

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 86307 / July 5, 2019

Admin. Proc. File No. 3-18420

In the Matter of
EFUEL EFN CORP.

OPINION OF THE COMMISSION

SECTION 12(k) PROCEEDING—SUSPENSION OF TRADING

Issuer seeks to terminate a trading suspension that was ordered after questions arose regarding the accuracy and adequacy of information in the marketplace about, among other things, the company's listing status with OTC Markets Group Inc. *Held*, petition to terminate the trading suspension denied because the Commission remains of the opinion that the public interest and the protection of investors required the trading suspension.

APPEARANCES:

Ljubica Stefanovic for Efuel EFN Corp.

Christopher J. Dunnigan and *John O. Enright* for the Division of Enforcement.

Petition to terminate suspension filed: April 3, 2018
Last brief received: June 18, 2018

Efuel EFN Corp. filed a timely petition to terminate the Commission’s order temporarily suspending trading in Efuel’s securities. Because we remain of the opinion that the public interest and investor protection required the suspension of trading, we deny Efuel’s petition.

I. Background

On March 21, 2018, we issued an order pursuant to Section 12(k) of the Securities Exchange Act of 1934 suspending trading in the securities of Efuel EFN Corp. (“EFLN”) (CIK No. 0001302298) through April 5, 2018.¹ Our trading suspension order cited “concerns about the accuracy and adequacy of information in the marketplace about, among other things, the company’s status with OTC Markets Group Inc. (‘OTC Markets’) as stated in a press release issued on March 19, 2018.”² It therefore appeared to the Commission “that the public interest and the protection of investors require a suspension of trading.”³ As discussed below, the press release stated that OTC Markets had lifted Efuel’s designation as a “Caveat Emptor” issuer. Efuel does not dispute that this claim was false and that the press release was fraudulent.

On April 3, 2018, Efuel filed a petition under Rule of Practice 550 requesting termination of the trading suspension.⁴ Because the petition was timely—that is, filed before the trading suspension expired⁵—we directed the Division of Enforcement to file the non-privileged factual information before the Commission at the time trading was suspended.⁶ We also permitted the parties to make additional submissions, which they have done.

The temporary trading suspension, which lasted only ten days, has already expired. Nonetheless, as we have explained, we may consider a timely filed Rule 550 petition and provide appropriate relief even if the suspension expired while the petition was pending.⁷ In other words, we may “vacate an expired trading-suspension order in appropriate circumstances.”⁸ We may

¹ *Efuel EFN Corp.*, Exchange Act Release No. 82918, 2018 WL 1517792 (Mar. 21, 2018).

² *Id.* at *1.

³ *Id.*

⁴ 17 C.F.R. § 201.550.

⁵ *Cf. Sunshine Capital, Inc.*, Exchange Act Release No. 82555, 2018 WL 487321, at *1 (Jan. 19, 2018) (dismissing untimely petition); *Glob. Green, Inc.*, Exchange Act Release No. 73855, 2014 WL 7184234, at *1 (Dec. 16, 2014), *aff’d*, *Glob. Green, Inc. v. SEC*, 631 F. App’x 868 (11th Cir. 2016) (per curiam) (same); *Accredited Bus. Consolidators, Corp.*, Exchange Act Release No. 73420, 2014 WL 5386875, at *1 (Oct. 23, 2014) (same).

⁶ *Efuel EFN Corp.*, Exchange Act Release No. 83182, 2018 WL 2095381 (May 7, 2018).

⁷ *Bravo Enters.*, Exchange Act Release No. 75775, 2015 WL 5047983, at *6 (Aug. 27, 2015) (stating that “entertaining timely challenges to trading-suspension orders enables us to consider adversely affected parties’ objections and to develop the record before any subsequent judicial review occurs”).

⁸ *Id.* at *6 (explaining the reasons for considering a timely-filed Rule 550 petition despite the fact that the temporary suspension ended during the pendency of the petition to terminate).

also provide relief with respect to the collateral consequences that might have arisen as a result of the trading suspension.⁹ Here, however, we see no basis for any relief.

