
MAINTAINING MARKET INTEGRITY THROUGH COVID-19: LESSONS FROM RECENT SEC ENFORCEMENT ACTIONS

Despite the challenges that accompany maintaining market integrity through the COVID-19 pandemic, the U.S. Securities and Exchange Commission (“SEC”) and the Division of Enforcement remain engaged in regulating the markets and market participants. As of June 8, 2020, the Division of Enforcement suspended trading of 30 companies¹ and brought three COVID-19-related charges in U.S. District Courts.²

COVID-19 ENFORCEMENT: TRADING SUSPENSIONS

The SEC’s trading suspensions range from companies offering products to treat or test for COVID-19 to a company being mistaken for another company causing market confusion. The examples discussed below represent a small portion of the 30 trading suspensions.

In early February, the SEC issued its first trading suspension to Nasdaq-traded Aethlon Medical, Inc. for information disseminated by a third party concerning the potential efficacy of Aethlon Medical, Inc.’s product to treat COVID-19.³ The SEC suspended trading in Aethlon Medical, Inc. stock for 14 days “because of [] concerns regarding the accuracy and adequacy of information in the marketplace” created by third-party promoters, purportedly unaffiliated with Aethlon Medical, Inc.⁴

In March, the SEC issued a 13-day trading suspension to: (1) Praxsyn Corporation based on its statements regarding being able to obtain an abundance of N95 masks;⁵ and (2) Zoom Technologies, Inc. over concerns about investors confusing the company for a similarly named Nasdaq company offering video communications through an application.⁶

The most recent trading suspensions involved statements about the potential development of a COVID-19 treatment—a drug candidate labeled “WP1122.” The SEC suspended the trading of CNS Pharmaceuticals, Inc.⁷ and WPD Pharmaceuticals, Inc.⁸ for 11 days following statements that the companies entered into an agreement with each other to develop several drug candidates, including WP1122, which is purportedly being developed to treat COVID-19.⁹ The SEC also suspended the trading of Moleculin Biotech, Inc. for the company’s statements regarding the development status of “WP1122 for potential application to COVID-19, and the Company’s ability to expedite regulatory approval of any such treatment.”¹⁰ All three companies released statements regarding the trading suspensions and clarified the information surrounding the potential efficacy of WP1122.¹¹ Nasdaq, however, continued to halt the trading of CNS Pharmaceuticals, Inc.¹² and Moleculin Biotech, Inc.¹³ for 13 days after the SEC trading suspensions expired. Nasdaq resumed trading for CNS Pharmaceuticals, Inc.¹⁴ and Moleculin Biotech, Inc.¹⁵ on May 28, 2020.

The SEC’s trading suspensions highlight the importance of full and accurate, or corrective, disclosures by companies. Because a company may find itself subject to the SEC’s trading suspension

power as a result of information disseminated by a third party, company management should create alerts to be notified of statements about the company and issue remarks clarifying or correcting any statements made by others, as appropriate. A company that takes concerted preemptive measures to disclose all relevant facts regarding a company-issued statement provides itself with more time to get ahead of the SEC, instead of communicating with the SEC after trading suspensions are ordered and risking continued halt in trading by an exchange after the SEC's trading suspensions lift.

COVID-19 ENFORCEMENT: DISTRICT COURT ACTIONS

All three of the COVID-19-related district court actions initiated by the SEC began as trading suspensions.

The SEC filed the first action on April 28, 2020, against Praxsyn Corporation and its chief executive officer in the Southern District of Florida, a month after the SEC suspended the trading of Praxsyn Corporation.¹⁶ The three-count complaint alleges Praxsyn Corporation violated Section 10(b) and Rules 10-b(a)-(c) of the Securities Exchange Act of 1934 (the "Exchange Act") by issuing two press releases stating the company was "negotiating the sale of millions of masks meeting the standards for N95 masks" and later "had a large number of N95 masks on hand and had created a 'direct pipeline from manufacturers and suppliers to buyers' of the masks."¹⁷ The SEC alleges in the complaint that both press releases were false and the chief executive officer "knew efforts to obtain and sell N95 or other masks were proving futile."¹⁸ In support of the allegations and knowledge of falsity, the SEC, in part, relies upon a third press release that purportedly acknowledges Praxsyn Corporation "never had masks on hand."¹⁹

