

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 78699 / August 26, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17507

In the Matter of

JOSEPH L. PITTERA, ESQ.

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS AND
IMPOSING TEMPORARY SUSPENSION
PURSUANT TO RULES 102(e)(3) OF THE
COMMISSION'S RULES OF PRACTICE**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Joseph L. Pittera (“Respondent” or “Pittera”) pursuant to Rule 102(e)(3)(i)¹ of the Commission’s Rules of Practice (17 C.F.R. § 200.102(e)(3)(i)).

¹ Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any attorney . . . who has been by name:

(A) permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder; or

(B) [f]ound by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party . . . to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

II.

The Commission finds that:

1. Joseph L. Pittera is an attorney licensed in the State of California.
2. From January 2011 through June 2011, Pittera wrote and signed ten attorney opinion letters incorrectly opining that certain MusclePharm Corp. (“MSLP”) stock held by OTC Capital Partners LLC (“OTC”), among others, were “free trading” and could be sold without a restrictive legend, thereby permitting OTC and others to sell unregistered MSLP stock on the open market when no exemption from registration was available.
3. On January 22, 2016, the Commission filed a complaint against Pittera and others in the United States District Court for the Southern District of Florida, charging Pittera with issuing incorrect and baseless attorney opinion letters in violation of Sections 5(a) and 5(c) of the Securities Act of 1933, 15 U.S.C. §§ 77e(a) and 77e(c). *SEC v. OTC Capital Partners, LLC*, Civil Action No. 16-20270-Civ-Scola (S.D. Fla.). As to Pittera, the complaint sought a permanent injunction, disgorgement of unlawful proceeds plus prejudgment interest, a financial penalty, and penny stock bar. Pittera failed to respond to the complaint.
4. On April 11, 2016, the clerk of the court entered default against Pittera. On May 31, 2016, the court entered an Order Granting the SEC’s Motion for Default Judgment and Permanent Injunctive Relief Against Defendant Joseph L. Pittera. The court found that, by virtue of the default and failure to respond, Pittera was deemed to have admitted the allegations in the complaint. The court ordered Pittera to pay \$5,823.29 disgorgement of profits plus interest and penalties and a \$50,000 penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d). The court enjoined Pittera from violating Sections 5(a) and 5(c) of the Securities Act of 1933, 15 U.S.C. § 77e(a) and 77e(c) and permanently enjoined Pittera from participating in any penny stock offerings.

III.

NOTICE TO RESPONDENT:

On July 13, 2016, the Commission voted to amend certain of its Rules of Practice related to administrative proceedings. The amended rules will become effective on September 27, 2016, and shall apply to proceedings initiated on or after that date. Some of the amendments will apply to proceedings initiated before that date, depending on the circumstances, as detailed in Exchange Act Release No. 34-78319, *Amendments to the Commission’s Rules of Practice*, at 75-76 [81 FR 50212, at 50229-30 (July 29, 2016)]. Additionally, for proceedings instituted on or after July 13, 2016, but before September 27, 2016, the parties may elect to have the amended rules (except for the amendments to Rule 141, regarding service of orders instituting proceedings) apply to such proceedings if, within 14 days of service of the Order Instituting Proceedings (OIP), every party to the proceeding, including the Division of Enforcement,

submits a request in writing to the Office of the Secretary of the Commission that the proceedings be conducted under the amended rules. Moreover, various other of the amended rules will apply in cases in which the initial prehearing conference pursuant to Rule 221 has not been held as of September 27, 2016 or where the proceedings have been stayed as of September 27, 2016 (except for proceedings stayed pursuant to Rule 161(c)(2)(i)), *See Exchange Act Release No. 34-78319, Amendments to the Commission's Rules of Practice*, at 73-74, [81 FR 50212, at 50228-29].

IV.

Based on the foregoing, the Commission finds that Pittera has been permanently enjoined by a court of competent jurisdiction, by reason of his own misconduct, in an action brought by the Commission, from violating federal securities laws, within the meaning of Rule 102(e)(3)(i)(A) of the Commission's Rules of Practice; and that he has been found by a court of competent jurisdiction, in an action brought by the Commission, to have violated provisions of the Federal securities laws within the meaning of Rule 102(e)(3)(i)(B) of the Commission's Rules of Practice. The Commission deems it appropriate and in the public interest that Pittera be temporarily suspended from appearing or practicing before the Commission as an attorney.

IT IS HEREBY ORDERED that Pittera be, and hereby is, temporarily suspended from appearing or practicing before the Commission as an attorney. This Order will be effective upon service on the Respondent.

IT IS FURTHER ORDERED that Pittera may, within thirty days after service of this Order, file a petition with the Commission to lift the temporary suspension. If the Commission receives no petition within thirty days after service of the Order, the suspension will become permanent pursuant to Rule 102(e)(3)(ii).

If a petition is received within thirty days after service of this Order, the Commission shall, within thirty days after the filing of the petition, either lift the temporary suspension, or schedule the matter for hearing at a time and place to be designated by the Commission, or both. If a hearing is ordered, following the hearing, the Commission may lift the suspension, censure the petitioner, or disqualify the petitioner from appearing or practicing before the Commission for a period of time, or permanently, pursuant to Rule 102(e)(3)(iii).

This Order shall be served forthwith upon Pittera as provided for in the Commission's Rules of Practice.

By the Commission.

Brent J. Fields
Secretary