SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 90779 / December 22, 2020

Admin. Proc. File No. 3-19242

In the Matter of

APOTHECA BIOSCIENCES 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 of information in press releases and regarding the presence of suspicious trading in issuer's securities. *Held*, petition to terminate the trading suspension denied because the Commission remains of the opinion that the public interest and the protection of investors required the trading suspension.

APPEARANCES:

Craig A. Huffman, Esq., Securus Law Group, Tampa, FL, for Apotheca Biosciences Inc.

Deena R. Bernstein, Amy Gwiazda, and *Susan Cooke Anderson* for the Division of Enforcement.

Petition to terminate suspension filed:	July 9, 2019
Last brief received:	September 12, 2019

Apotheca Biosciences Inc. filed a timely petition to terminate the Commission's order temporarily suspending trading in Apotheca's securities. Because we remain of the opinion that the public interest and investor protection required the suspension of trading, we deny Apotheca's petition.

I. Background

On June 28, 2019, we issued an order pursuant to Section 12(k) of the Securities Exchange Act of 1934 suspending trading in the securities of Apotheca (CIK No. 0001632053) through July 15, 2019.[1] The trading suspension order cited "questions regarding the accuracy of assertions by Apotheca . . . and by others, in press releases and/ or cold calls to investors concerning, among other things: (1) corporate assets; (2) anticipated corporate acquisitions; (3) business operations; and (4) up-listing to the OTCQB."[2] The Commission therefore concluded that there was a "lack of current and accurate information concerning" Apotheca's securities and "that the public interest and the protection of investors require a suspension of trading."[3]

On July 9, 2019, Apotheca filed a petition under Rule of Practice 550 requesting termination of the trading suspension.[4] Because the petition was timely—that is, filed before the trading suspension expired[5]—we directed the Division of Enforcement to file the non-privileged factual information before the Commission at the time trading was suspended.[6] We also permitted the parties to make additional submissions, which they have done.

The temporary trading suspension, which lasted only ten days, has already expired. Nonetheless, as we have explained, we may consider a timely-filed Rule 550 petition and provide appropriate relief even if the suspension expired while the petition was pending.[7] We

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1 *Apotheca Biosciences Inc.*, Exchange Act Release No. 86248, 2019 WL 2726232 (June 28, 2019).

2 *Id.* at *1.

3 *Id.*

4 17 C.F.R. § 201.550.

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

6 *Apotheca Biosciences, Inc.*, Exchange Act Release No. 86405, 2019 WL 3322259 (July 18, 2019).

7 *Efuel EFN Corp.*, Exchange Act Release No. 86307, 2019 WL 2903941, at *1 & n.7 (July 5, 2019) (citing *Bravo Enters.*, Exchange Act Release No. 75775, 2015 WL 5047983, at *6 (Aug. 27, 2015) (stating that "entertaining timely challenges to trading-suspension orders enables

may "vacate an expired trading-suspension order in appropriate circumstances,"[8] or provide relief with respect to the collateral consequences that might have arisen as a result of the trading suspension.[9] Here, however, we see no basis for any relief.

II. Analysis

Section 12(k)(1) of the Exchange Act provides that "[i]f in its opinion the public interest and the protection of investors so require, the Commission is authorized by order . . . summarily to suspend trading in any security" for up to ten business days.[10] The text, structure, and legislative history of this provision establish that Congress conferred upon the Commission broad discretion in determining when to temporarily suspend trading in a security.[11] Thus, we are empowered to suspend trading without determining that an issuer has violated the securities laws.[12] Our inquiry turns solely on whether we are of the "opinion" that the "public interest" and the "protection of investors" require a trading suspension.[13] "Congress did not intend to require the Commission to make any other findings."[14]

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us to consider adversely affected parties' objections and to develop the record before any subsequent judicial review occurs")).

8 *Bravo Enters.*, 2015 WL 5047983, at *6.

9 *Id.* at *6 & n.54, *11 & n.72 (describing collateral consequences).

10 15 U.S.C. § 78*l*(k)(1).

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

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

13 *Bravo Enters.*, 2015 WL 5047983, at *2 & n.13 ("Section 12(k)(1)'s use of the phrase 'in its opinion' augments the breadth of the Commission's discretion to determine whether a trading suspension is required in the public interest and for the protection of investors. The decisional inreference point is our own *subjective* opinion about what action is necessary under the circumstances, as distinguished from an *objective* standard. As the D.C. Circuit has explained, there is a significant 'distinction between a subjective standard (whether the agency thinks that a condition has been met) and an objective one (whether the condition has in fact been met),' with the former giving the agency more discretion to act.") (emphasis in original) (citing cases).

