

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

Administrative Proceedings Rulings  
Release No. 6747 / March 27, 2020

Administrative Proceeding  
File Nos. 3-17545, 3-17546, 3-17547, 3-17548, 3-17549

In the Matters of

**Fusion Pharm, Inc.;**

**Scott M. Dittman, CPA;**

**William J. Sears;**

**Microcap Management LLC,  
Bayside Realty Holdings LLC,  
and Meadpoint Venture  
Partners, LLC;**

**Cliffe R. Bodden**

**Order Denying  
Motion to Postpone**

The Securities and Exchange Commission initiated these five unconsolidated proceedings in 2016. The Commission instructed that the proceedings would commence after “the entry of a final judgment against the last remaining defendant(s) in *United States v. William Sears and Scott Matthew Dittman*, 16-CR-301-WJM (D. Colo.)”<sup>1</sup> In October 2018, I directed the Division of Enforcement to “file a status update every six months or upon entry of a final judgment in *Sears*.”<sup>2</sup>

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<sup>1</sup> *E.g.*, *Fusion Pharm, Inc.*, Order Instituting Proceedings at 7.

<sup>2</sup> *Fusion Pharm*, Admin. Proc. Rulings Release No. 6140, 2018 SEC LEXIS 2742, at \*1–2 (ALJ Oct. 4, 2018).

On Friday, March 20, 2020, the Division filed a status report and motion, in which it reported that final judgment was entered in *Sears* on February 10, 2020.<sup>3</sup> The Division asks that I indefinitely postpone these proceedings because Sears has filed an appeal and Dittman might file one. The Division represents that the outcome of any appeal might affect what sanctions the Division requests in this administrative proceeding and that waiting for the resolution of appeals could facilitate settlement.<sup>4</sup> The Division states that counsel for Dittman does not oppose the motion, and that it was unable to contact the other Respondents.<sup>5</sup>

The pendency of an appeal and a possibility of settlement do not warrant postponing these proceedings. Even in cases in which a conviction serves as a basis for remedial action, the Commission routinely rejects arguments that an administrative proceeding should be delayed because a respondent has appealed an underlying conviction.<sup>6</sup>

And the Commission has an established procedure in Rule of Practice 161 that parties must follow in order to qualify for a settlement-based postponement.<sup>7</sup> A postponement based on the possibility that the parties might reach a settlement at some future date is not appropriate.

Significantly, the Commission specifically tied this proceeding to final judgment, and “a ‘final judgment’ is one that is final and appealable.”<sup>8</sup> If the Commission had wanted these proceedings to begin after all appeals, it would have said so. But it didn’t and the Division’s postponement request runs counter to what is contemplated in the orders instituting these proceedings.

Nonetheless, the Division may renew its motion by making a particularized showing why the circumstances now are different than what

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<sup>3</sup> Mot. at 2.

<sup>4</sup> *Id.* at 2–3.

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *E.g.*, *David R. Wulf*, Exchange Act Release No. 77411, 2016 WL 1085661, at \*5 n.21 (Mar. 21, 2016), *vacated in part as to certain sanctions*, 2019 WL 2903943 (July 5, 2019).

<sup>7</sup> See 17 C.F.R. § 201.161(c)(2).

<sup>8</sup> *Melkonyan v. Sullivan*, 501 U.S. 89, 95 (1991); see also *John Francis D’Acquisto*, Investment Advisers Act of 1940 Release No. 1696, 1998 WL 34300389, at \*2 n.9 (Jan. 21, 1998) (“[T]he pendency of an appeal does not diminish the preclusive effect of a final judgment.”).

was contemplated when the Commission initiated these proceedings. The Division's motion is thus DENIED without prejudice to renewal.

Within 14 days, by April 10, 2020, the Division must file evidence demonstrating that each Respondent has been served with the order instituting proceedings pertaining to that Respondent. If the Division is unable to submit evidence as to all Respondents, it should explain how it will effect service on any unserved Respondent. In its submission, the Division should also explain how it plans to serve Respondents with future filings. After the Division files its submission, I will issue an order regarding further proceedings.

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James E. Grimes  
Administrative Law Judge

Served by e-mail on the Division of Enforcement and Respondent Scott M. Dittman, CPA.