

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75790 / August 28, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16321

In the Matter of
IMMUNOTECH LABORATORIES, INC.

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 publicly disseminated information, including with respect to the relationship between the company's business prospects and the Ebola crisis, and possible market manipulation. *Held*, petition to terminate the trading suspension is denied because the Commission remains of the opinion that the public interest and the protection of investors required the trading suspension.

APPEARANCES:

Adam S. Tracy, of Securities Compliance Group, Ltd., for Immunotech Laboratories, Inc.

Deena R. Bernstein, Amy Gwiazda, and Lauchlan Wash, for the Division of Enforcement.

Petition for termination filed: December 1, 2014
Last brief received: February 11, 2015

On November 20, 2014, we issued an order temporarily suspending trading in the securities of Immunotech Laboratories, Inc. (IMMB) pursuant to Section 12(k)(1) of the Securities Exchange Act of 1934 (the “Trading Suspension Order”).¹ The Trading Suspension Order stated that “[q]uestions have arisen concerning the accuracy and adequacy of publicly disseminated information,” including information about the relationship between Immunotech’s “business prospects and the current Ebola crisis.” It went on to say that the “Commission is of the opinion that the public interest and the protection of investors require the suspension of trading” for a period of ten business days.² Immunotech submitted a timely petition to terminate the trading suspension pursuant to Rule of Practice 550.³ Because we remain of the opinion that the public interest and the protection of investors required suspension of trading in Immunotech’s securities, we deny the petition.

I. BACKGROUND

Our recent opinion in *Bravo Enterprises* described the legal framework governing the Commission’s trading-suspension authority under Section 12(k)(1) and our practice with respect to the disposition of Rule 550 petitions.⁴ We briefly summarize that discussion here.

Exchange Act Section 12(k)(1) 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 a period not exceeding 10 business days.”⁵ The text, structure, and legislative history of this provision show that Congress conferred upon us broad discretion in determining when to temporarily suspend trading in a security.⁶ The relevant inquiry is whether we are of the “opinion” that a trading suspension is required in light of “public interest” and “protection of investors” considerations. We explained in *Bravo Enterprises* that we may suspend trading without determining that an issuer has violated the securities laws. In particular, we are not required to find that an issuer failed to comply with periodic reporting requirements, committed an antifraud violation, or otherwise engaged in deceptive or manipulative conduct.⁷ Section 12(k)(1) gives us the flexibility to take decisive steps when

¹ 15 U.S.C. § 78l(k)(1); *Bravo Enters. Ltd.*, Securities Exchange Act Release No. 73650, 2014 WL 6480286, at *1 (Nov. 20, 2014) (press release announcing suspension of trading in securities of four issuers); *Bravo Enters. Ltd.*, 2014 WL 6480308, at *1 (Nov. 20, 2014) (Trading Suspension Order).

² *Bravo Enters.*, 2014 WL 6480308, at *1.

³ 17 C.F.R. § 201.550.

⁴ *Bravo Enters.*, Exchange Act Release No. 75775, 2015 WL 5047983, at *2-5 (Aug. 27, 2015).

⁵ 15 U.S.C. § 78l(k)(1).

⁶ *Bravo Enters.*, 2015 WL 5047983, at *2-4.

⁷ *Id.* at *3.

necessary to protect investors and the public interest. Discharging this function will at times require that we act before there has been an opportunity to fully develop information about a situation or while an investigation is ongoing.⁸

Section 12(k)(1)'s trading-suspension authority is an important tool for alerting the public about the Commission's 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, which we discussed in *Bravo Enterprises*.⁹ For example, we have suspended trading to protect the public interest and investors when there was a lack of current, adequate, and accurate information about an issuer; when an issuer did not file required periodic reports with the Commission; when we had concerns about the accuracy of publicly available information about the company; and when we had concerns about potential market manipulation or other unusual market activity occurring.¹⁰ The trading suspension issued by the Commission in this case implicates several of these concerns.

II. ANALYSIS

A. The Commission will decide the merits of Immunotech's timely Rule 550 petition.

We will consider Immunotech's challenge to the Trading Suspension Order because it timely sought to terminate the suspension pursuant to Rule of Practice 550.¹¹ By way of procedural background, on the same day that the Trading Suspension Order was issued, staff of the Division of Enforcement (the "Division") spoke with Adam Tracy, counsel for Immunotech, to describe the Commission's concerns about the accuracy and adequacy of Immunotech's disclosures. Immunotech timely filed a Rule 550 petition prior to the expiration of the trading suspension. We then directed the Division to file all of the non-privileged factual information that was before the Commission at the time the Trading Suspension Order was issued.¹² We also permitted the parties to make additional submissions, which they have done.¹³ Although the

⁸ *Id.* at *3-4.

⁹ *Id.* at *3 & nn.14-18, *5 & nn.30-32, 39-41.

¹⁰ *Id.* at *5 nn.30-32.

¹¹ The Division does not dispute that Immunotech is "adversely affected" by the trading suspension within the meaning of Rule 550.

¹² *Immunotech Labs., Inc.*, Exchange Act Release No. 73899, 2014 WL 7243176, at *1 (Dec. 19, 2014).

¹³ The Division's unopposed motion for leave to file exhibits that it inadvertently failed to attach to its answering brief is granted. We have determined to resolve the petition without scheduling an in-person hearing. *See* Rule of Practice 550(b), 17 C.F.R. § 201.550(b) (stating

(footnote continued . . .)

trading suspension is no longer in effect, we have the authority to resolve Immunotech's petition on the merits.¹⁴ Among other things, our decision to address the substance of Immunotech's arguments promotes the development of the record in the event Immunotech seeks judicial review.

B. The information before the Commission at the time of the Trading Suspension Order's issuance provided grounds for our opinion that the public interest and the protection of investors required a trading suspension.

When we issued the Trading Suspension Order, we reviewed the information before us and were of the "opinion that the public interest and the protection of investors require[d] the suspension of trading" in Immunotech's securities given that "[q]uestions ha[d] arisen concerning the accuracy and adequacy of publicly disseminated information, including information about the relationship between the company's business prospects and the current Ebola crisis."¹⁵

Immunotech is a purported drug company that claims to be developing proteins for therapeutic purposes. According to Immunotech, its "inactive pepsin fraction" (also called "inactivated pepsin fragment" or "IPF") compound is a "molecule that has a strong affinity to bind with the HIV virus' peptide components." Immunotech's president and Chief Scientific Officer, Harry Zhabilov, obtained two patents on IPF-based compositions for the prevention and treatment of HIV/AIDS. The patents were assigned to the Zhabilov Trust, which granted licensing rights to Immunotech. The company has developed a suspension of IPF called Immune Therapeutic Vaccine-1 ("ITV-1"); it asserts that studies have shown ITV-1 to be effective in the treatment of the HIV/AIDS virus.

Prior to its involvement in the pharmaceutical sector, Immunotech claimed to be developing media products for the marketing and entertainment industries under three different corporate names. Immunotech, then known as EarthNetMedia, Inc., filed a registration statement with the Commission that became effective in 2001. Its periodic reporting obligation under Exchange Act Section 15(d) was automatically suspended in January 2002 because there were fewer than 300 record holders of its stock.¹⁶ Thereafter, it reported on a voluntary basis; its last-filed periodic report with the Commission was a Form 10-K for the fiscal year ended

(. . . footnote continued)

that the Commission may schedule a hearing "in its discretion"). No party has requested a hearing and we do not believe holding one would significantly aid our decisional process. *Bravo Enters.*, 2015 WL 5047983, at *6 & n.51.

¹⁴ *Id.* at *6; *Accredited Bus. Consolidators Corp.*, Exchange Release No. 73420, 2014 WL 5386875, at *2 n.21 (Oct. 23, 2014).

¹⁵ *Bravo Enters.*, 2014 WL 6480308, at *1.

¹⁶ *See* 15 U.S.C. § 78o(d).

