

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

Civil Action No. 1:16cv20270

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

OTC CAPITAL PARTNERS, LLC,  
ADI M. ELFENBEIN and  
JOSEPH L. PITTERA

Defendants.

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**COMPLAINT**

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Plaintiff, United States Securities and Exchange Commission (“Commission”), states and alleges as follows against defendants OTC Capital Partners, LLC (“OTC Capital”), Adi M. Elfenbein, and Joseph L. Pittera (collectively, “Defendants”):

**SUMMARY**

1. From February to June 2011, Elfenbein, through his alter ego company OTC Capital, entered into ten transactions with MusclePharm Corporation (“MSLP”) in which OTC Capital obtained approximately 24 million shares of MSLP penny stock at a deep discount to the market price and then illegally resold those shares to the investing public without complying with the registration provisions of the federal securities laws. OTC Capital and Elfenbein were able to sell this stock to the public only because OTC Capital’s attorney, Pittera, issued baseless legal opinions to MSLP’s transfer agent opining that the shares were “free trading” pursuant to Section 5 of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77e].

2. Each of the transactions followed the same basic pattern. First, OTC Capital purchased “aged debt” from MSLP vendors by paying the vendors cash in the amount of the debt. OTC Capital simultaneously entered into Debt Settlement Agreements with MSLP that contained provisions permitting OTC Capital to convert the newly-acquired debt into MSLP common stock at a deep discount to the market price. OTC Capital then immediately converted the debt to MSLP shares with the intent to immediately sell the shares to the investing public for a large, virtually guaranteed, profit.

3. Before OTC Capital and Elfenbein could resell the shares, however, they needed MSLP’s stock transfer agent to issue the shares without a restrictive legend, which would have prevented their resale in the public markets. MSLP’s transfer agent required legal opinion letters opining that the transactions qualified for an exemption from the registration provisions of the federal securities laws before issuing the MSLP shares to OTC Capital without restrictive legends.

4. To that end, Pittera issued ten opinion letters to MSLP’s transfer agent opining that the securities acquired by OTC Capital in the transactions were “free trading” because any re-sale of the shares by OTC Capital purportedly would comply with Rule 144 of the Securities Act (“Rule 144”) [17 C.F.R. § 230.144]. Rule 144 requires that a purchaser of securities hold such securities until the expiration of a holding period, which was six months in the case of the MSLP securities acquired by OTC Capital. Pittera incorrectly stated in his opinion letters that the Rule 144 holding period had been met as to OTC Capital’s MSLP securities because the holding period could be calculated from the dates of the original vendor invoices underlying the aged-debt that was purchased by OTC Capital.

5. Pittera's opinion letters were baseless and incorrect because the Rule 144 holding period did not begin to run until the MSLP securities came into existence by virtue of the Debt Settlement Agreements between MSLP and OTC Capital, which were executed only days before OTC Capital and Elfenbein offered and sold the MSLP shares to the public. The invoices underlying the aged-debt that was the subject of the Debt Settlement Agreements did not constitute securities under the federal securities laws.

6. The transfer agent would not have issued the MSLP stock without restrictive legends but for Pittera's opinion letters. Through his role in creating and supplying the opinion letters, Pittera was both a necessary participant and substantial factor in the illegal unregistered offers and sales of MSLP securities by OTC Capital and Elfenbein.

7. Almost immediately after the transfer agent issued the purportedly unrestricted shares to OTC Capital, OTC Capital and Elfenbein sold them on the market for a substantial profit. OTC Capital and Elfenbein obtained proceeds of approximately \$1.19 million from the unregistered sales of MSLP stock. Pittera received \$5,000 in fees for issuing the ten opinion letters.

8. By virtue of the conduct alleged herein, the Defendants, directly or indirectly, violated Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77(e)(a) and 77(e)(c)], and unless restrained and enjoined will engage in future violations of these provisions.

9. The Commission seeks an order restraining and enjoining the Defendants from violating these provisions of the federal securities laws, requiring the Defendants to disgorge all ill-gotten gains plus pre-judgment interest and pay civil penalties, permanently prohibiting the Defendants from participating in the offering of any penny stock, and granting such other relief as is necessary and appropriate.

**JURISDICTION AND VENUE**

10. The Commission brings this action pursuant to the authority conferred upon it by Sections 20(b) and (d) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)].

11. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), and 77v(a)].

12. The Defendants, directly or indirectly, singly or in concert, made use of the means or instruments of transportation or communication in interstate commerce, or of the mails, in connection with the transactions, acts, practices and courses of business described in this Complaint.

13. Venue lies in this Court pursuant to Securities Act Section 22(a) [15 U.S.C. § 77v(a)]. Defendants OTC Capital and Elfenbein are inhabitants of and found in this District, Defendants transacted business in this District, offers in violation of the federal securities laws were made from this District, and Defendants engaged in a common scheme of acts that violated the Securities Act.

**DEFENDANTS**

14. **OTC Capital Partners, LLC**, a Florida limited liability company, was organized in 2008. From 2009 to present, Elfenbein has been the Managing Member and sole officer of OTC Capital and OTC Capital has not had any other members or employees. Its principal place of business is Sunny Isles Beach, Florida. OTC Capital describes its business as providing financing for companies through aged-debt and other transactions. Elfenbein has sole control over all OTC Capital brokerage accounts and trading decisions.

15. **Adi M. Elfenbein**, 40, resides in Sunny Isles Beach, Florida. Since May 2009, Elfenbein has been the sole owner and manager of OTC Capital. Between 1997 and 2009,

Elfenbein held Series 7 and 63 licenses and worked as a registered representative at several broker-dealers. Elfenbein's only current occupation is his role with OTC Capital.

16. **Joseph L. Pittera**, 49, resides in Torrance, California. Pittera is an attorney licensed to practice law in California and is the founder and sole lawyer of the Law Offices of Joseph L. Pittera, located in Torrance, California. Pittera's practice involves writing opinion letters for clients regarding transactions under the federal securities laws and assisting clients with Commission filings. In addition to the ten letters that Pittera wrote for OTC Capital, Pittera has performed legal work and provided opinion letters for other clients located in the Southern District of Florida. Pittera is currently writing approximately ten opinion letters per month related to compliance with Rule 144.

#### **RELATED ENTITY**

17. **MusclePharm Corp.** manufactures and markets sports nutrition products. It is incorporated in Nevada with its principal place of business in Denver, Colorado. In 2010, MSLP filed a registration statement with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act") and became subject to the reporting requirements of the Exchange Act. MSLP's common stock trades on the "over-the-counter" market and is quoted by OTC Markets Group, Inc., an electronic quoting and trading system, under "MSLP." On September 8, 2015, the Commission instituted cease-and-desist proceedings against MSLP and imposed a cease-and-desist order for, among other violations of the federal securities laws, violations of Sections 5(a) and 5(c) of the Securities Act relating to, in part, the OTC Capital aged-debt transactions that are the subject of this Complaint. (In the Matter of MusclePharm Corporation, Administrative Proceeding File No. 3-16788).

**FACTS**

**OTC CAPITAL'S TRANSACTIONS WITH MSLP**

18. In 2011, MSLP lacked cash flow and was unable to pay several hundred thousand dollars of outstanding debt incurred in 2010. The debt at issue consisted of aged-invoices from vendors for various goods and services.

19. From February to June 2011, MSLP and OTC Capital engaged in ten transactions involving MSLP debt and stock. The transactions were designed to induce OTC Capital to pay off MSLP's aged-debts by giving OTC Capital the ability to generate large, virtually guaranteed profits by flooding the market with newly-issued MSLP stock through sales that violated the registration provisions of the federal securities laws. The transactions followed substantially the same format and used nearly identical documents.

20. In each of the ten transactions, OTC Capital entered into Debt Purchase Agreements with MSLP vendors who held aged invoices that MSLP had failed to pay. Under the terms of the agreements, OTC Capital paid MSLP's outstanding debt for various goods and services, and the vendors assigned MSLP's debt to OTC Capital. Each of the Debt Purchase Agreements specifically stated that the debt being purchased was "evidenced by an invoice."

21. The invoices purchased by OTC Capital were not securities as defined by the federal securities laws.

22. Elfenbein signed each of the Debt Purchase Agreements in his capacity as the Managing Member and sole officer of OTC Capital.

23. OTC Capital also entered into Debt Settlement Agreements with MSLP on the same day Elfenbein signed the Debt Purchase Agreements. The Debt Settlement Agreements amended the terms of the debt and allowed OTC Capital to convert the debt to MSLP common

stock. The conversion formulas in the Debt Settlement Agreements included a substantial discount to the market price of the MSLP shares.

24. The Debt Settlement Agreements for the ten aged-debt transactions between OTC Capital and MSLP are dated: February 1, 2011, February 7, 2011, February 11, 2011, February 18, 2011, February 28, 2011, April 6, 2011, April 15, 2011, May 12, 2011, May 19, 2011, and June 1, 2011.

25. Elfenbein signed each of the Debt Settlement Agreements in his capacity as the Managing Member and sole officer of OTC Capital.

26. Also on or about the same day, MSLP's board of directors approved the issuance of shares to OTC Capital in the amounts set forth in the Debt Purchase Agreements and directed MSLP's transfer agent to issue the shares "free of restricted legend, effective thereafter upon opinion of counsel relating to the same."

27. MSLP did not file a registration statement for any of these transactions. Because no registration statement was filed and in effect for the transactions, MSLP's transfer agent would not issue the shares without restrictive legends unless it received attorney opinion letters stating that an exemption from registration applied and the shares should be unrestricted.

#### **PITTERA'S BASELESS OPINION LETTERS**

28. Elfenbein retained Pittera to write opinion letters for the ten aged-debt transactions between OTC Capital and MSLP. For each transaction, Elfenbein signed the relevant agreements before he emailed them to Pittera.

29. Pittera signed ten boilerplate opinion letters for the transactions. Nearly all of the letters are substantially the same except for transaction-specific information, such as the amount

of debt and number of shares. Pittera opined in each of the letters that the MSLP shares acquired by OTC Capital should be “free trading.”

30. Pittera’s legal opinions are baseless and wrong. Pittera’s legal opinions were premised on the incorrect conclusion that immediate re-sales of the MSLP securities by OTC Capital complied with Rule 144. Rule 144 requires that a purchaser hold securities until the expiration of a holding period, which was six months after acquiring the securities of an issuer, such as MSLP, that was subject to Exchange Act reporting requirements and was current in its reporting obligations. Pittera opined that the Rule 144 holding period was satisfied at the time OTC Capital acquired the shares because the holding period could be calculated from the dates of the invoices underlying the aged-debt purchased by OTC Capital. However, because the invoices were not securities, the Rule 144 holding period could not “tack” back to the dates the invoices were created. In fact, The Rule 144 holding period did not begin to run until a security was created, which did not occur until OTC Capital entered into the Debt Settlement Agreements with MSLP – only days prior to OTC Capital and Elfenbein offering and selling the shares. Thus, the MSLP shares acquired by OTC Capital were actually restricted when it offered and sold the shares to the public.

31. Pittera knew at the time he wrote the opinion letters that the Debt Settlement Agreements between OTC Capital and MSLP involved aged invoices from MSLP vendors.

32. In the opinion letters, Pittera failed to analyze whether OTC Capital was an “underwriter” within the meaning of Sections 4(a)(1) and 2(a)(11) of the Securities Act such that it was not entitled to any exemption from registration. Section 4(a)(1) of the Securities Act exempts from registration transactions by anyone other than an issuer, underwriter, or dealer. “Underwriter” is defined in Section 2(a)(11) of the Securities Act as “any person who has



purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security. . . .”