14 *Id.* at *4; *see also* H.R. Rep. No. 101-524, at 37, Pub. L. No. 101-432 (1990) (stating that under Exchange Act Section 12(k)(1) the "Commission's authority to implement trading suspensions . . . with respect to individual securities . . . may be exercised upon a finding by the Commission that in its opinion the public interest and the protection of investors so requires").

This trading suspension authority is an important tool for alerting the public about our concerns about an issuer, protecting investors against unfair or disorderly markets, and increasing the availability of information in the marketplace.[15] Consequently, we have found it necessary to suspend trading in a variety of circumstances. For example, as relevant here, we have suspended trading in situations when there was a lack of current, adequate, or accurate information about an issuer; and when we had concerns about potential market manipulation or other unusual market activity occurring.[16] Also relevant here, we have suspended trading when there were questions about the accuracy of publicly available information about the company, whether in press releases, public filings, or other statements, and regardless of whether such information was disseminated by the issuer itself or by a third party.[17] Therefore, while Apotheca argues that the Commission has not "defin[ed] how an 'opinion' [that a trading suspension is warranted] can be made," we have, through our application of such authority to various fact patterns and circumstances, explained what types of situations give rise to concerns that lead to the Commission being of the opinion that a trading suspension is necessary.

Nonetheless, we recognize that the statute authorizing the Commission to order a trading suspension affords it great latitude. As discussed above, the Commission is authorized to suspend trading so long as it believes doing so would further the public interest and protect investors. The issuer does not, as the Supreme Court confirmed in *SEC v. Sloan*, have a right to be notified that the Commission is considering a trading suspension and is not afforded a pre-suspension hearing or other formal process to dispute the grounds for the suspension before it takes effect.[18] A subsequent hearing is available under Commission Rule of Practice 550, but in most cases the Commission will be able to resolve challenges to the suspension only after it has expired.[19] As a result, we exercise our discretion to suspend trading carefully.

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15 *See, e.g., Efuel*, 2019 WL 2903941, at *2.

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

17 *Id.* at *9 ("press release included potentially misleading statements"); *Myriad*, 2015 WL 5081238, at *2-4 (there was "conflicting information in the marketplace"); *Immunotech Labs., Inc.*, Exchange Act Release No. 75790, 2015 WL 5081237, at *2-4 (Aug. 26, 2015) ("information available to potential investors was, at best, contradictory and confused").

18 *SEC v. Sloan*, 436 U.S. 103, 112 (1978).

19 This provision for a post-suspension opportunity to be heard satisfies the requirements of the Due Process Clause. *Xumanii Int'l Holdings Corp. v. SEC*, 670 F. App'x 508 (9th Cir. 2016). An issuer is required to file a Rule 550 petition within the 10-day effective period of the suspension or the petition will be dismissed as untimely. *Global Green, Inc.*, Exchange Act Release No. 73855, 2014 WL 7184234 at *1 (Dec. 16, 2014), *pet. denied*, 631 F. App'x 868, 870 (11th Cir. 2015). However, it is typically not feasible for the Commission to resolve a timely filed Rule 550 petition within the 10-day suspension period, and the suspension therefore will expire by its terms before the Commission reaches its decision. *Cf. Encore Clean Energy, Inc.*, 2012 WL 6185728 (Dec. 12, 2012) (withdrawing trading suspension before the suspension expired where the Commission learned, after the trading suspension order had issued, that the

We also exercise our discretion carefully because a trading suspension order has significant consequences. It prohibits brokers, dealers, and members of a national securities exchange from using any instrumentality of interstate commerce "to effect any transaction in, or induce the purchase or sale of," a security subject to a suspension order while the suspension is in effect.[20] Although trading may resume after a suspension expires, for securities that are not listed on national securities exchanges and that instead are quoted over-the-counter (OTC), quoting does not automatically resume. Instead, a broker-dealer generally may not solicit investors to buy or sell the previously suspended stock until certain requirements are met. And this means that the expiration of a trading suspension, at least for OTC securities, does not automatically result in the immediate resumption of widespread trading activity.[21]

As with any other area in which we are afforded significant discretion, therefore, we exercise our trading suspension authority with great care. We are cognizant of the foregoing considerations when exercising our broad discretion to summarily suspend trading in an issuer's securities. Given the summary nature of a suspension, and the practical difficulties of fully undoing its consequences once imposed, we only order trading suspensions after careful consideration of the facts and circumstances of each case to ensure that such action is necessary to protect investors.

When we issued the trading suspension order in this case, we reviewed the information before us and concluded "that the public interest and the protection of investors require a suspension of trading." As discussed above, Rule 550 allows an issuer to challenge the trading suspension. Upon review of the arguments presented in Apotheca's petition, we remain of the opinion that a trading suspension was in the public interest and necessary to protect investors.