II. Analysis

Section 12(k)(1) of the Exchange Act provides that “[i]f in its opinion the public interest and the protection of investors so require, the Commission is authorized by order . . . summarily to suspend trading in any security” for up to ten business days.¹⁰ The text, structure, and legislative history of this provision establish that Congress conferred upon the Commission broad discretion in determining when to temporarily suspend trading in a security.¹¹ Thus, we are empowered to suspend trading without determining that an issuer has violated the securities laws.¹² Our inquiry turns solely on whether we are of the “opinion” that a trading suspension is required in light of the “public interest” and the need for the “protection of investors.” “Congress did not intend to require the Commission to make any other findings.”¹³

This trading suspension authority is an important tool for alerting the public about our concerns about an issuer, protecting investors against unfair or disorderly markets, and increasing the availability of information in the marketplace. Consequently, we have found it necessary to suspend trading in a variety of circumstances.¹⁴ For example, we have suspended trading in situations when there was a lack of current, adequate, or accurate information about an issuer; when an issuer failed to file required periodic reports with the Commission; and when we had concerns about potential market manipulation or other unusual market activity occurring.¹⁵

⁹ *Id.* at *6 & n.54, *12 n.72 (describing collateral consequences).

¹⁰ 15 U.S.C. § 78l(k)(1).

¹¹ *Bravo Enters.*, 2015 WL 5047983, at *2-4; accord *Myriad Interactive Media, Inc.*, Exchange Act Release No. 75791, 2015 WL 5081238, at *1-2 (Aug. 28, 2015).

¹² *Bravo Enters.*, 2015 WL 5047983, at *3-4; see also *SEC v. Sloan*, 436 U.S. 103, 112 (1978) (recognizing that Exchange Act Section 12(k) represents a “clear mandate from Congress” authorizing the Commission to “summarily suspend trading in a security” for ten days “without any notice, opportunity to be heard, or findings based upon a record”).

¹³ *Bravo Enters.*, 2015 WL 5047983, at *3 (recognizing that “Congress drew a distinction between short-term, temporary trading suspensions based on our *opinion* concerning the public interest and longer suspensions based on a finding of a *failure to comply with a provision of the securities laws*”) (emphasis in original); see also H.R. Rep. No. 101-524, at 37, Pub. L. No. 101-432 (1990) (stating that under Exchange Act Section 12(k)(1) the “Commission’s authority to implement trading suspensions . . . with respect to individual securities . . . may be exercised upon a finding by the Commission that in its opinion the public interest and the protection of investors so requires”).

¹⁴ *Bravo Enters.*, 2015 WL 5047983, at *3-5 (collecting examples).

¹⁵ *Id.* at *3, 5.

We also have suspended trading when there were questions about the accuracy of publicly available information about the company, whether in press releases, public filings, or other statements, and whether such information was disseminated by the issuer itself or by a third party.¹⁶

When we issued the trading suspension order in this case, we reviewed the information before us and concluded that it appeared to the Commission “that the public interest and the protection of investors require a suspension of trading” given “concerns about the accuracy and adequacy of information in the marketplace about, among other things, the company’s status with OTC Markets Group Inc.”¹⁷ Upon review of the information and arguments in the petition and briefs, we remain of the opinion that the public interest and the protection of investors required the suspension of trading pursuant to Section 12(k)(1) of the Exchange Act.

A. The information before the Commission at the time of the trading suspension provided grounds for our opinion that the public interest and the protection of investors required a trading suspension.

Our decision to suspend trading in Efuel’s securities was based on the same concerns about the information in the marketplace regarding the issuer that have prompted many of our past trading suspensions. We reviewed the information before us and were of the opinion that the “public interest and the protection of investors require a suspension of trading” on the principal ground that Efuel issued a press release purporting to reproduce a letter from OTC Markets to Efuel stating that OTC Markets had removed Efuel’s designation as a “Caveat Emptor” issuer. When an issuer receives the “Caveat Emptor” designation, OTC Markets “places a skull and crossbones icon next to the stock symbol to inform investors that there may be reason to exercise additional care and perform thorough due diligence.”¹⁸ In fact, the text of the letter was altered, and the original letter said the *exact opposite*—*i.e.*, that OTC Markets was “unable to remove the Caveat Emptor flag” because Efuel “d[id] not comply” with disclosure guidelines.