On May 14, 2020, a little over a month after the SEC suspended the trading of Turbo Global Partners, Inc., the SEC filed a complaint in the Middle District of Florida against the company and its chief executive officer and chairperson.²⁰ The SEC's complaint alleges Turbo Global Partners, Inc. violated Section 10(b) and Rule 10b-5 of the Exchange Act by releasing statements claiming the company could provide a thermal scanning product that is "the only scanning technology on the planet with non-contact intelligent human temperature screening and facial recognition."²¹ Numerous statements issued by Turbo Global Partners, Inc. resulted in increased trading volume and share price.²²

Finally, the SEC filed a COVID-19-related action in the Southern District of New York against Applied Biosciences Corporation alleging violation of Section 10(b) and Rule 10b-5 of the Exchange Act for issuing statements announcing Applied Biosciences Corp. had begun "shipping Coronavirus Test Kits" in the United States.²³ The SEC alleges the press releases were false and quotes the FDA to support the falsity because the FDA "has not authorized any COVID-19 test to be completely used and processed at home."²⁴

Steven Peikin, co-director of the SEC's Division of Enforcement, said in a statement addressing the charges against Praxsyn Corporation that the SEC "will move swiftly against those who seek to profit off this national emergency by cheating or misleading investors."²⁵ These three district court actions demonstrate the SEC's ability to prosecute market participants during the COVID-19 pandemic. Companies and their leadership should be vigilant in monitoring statements made by—or by third companies about—the company and ensure they do not overpromise, are not overly optimistic, and do not omit material facts, but instead provide accurate information as of the date of issuance. Corrective

disclosures are beneficial, even though the SEC (and putative class action plaintiffs) may use corrective disclosures in an enforcement action. Corrective disclosures are a means to remediate a misleading statement prior to SEC involvement or prompting, which may help the company navigate or mitigate its risk in any enforcement action going forward. Quick, voluntary, and unassisted remediation is contingent upon thorough and effective internal controls that are able to flag and analyze potential issues and implement procedures to detect and prevent recurring issues.

If you have any questions about the information contained in this Client Alert, please contact the Thompson & Knight attorney with whom you regularly work or one of the attorneys listed below.

CONTACTS:

Jessica B. Magee
214.969.1375
Jessica.Magee@tklaw.com

Amy R. Curtis
214.969.1763
Amy.Curtis@tklaw.com

Michele (Mitch) L. Gibbons
713.653.8621
Mitch.Gibbons@tklaw.com

Wesley P. Williams
214.969.1324
Wesley.Williams@tklaw.com

Sydne K. Collier
214.969.2138
Sydne.Collier@tklaw.com

Michael W. Stockham
214.969.2515
Michael.Stockham@tklaw.com

Brittney Edwards
212.751.3615
Brittney.Edwards@tklaw.com

This Client Alert is sent for the information of our clients and friends. It is not intended as legal advice or an opinion on specific circumstances. Furthermore, due to the rapidly evolving nature of the COVID-19 pandemic, you should consult with counsel for the latest developments and updated guidance.

©2020 Thompson & Knight LLP

¹ SEC Coronavirus (COVID-19) Response, U.S. Secs. & Exch. Comm'n, www.sec.gov/sec-coronavirus-covid-19-response (last visited June 1, 2020).

² Press Release, US Sec. & Exch. Comm'n, *SEC Charges Penny Stock Company and Its CEO for Misleading Covid-19 Claims* (May 14, 2020), available at <https://www.sec.gov/litigation/litreleases/2020/lr24820.htm> (last visited May 25, 2020); Press Release, US Sec. & Exch. Comm'n, *SEC Charges Company and CEO for Covid-19 Scam* (Apr. 28, 2020), available at <https://www.sec.gov/litigation/litreleases/2020/lr24807.htm> (last visited May 25, 2020); and Press Release, US Sec. & Exch. Comm'n, *SEC Charges Companies and CEO for Misleading COVID-19 Claims* (May 14, 2020), available at <https://www.sec.gov/news/press-release/2020-111> (last visited May 15, 2020).

³ Order of Suspension of Trading, US Sec. & Exch. Comm'n, *In re Aethlon Medical, Inc.*, File No. 500-1 (Feb. 7, 2020), available at <https://www.sec.gov/litigation/suspensions/2020/34-88142-o.pdf> (last visited May 15, 2020).

⁴ *Id.*

⁵ Order of Suspension of Trading, US Sec. & Exch. Comm'n, *Praxsyn Corporation*, File No. 500-1 (Mar. 25, 2020), available at <https://www.sec.gov/litigation/suspensions/2020/34-88479-o.pdf> (last visited May 15, 2020).

