart from a press release issued by Dow Jones the week before, he did not know the reason for the increase in Digital’s share price. After confirming that the increase in Digital’s share price was unexplained, Wilson told the Chairman and CEO that if Digital did not issue a press release by 11:00 a.m., trading in Digital would be suspended. At Wilson’s request, Digital’s Chairman and CEO began preparing a press release. After further investigation, Digital discovered that Wilson was not calling from NASDAQ, and decided not to issue the release.

45. Wilson held a 23,000 share short position in Digital when he telephoned the company at 10:09 a.m. (ET) on April 12, 2004 and demanded that the company issue a press release. When Digital had not issued the release by 11:40 a.m. (ET), Wilson started covering his short position. By 1:30 p.m. (ET), Wilson had covered his entire short position at a significant loss.

#### **Other Trading**

46. From on or about January 9, 2003 to on or about June 17, 2004, Wilson placed telephone calls to approximately 27 other companies at or about the time that he traded in securities issued by those companies.

#### **CLAIM FOR RELIEF**

##### **[Fraud]**

##### **Violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]**

47. Paragraphs 1 through 46 are realleged and incorporated by reference.

48. Wilson knowingly or recklessly engaged in a scheme to defraud in which he made misrepresentations and misleading statements of material fact with the intent of deceiving

company officials at Metrologic, NVE, SMTEK, Arrhythmia, Greenbriar, Wheeling-Pittsburgh, and Digital into believing that he was an employee of AMEX Stock Watch, NASD StockWatch and/ or NASDAQ MarketWatch, in order to obtain material nonpublic information concerning the reasons for increases in the share price and/or trading volume of their company's securities, at or about the time that he was trading in shares of those securities.

49. Wilson knowingly or recklessly engaged in a scheme to defraud in which he made misrepresentations and misleading statements of material fact with the intent of manipulating the share price and trading volume of the securities of Metrologic, NVE, SMTEK, Arrhythmia, Greenbriar, Wheeling-Pittsburgh, and Digital.

50. Wilson traded in the securities of Metrologic, NVE, SMTEK, Arrhythmia, Greenbriar, Wheeling-Pittsburgh, and Digital pursuant to his scheme to defraud.

51. Wilson, in the offer or sale of securities, by the use of means or instrumentalities of interstate commerce or of the mails, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) obtained money by means of untrue statements of material facts or omitting to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon the purchaser, in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

52. Wilson, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce or of the mails, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of

the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon other persons, including purchasers and sellers of such securities, in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

53. By reason of the foregoing, Wilson has violated and unless restrained will continue to violate Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that this Court enter a final judgment:

A. Permanently enjoining Wilson from violating, directly or indirectly, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

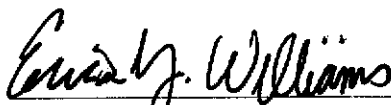
B. Ordering Wilson to disgorge, with pre-judgment interest, all illicit profits realized from the conduct described above;

C. Ordering Wilson to pay civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

D. Granting such other relief as this Court may deem just and proper.

Dated: November 17, 2004

Respectfully submitted:



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