¹⁶ *Id.* at *5 n.31 (collecting examples); *see also id.* at *9 (where “press release included potentially misleading statements”); *Myriad Interactive Media, Inc.*, 2015 WL 5081238, at *2-4 (where there was “conflicting information in the marketplace”); *Immunotech Labs., Inc.*, Exchange Act Release No. 75790, 2015 WL 5081237, at *2-4 (Aug. 26, 2015) (where “information available to potential investors was, at best, contradictory and confused”).

¹⁷ *Efuel*, 2018 WL 1517792, at *1.

¹⁸ OTC Markets, *Caveat Emptor Policy*, <https://www.otcmarkets.com/learn/caveat-emptor> (last visited July 3, 2019).

1. OTC Markets designated Efuel a “Caveat Emptor” issuer.

Efuel is a non-reporting company incorporated in Florida. Its CEO is Ljubica Stefanovic, and her husband, Slavoljub Stefanovic, is its CFO. Efuel purports to be a holding company with five “business lines:” solar and wind energy, real estate and agriculture, investments, retail and hospitality, and construction. The company operates a retail store and restaurant called the Cherokee Trading Post and Cherokee Cafe.

Since June 11, 2009, Efuel’s common stock has been quoted on the Pink Open Market (“Pink market”) within OTC Link ATS (“OTC Link”) under the symbol “EFLN.”¹⁹ On September 25, 2017, OTC Markets, which operates OTC Link, designated Efuel as a “Buyer Beware” or “Caveat Emptor” issuer due to concerns about Efuel’s financial statements, “Research Reports,” and other public disclosures provided by Efuel on OTC Markets’ website. For example, Efuel provided documents including:

- a May 12, 2017 “Research Reported [sic]” titled “Efuel EFN CORPORATION HAS BEEN AUDITED BY DEPARTMENT OF REVUNUE” that attached as purported proof a “Notice of Proposed Assessment” from Florida taxing authorities for the Cherokee Trading Post.
- a May 5, 2017 “Research Report” titled “Euro-American Finance Network. [sic] Inc. and Stefanovic Family Plan \$160,000,000.00 (ONE HUNDRED SIXTY MLLION DOLLARA [sic]) to invest in Efuel EFN” that claimed Efuel’s CFO “received \$35,000,000.00 loan approval, and he plan [sic] to invest . . . wean [sic] stock rich [sic] \$0.20.”
- multiple “balance sheets” that did not, in fact, balance.

2. OTC Markets refused to remove the “Caveat Emptor” designation, but Efuel disseminated a letter that stated that OTC Markets had agreed to do so.

On January 2, 2018, Efuel sent a letter to OTC Markets requesting that the Caveat Emptor designation be removed. On January 8, 2018, Efuel provided its 2017 annual financial statements to OTC Markets, which were purportedly “audited” by Efuel’s own CFO through his firm, Euro-American Financial Network, Inc. On February 8, 2018, Efuel submitted an attorney opinion letter in support of its request to remove the Caveat Emptor flag.

¹⁹ The Pink market is one of three “tiered marketplaces” within OTC Link. The Pink market “offers trading in a wide spectrum of equity securities through any broker,” has no minimum disclosure or reporting requirements, and “is for all types of companies that are there by reasons of default, distress or design.” *See generally Positron Corp.*, Exchange Act Release No. 74216, 2015 WL 470454, at *1 & n.1 (Feb. 5, 2015).

About two weeks later, on February 23, 2018, OTC Markets sent Efuel a letter refusing Efuel's request and stating, in material part, that:

We have completed our review of your December 31, 2017 Annual Report and related Attorney Letter and have determined that the information contained in these documents does not comply with the OTC Pink Basic Disclosure Guidelines, therefore we are unable to remove the Caveat Emptor flag at this time.

The February 23 letter contained the signature block of Michael Vasilios, OTC Markets' Head of Issuer Compliance, and listed his title, phone number, and email address.

On March 19, 2018, Efuel drafted and disseminated a press release purporting to reproduce "correspondence from OTC Markets." The body of the press release contains a doctored version of OTC Markets' February 23 letter, which we excerpt below with alternations from the original February 23 letter indicated in italics:

We have completed our review of your December 31, 2017 Annual Report and related Attorney Letter and have determined that the information contained in these documents *comply* with the OTC Pink Basic Disclosure Guidelines, therefore we are *able* to remove the Caveat Emptor flag at this time.