December 31, 2009, filed on January 5, 2011. At the time of the Trading Suspension Order's issuance, Immunotech's common stock was quoted on the OTC Pink marketplace within OTC Link under the symbol "IMMB."¹⁷ Immunotech posted some corporate information on OTC Link's website, including a document entitled Interim Financial Report for Quarter Ended June 30, 2014. That report included unaudited financial statements reporting that the company had only one full-time employee (*i.e.*, Zhabilov) and was operating at a loss, had no revenues or cash, and had liabilities of almost \$5 million.

At the time we issued the Trading Suspension Order, our opinion that the public interest and the protection of investors required the suspension of trading was based on our consideration of the information summarized below.

1. Claims regarding Immunotech's negotiations and agreement with the Zimbabwean company, Uldic Investment Pvt. Ltd. ("Uldic")

Immunotech's October 9, 2014 press release stated that the company had entered into negotiations with Uldic, a Zimbabwean company, to pursue the development of its treatments in Africa. A subsequent October 21, 2014 press release stated that Immunotech had completed negotiations with Uldic to, among other things, pursue the development of market opportunities related to the "deadly Ebola virus" in Africa and to conduct human clinical trials there.¹⁸ These statements raised questions because information provided to Division staff by the Zimbabwean Securities and Exchange Commission ("ZSEC") showed that Uldic was a dormant shell company with no operations.

2. Claims regarding Immunotech's development of market opportunities related to the Ebola virus

Immunotech's October 21 press release also described the Ebola virus as a "new potential initiative" for Immunotech's IPF-based treatments, including ITV-1. Immunotech noted that, although its studies had focused on its protein's potential as an HIV/AIDS vaccine, it believed that the compound also could be used as a potential immune-therapeutic drug to treat other infectious diseases. Contrary to these representations regarding Immunotech's pursuit of Ebola-related market opportunities, it appeared that Immunotech's agreement with the Zhabilov Trust dated March 2, 2006, which was published as an attachment to Immunotech's last Form 10-K filed with the Commission, specifically limited the scope of the licensing rights to "IPF **specific**

¹⁷ OTC Pink is one of three "tiered marketplaces" within OTC Link, which is operated by OTC Markets Group, Inc. OTC Pink "offers trading in a wide spectrum of equity securities through any broker," 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).

¹⁸ The parties also refer to this document as the October 19 or October 24 press release; it is not disputed that all versions of this press release are substantively the same.

to the HIV/AIDS treatment only.” (Emphasis in original.) Furthermore, Immunotech’s October 2014 press releases omitted information regarding the likelihood of success in applying IPF-based compounds specifically patented as a treatment for HIV/AIDS to the treatment of Ebola or how Immunotech could expect to fund the development given its precarious financial condition.

3. Other indicia of a potential market-manipulation scheme, including suspicious trading activity

During the period from August 1, 2014 through October 21, 2014, Immunotech was the subject of nineteen penny-stock touts identified by Division staff. Moreover, Immunotech’s October 21 press release—which, as discussed above, announced the completion of Immunotech’s negotiations with Uldic to pursue Ebola-related market opportunities in Africa—coincided with a 52% increase in Immunotech’s share price from \$0.0046 per share to \$0.007 per share. Its trading volume rose sharply from 1.4 million shares to 28.5 million shares, an increase of more than 1,800%.

C. Immunotech’s Rule 550 petition does not establish an entitlement to relief.

Immunotech contends that the trading suspension was not in the public interest and was unnecessary for the protection of investors. 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. We address Immunotech’s factual arguments before turning to its legal ones.

1. Immunotech’s challenges to the factual basis of the trading suspension are without merit.

According to Immunotech, its October 9 and October 21 press releases were not misleading and there was no evidence of manipulative trading. We find these contentions to be without merit and conclude, as we did when we suspended trading, that there was an absence of sufficient public information to permit informed investment decisions regarding Immunotech and that there was the appearance of possible manipulative activity in the market for its security.

