

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10214 / September 16, 2016

SECURITIES EXCHANGE ACT OF 1934
Release No. 78867 / September 16, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17549

In the Matter of

CLIFFE R. BODDEN

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933 AND SECTIONS
15(b) and 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Cliffe R. Bodden (“Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the 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, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order and Notice of Hearing (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ 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 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 entities controlled by Sears. Second, Sears 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. Among other things, Respondent Cliffe R. Bodden assisted FSPM in drafting certain fraudulent FSPM corporate documents, including backdated convertible notes.

Respondent

1. **Cliffe R. Bodden**, age 52, is a Cayman Islands citizen who currently resides in Folkston, Georgia, where he is serving a 74-month sentence in federal prison for his role in an unrelated offering fraud. On August 2, 2012, he pleaded guilty to conspiracy to commit wire fraud in connection with a securities fraud scheme, and was sentenced in early 2013. Respondent participated in an offering of FSPM stock, which is a penny stock.

Other Relevant Entity and Persons

2. **Fusion Pharm, Inc. ("FSPM")** is a Nevada corporation with its principal offices in Denver, Colorado. The company claims that it 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. **Scott M. Dittman**, age 47, is a resident of Boyertown, Pennsylvania. 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 website.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

4. **William J. Sears**, age 50, is a resident of Thornton, Colorado. During the relevant period, Sears was a founder, de facto 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.).

Facts

Background

5. In late 2010, Dittman and Sears took over an existing public company and in March 2011, changed its name to FSPM. Dittman was on paper the CEO of the company, but Sears essentially acted as an undisclosed co-CEO. Although FSPM was ostensibly in the business of selling PharmPods, it had almost no revenue to fund its operations. Instead, from approximately 2011 through 2013, FSPM was funded almost entirely through illegal sales of FSPM stock.

6. Initially, FSPM was funded through the sale of stock that Sears received both from FSPM's predecessor entity and as part of the take-over of the public company. 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 entities he controlled, had loaned money to FSPM. Once Sears and Dittman had exhausted these funds, however, Sears then converted the so-called "debt" to unrestricted FSPM shares, which he and his entities then illegally sold into the market.

7. 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, thereby increasing FSPM's stock price and volume and making the fraud even more profitable. Because the stock sales would not have been possible, and because the purported revenues from Sears' entities would have to have been reported as related party transactions, if Sears was disclosed as an FSPM officer, Sears and Dittman hid Sears' role in FSPM.

Bodden's Role in the Scheme

8. Bodden had previously worked with Sears, and was hired by FSPM to draft certain corporate documents that Sears and Dittman used to conduct the fraud. Between approximately early 2011 through early 2013, Bodden assisted in drafting fraudulent FSPM corporate documents, including backdated convertible notes.

9. For example, in approximately mid-2012, Bodden assisted in creating a forged and backdated document bearing the electronic signature of FSPM's predecessor company's CEO. The purpose of creating this document was to assist Sears with converting preferred shares he had received from the predecessor company's CEO into common shares that could be sold in the market.

10. Also in mid-2012, at the direction of Sears and Dittman, Bodden drafted promissory notes between FSPM and Sears' entities to make certain transfers of Sears' stock sale proceeds to FSPM falsely appear to be loans to FSPM. Further, to make it falsely appear that the promissory notes related to transfers of funds that Sears made to FSPM in 2011, the notes were backdated to 2011.

11. In approximately December 2012, Bodden drafted new promissory notes between FSPM and Sears' entities—now convertible to FSPM common stock at the rate of \$0.01 per share—and again backdated the documents to make it falsely appear that the convertible debt had been outstanding for more than one year.² The purpose of creating these promissory notes was so that the debt could be converted to more unrestricted FSPM stock for Sears to sell into the market, and the backdating was an attempt to circumvent the one-year holding period required under the Securities Act.