Like the original February 23 letter, the altered version also contained Vasilios's signature block.

Efuel released this doctored letter via the Globe Newswire press release distribution platform and posted a tweet referring to it on Efuel's Twitter account (@EfuelEFNCorp). As of March 21, 2018, the date we suspended trading, the letter remained viewable on Twitter and Yahoo Finance. Subsequent tweets on Efuel's Twitter account touted the company's stock, discussed purported buyback plans, and referred to alleged shorting activity.

* * *

In short, we were justified in suspending trading because the information before us led us to have concerns about the accuracy of publicly available information about the claim in Efuel's March 19 press release that OTC Markets had agreed to remove the Caveat Emptor flag.

B. Efuel's Rule 550 petition does not establish an entitlement to relief.

We have reviewed the arguments and information submitted in support of Efuel's Rule 550 petition and remain of the opinion that the public interest and the protection of investors required suspension of trading in Efuel's securities.

1. Efuel’s claim that an unspecified third party was responsible for the altered press release is legally irrelevant and factually unsupported.

Efuel’s principal contention is that an unknown third party is responsible for releasing the altered OTC Markets letter. It “100% denies any involvement in any and all press releases or original social media posts” regarding “Caveat Emptor removal.” It claims to be “outraged by the accusation” and states that the March 19 press release—which Efuel acknowledges is “false, misleading,” and “fraudulent”—was “purposefully [and] deliberately published [sic] don’t know by whom and why.” Efuel’s arguments are legally irrelevant and factually unsupported.

Efuel concedes, as it must, that the March 19 press release falsely and misleadingly claimed that OTC Markets had agreed to remove the Caveat Emptor flag, when OTC Markets had specifically (and recently) written to Efuel that it refused to do so. This inaccuracy threatened investors’ ability to make informed investment decisions. The “Caveat Emptor” designation—accompanied by a skull and crossbones icon—is intended to alert the public about potential “public interest concern[s] associated with the company . . . which may include but is not limited to a spam campaign, questionable stock promotion, investigation of fraudulent or other criminal activity, regulatory suspensions, or disruptive corporate action.”²⁰

In light of the falsity and clear importance of the March 19 press release’s claims, Efuel’s assertion, even if credited, that an unidentified third party was responsible for drafting and releasing it does not undermine the decision to suspend trading. As we have explained, “Section 12(k)(1) empowers us to suspend trading if we are of the opinion that the public interest and the protection of investors requires it, and the Commission need not establish a predicate statutory or regulatory violation and in particular it need not find that the issuer or those affiliated with it engaged in” proscribed conduct.²¹ Accordingly, we may suspend trading even “based on the conduct of unrelated third parties when that conduct threatens a fair and orderly marketplace.”²² Put another way, any alleged uncertainty in the identity of the party directly responsible for spreading materially false information does not detract from the Commission’s interest in maintaining fair and orderly markets in which investors can make informed investment decisions. As a result, Efuel’s assertions about an unidentified third party are irrelevant as a matter of law as to the propriety of the trading suspension.

²⁰ *Positron Corp.*, 2015 WL 470454, at *1 n.1.

²¹ *Immunotech Labs., Inc.*, 2015 WL 5081237, at *10; *see also Bravo Enters.*, 2015 WL 5047983, at *3, *11 (noting that “we have suspended trading in situations involving fraud or manipulation by individuals unconnected to the issuer”).

²² *Myriad Interactive Media, Inc.*, 2015 WL 5081238, at *8 n.31; *see also Bravo Enters.*, 2015 WL 5047983, at *3 & n.17 (noting that we have suspended trading where “speculative rumors were swirling in the marketplace”); *Microbiological Sciences, Inc.*, Exchange Act Release No. 8544, 1969 WL 96473, at *1 (Mar. 4, 1969) (trading suspension where “unfounded and false rumors” circulated in the marketplace “[c]ontrary to past efforts of management”).