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company had five years ago filed a Form 15 to voluntarily terminate the registration of its securities under Exchange Act Section 12(g), and so was not a delinquent issuer).

[20] Exchange Act Section 12(k)(4), 15 U.S.C. § 78*l*(k)(4).

[21] Exchange Act Rule 15c2-11 governs the ability of brokers to initiate and resume securities quotations for securities not listed on a national securities exchange. *See* 17 C.F.R. § 240.15c2-11. After a trading suspension of more than four business days, a broker-dealer cannot re-initiate quotations without satisfying the requirements of 15c2-11, which it typically does by filing a Form 211 with FINRA. To get a Form 211 approved, the broker must provide certain detailed information about the issuer and have "a reasonable basis under the circumstances for believing the information is accurate in all material respects . . . ." Rule 15c2-11(a) (quoted language in paragraph appears immediately after 15c2-11(a)(5)(xvi)). The Form 211 process thus imposes obligations on a broker, as does the need to gather the requisite information, and these obligations may prevent quoting from resuming. And, as the Form 211 process is proceeding, an issuer's shares cannot trade in a quoted market (as some issuers may prefer), and stockholders and prospective investors are able to trade shares only in the so-called grey market.

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

We based our determination that the "public interest and the protection of investors require a suspension of trading" on two grounds: (1) that Apotheca issued at least six press releases that contained inadequate, misleading, inaccurate, or incomplete information; and (2) the presence of suspicious trading in Apotheca's securities.

Apotheca is a Nevada corporation with its principal place of business in St. Petersburg, Florida. Prior to an August 2018 reverse merger, it was known as Cannabis Leaf Inc. According to the information before the Commission at the time of the trading suspension, Cannabis Leaf "was the subject of numerous FINRA Fraud Surveillance referrals to the Commission for possible pump and dump and boiler room activity." Apotheca does not deny this.

According to an annual report on Form 10-K, filed on May 16, 2019 for the fiscal year ended January 31, 2019, and its description of itself in numerous press releases, Apotheca is in the business of developing "cutting edge medical products, nutraceuticals, formulation and delivery technologies for the healthcare and consumer care industry," and its website states that it is "installing a world-class production facility to manufacture hemp-derived products." In at least one press release, Apotheca claimed that it "engages in," among other things, "the discovery, development, and commercialization of therapies for the treatment of opioid addiction, sleep disorder, PTSD, Alzheimer's and inflammatory diseases worldwide."

Apotheca's securities are registered pursuant to Exchange Act Section 12(g).[22] Its common stock has been quoted on OTC Link (previously "Pink Sheets") operated by OTC Markets Group, Inc. ("OTC Link") under the symbol "CBDC."[23] Apotheca's Form 10-K for the period ended January 31, 2019 stated that it had "not attained profitable operations and [is] dependent upon obtaining financing to pursue any extensive activities. For these reasons, [Apotheca's] auditors stated in their report on [its] audited financial statements that they have substantial doubt that [it] will be able to continue as a going concern. . . ." Indeed, the Form 10-K stated that, as of January 31, 2019, Apotheca had just $2,942 in cash and $822,993 in "negative working capital" and had a net loss of $2,512,440 since the company's inception.

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22 15 U.S.C. § 78*l*(g).

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

1. Apotheca issued press releases containing misleading and inaccurate information.

On November 6, 2018, Apotheca issued a press release announcing its "intent to purchase Nano Creaciones S.A. P.I. de D.V. Research LLC," which the press release described as being "on the cutting edge of nanotechnology," and stating that Nano "currently holds several patents and patents pending for the treatment of certain medical conditions. . . ." But, according to the information before the Commission at the time of the trading suspension, there were "no patents or patents pending held by Nano according to the U.S. Patent and Trademark Office's database." As of the time of the trading suspension order, Apotheca had publicized no further information about Nano or the purchase transaction announced in the press release.

On November 12, 2018, Apotheca issued a press release stating that it "plan[ned] to uplist to the OTCQB market within the next few weeks."[24] The press release noted several benefits of such a move including "enhanced investor benefits including higher reporting standards, greater access to analyst coverage and news services, and more comprehensive compliance requirements." But, according to the information before the Commission at the time of the trading suspension in July 2019, Apotheca remained on the OTC Pink market and had made no further announcements about the status of its application for uplisting to the OTCQB.

On December 10, 2018, Apotheca issued a press release announcing plans "to deliver some of the highest quality CBD products on the market" under a new "business brand [called] Apotheca Earth."[25] The press release stated that Apotheca would launch a "nationwide sales and marketing drive" for Apotheca Earth. But, according to the information before the Commission at the time of the trading suspension in June 2019, Apotheca Earth's website stated "Store Unavailable" and "the link on Apotheca's website [did] not work."