a) Claims regarding Immunotech’s negotiations and agreement with Uldic

Immunotech asserts that it accurately described its contractual relationship with Uldic in its October 2014 press releases. It submits a contract with Uldic dated October 1, 2014, pursuant to which Uldic was to develop market opportunities for Immunotech’s “Medicine” (defined as IPF compounds for the “treatment of HIV/AIDS[] and HEPATITIS C”) and negotiate with

institutions “connected with promotion, distribution[,] and . . . sales of the Medicine.”¹⁹ Immunotech contends that it “hasn’t any reason to believe that Uldic” was a shell corporation, although it acknowledges that it did not take any steps to “ensure [Uldic’s] corporate status.” It posits that whether or not Uldic is a shell is immaterial because Uldic is owned by an individual named Borislav Boynov, who supposedly has decades of experience in Africa acting as a local representative to drug companies as well as longstanding business ties with Zhabilov.²⁰ Immunotech claims that it is “Boynov, not the corporate shell[,] . . . that makes the agreement relevant and of commercial viability.”

We find Immunotech’s arguments unpersuasive and conclude, as we did when we issued the Trading Suspension Order, that the company did not accurately depict its Ebola-related business prospects in relation to its dealings with Uldic. Notably, Immunotech does not deny that Uldic is a shell company;²¹ rather, it believes that status is irrelevant because of the supposed relationship between Immunotech’s owner and Uldic’s owner. But as the U.S. Supreme Court has reiterated on many occasions, a “basic tenet” of corporate law is that “the corporation and its shareholders are distinct entities.”²² A reasonable investor would consider an agreement between two *companies* very different from an agreement between the companies’ *owners* in terms of the duties, obligations, and liabilities of the parties. Further, the October 1 contract is limited to Immunotech’s HIV/AIDS and/or Hepatitis C treatments and by its terms does not embrace the *Ebola*-related market opportunities touted in Immunotech’s October 21 press release.²³ Moreover, although the press release stated that Immunotech would work with Uldic to conduct human clinical trials, such activities appear to be beyond the scope of the October 1 contract. The contract requires Uldic to “contact[]” and “enter[] into” negotiations with, *inter*

¹⁹ The October 1 date of this contract is anomalous, given that Immunotech’s later October 9 press release stated that it had entered into *negotiations* with Uldic.

²⁰ Immunotech asserts that Uldic assisted in the negotiation of a preliminary agreement between Immunotech and a company called Synexa Laboratories. This purported “agreement” is attached as an exhibit to the opening brief. It is a one-page, unauthenticated letter dated November 10, 2014 that is addressed “to whom it may concern” and that commits neither Immunotech nor Synexa to any concrete steps.

²¹ According to the Division, documentation provided from the Zimbabwean Registrar of Companies via the ZSEC shows that Uldic had no returns as of its last-filed report (2009).

²² *E.g.*, *Dole Food Co. v. Patrickson*, 538 U.S. 468, 474 (2003).

²³ For purposes of discussion, we have assumed that the contract is authentic and genuine. We observe, though, that it is implausible on its face. *See, e.g.*, *Anthony Fields*, Exchange Act Release No. 74344, 2015 WL 728005, at *13, 15 & n.93 (Feb. 20, 2015) (discounting purported agreements whose terms were nonsensical and absurd). For example, Immunotech does not explain how Uldic, a Zimbabwean shell corporation, could create a distribution network in the regions—*e.g.*, Australia, New Zealand, a half dozen countries in Africa, and several island nations in the Indian Ocean—that the contract defines as Uldic’s exclusive territory.

alia, “clinical research centres” to “promote” Immunotech’s products and “develop[e] demand”—not plan for clinical trials.

b) *Claims regarding Immunotech’s development of market opportunities related to the Ebola virus*

Immunotech next argues that we misconstrued its October 21 press release, which it contends merely stated the company’s intent to “embark upon further research concerning the applicability of [IPF] technology to the Ebola virus,” not that the company had already tested IPF-based therapies on Ebola patients or that it had an effective treatment for Ebola. Immunotech also asserts that its statements about the *potential* utility of IPF-based therapies were well founded, because research supposedly indicates that such therapies can be useful in treating diseases such as HIV/AIDS and Hepatitis C.²⁴ It asserts that IPF has been shown in tests to bind with “glycoproteins” located on the surface of the HIV virus, and that because the Ebola virus “also has glycoproteins on its surface,” Immunotech “believes that IPF would work in the same manner.”