We find, in any event, that Efuel’s denial of responsibility for the March 19 press release is not credible in light of the substantial contrary evidence. Efuel does not dispute that the March 19 press release exactly reproduces the February 23 letter that OTC Markets sent to Efuel except for alterations in two places to reverse its meaning: (i) changing the phrase “does not comply with the OTC Pink Basic Disclosure Guidelines” to “comply with the OTC Pink Basic Disclosure Guidelines” and (ii) changing “we are unable to remove the Caveat Emptor flag” to “we are able to remove the Caveat Emptor flag.” There is no evidence that anyone other than Efuel itself or OTC Markets was in possession of the original letter. Efuel does not account for how an unaffiliated third party might have obtained a copy of OTC Markets’ letter in order to alter it. On the record before us, we infer that no satisfactory explanation exists.²³

Abundant other evidence indicates that Efuel intended to disseminate the fraudulent claim about OTC Markets’ alleged removal of the Caveat Emptor flag. The March 19 press release was issued under Efuel’s account on the Globe Newswire distribution platform, and Efuel has not explained how a third party could have acquired such access to its account.²⁴ It was also referenced on Efuel’s Twitter account in a now-deleted tweet.²⁵

²³ E.g., *Phelps v. Vannatta*, 97 F. App’x 669, 673-74 (7th Cir. 2004) (holding that factfinder could “reasonably infer that [the defendant] forged the reports” when “there was evidence that he possessed the original conduct report,” “that the documents were forged,” and “that the forgeries benefited only him”); *Sharif v. Children’s Hunger Alliance, Inc.*, No. 10AP-796, 2011 WL 1632159, at ¶11 (Ohio Ct. App. Apr. 28, 2011) (holding that evidence that individual received “original copy of the . . . inspection report” and then submitted copy to another party with an “altered, incorrect inspection date” supported inference that original recipient was responsible for falsification); see also *Immunotech Labs., Inc.*, 2015 WL 5081237, at *9 n.41 (drawing adverse inference from “unexplained failure to clarify or deny suspicious circumstances”); *Myriad Interactive Media, Inc.*, 2015 WL 5081238, at *7 n.23 (“[The issuer] blamed an unspecified ‘Edgar error,’ but could not explain how the EDGAR system would omit only a single paragraph within a larger filing.”); *Bravo Enters.*, 2015 WL 5047983, at *12 n.66 (similar).

²⁴ Efuel used Global Newswire to release dozens of other press releases beginning as early as 2010. See, e.g., *eFUEL EFN Corp. Announces Full Acquisition of Possible \$1B Mining Property and Potential Uplisting* (Mar. 16, 2018); *eFUEL EFN Corp. Announces \$160,000,000.00 Million Dollars Investment and OTC MARKETS CE UPDATE* (Mar. 8, 2018); *eFUEL EFN Corp. Files for CE Removal with OTC MARKETS and The Company Has Restricted 1.6 Billion Shares to \$1 Dollar* (Feb. 27, 2018).

²⁵ Efuel does not dispute that it controls and is responsible for the content on the @EfuelEFNCorp Twitter account. Nor could it, having announced in a press release that it “will be using Twitter . . . to communicate with its Shareholders and the Investment Community Twitter: <https://twitter.com/EfuelEfnCorp>.” *eFUEL EFN Corp. Announces Full Acquisition of Possible \$1B Mining Property and Potential Uplisting* (Mar. 16, 2018).

Additionally, immediately before the March 19 press release's issuance, Efuel's public communications touted upcoming "BIG news" regarding the Caveat Emptor designation. For example, earlier that day, Efuel tweeted: "Big news this week regarding the CE sign." On March 15, Efuel tweeted: "Caveat Emptor *coming off*." On March 8, Efuel issued a press release asserting that "OTC Markets in accordance with the filings submitted should *lift* Caveat Emptor warning from our company in the coming days." This pattern of communications shows that Efuel intended to alert the marketplace about a forthcoming announcement regarding its Caveat Emptor status and further undercuts Efuel's assertion that it was not responsible for the March 19 press release. The fact that these communications implied that announcement would be *favorable*—even though Efuel knew that OTC Markets had already *denied* its request to remove the Caveat Emptor designation—supports the view that Efuel intended to mislead.

Efuel also failed to make a corrective disclosure after it became aware of the false March 19 press release. Although Efuel asserts that it "tried to issue it [sic] own press release without success" because of an unspecified "block out by any press release companies," Efuel's assertion that there was such a "block" is unsubstantiated. Even assuming Efuel lost access to Globe Newswire, it is undisputed that the company continued to tweet under its Twitter account. Yet instead of disavowing the March 19 press release and making clear that the Caveat Emptor designation remained in place, Efuel made ambiguous statements to the effect that it was "aware of" and "currently investigating" the "situation." This conduct is again inconsistent with Efuel's claim of having been blindsided by an unknown third party issuing the March 19 press release.