On January 15, 2019, Apotheca issued a press release introducing a "pharma-grade new isolate and full-spectrum CBD product line called ProMED." The press release stated that ProMED had "partnerships that have been formed . . . for the past 4 years" that would allow it to

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[24] OTCQB is a tier of OTC Link on which qualifying issuers must report more detailed information than that required of issuers on the Pink market. *See* https://www.otcmarkets.com/learn/reporting-standards (last visited Dec. 21, 2020).

[25] "CBD is short for 'cannabidiol,' and it is one of the 'unique molecules' found in the *Cannabis sativa* plant. The *Cannabis sativa* plant is better known as the plant from which marijuana is derived. But it is also the species of plant from which industrial hemp is derived." *Horn v. Medical Marijuana, Inc.*, 383 F.Supp.3d 114, 119-20 (W.D.N.Y. Apr. 17, 2019). "Products containing CBD have become hot commodities in recent years, and sales are 'projected to grow tremendously.' Advocates claim that CBD provides numerous health benefits, particularly in the area of pain management." *Id.* at 120 (citing W. Michael Schuster & Jack Wroldsen, *Entrepreneurship and Legal Uncertainty: Unexpected Federal Trademark Registrations for Marijuana Derivatives*, 55 AMBLJ 117, 128, 129, 135 (2018)).

launch several new products including "tinctures," "pain creams," "soft gels," a "special formulated CBD sleeping aid," and a "pet line," all of which it said "should launch mid-year 2019." On April 1, 2019, Apotheca issued another press release announcing the incorporation of ProMED Biosciences, Inc., specifying eleven products that were described as immediately available for delivery, an additional eight products that would be available during the second quarter of 2019, and an additional 24 products that were "in development" and stating that it had received "close to $500k in preorders so far."[26] Apotheca issued a similar press release on April 23, 2019. But, according to the information before the Commission at the time of the trading suspension in June 2019, ProMED did not have a website.

On June 6, 2019, Apotheca issued a press release and filed a Form 8-K announcing an agreement to acquire a majority stake in Hemp Sciences Corp. According to the information before the Commission at the time of the trading suspension in June 2019, Hemp Sciences's former CEO and current chairman (also the former CEO and current chairman of Apotheca), as well as Hemp Sciences's chief technology officer, have been the subjects of FINRA referrals to the Commission regarding potential manipulative schemes. Apotheca represents that, "[s]ince the [trading] suspension by the SEC, the transaction has been cancelled."

2. Evidence existed of a potential market manipulation scheme.

Apotheca's stock was promoted and traded in a manner that raised concerns that it might be the subject of a market manipulation. In the six months before October 31, 2018, Apotheca's average daily trading volume was 128,666 shares. Yet between November 2, 2018 and April 1, 2019, the average daily trading volume almost doubled, to 248,010 shares.

During that time, in November and December 2018, FINRA and the Commission received tips from three investors who were solicited to purchase Apotheca securities by a company called Equity Traders.[27] Equity Traders also solicited investors for three other companies that were the subject of trading suspension orders at the same time as Apotheca. The FINRA referral further noted that investors who were senior citizens and together purchased over $600,000 of Apotheca stock during this period had also purchased stock in Korver Corp., another issuer subject to a trading suspension for whose stock Equity Traders solicited investors.

Between September and December 2018, FINRA also identified three entities that sold 2,335,758 shares of Apotheca stock for proceeds of approximately $1,272,109. One such entity,

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[26] In its petition, Apotheca argued that the trading suspension order's reference to a lack of available information about Apotheca's "business operations" was unclear. But Apotheca acknowledges that the Division had explained to Apotheca before it filed its first brief that "business operations" referred to "a $500,000 order contained in a release on April 1, 2019."

[27] Apotheca claims that the statement in the trading suspension order that "cold calls" had been made in an effort to promote Apotheca's securities "is not even just a rumor but is a non-existent unsourced allegation." We believe it was reasonable to use the term "cold calls" to describe the solicitations to buy Apotheca's securities that investors brought to our attention.

Tendall Capital Markets Ltd., also sold stock during this time period in two other issuers now subject to trading suspension orders. Tendall was also often used as a broker-dealer by Wintercap SA, an asset manager that is the defendant in a pending Commission civil proceeding alleging its participation in a $165 million microcap fraud. The other two entities that FINRA identified have been cited in numerous FINRA Fraud Surveillance reports involving trading connected to market manipulation schemes. And Apotheca filed a Form S-1/A with the Commission on March 15, 2019, which stated that it had entered into two securities purchase agreements with FirstFire Global Opportunities Fund, which has been referenced in numerous FINRA Fraud Surveillance reports for involvement in financing agreements with OTC issuers suspected of being the subject of market manipulation schemes.

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

Apotheca contends that the trading suspension was "not necessary, nor just in the public interest or for the protection of investors." We have reviewed the arguments and information submitted in support of Apotheca's Rule 550 petition and remain of the opinion that the public interest and the protection of investors required suspension of trading in Apotheca's securities.

Apotheca argues that the press releases at issue were accurate and that the company itself had no involvement in any manipulative trading activity in its securities. It states that "none of the Commission staff ever communicated with the Company in any fashion to ascertain the truth of what was being announced." But we have considered all of the facts presented and conclude that the trading suspension was warranted because there was an absence of sufficient public information to permit informed investment decisions regarding Apotheca and there was the appearance of possible manipulative activity in the market for its securities.[28]

1. Apotheca's arguments regarding the inadequate, inaccurate, or misleading information in the marketplace do not establish that relief is warranted.

a. The Nano press release contained misleading information.

Apotheca contends that its November 6, 2018 press release regarding a merger with Nano was accurate at the time it was issued because Apotheca believed the transaction would occur "but just recently . . . discovered [its] inability to close on the agreement." As support, Apotheca introduces a "Term Sheet for Agreement and Plan of Purchase." The term sheet set forth the terms of a proposed agreement between Apotheca and Nano, but was subject to completion of financing and due diligence. Although Apotheca states that it was "planning on filing the appropriate 8-K with Edgar," it acknowledges that it still had not informed the public that the transaction would not occur as of the date of the trading suspension order.

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[28] *See, e.g.*, *Immunotech*, 2015 WL 5081237, at *4.

Apotheca argues further that "a review of all press releases by [Apotheca] show that there was never any release regarding [Apotheca] in any way obtaining patents under [Nano's] ownership, control or otherwise." But the press release announced Apotheca's "intent to purchase" Nano and stated that Nano's holdings included "several patents and patents pending for the treatment of certain medical conditions."[29] And although Apotheca argues that, while Nano does not have U.S. patents or patents pending, Nano has Mexican patents, it supports that claim with a document captioned as an application for a patent rather than a patent itself.[30]

Apotheca also argues that "the Commission has changed its insinuation from non-existent company/deal/Patent to inadequate information." But neither the trading suspension order nor the Division's submissions in this proceeding said Nano was non-existent. Rather, the trading suspension order questioned the accuracy of the information in Apotheca's press releases, and the evidence shows that the press release regarding Nano was misleading. Our judgment that a trading suspension is necessary need not "rest on conclusive proof that any specific statement was in fact false or materially misleading,"[31] nor does it require a showing of scienter.[32] As we have said, a "professed lack of intent to mislead, even if credited, does not change our analysis concerning whether a trading suspension was necessary for the protection of investors."[33]

b. The OTCQB press release contained misleading information.

Apotheca claims that its November 12, 2018 press release announcing Apotheca's intent to uplist its securities to the OTCQB was accurate because Apotheca filed an application to list on the OTCQB in November 2018. But Apotheca acknowledges that its application was denied on January 4, 2019, nearly six months before the trading suspension order. And Apotheca did

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[29] In its petition, Apotheca argues that the use of the term "corporate assets" in the trading suspension order was "completely vague," but then acknowledged that "Commission personnel . . . raised the issue that this allegation of corporate assets was related to patents which they contended were misrepresented as being acquired by the Company in a press release."

[30] The document states that it is a "TRANSLATION INTO ENGLISH FOR REFERENCE PURPOSES ONLY" and therefore appears not to be an actual patent application. Apotheca does not explain its failure to introduce any sort of authenticated or official document. The document signature line reads "Illegible Signature." It also states that it is directed to the "Mexican Institute of Intellectual Property." The Division's brief provides the website address for the Mexican Institute of Industrial Property or the Instituto Mexicano de la Propriedad Industrial, which is the correct name of the Mexican government agency that oversees patents. *See* https://www.gob.mx/impi/ (last visited Dec. 21, 2020).

[31] *Immunotech*, 2015 WL 5081237, at *6 & n.26 (citing *Bravo Enters.*, 2015 WL 5047983, at *6, 11).

[32] *Bravo Enters.*, 2015 WL 5047983, at *9 & n.57.

[33] *Id.*

not inform the market of this denial until after the trading suspension when it acknowledged the denial in its briefing here. Apotheca claims it "was planning on refiling" another application. Apotheca also notes that the press release said only that it had a "plan" to uplist its securities and added that the application "will not guarantee" that the application would be accepted.

Apotheca's admitted failure to acknowledge the denial of its application until after the issuance of the trading suspension order led to a lack of current and accurate information about it in the marketplace. And we have held that an issuer's "corrective disclosures [occurring] only after the Trading Suspension Order's issuance" often will confirm the propriety of our having suspended trading, "because [by] promoting the public dissemination of accurate information, the trading suspension advanced the public interest and the protection of investors."[34]

c. The Apotheca Earth press release contained misleading information.

Apotheca contends that its December 2018 press release regarding the imminent "nationwide sales and marketing drive" for its new Apotheca Earth products was not misleading because, although the website for Apotheca Earth was not active at the time of the trading suspension in June 2019, as of the time of briefing visitors were forwarded to the "new site" for ProMED, which, according to Apotheca, "sells most of its products wholesale and private label, initially needing no website." It further cites an Apotheca Earth Twitter account that was last active in 2017, but "which shows the date of inception," as supporting its claim that Apotheca Earth was a legitimate concern at the time of the trading suspension order. Apotheca also introduces photographs of boxes of Apotheca Earth products.

Apotheca has not produced any evidence of the "nationwide sales and marketing drive to distribute" such products that the press release touted. Its assertions about Apotheca Earth do not establish that the information in the marketplace as a result of the press release was accurate.

d. The ProMED press releases contained misleading information.

Apotheca defends the accuracy of its three press releases between January and April 2019 regarding ProMED by stating that it was "focused on Promed brand," by providing evidence of the existence of a ProMED website, and by emphasizing that the $500,000 in ProMED preorders touted in the press releases were real but "withdrawn by two customers . . . due to terms of payment and the requested inventory turnaround time." But the press releases stated that ProMED had numerous specific products that were ready for immediate shipping and delivery. That statement combined with the announcement of $500,000 in preorders gave the impression

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[34] *Helpeo, Inc.*, Exchange Act Release No. 82551, 2018 WL 487320, at *4 & n.39 (Jan. 19, 2018) (citing *Immunotech*, 2015 WL 5081237, at *7 (quoting *Bravo Enters.*, 2015 WL 5047983, at *9)).

that ProMed was a well-developed new product line. Instead, Apotheca admits that with respect to ProMed it still had no actual orders and had shipped no products several months later.[35]

2. Apotheca's arguments regarding the suspicious trading in its securities do not establish that relief is warranted.

Apotheca's assertion that it had no involvement in any manipulative or deceptive trading schemes involving its securities does not establish that relief is warranted. "Section 12(k)(1) empowers us to suspend trading if we are of the opinion that the public interest and the protection of investors requires it, and the Commission need not establish a predicate statutory or regulatory violation and in particular it need not find that the issuer or those affiliated with it engaged in" proscribed conduct.[36] Accordingly, we may suspend trading even "based on the conduct of unrelated third parties when that conduct threatens a fair and orderly marketplace."[37]

Apotheca argues that there is no "allegation that any of the Company's management or its majority (or any) shareholders sold or did any improper trading since the [Cannabis Leaf] merger occurred," that Apotheca "had no information as to Cannabis Leaf's previous activities such as pump and dump and boiler room activities," and that it "had no prior information on numerous FINRA Fraud Surveillance reports" that referenced its auditor and former counsel.[38] But the evidence before the Commission at the time of the trading suspension order raised concerns that Apotheca might be the subject of a market manipulation. Our trading suspension was in the

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[35] *Cf. Bravo Enters.*, 2015 WL 5047983, at *9 (noting that "our concerns were not linked to whether Bravo had an Ebola cure. Our concerns instead arose from the press release's suggestion that Bravo—despite a lack of concrete business prospects—was poised to sell commercial or industrial scale air-to-water machines to alleviate the shortage of water in Africa. And that concern appears to have been justified given the petitioners' admission in their brief that Bravo 'has not sold . . . commercial units in the last 24 months.'").

[36] *Immunotech*, 2015 WL 5081237, at *10; *accord Efuel*, 2019 WL 2903941, at *5; *see also Bravo Enters.*, 2015 WL 5047983, at *3, *11 (noting that "we have suspended trading in situations involving fraud or manipulation by individuals unconnected to the issuer").

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

[38] Apotheca also argues that the Commission alleged that it "was involved in 'cold calling.'" As discussed above, the Commission alleged that it was others who engaged in cold calling to purchase Apotheca's securities. In any event, "any alleged uncertainty in the identity of the party directly responsible for spreading materially false information does not detract from the Commission's interest in maintaining fair and orderly markets in which investors can make informed investment decisions." *Efuel*, 2019 WL 2903941, at *5.

public interest and for the protection of investors regardless of whether Apotheca or its executives were involved in or aware of any potentially anomalous market activity.[39]

Apotheca urges that the anomalous increase in trading volume (a doubling of daily trading volume during the period of the solicitation activity discussed above) in its securities during the period at issue is not evidence of potential manipulative trading since the Division has produced "no trading records, no daily or other comparisons. . . ." But we have held that anomalous trading patterns such as those present here indicate the possible presence of manipulative trading and support the imposition of a trading suspension.[40] And we have specifically held that it is appropriate for us to rely on FINRA referrals, as we did here in identifying three instances of suspicious trading in Apotheca's securities.[41]

Section 12(k)(1) gives us the flexibility to take decisive steps when 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.[42] Given the breadth of our authority and responsibility to protect investors and the markets, as discussed above, we may take action to suspend trading in an issuer's securities on the basis of our well-supported opinion that such an action is necessary in the public interest and for the protection of investors.

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39 *See Bravo Enters.*, 2015 WL 5047983, at *4 (stating that the "'primary issues normally to be considered by the Commission in determining whether or not a 10-day suspension should be instituted are whether or not there is sufficient public information upon which to base an informed investment decision or whether the market for the security *appears to reflect* manipulative or deceptive activities'") (quoting *Rules of Practice*, Exchange Act Release No. 35833, 60 Fed. Reg. 32738, 32787 (June 23, 1995) (adopting Rule 550)); *see also Efuel*, 2019 WL 2903941, at *5 (stating that we "'need not establish a predicate statutory or regulatory violation'" or "'find that the issuer or those affiliated with it engaged in proscribed conduct'" to issue a trading suspension order and that we "may suspend trading even 'based on the conduct of unrelated third parties when that conduct threatens a fair and orderly marketplace'") (quoting *Immunotech*, 2015 WL 5081237, at *10 and *Myriad*, 2015 WL 5081238, at *8 & n.31)).

40 *Bravo Enters.*, 2015 WL 5047983, at *11 (noting in support of the trading suspension that the respondent did not deny the presence of "independently identified suspicious trading (*e.g.*, anomalously high volume) and promotional activity (*e.g.*, paid stock alerts and touts) around the time that Bravo issued" the press release that served as a basis for the suspension).

41 *Id.* (finding that Rule 550(b) "authorizes the consideration of facts however they become 'known' to us, including through information gathered by persons outside the Commission").

42 *Id.* at *3-4.

3. Any alleged harm from the trading suspension to Apotheca or its investors does not establish that relief is warranted.

Apotheca states that the trading suspension order has caused unnecessary harm to Apotheca itself and to its shareholders. According to Apotheca, it "had two anticipated agreement[s] that the Company had filed 8-Ks in 6/05/2019 and 6/21/2019 on the acquisitions of Hemp Bloom LLC and Hemp Sciences Corp.," but both transactions "were cancelled due to the suspension of trading." Apotheca describes the trading suspension order as "in essence, 'kill-switch' to the Company," causing "irreversible damage," and contends that "[m]illions lost in shareholder equity will be totally for naught, serving no purpose."

We are not persuaded that these considerations warrant relief. As an initial matter, the trading suspension did not necessitate that the company suspend operations; it temporarily suspended trading in the company's securities. And now that the trading suspension has expired, both current shareholders and prospective investors may buy and sell Apotheca's shares.[43] As discussed above, we recognize the consequences of a trading suspension. But those consequences do not mean it was inappropriate to order a trading suspension where the record indicates that it was in the public interest and necessary for the protection of investors to do so.

In issuing a trading suspension, moreover, we consider not only the impact that an order to suspend trading has on the company and its current shareholders but also "the interests of *prospective* or *potential* investors who might be harmed because they purchase shares in reliance on potentially inaccurate or inadequate information about the issuer."[44] "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."[45]

An additional consideration is that a trading suspension may "elicit more information from the issuer."[46] "Both existing and prospective investors, as well as the public interest more generally, benefit from the disclosure of additional, accurate information about a company's

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43 *See id.* at *12 (noting that current and prospective investors were "permitted to buy and sell Bravo's shares" once the trading suspension expired and "the fact that a broker-dealer might not be able to 'publish quotations' for Bravo's securities 'does not prevent [an] investor[] from engaging in transactions in [that] security,' including by having a broker-dealer submit quotations on his or her behalf" on an unsolicited basis) (alteration in original) (citation omitted).

44 *Helpeo*, 2018 WL 487320, at *5 (quoting *Bravo Enters.*, 2015 WL 5047983, at *13); *accord Efuel*, 2019 WL 2903941, at *7; *Immunotech*, 2015 WL 5081237, at *10.

45 *Immunotech*, 2015 WL 5081237, at *10.

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

business prospects."[47] Here, Apotheca informed the investing public that its application for uplisting to the OTCQB had been previously denied after we instituted the trading suspension.

After weighing all of the interests discussed above, we remain of the opinion that the public interest and the protection of investors required the June 28, 2019 order suspending trading in Apotheca's securities and find no basis for granting relief.

III. Apotheca's Procedural Arguments

Apotheca contends that our determination to suspend trading in its securities "must be reviewed . . . by the evidence presented in the affidavit if it is supported by substantial evidence." In so doing, it cites to Exchange Act Section 25(a)(4). Section 25(a)(4) provides that in an appeal of a final Commission order to a federal appeals court "[t]he findings of the Commission as to the facts, if supported by substantial evidence, are conclusive."[48] Regardless of the applicability or lack thereof of the substantial evidence standard to petitions to terminate trading suspensions under Rule 550, we believe that the record before us contains substantial evidence supporting our opinion that the public interest and the protection of investors required the issuance of the trading suspension order. And because "the facts presented in the petition and any other relevant facts known to the Commission" establish the propriety of the trading suspension order, we need not hold an evidentiary hearing ourselves or assign this proceeding to a hearing officer, as Apotheca requested in its petition to terminate the trading suspension.[49]

Apotheca also claims that neither FINRA nor the staff of the Commission contacted it before we issued the trading suspension order and suggests that such contact "would have easily yielded a response from this Company." But neither we nor FINRA are obliged to contact an issuer to inform the issuer of concerns about the accuracy or adequacy of its press releases or suspicious trading in its securities, which might lead to a trading suspension, and we have stated that providing an issuer with advance notice of a potential trading suspension could harm investors and frustrate regulatory objectives.[50] In any case, the information before the

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47 *Id.* (citing *China-Biotics, Inc.*, Exchange Act Release No. 70800, 2013 WL 588342, at *11 (Nov. 4, 2013)).

48 15 U.S.C. § 78y(a)(4).

49 *See* Rule 550(b), 17 C.F.R. § 201.550(b) (providing that in resolving a petition to terminate a trading suspension the "Commission, in its discretion, may schedule a hearing in the matter, request additional written submissions, or decide the matter on the facts presented in the petition and any other relevant facts known to the Commission").

50 *See Bravo Enters.*, 2015 WL 5047983, at *6 & n.44 (noting the importance of the Commission "avoid[ing] giving advance notice to insiders of an impending trading suspension—which might cause insiders to dump their shares on unsuspecting investors in advance of the suspension") (citing *Accredited Bus. Consolidators*, 2014 WL 5386875, at *2 & n.17 (observing that there "are sound reasons that the Commission does not provide advance notice to a company

Commission at the time of the trading suspension included the facts that: (1) before FINRA referred Apotheca to the Division, FINRA's staff "attempted to contact Apotheca on January 17, 2019 and March 18, 2019 at the phone number listed on Apotheca's filings with the Commission and in its OTC Markets Profile"; (2) FINRA "only reached a voicemail that did not identify Apotheca by name"; and (3) "[a]s of June 2019, FINRA had not received a call back."

Finally, Apotheca claims that the Commission's approach to its trading suspension here "is a selective justification without any legal basis which if used in general will result in the suspension of the majority of the publicly traded companies" and that its press releases are "not by any means outside the scope of thousands of small cap companies' daily announcements of potential revenues and customers." Apotheca does not specifically argue that the Commission or the Division has engaged in unlawful "selective prosecution," or has denied it "equal protection." In any case, we have previously rejected similar unsupported arguments based on claims that suspended issuers' actions were like those of issuers not subject to a trading suspension.[51]

* * *

Apotheca's request to terminate the trading suspension is denied in all respects.[52]

An appropriate order will issue.

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

Vanessa A. Countryman
Secretary

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that it is considering a trading suspension," including the need to "maintain the effectiveness of any related investigation [the Commission] may be conducting")).

[51] *See Myriad*, 2015 WL 5081238, at *8-9 & nn.31-42 (rejecting selective prosecution claim because issuer could not show "that it was unfairly singled out or that our decision to suspend trading was motivated by 'improper considerations such as race, religion, or the desire to prevent the exercise of a constitutionally protected right'" and rejecting equal protection claim because "our decision to suspend trading as to one issuer's securities but take no action with respect to others" is a "discretionary decision" not susceptible to an equal protection claim).

[52] 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. 90779 / December 22, 2020

Admin. Proc. File No. 3-19242

In the Matter of

APOTHECA BIOSCIENCES INC.

ORDER

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

ORDERED that the petition filed by Apotheca Biosciences Inc. requesting termination of the Commission's June 28, 2019 order suspending trading in its securities for a period of 10 days be denied.

By the Commission.

Vanessa A. Countryman
Secretary