We reject Immunotech’s attempt to characterize its prior statements as merely announcing a general intent to conduct “further research” about the potential use of IPF in the Ebola crisis. Its October 21 press release declared that the company had “completed negotiations with Uldic” to “pursue the development of *market opportunities* related to the deadly Ebola virus.” The press release went on to say that “experimental *treatments* are permitted” in parts of Africa, and that, “with the Ebola outbreak, Immunotech expects that it can *market* its treatment for infectious diseases.” A potential investor reading the press release would reasonably have believed that Immunotech had an IPF-based treatment for Ebola ready to market in Africa—something that Immunotech itself concedes is not the case.

Immunotech also argues that our concerns regarding the scope of Immunotech’s license to use the IPF patents were unwarranted. Immunotech acknowledges that its March 2006 licensing agreement with the Zhabilov Trust was limited to “HIV/AIDS treatments only,” whereas its October 21 press release stated that it was developing market opportunities with respect to Ebola. It tries to explain away this discrepancy by asserting that the licensing agreement was later amended on September 22, 2014 to cover “all infectious diseases.”²⁵ Yet

²⁴ Searches on the Westlaw databases ALLNEWSPLUS and JLR for the search terms (“inactiv! pepsin! fraction!” or “inactiv! pepsin! fragment!”), and similar searches on PubMed and Google Scholar, did not return any published research from outside parties.

²⁵ We need not pursue evidence concerning whether the amendment is authentic. Statements by Immunotech that post-date the purported amendment do not corroborate its existence. On November 14, 2014, Immunotech published on OTC Link’s website its Quarter End Report for the Quarter and Nine Month Period Ended September 30, 2014. That document states, under the heading “Business information,” that Immunotech has “full indefinite licensing rights of the Irreversible Pepsin Fraction (IPF) peptide molecule for the *specific treatment of the*

(footnote continued . . .)

Immunotech does not claim that this amendment was publicly available when it issued the October 2014 press releases or when we suspended trading in November 2014. Thus, at the time of the suspension, the information available to potential investors was, at best, contradictory and confused. Even assuming *arguendo* that the press releases' representations about the scope of Immunotech's IPF license were technically true when made, our judgment that a trading suspension is necessary need not, as we detailed in *Bravo Enterprises*, rest on conclusive proof that any specific statement was in fact false or materially misleading.²⁶ To the contrary, we appropriately may suspend trading when we are of the opinion that the public interest and investor protection make such action necessary; that opinion may be informed by concerns regarding the accuracy and adequacy of publicly disseminated information about an issuer, which manifestly were present here.

Indeed, Immunotech's subsequent disclosure of the September 22 amendment shows how the trading suspension advanced the public interest. We considered a closely analogous situation in *Bravo Enterprises*, and what we said there is equally apt here:

[P]artial corrective disclosures, which occurred only after the Trading Suspension Order's issuance[,] . . . further support[] our determination By promoting the public dissemination of accurate information, the trading suspension advanced the public interest and the protection of investors.²⁷

In short, far from demonstrating that a trading suspension was unwarranted, Immunotech's arguments to us with respect to its October 2014 press releases reinforce and confirm our opinion that a trading suspension was necessary in the public interest and for the protection of investors.

c) *Other indicia of a potential market-manipulation scheme, including suspicious trading activity*

Finally, Immunotech maintains that our concerns about potential market manipulation do not support the trading suspension. It advances three arguments on this front, each of which we find to be without merit.

First, Immunotech claims that it is unaware of the identity of the 19 penny-stock touts identified by Division staff. But it does not deny that its stock has been the subject of touting

(. . . footnote continued)

HIV/AIDS indication." See <http://www.otcmarkets.com/financialReportViewer?symbol=IMMB&id=129099> (all websites last visited August 28, 2015 unless otherwise indicated). Nor is there any mention of the purported amendment under the heading "Subsequent Events" in that document. *Id.*

²⁶ *Bravo Enters.*, 2015 WL 5047983, at *6, 11.

²⁷ *Id.* at *9.

activity. We reject Immunotech’s contention that we are required to find that Immunotech itself “engaged in a scheme to manipulate the stock price” in violation of the securities laws. As we explained in *Bravo Enterprises*, 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.²⁸ 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, or was responsible for, market manipulation.²⁹ Regardless of the culpable party, potentially manipulative or deceptive trading implicates the public interest and our objective to maintain fair and orderly markets in which investors can make informed investment decisions.

Second, Immunotech claims that the 52% increase in its share price and volume on October 21 is immaterial because, according to Immunotech, it issued the press release announcing its pursuit of Ebola-related market opportunities three days later, on October 24. But contrary to Immunotech’s asserted chronology, Immunotech provided the press release to OTC Link’s OTC Disclosure and News Service and issued the press release in question on October 21.³⁰ Moreover, Immunotech’s Quarter End Report for the Quarter and Nine Month Period Ended September 30, 2014 published on OTC Link’s website states that “[o]n *October 21, 2014* the Company announced it had successfully completed negotiations with Uldic.”³¹ Thus, the dramatic price and volume spikes that occurred on October 21 in fact coincided with Immunotech’s dissemination of information regarding how the Ebola crisis could improve its business prospects. This is indicative of possible manipulative activity in the market for Immunotech’s securities.

Third, Immunotech contends that its press releases were accurate, and that, as a result, it cannot be held accountable for “increased volume and share price” caused by the announcement of *truthful*, “favorable news.” This argument fails because the October 2014 press releases contained statements regarding the company’s Ebola-related business prospects that, in our view, appeared to be misleading.

2. Immunotech’s legal arguments are without merit.

Immunotech also argues that we considered inadmissible evidence and failed to take into account the harm to its investors. We reject these arguments as well.

²⁸ *Id.* at *2.

²⁹ *Id.* at *3 & n.16; *see also id.* at *11.

³⁰ *See* <http://www.otcmarkets.com/stock/IMMB/news/Immunotech-Laboratories--Inc--Enters-into-Agreement-to-Market-Potential-Ebola-Virus-Disease---ldquo-EVD-rdquo---Treatment-and-Implement-Strategy-for-Company-s-ITV-1-Infectious-Diseases-Treatment-in-Africa?id=89899&b=y>.

³¹ *See* <http://www.otcmarkets.com/financialReportViewer?symbol=IMMB&id=129099> (emphasis added).

a) *Immunotech's evidentiary objections are meritless.*

Immunotech challenges an affidavit filed with the Division's answering brief (the "Second Affidavit"). It argues that the Second Affidavit should not be considered by the Commission for three reasons: (i) it makes incorrect and unsound claims about the scientific validity of Immunotech's technology; (ii) it is "self-serving"; and (iii) it does not establish the basis for the affiant's knowledge of matters at issue. The first of these contentions is beside the point, while the second and third are, in our view, unpersuasive.

i. The Second Affidavit states that counsel for the Division reviewed referrals from the Financial Industry Regulatory Authority ("FINRA"), which in turn summarize conversations between Zhabilov and FINRA staff. According to the Second Affidavit, the summary in the referral states that Zhabilov told FINRA staff about a number of deficiencies in Immunotech's human studies concerning the efficacy of IPF-based therapies for the treatment of HIV/AIDS. Immunotech asserts that Zhabilov's remarks were misunderstood and that, in any event, the Trading Suspension Order was premised on Immunotech's "activities relating to the Ebola virus, not . . . AIDS." It also argues that counsel for the Division lacks a "scientific basis" for challenging the "overall validity" for Immunotech's IPF-based technologies as they relate to Ebola.

We deem irrelevant Immunotech's assertion that the Division has not set forth a "scientific basis" for questioning its claims. We did not premise the Trading Suspension Order on an assessment of the effectiveness of Immunotech's IPF-based therapies or the truth of its theories about glycoproteins, Ebola, or the like. And our decision to deny Immunotech's Rule 550 petition likewise is not based on an evaluation of any scientific issues.³² Rather, even taken at face value and on their own terms, Immunotech's statements about, *inter alia*, the scope of its licensing agreement and its dealings with Uldic are and were inconsistent with Immunotech's other submissions and filings. Standing alone, these discrepancies supported our concerns about the accuracy and adequacy of publicly disseminated information regarding Immunotech's Ebola-related business prospects and justify our continued opinion that a trading suspension was necessary in the public interest and for the protection of investors.

ii. Immunotech next errs in arguing that "self-serving" affidavits categorically must be disregarded by the Commission in resolving a Rule 550 petition. We recognize that "declarations are often self-serving, and this is properly so because the party submitting it would use the declaration to support his or her position."³³ But the "self-serving" nature of an affidavit

³² We make explicit that we have not relied upon the third paragraph of the Second Affidavit in determining this matter.

³³ *Nigro v. Sears, Roebuck and Co.*, 784 F.3d 495, 497 (9th Cir. 2015); *see, e.g., Spring Street Partners-IV, L.P. v. Lam*, 730 F.3d 427, 441 n.7 (5th Cir. 2013); *Hill v. Tangherlini*, 724 F.3d 965, 967-68 & n. 1 (7th Cir. 2013).

will not automatically render it insufficient, so long as it relates concrete facts and not merely conclusory assertions.³⁴ As in other contexts, we carefully consider the relevance, materiality, and reliability of evidence in determining the weight to be afforded it.³⁵ So the identity of an affiant and the timing and circumstances of an affidavit's preparation all bear on the weight we give it.³⁶ We believe that the Second Affidavit is relevant, material, and reliable and we therefore reject Immunotech's characterization of the Second Affidavit as an "artifice" or "ruse" devoid of "any evidentiary value."

iii. Lastly, Immunotech criticizes the Second Affidavit as containing averments outside of the affiant's personal knowledge. The affidavit states that counsel for the Division reviewed corporate documents provided by the ZSEC supporting the conclusion that Uldic was a shell company without annual returns. It also states that Division counsel was unable to locate any public references to Immunotech's purported amendment of its licensing agreement with the Zhabilov Trust.³⁷ We see no merit in Immunotech's objection to these statements. As we held in *Bravo Enterprises*, Rule of Practice 550(b) provides that we may resolve such petitions "on the facts presented in the petition and *any other relevant facts known to the Commission.*"³⁸ This provision authorizes us to consider information relayed through another person, such as a regulatory authority, subject again to the proviso that we consider the relevance, materiality, and reliability of evidence in determining what weight to give it.³⁹ Here, no reason has been provided to doubt the relevance, materiality, or reliability of the Second Affidavit's statements regarding Uldic's status as a shell company or how the license amendment was not publicly

³⁴ See, e.g., *Nigro*, 184 F.3d at 497-98; *Widmar v. Sun Chem. Corp.*, 772 F.3d 457, 459-60 & n.1 (7th Cir. 2014).

³⁵ See, e.g., *Bravo Enters.*, 2015 WL 5047983, at *12.

³⁶ E.g., *Nigro*, 784 F.3d at 497; *Continental Cas. Co. v. Sycamore Springs Homeowners Ass'n, Inc.*, 652 F.3d 804, 806 (7th Cir. 2011); *Nelson v. City of Davis*, 571 F.3d 924, 929 n.2 (9th Cir. 2009); cf. *Cleveland v. Policy Mgmt. Sys. Corp.*, 526 U.S. 795, 806 (1999) (self-serving affidavit that seeks to contradict prior, sworn testimony without explaining the disparity may be disregarded); *SEC v. Silverman*, 328 F. App'x 601, 605 (11th Cir. 2009) (ordering disgorgement where defendant submitted "no documentary evidence supporting their conclusory and self-serving affidavits" stating that their ill-gotten gains were lost); *Zheng v. Mukasey*, 546 F.3d 70, 72 (1st Cir. 2008) (similar).

³⁷ Immunotech also challenges on hearsay grounds the Second Affidavit's statements regarding the FINRA referrals and Immunotech's HIV/AIDS trials. Because we have not considered these portions of the affidavit, we do not address this challenge. See *supra* note 32.

³⁸ *Bravo Enters.*, 2015 WL 5047983, at *11 (quoting 17 C.F.R. § 201.550(b) (emphasis added)).

³⁹ *Id.* at *11-12.

available.⁴⁰ Immunotech did not dispute the correctness of these statements, even though any evidence to the contrary—assuming it existed—readily would have been available to Immunotech. Thus, we are justified in inferring, consistently with Second Affidavit’s averments, that such evidence does not exist.⁴¹ In short, we are satisfied that consideration of the Second Affidavit is fair and proper under the circumstances.

b) *The public interest does not require vacating the suspension.*

Immunotech also contends that the “harm the Commission alleges the public was facing upon entering the trading suspension has now been far outweighed by the suspension itself and the ongoing repercussions therefore.” We do not agree. Trading suspensions serve a valuable purpose by drawing attention to potential inadequacies or inaccuracies in the publicly available information about a company. We have a compelling interest in alerting the investing public about concerns that we may have regarding an issuer or about potential manipulation in the market for its securities. And as we have discussed in detail above, our concerns about Immunotech were warranted when we suspended trading and remain largely unresolved. Any potential, continuing harm to Immunotech’s shareholders caused by the Trading Suspension Order, which is no longer in effect, does not alter our overall public-interest assessment.⁴² Specifically, even though a trading suspension potentially could be to the detriment of current shareholders prevented from selling their holdings while the suspension was in effect, we also must consider the interests of prospective or potential investors who might be harmed if they purchase shares in reliance on potentially inaccurate or inadequate information about the issuer.⁴³

⁴⁰ Counsel for the Division acquired the information in the normal course of his responsibilities and no irregularity is apparent.

⁴¹ *Bravo Enters.*, 2015 WL 5047983, at *12 n.66 (noting permissibility of “inference that missing or unsupplied information peculiarly available to corporate insiders would have been unfavorable to an issuer seeking relief from a trading suspension”); *see also Community Hospitals of Cent. Cal. v. NLRB*, 335 F.3d 1079, 1086 (D.C. Cir. 2003); *Gumbs v. Int’l Harvester, Inc.*, 718 F.2d 88, 96 (3d Cir. 1983); *UAW v. NLRB*, 459 F.2d 1329, 1336-38 (D.C. Cir. 1972); *James E. Welch*, Exchange Act Release No. 31648, 1992 WL 394574, at *2 & n.6 (Dec. 23, 1992) (drawing adverse inference from unexplained failure to clarify or deny suspicious circumstances).

⁴² Because the trading suspension expired ten business days after the Trading Suspension Order’s issuance, on December 4, 2014, Immunotech’s existing shareholders now may sell their shares on the “grey market” (*i.e.*, through brokers on an unsolicited basis). *See Bravo Enters.*, 2015 WL 5047983, at *12. The fact that a broker-dealer has not so far chosen to take the steps necessary to resume publishing quotations for Immunotech’s securities does not prevent an investor from engaging in transactions in that security, including by having a broker-dealer submit unsolicited quotations on his or her behalf. *See id.* at *12 & n.72; Exchange Act Rule 15c2-11(f)(2), 17 C.F.R. § 240.15c2-11(f)(2).

⁴³ *Bravo Enters.*, 2015 WL 5047983, at *13.

After weighing these interests, our opinion is unchanged from when we issued the Trading Suspension Order.

* * *

It was and remains our opinion that the public interest and the protection of investors required suspension of trading in Immunotech's securities for the full period specified in the Trading Suspension Order.⁴⁴

By the Commission (Chair WHITE and Commissioners AGUILAR, GALLAGHER, STEIN, and PIWOWAR).

Brent J. Fields
Secretary

⁴⁴ We have considered all of the parties' contentions. We have rejected or accepted them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75790 / August 28, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16321

In the Matter of
IMMUNOTECH LABORATORIES, INC.

ORDER DENYING PETITION FOR TERMINATION OF TRADING SUSPENSION

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

ORDERED that the petition filed by Immunotech Laboratories, Inc. requesting termination of the November 20, 2014 order suspending trading in its securities for a period of 10 days be denied.

By the Commission.

Brent J. Fields
Secretary