12. These documents, as well as other false documents that Bodden prepared, enabled Sears to convert phony debt into unrestricted shares that he sold into the market for approximately \$10.5 million of illegal proceeds (in addition to approximately \$1.5 million of FSPM stock he sold without Bodden's involvement). Because the convertible notes were backdated and the underlying "debt" claimed incurred was itself phony debt, the sales of shares violated the registration provisions of the federal securities laws because Sears' sales failed to meet the volume limitations applicable to affiliates and/or did not meet the applicable one-year holding period.

13. Further, to make it falsely appear as if the money that Sears funneled to FSPM from the illegal stock sales was real revenue from FSPM's PharmPod business, Bodden assisted in drafting licensing and distribution agreements that purported to show that there were legitimate sources for FSPM's revenues. The entities that FSPM reported as sources of licensing and distribution revenue were actually just front companies for Sears and/or Dittman that were funded by the illegal FSPM stock sales.

14. Additionally, Bodden assisted in drafting certain FSPM financial statements, quarterly and annual reports, and investor materials that falsely claimed funds received from these entities as FSPM revenues. None of these documents disclosed that the claimed business partners were owned or controlled by Sears and/or Dittman, or that the claimed revenues were traceable back to FSPM stock sales. Almost all of FSPM's claimed revenues in 2011, 2012, and 2013 are traceable back to Sears' FSPM stock sales.

² At the same time, Bodden drafted a backdated letter of resignation from one of Sears' relatives who appeared on paper to be both a director and officer of FSPM and the owner of one of the entities that purported to hold the debt that Sears wanted to convert into FSPM shares. This fake document was necessary because if Sears' relative was known to be both an FSPM director and officer and the owner of an entity that held FSPM debt, that entity would be considered an affiliate and would be restricted from selling FSPM shares.

Violations

15. As a result of the conduct described above, Bodden 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.

16. As a result of the conduct described above, Bodden willfully aided and abetted and caused FSPM's violations of Sections 17(a)(1) and 17(a)(3) of the Securities Act and Section 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder. Section 17(a)(1) of the Securities Act makes it unlawful, in the offer or sale of securities, to employ any device, scheme, or artifice to defraud. Section 17(a)(3) of the Securities Act makes it unlawful, in the offer or sale of securities, to engage in any transaction, practice or course of business that operates or would operate as a fraud or deceit upon the purchaser. Section 10(b) of the Exchange Act and Rule 10b-5(a) thereunder make it unlawful, in the purchase or sale of securities, to employ any device, scheme or artifice to defraud. Section 10(b) of the Exchange Act and Rule 10b-5(c) thereunder make it unlawful, in the purchase or sale of securities, to engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

IV.

Pursuant to this Order, Respondent agrees 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. In connection with such additional proceedings: (a) Respondent agrees that he will be precluded from arguing that he did not violate the federal securities laws described in this Order; (b) Respondent agrees that he may not challenge the validity of this Order; (c) solely for the purposes of such additional proceedings, the findings of this Order shall be accepted as and deemed true by the hearing officer; and (d) the hearing officer may determine the issues raised in the additional proceedings on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence.

V.

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

Accordingly, pursuant to Section 8A of the Securities Act and Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Bodden cease and desist from committing or causing any violations and any future violations of Sections 5(a), 5(c), 17(a)(1) and 17(a)(3) of the Securities Act and Section 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder.

B. Respondent Bodden 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. IT IS FURTHER ORDERED pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), in the interest of justice and without prejudice to any party to the proceeding, that a public hearing for the purpose of taking evidence on the questions set forth in Section IV hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110, following the entry of a final judgment against the last remaining defendant(s) in *United States v. William Sears and Scott Matthew Dittman*, 16-CR-301-WJM (D.Colo.) (the "Related Actions").

If Bodden fails to appear at a hearing after being duly notified, Bodden may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 221(f), and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.221(f), and 201.310.

This Order shall be served forthwith upon Bodden personally or by certified mail.

D. IT IS FURTHER ORDERED pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), in the interest of justice and without prejudice to any party to the proceeding, that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of the entry of a final judgment in the Related Actions.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary