

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10816 / August 5, 2020

SECURITIES EXCHANGE ACT OF 1934
Release No. 89488 / August 5, 2020

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4157 / August 5, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-17546

In the Matter of

SCOTT M. DITTMAN, CPA,

Respondent.

**ORDER IMPOSING
ADDITIONAL SANCTIONS**

I.

In connection with these proceedings, Respondent Scott M. Dittman (“Respondent” or “Dittman”) has submitted an Offer of Settlement (the “Offer”) which the Securities and Exchange Commission (“Commission”) has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent has admitted the Commission’s jurisdiction over him and the subject matter of these proceedings, and consents to the entry of this Order Imposing Additional Sanctions (“Order”), as set forth below.

II.

On the basis of this Order and Respondent’s Offer, the Commission finds that:

Summary

From approximately April 2011 to May 2014 (the “relevant period”), Fusion Pharm, Inc. (“FSPM”), through its chief executive officer (“CEO”), president and sole director Scott M. Dittman, and its undisclosed de facto officer and control person William J. Sears, engaged in an approximately \$12.2 million fraudulent scheme in violation of the registration and antifraud provisions of the federal securities laws. The scheme essentially involved four steps. First,

utilizing backdated convertible notes and preferred FSPM stock, FSPM issued common stock to Microcap, Bayside and Meadpoint, all entities controlled by Sears. Second, Sears, through these entities, sold the FSPM stock into the market. Third, Sears transferred over \$1 million of the proceeds from the illegal stock sales back to FSPM, where the money was fraudulently recognized and reported as revenue. Fourth, FSPM issued press releases and financial reports claiming the false revenues, and failed to disclose Sears' identity, role, and background in FSPM's quarterly and annual reports posted on the OTC Markets Group, Inc.'s website.

Respondent

1. **Scott M. Dittman**, is currently incarcerated at Schuylkill Federal Correctional Institution in Minersville, PA. During the relevant period, Dittman was a founder, FSPM's CEO, president, and sole director. Dittman signed and certified FSPM's unaudited quarterly and annual financial statements posted on the OTC Markets Group Inc.'s website. Dittman was licensed as a certified public accountant ("CPA") in California in 1995. His CPA license was cancelled in April 2002, five years after it expired in 1997.

Other Relevant Entities and Person

2. **Fusion Pharm, Inc. ("FSPM")** is a Nevada corporation with its principal offices in Denver, Colorado. The company is focused on the development, production and sales of the "patent pending PharmPods cultivation container system," which are refurbished shipping containers used primarily to grow cannabis. FSPM has never registered an offering of securities under the Securities Act or a class of securities under the Exchange Act. Beginning on April 4, 2011, the company's stock was quoted on OTC Link (previously "Pink Sheets") operated by OTC Markets Group Inc. ("OTC Link") under the symbol FSPM. Following the Commission's 10-business day trading suspension in May 2014, FSPM is currently listed as a Caveat Emptor/Grey Market OTC stock.

3. **William J. Sears**, is currently incarcerated at Florence Federal Correctional Institution at Florence, CO. During the relevant period, Sears was a founder, de facto executive officer and undisclosed control person of FSPM. In 2007, Sears was convicted (via guilty plea) of one count of conspiracy to commit securities fraud and commercial bribery and one count of securities fraud. *United States v. Sears*, Case No. 04-cr-556-swk (S.D.N.Y.).

4. **Microcap Management LLC ("Microcap")** is a Nevada limited liability company, with its primary business address listed as Sears' home address in Thornton, Colorado. Sears controls Microcap and is listed as the Manager with the Nevada Secretary of State.

5. **Bayside Realty Holdings LLC ("Bayside")** is a Nevada limited liability company, with its primary business address listed as the home address of Sears' mother in New Bern, North Carolina. During the relevant period, Sears controlled Bayside.

6. **Meadpoint Venture Partners, LLC ("Meadpoint")** is a Nevada limited liability company that shared a primary business address with FSPM's prior warehouse in Denver, Colorado. Meadpoint was purportedly FSPM's exclusive distributor of PharmPods during the relevant period. From 2011 through 2013, Sears represented himself as the "Managing Member"

of Meadpoint. Dittman was a shareholder and Internal Revenue Service Form 1099 employee of Meadpoint.

Facts

Background

7. In late 2010, Dittman and Sears took over an existing public company, changing its name to FSPM in March 2011. Dittman was listed as the CEO of the company, but Sears acted as an undisclosed executive officer. Among other things, Sears worked at FSPM from its inception, appeared on non-public company documents as an officer, drew a paycheck, and handled many day-to-day responsibilities usually reserved for a company officer. Although FSPM was ostensibly in the business of selling PharmPods, it had almost no revenue to fund its operations. Instead, from 2011 through 2013, FSPM was funded almost entirely through illegal sales of FSPM stock.

8. Initially, FSPM was funded through the sale of stock that Sears received in the name of Microcap, both from FSPM's predecessor entity and as part of the transition to FSPM. In order to make Sears' sales of FSPM stock appear legitimate, and as part of the fraudulent scheme, Sears and Dittman made it falsely appear that Sears, through Bayside and Meadpoint, had loaned money to FSPM. Once Sears and Dittman had exhausted these funds, however, Sears then converted the fake "debt" owed to Bayside and Meadpoint to unrestricted FSPM shares, which Bayside and Meadpoint then illegally sold into the market.

9. As part of the fraudulent scheme, Sears and Dittman funneled approximately \$1.3 million from the illegal FSPM stock sales back into FSPM. In turn, FSPM falsely claimed the stock sale proceeds as revenue from sales of PharmPods, thereby increasing FSPM's stock price and volume and making the fraud even more profitable. As part of the scheme, Sears and Dittman hid Sears' role in FSPM so as to claim falsely that Sears' entities were not affiliates of FSPM (which they were), thus facilitating Sears' illegal sales of unrestricted FSPM stock. They also failed to disclose FSPM's purported transactions with Sears' entities as related party transactions, which they were based on Sears' role in FSPM.

Dittman and Sears Funnel Shares Into Microcap, Bayside and Meadpoint

10. In 2009, Microcap received common shares from FSPM's predecessor company for stock promotion work. In 2010, Microcap received preferred shares as part of the transfer of the predecessor company to Sears and Dittman. In 2011, Microcap purchased FSPM common shares from an individual FSPM shareholder.

11. In June 2012, Sears and Dittman prepared fraudulent non-convertible promissory notes and credit lines between FSPM and Bayside and between FSPM and Meadpoint. The Bayside non-convertible note and credit line agreement, with a credit limit of \$275,000, was backdated to May 2, 2011. The Meadpoint non-convertible promissory note and credit line agreement, with a credit limit of \$200,000 was backdated to June 15, 2011.

12. In November/December 2012, the Bayside and Meadpoint notes were re-drafted as fraudulent convertible notes. The notes were changed from non-convertible to convertible in order

to obtain more unrestricted FSPM stock to sell illegally into the market and to investors, and in turn to fund FSPM. Without changing the notes to convertible notes, FSPM would not have been able to issue purportedly unrestricted shares to Sears' entities. The Bayside note, backdated to May 2, 2011, was a 10% Convertible Promissory Note and Line of Credit Agreement in the amount of \$275,000, with a conversion rate of \$0.01/share. The Meadpoint convertible note, this time backdated to December 8, 2011, was a 10% Convertible Promissory Note in the amount of \$88,000, with a conversion rate of \$0.01/share.

Microcap, Bayside and Meadpoint Illegally Sell Shares Into The Market

13. From approximately April 28, 2011 through May 8, 2014, Sears, through his entities Microcap, Bayside, and Meadpoint, illegally sold over \$12.2 million of restricted FSPM stock.

14. Between approximately April 2011 and December 2012, Microcap sold approximately 735,000 shares of unregistered FSPM stock. Microcap's sale of these unregistered shares was based on false statements to brokers and to FSPM's stock transfer agent that Sears had no role at or control of FSPM, and therefore that Microcap was not an affiliate of FSPM. Almost all of the funds flowing into FSPM's bank account in 2011 and 2012, either directly from Microcap or funneled first through Bayside, Meadpoint, or another Sears entity, are traced back to Microcap's stock sales.

15. Between approximately February 2013 and April 2013, pursuant to the Bayside convertible note, Bayside converted debt into 140,000 FSPM common shares and sold them into the market. In order to facilitate the sales, Sears and Dittman made false statements to brokers and the transfer agent about Bayside's purported non-affiliate status. In addition to the consequences the fraudulent Bayside convertible promissory note had on Bayside's ability to receive unrestricted shares, Bayside's true affiliate status also meant that Bayside needed to abide by certain volume restrictions, which it failed to do. Bayside sold the remainder of its note to an investment group for \$250,000 and, based on more false statements from Dittman and Sears, the investors sold shares prior to the expiration of the one-year holding period required by Securities Act Rule 144 [17 C.F.R. § 230.144]. Bayside's proceeds from its FSPM stock sales, as well as the payment from the investors, were ultimately funneled to FSPM using Meadpoint as an intermediary. FSPM used proceeds from the Bayside sales of stock and debt to fund its 2013 operations.

16. Between approximately March 2013 and April 2014, pursuant to the Meadpoint convertible note, Meadpoint converted \$42,450 of debt into 4.245 million FSPM common shares, and then sold into the market approximately 3.2 million of those shares. In order to facilitate the sales, Sears and Dittman made false statements to brokers and the transfer agent about Meadpoint's purported non-affiliate status. In August 2013, Meadpoint also converted \$15,000 of fake debt into 1.5 million shares and then sold them to three investors. The investors received unrestricted shares on the basis of, again, Dittman's and Sears' false representations of Meadpoint's non-affiliate status. In 2013, Meadpoint's stock sale proceeds and payments from the investors funded FSPM operations. In 2014, Meadpoint's proceeds from its note with FSPM were \$9.9 million. While some of this amount was transferred to FSPM, the majority, \$8.7 million, was seized by criminal authorities in May 2014.

FSPM Falsely Reports Proceeds From Stock Sales As Revenue and Issues
Additional False and Misleading Statements

17. While Dittman and Sears were facilitating the transfer of unrestricted FSPM shares to Sears through his entities, Sears illegally sold those shares into the market and round-tripped some of the proceeds back to FSPM. FSPM, through Dittman and Sears, reported false revenues and made false statements about sales of PharmPods in press releases, which in turn maintained and/or increased FSPM's stock price and volume, and allowed Sears to sell his FSPM stock into the market. The false financial statements and revenue reported by FSPM were included in: (1) FSPM's 2011 annual report (including its financial statements and notes to the financial statements), signed by Dittman and posted on the OTC Markets Group Inc.'s website; (2) FSPM's 2012 annual report, signed by Dittman and posted on the OTC website; and (3) FSPM's 2013 annual report, signed by Dittman and posted on the OTC website.

18. FSPM also claimed to have sold PharmPods to certain Sears' entities, including to Meadpoint and another Sears entity, but failed to disclose these transactions, as well as the Bayside and Meadpoint notes, as related party transactions. FSPM's Information and Disclosure Statement for the period ended September 30, 2011, and its 2011 and 2012 annual reports, all signed by Dittman and posted on the OTC website, falsely stated there were no related party transactions. Further, none of FSPM's other quarterly reports or its 2013 annual report posted on the OTC website disclosed related party transactions.

Violations

19. As a result of the conduct described above, Respondent willfully violated Sections 5(a) and 5(c) of the Securities Act. Section 5(a) of the Securities Act prohibits the direct or indirect sale of securities through the mail or interstate commerce unless a registration statement is in effect. Section 5(c) prohibits the direct or indirect offer for sale of securities through the mail or interstate commerce unless a registration statement has been filed.

20. As a result of the conduct described above, Respondent willfully violated Sections 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

21. As a result of the conduct described above, Respondent willfully aided and abetted and caused FSPM's violations of Sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

22. Exchange Act Section 4C(a)(3) and Rule 102(e)(1)(iii) of the Commission's Rules of Practice provide, in pertinent part, that "[t]he Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found . . . [t]o have willfully violated, or willfully aided and abetted the violation of, any provision of the Federal securities laws or the rules and regulations thereunder." 17 C.F.R. § 201.102(e)(1)(iii). As a result of the conduct described above, Respondent willfully violated, and

willfully aided and abetted the violation of, the aforementioned provisions of the Securities Act and Exchange Act within the meaning of Section 4C(a)(3) and Rule 102(e)(1)(iii).

Criminal Prosecution

23. Respondent entered into a written agreement to plead guilty to criminal conduct relating to the findings in the Order. Specifically, in *United States v. William Sears and Scott Matthew Dittman*, 16-CR-301-WJM (D. Colo.), Respondent agreed to plead guilty to conspiracy [18 U.S.C. § 371] to commit violations of Section 5(a) of the Securities Act [15 U.S.C. § 77e(a)], violations of 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], wire fraud [18 U.S.C. § 1343], and mail fraud [18 U.S.C. § 1341].

24. On February 10, 2020, Judgment in a Criminal Case was entered against Respondent. Respondent was sentenced to sixty months of imprisonment, ordered to forfeit \$921,094.29 to the United States, and ordered to pay a money judgment in the amount of \$1,160,160.81.

This Proceeding

25. On September 16, 2016, the Commission issued the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 4C, 15(b) and 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order and Notice of Hearing ("OIP") in this matter.

26. In the OIP, consistent with an offer of settlement from Respondent, pursuant to Section 8A of the Securities Act, Sections 4C, 15(b) and 21C of the Exchange Act, and Rule 102(e) of the Commission's Rules of Practice the Commission ordered, effective immediately, that:

A. Respondent shall cease and desist from committing or causing any violations and any future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent be, and hereby is barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Respondent is prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

D. Respondent is denied the privilege of appearing or practicing before the Commission as an accountant.

27. The OIP further noted that Respondent agreed to additional proceedings in this proceeding to determine what, if any, disgorgement pursuant to Section 8A(e) of the Securities Act and Section 21C(e) of the Exchange Act and/or civil penalties pursuant to Section 8A(g) of the Securities Act and Section 21B(a) of the Exchange Act against Respondent are in the public interest.

III.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the additional sanctions agreed to in Respondent Dittman's Offer. Accordingly:

A. Respondent is ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act and Section 21C(e) of the Exchange Act in the amount of \$1,393,255. Payment of such disgorgement is deemed satisfied by the order of forfeiture and money judgment against Respondent in *United States v. William Sears and Scott Matthew Dittman*, 16-CR-301-WJM (D. Colo.)

B. Civil penalties pursuant to Section 8A(g) of the Securities Act and Section 21B(a) of the Exchange Act are appropriate and in the public interest. Based on Respondent's imprisonment, however, the Commission is not imposing a civil penalty.

By the Commission.

Vanessa A. Countryman
Secretary