33. OTC Capital did not qualify for the exemption under Section 4(a)(1) because it acted as an underwriter when it obtained the MSLP shares from MSLP with the intent to immediately distribute the shares, and did in fact immediately distribute the shares, by selling the securities into the market.

34. Pittera knew, or should have known, at the time he wrote the opinion letters that OTC Capital and Elfenbein intended to immediately distribute MSLP securities by selling the securities into the market.

35. Pittera’s opinion letters contained various other errors, such as references to inapplicable provisions of the federal securities laws, incorrect facts, and inaccurate dates. The opinion letters also incorrectly stated that Pittera was acting as counsel for MSLP. In fact, Pittera was acting as counsel for OTC Capital and has never performed any legal work for MSLP.

36. Pittera’s incorrect opinion letters related to the ten aged-debt transactions between OTC Capital and MSLP are dated: February 2, 2011, February 9, 2011, February 14, 2011, February 22, 2011, March 1, 2011, April 6, 2011, April 14, 2011, May 13, 2011, May 24, 2011, and June 13, 2011.

37. Pittera emailed or faxed each of the opinion letters to Elfenbein in Florida with the understanding that the letters would be sent to the transfer agent to remove the restrictive legends on the MSLP shares. Elfenbein almost immediately emailed or otherwise transmitted the opinion letters to MSLP in Colorado. MSLP then emailed the opinion letters and other documents related to the transactions to MSLP’s transfer agent.

38. Pittera charged OTC Capital \$500 for each opinion letter and received \$5,000 in total fees. Elfenbein wired the fees to a bank account in the name of the Law Offices of Joseph L. Pittera.

39. But for Pittera's opinion letters, the transfer agent would not have issued the MSLP stock to OTC Capital without restrictive legends. Pittera was both a necessary participant and substantial factor in the unregistered sales of MSLP securities by OTC Capital and Elfenbein that violated Section 5 of the Securities Act.

### **THE ILLEGAL OFFERS AND SALES**

40. From February to June 2011, OTC Capital and Elfenbein obtained approximately 24 million shares of MSLP stock through the aged-debt transactions.

41. Elfenbein caused all of the MSLP shares to be deposited in two of OTC Capital's brokerage accounts. Elfenbein had sole control over all OTC Capital brokerage accounts and made the trading decisions. Elfenbein almost immediately, usually within 24 hours, placed orders to offer and sell the purportedly unrestricted MSLP shares into the market.

42. Elfenbein made misstatements in certain Deposit Securities Request Forms transmitted to the firm that provided clearing services for one of the brokerage accounts. For example, in these forms, Elfenbein misstated that OTC Capital had received and sold zero MSLP shares in the last year. In fact, OTC Capital had received and sold millions of MSLP shares in that period.

43. OTC Capital and Elfenbein obtained and sold the MSLP shares associated with the ten aged-debt transactions as follows:

Date of Debt Settlement Agreement between OTC Capital and MSLP	Number of MSLP shares obtained by OTC Capital	Date purportedly unrestricted MSLP shares deposited in OTC Capital's brokerage account	Date Range of Sales by OTC Capital
February 1, 2011	833,333	February 3, 2011	February 4-8, 2011
February 7, 2011	1,250,000	February 9, 2011	February 10-11, 2011
February 11, 2011	2,000,000	February 15, 2011	February 15-18, 2011
February 18, 2011	1,667,000	February 23, 2011	February 24-25, 2011
February 28, 2011	2,187,666	March 4, 2011	March 7-11, 2011
April 6, 2011	2,000,000	April 7, 2011	April 8-12, 2011
April 15, 2011	2,000,000	April 15, 2011	April 15-20, 2011
May 12, 2011	3,023,040	May 23, 2011	May 23-25, 2011
May 19, 2011	4,031,863	June 6, 2011	June 6-10, 2011
June 1, 2011	4,932,500	June 14, 2011	June 14-20, 2011
TOTAL	23,925,402		

44. During the relevant period, MSLP stock was a “penny stock” as defined by Section 3(a)(51)(A) of the Exchange Act [15 U.S.C. § 78c(a)(51)(A)] and Rule 3a51-1 thereunder [17 C.F.R. § 240.3a51-1], meaning that, among other things, the stock traded below five dollars per share during the relevant period and the securities did not meet any of the exceptions from the definition of “penny stock” contained in Rule 3a51-1.

45. OTC Capital and Elfenbein received approximately \$1.19 million from sales of MSLP stock acquired through the aged-debt transactions.

46. Through his role in creating and supplying the opinion letters, Pittera was both a necessary participant and substantial factor in the unregistered offers and sales of MSLP securities by Elfenbein and OTC Capital.

47. No registration statement was filed or in effect for the Defendants' offers and sales of MSLP securities pursuant to Section 5 of the Securities Act.

48. The Defendants used means and instruments of interstate commerce and the mails in connection with the unregistered offers and sales of MSLP securities, including in the form of

emails and facsimiles, electronic transfers of securities and funds, and brokerage transactions to offer and sell the securities.

49. The federal securities registration requirements protect investors by promoting full disclosure of information thought necessary to informed investment decisions. Purchasers of MSLP securities offered and sold by the Defendants were deprived of such protections by the Defendants' misconduct.

**CLAIM FOR RELIEF**

**Offer and Sale of Unregistered Securities – Violations of Sections 5(a) and 5(c) of the Securities Act**

**[15 U.S.C. §§ 77e(a) and 77e(c)]**

50. Paragraphs 1 through 49 are re-alleged and incorporated by reference as if fully set forth herein.

51. The MSLP shares that OTC Capital, Elfenbein, and Pittera offered and sold to the investing public as alleged herein constitute "securities" as defined by Section 2(a)(1) of the Securities Act [15 U.S.C. § 77b(a)(1)].

52. OTC Capital, Elfenbein, and Pittera directly or indirectly, singly or in concert, made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer and sell securities through the use or medium of a prospectus or otherwise, and carried or caused to be carried through the mails or in interstate commerce, by means or instruments of transportation, such securities for the purpose of sale or for delivery after sale, when no registration statement had been filed or was in effect as to such offers and sales of securities and when no exemption from registration was available.

53. By reason of the activities described herein, OTC Capital, Elfenbein, and Pittera directly or indirectly, singly or in concert, violated, and unless restrained and enjoined will continue to violate, Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

**PRAYER FOR RELIEF**

Wherefore the Commission respectfully requests that the Court grant the following relief:

I.

A final judgment permanently restraining and enjoining OTC Capital, Elfenbein, and Pittera, and any officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the final judgment by personal service or otherwise, and each of them, from violating Sections 5(a) and (c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

II.

A final judgment ordering OTC Capital, Elfenbein, jointly and severally, and Pittera to disgorge all ill-gotten gains, plus pre-judgment interest.

III.

A final judgment ordering OTC Capital, Elfenbein, and Pittera to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)].

IV.

A final judgment permanently prohibiting OTC Capital, Elfenbein, and Pittera from participating in the offering of any penny stock pursuant to Section 20(g) of the Securities Act [15 U.S.C. § 77t(g)].

V.

Order such other relief as the Court deems appropriate.

**JURY DEMAND**

The Commission demands a jury in this matter.

Dated: January 22, 2016

Respectfully submitted,

s/ Zachary T. Carlyle

Zachary T. Carlyle

Colorado Bar No.: 34962

Attorney for Plaintiff

U.S. Securities and Exchange Commission

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Denver, Colorado 80294-1961

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS Securities and Exchange Commission

DEFENDANTS OTC Capital Partners, LLC, Adi M. Elfenbein, and Joseph L. Pittera

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Miami-Dade (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) Zachary T. Carlyle, 1961 Stout St., Ste. 1700, Denver, CO 80294; Ph. 303.844.1000

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

(d) Check County Where Action Arose: [X] MIAMI-DADE [ ] MONROE [ ] BROWARD [ ] PALM BEACH [ ] MARTIN [ ] ST. LUCIE [ ] INDIAN RIVER [ ] OKEECHOBEE [ ] HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- [X] 1 U.S. Government Plaintiff
[ ] 2 U.S. Government Defendant
[ ] 3 Federal Question (U.S. Government Not a Party)
[ ] 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State [ ] PTF [ ] DEF
Citizen of Another State [ ] PTF [ ] DEF
Citizen or Subject of a Foreign Country [ ] PTF [ ] DEF
Incorporated or Principal Place of Business In This State [ ] PTF [ ] DEF
Incorporated and Principal Place of Business In Another State [ ] PTF [ ] DEF
Foreign Nation [ ] PTF [ ] DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Damage, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- [X] 1 Original Proceeding
[ ] 2 Removed from State Court
[ ] 3 Re-filed (See VI below)
[ ] 4 Reinstated or Reopened
[ ] 5 Transferred from another district (specify)
[ ] 6 Multidistrict Litigation
[ ] 7 Appeal to District Judge from Magistrate Judgment
[ ] 8 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions):

a) Re-filed Case [ ] YES [ ] NO b) Related Cases [ ] YES [ ] NO

JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. §§ 77e(a) and 77e(c); Description: unregistered offers and sales of securities LENGTH OF TRIAL via 10 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

[ ] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [ ] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE SIGNATURE OF ATTORNEY OF RECORD

January 22, 2016

s/ Zachary T. Carlyle

FOR OFFICE USE ONLY

RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

**VI. Related/Refiled Cases.** This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

**VII. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VIII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**Date and Attorney Signature.** Date and sign the civil cover sheet.



AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

SECURITIES AND EXCHANGE COMMISSION

Plaintiff(s)

v.

OTC CAPITAL PARTNERS, LLC,
ADI M. ELFENBEIN and
JOSEPH L. PITTERA

Defendant(s)

Civil Action No. 1:16cv20270

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) OTC Capital Partners, LLC
c/o William S. Hart, Esq.
Bill Hart, Esq.
Hart & Trinen LLP
1624 Washington St.
Denver, CO 80203

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Zachary Carlyle, Esq.
Securities and Exchange Commission
1961 Stout Street, Ste. 1700
Denver, CO 80294

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

Civil Action No. 1:16cv20270

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

SECURITIES AND EXCHANGE COMMISSION

Plaintiff(s)

v.

OTC CAPITAL PARTNERS, LLC,
ADI M. ELFENBEIN and
JOSEPH L. PITTERA

Defendant(s)

Civil Action No. 1:16cv20270

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) ADI M. ELFENBEIN
c/o William S. Hart, Esq.
Bill Hart, Esq.
Hart & Trinen LLP
1624 Washington St.
Denver, CO 80203

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Zachary Carlyle, Esq.
Securities and Exchange Commission
1961 Stout Street, Ste. 1700
Denver, CO 80294

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 1:16cv20270

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*Printed name and title*

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UNITED STATES DISTRICT COURT

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Plaintiff(s)

v.

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ADI M. ELFENBEIN and
JOSEPH L. PITTERA

Defendant(s)

Civil Action No. 1:16cv20270

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) JOSEPH L. PITTERA
c/o Al West, Esq.
West & Associates
700 N. Pacific Coast Hwy #201
Redondo Beach, CA 90277

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Zachary Carlyle, Esq.
Securities and Exchange Commission
1961 Stout Street, Ste. 1700
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*Printed name and title*

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*Server's address*

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