⁶ Order of Suspension of Trading, US Sec. & Exch. Comm'n, *Zoom Technologies, Inc.*, File No. 500-1 (Mar. 25, 2020), available at <https://www.sec.gov/litigation/suspensions/2020/34-88477-o.pdf> (last visited May 15, 2020).

⁷ Order of Suspension of Trading, US Sec. & Exch. Comm'n, *CNS Pharmaceuticals, Inc.*, File No. 500-1 (May 1, 2020), available at <https://www.sec.gov/litigation/suspensions/2020/34-88802-o.pdf> (last visited May 15, 2020).

⁸ Order of Suspension of Trading, US Sec. & Exch. Comm'n, *WPD Pharmaceuticals, Inc.*, File No. 500-1 (May 1, 2020), available at <https://www.sec.gov/litigation/suspensions/2020/34-88800-o.pdf> (last visited May 15, 2020).

⁹ *Id.*

¹⁰ Order of Suspension of Trading, US Sec. & Exch. Comm'n, *In re Moleculin Biotech, Inc.*, File No. 500-1 (May 1, 2020), available at <https://www.sec.gov/litigation/suspensions/2020/34-88801-o.pdf> (last visited May 15, 2020).

¹¹ See Press Release, WPD Pharmaceuticals, Inc., *WPD Pharmaceuticals Comments on the SEC Order* (May 5, 2020), available at <https://www.wpdpharmaceuticals.com/resources/news/May-05-2020.pdf> (last visited May 25, 2020); Press Release, CNS Pharmaceuticals, Inc., *CNS Provides Additional Comments Regarding Trading Halt* (May 11, 2020), available at <https://ir.cnspharma.com/news-events/press-releases/detail/66/cns-provides-additional-comments-regarding-trading-halt> (last visited May 25, 2020); and Press Release, Moleculin Biotech, Inc., *Moleculin Provides Additional Comments Regarding Trading Halt* (May 11, 2020), available at <https://ir.moleculin.com/press-releases/detail/172/moleculin-provides-additional-comments-regarding-trading> (last visited May 25, 2020).

¹² Press Release, CNS Pharmaceuticals, Inc., *CNS Announces Nasdaq Trading Halt Pending Receipt of Additional Information* (May 18, 2020), available at <https://ir.cnspharma.com/news-events/press-releases/detail/67/cns-announces-nasdaq-trading-halt-pending-receipt-of> (last visited May 25, 2020).

¹³ Press Release, Moleculin Biotech, Inc., *Moleculin Announces Nasdaq Trading Halt Pending Receipt of Additional Information* (May 18, 2020), available at (<https://ir.moleculin.com/press-releases/detail/173/moleculin-announces-nasdaq-trading-halt-pending-receipt-of>) (last visited May 25, 2020).

¹⁴ Press Release, CNS Pharmaceuticals, Inc. *CNS Announces Common Stock Will Resume Trading on the Nasdaq on May 28, 2020* (May 27, 2020), available at (<https://ir.cnspharma.com/news-events/press-releases/detail/69/cns-announces-common-stock-will-resume-trading-on-the>) (last visited May 28, 2020).

¹⁵ Press Release, Moleculin Biotech, Inc., *Moleculin Announces Common Stock Will Resume Trading on the NASDAQ on May 28, 2020* (May 27, 2020), available at <https://ir.moleculin.com/press-releases/detail/175/moleculin-announces-common-stock-will-resume-trading-on-the> (last visited May 28, 2020).

¹⁶ Complaint, *SEC v. Praxsyn Corp.*, No. 9:20-cv-80706 (S.D. Fla. Apr. 4, 2020), ECF No. 1.

¹⁷ *Id.* at ¶ 3.

¹⁸ *Id.* at ¶ 4.

¹⁹ *Id.* at ¶¶ 4, 19.

²⁰ Complaint, *SEC v. Turbo Global Partners, Inc.*, No. 8:20-cv-01120 (M.D. Fla. May 14, 2020), ECF No. 1.

²¹ *Id.* at ¶ 19.

²² *Id.* at ¶¶ 30-31.

²³ Complaint, *SEC v. Applied Biosciences Corp.*, No. 1:20-cv-03729 (S.D. N.Y. May 14, 2020), ECF No. 1.

²⁴ *Id.* at ¶ 24.

²⁵ Press Release, US Sec. & Exch. Comm'n, *SEC Charges Company and CEO for Covid-19 Scam* (Apr. 28, 2020), available at <https://www.sec.gov/news/press-release/2020-97> (last visited May 15, 2020).