For these reasons, we are of the view that Efuel deliberately disseminated the materially false claim that OTC Markets had removed its Caveat Emptor designation. Indeed, Efuel's explanation that someone else was responsible for the March 19 press release is so incredible that it reinforces our skepticism generally as to whether there is sufficient current and accurate information in the marketplace regarding Efuel's activities and business prospects. Falsehoods that "go to the very heart of the issues upon which the [subsequent explanation] is meant to shed light . . . certainly give[] the [factfinder] sufficient reason to invoke the hoary doctrine of *falsus in uno, falsus in omnibus*"—false in one thing, false in everything.²⁶ Far from demonstrating that a trading suspension was unwarranted, Efuel's arguments in its Rule 550 petition confirm our opinion that a trading suspension was necessary in the public interest and for the protection of investors.

2. Any alleged harm from the trading suspension to Efuel or its investors flows from the actions of Efuel itself and does not warrant relief.

Efuel also argues that the trading suspension "caused deep harm to Efuel, the company, Ljubica Stefanovic, President and investors who have had their hard earned monies taken away." Therefore, Efuel continues, the Commission should "clear [Efuel] with Broker Dealers" to "mitigate the damage" caused by the trading suspension. Two individuals who purport to be

²⁶ *United States v. Connolly*, 504 F.3d 206, 216 (1st Cir. 2007).

“large” and “long term” Efuel shareholders likewise urge the Commission to “clear EFLN to trade again” so that “loyal shareholders” do not “los[e] everything.”

We are not persuaded that these considerations warrant relief. Any alleged harm to Efuel stems from its own actions. As discussed above, the record indicates that Efuel deliberately disseminated materially false information about the company into the marketplace. It was these actions that necessitated the trading suspension that resulted in the effects about which Efuel complains. Having found unpersuasive Efuel’s arguments going to the merits of whether the trading suspension was warranted, we find no basis for relieving Efuel from its consequences.

As a result, any potential, continuing consequences felt by Efuel’s shareholders from the now-expired temporary trading suspension do not alter our overall assessment as to the need for having instituted the trading suspension. In issuing a trading suspension, we must consider not only current shareholders but also “the interests of *prospective* or *potential* investors who might be harmed because they purchase shares in reliance on potentially inaccurate or inadequate information about the issuer.”²⁷ After weighing these interests—and taking into account our continuing concerns regarding the accuracy of Efuel’s statements about its Caveat Emptor status as well as Efuel’s implausible attempts to evade responsibility for those clearly material misstatements—we remain of the opinion that the public interest and the protection of investors required the March 21, 2018 order suspending trading in Efuel’s securities, and that no relief is warranted.

* * *

Efuel’s request to terminate the trading suspension is denied in all respects.²⁸

An appropriate order will issue.

By the Commission (Chairman CLAYTON and Commissioners JACKSON, PEIRCE, and ROISMAN).

Vanessa A. Countryman
Secretary

²⁷ *Helpeo, Inc.*, Exchange Act Release No. 82551, 2018 WL 487320, at *5 (Jan. 19, 2019) (quoting *Bravo Enters.*, 2015 WL 5047983, at *13); *accord Immunotech Labs., Inc.*, 2015 WL 5081237, at *10.

²⁸ Efuel asks the Commission to “UPLEAST [sic] eFUEL EFN . . . WITH OTC PINK SHEET.” We construe this as a request to order OTC Markets to remove Efuel’s Caveat Emptor designation. But Efuel’s complaints about the correctness of that designation and OTC Markets’ handling of its inquiries are not properly before the Commission because Rule 550 contains no provision for granting such relief or resolving such disputes. *See* 17 C.F.R. § 201.550.

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In the Matter of
EFUEL EFN CORP.

ORDER

On the basis of the Commission's opinion issued this day, it is

ORDERED that the petition filed by Efuel EFN Corp. requesting termination of the Commission's March 21, 2018 order suspending trading in its securities for a period of 10 days be denied.

By the Commission.

Vanessa A. Countryman
Secretary