

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10496 / May 15, 2018

SECURITIES EXCHANGE ACT OF 1934
Release No. 83236 / May 15, 2018

INVESTMENT COMPANY ACT OF 1940
Release No. 33097 / May 15, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18483

In the Matter of

TIMOTHY C. SCARPINO,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933, SECTIONS 15(b) AND 21C OF
THE SECURITIES EXCHANGE ACT OF
1934, AND SECTION 9(b) OF THE
INVESTMENT COMPANY ACT, 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 against Timothy C. Scarpino (“Scarpino” or “Respondent”) pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Section 9(b) of the Investment Company Act (“Investment Company Act”).

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, and except as provided herein in Section IV, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Section 9(b) of the Investment Company Act, 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 late May 2013 to mid-June 2013, Timothy Scarpino (“Scarpino”), then a registered representative at registered broker-dealer Scottsdale Capital Advisors (“Scottsdale”), willfully violated Sections 5(a) and 5(c) of the Securities Act when he engaged in the illegal distribution of the securities of Biozoom, Inc. (“Biozoom” or “BIZM”) by offering and selling shares of BIZM, which was quoted on the Over-the-Counter Bulletin Board (“OTCBB”), on behalf of four Argentine customers (the “Argentines”). The scope of this illegal distribution was massive, as Scarpino offered and sold approximately 8.2 million BIZM shares, which constituted almost 14% of BIZM’s total outstanding shares, and over 40% of BIZM’s total number of shares that did not bear a restrictive legend. The Argentines reaped proceeds of over \$18.5 million from the less than four weeks of trading activity facilitated by Scarpino.

Sections 5(a) and 5(c) of the Securities Act make it unlawful for any person, directly or indirectly, to offer or sell securities by any means or instruments of transportation or communication in interstate commerce unless a registration statement has been filed with the Commission with respect to Section 5(c) and is in effect with respect to Section 5(a), or an applicable exemption from registration applies. This governs resales of deposited securities, such as Scarpino’s sales of the BIZM shares on behalf of the Argentines. No registration statement was in effect as to Scarpino’s BIZM offers and sales, and no exemption from registration was applicable to them. Although brokers may rely on an exemption under Section 4(a)(4) of the Securities Act, this exemption would be available to Scarpino for the offers and sales of BIZM only if, after engaging in a reasonable inquiry into the facts surrounding the proposed sales, Scarpino was not aware of facts indicating that the customers would be engaging in an unlawful distribution of securities. Moreover, because Scarpino was presented with red flags of a potential unlawful distribution, he needed to conduct a searching inquiry to determine that the proposed sales were not part of an unlawful distribution of securities. Despite these significant red flags, Scarpino failed to conduct a searching inquiry into facts surrounding the proposed sales, and thereby violated Sections 5(a) and 5(c) of the Securities Act.

Respondent

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.

1. Timothy Scarpino, 35, resides in Scottsdale, Arizona. Scarpino was, from 2009 until 2013, a registered representative at Scottsdale. Currently, he is not working in the securities industry.

Relevant Entity

2. Scottsdale has been registered with the Commission as a broker-dealer with its principal place of business in Scottsdale, Arizona since May 2002.

Facts

A. Scarpino Opens Foreign Accounts at Scottsdale Based on Referrals from James Benjamin Panther II

3. In or around early May 2013, James B. Panther II (“Panther”), a longtime Scottsdale customer, informed Scarpino and Scottsdale’s owner (the “Owner”) that Panther planned to refer several individuals to open brokerage accounts and deposit stock certificates at Scottsdale. The Owner told Scarpino that Panther had referred significant business to Scottsdale in the past and that Scarpino should provide special treatment to Panther’s referrals because Panther was an important customer.

4. On May 2, 2013, Scarpino emailed an associate of Panther’s (“Panther Associate”), writing that Panther had suggested that Scottsdale might be able to assist Panther Associate in “depositing OTC/Pinksheet stocks.” Scarpino attached Scottsdale account opening forms for foreign customers to his email.

5. Panther Associate provided Scarpino the names and email addresses of four individuals who Panther was referring to Scottsdale – the Argentines. Scarpino then emailed each of the Argentines offering to assist them in opening accounts and depositing shares at Scottsdale.

6. Starting on May 10, 2013, the Argentines opened accounts at Scottsdale with Scarpino as their registered representative. During the account-opening process, Scarpino learned that the Argentines shared several unusual characteristics, which suggested that they might be acting in concert. In particular, Scarpino knew:

- Each of the Argentines stated that they intended to deposit physical certificates of BIZM stock in significant amounts, ranging from 1.815 million to 2.37 million shares for a total of 8.2 million shares; and
- Each of the Argentines requested the ability to place orders with Scarpino via instant message, which was not a functionality that Scottsdale offered its customers.

7. The initial account opening documents Scarpino received for each of the Argentines listed Panther as the referral source. In response to inquiries from Scarpino and compliance personnel at Scottsdale, however, the Argentines claimed they did not know Panther.

Ultimately, Panther's name was deleted from each of the account opening documents and the referring source was left blank.

B. Panther Confirms His Connections to Biozoom and the Argentines

8. On May 15, 2013, Scarpino and the Owner flew on the Owner's private jet to meet with Panther in California to discuss the Argentines. During their meeting, Panther told Scarpino that the Argentines planned to deposit share certificates into their respective accounts for trading.

9. Panther explained that he worked with Biozoom and similar start-up companies to maintain their share prices. Panther also told Scarpino and the Owner that the Argentines could bring a good amount of business to Scottsdale.

10. In return for what Panther suggested could be significant trading commissions to Scottsdale, he confirmed specific accommodations for the accounts, several of which he had previously requested. These accommodations included permitting the Argentines to place trades through instant message and significantly reducing commissions for the Argentines. Although some of these requests ran contrary to existing Scottsdale policies, the Owner directed Scarpino to grant them for Panther's referrals.

11. Panther's confirmation that he was connected with both Biozoom and the Argentines was a red flag that the Argentines were potentially affiliates of BIZM.

C. Scarpino Was Aware of Red Flags as He Deposited Substantial Amounts of Penny Stock for the Argentines

12. On May 16, 2013 – the day after Scarpino's meeting with Panther – the Argentines began working with Scarpino to deposit physical certificates of Biozoom stock into their new accounts. Scarpino knew that these certificates had been sent to Scottsdale from another broker-dealer that had rejected the Argentines' attempted deposits of the same certificates.

13. Each Argentine completed a Deposit Securities Request Questionnaire ("DSRQ"), which was necessary for the certificates to be deposited. These DSRQs required the Argentines to, among other things, explain how they obtained their shares and whether they planned to trade the shares in concert with anyone else. The Argentines' completed DSRQs provided no information on Panther's relationship or involvement with the Argentines, even though Scarpino knew that Panther had referred them to Scottsdale and was connected both to them and to BIZM.

14. The Argentines' DSRQs and related documentation raised numerous red flags of a potential unregistered distribution, which Scarpino knew or should have known:

- The Argentines were depositing a large volume of BIZM stock, which had no significant public trading in its history. Collectively, the Argentines' certificates represented 8.92 million BIZM shares, which constituted approximately 15% of BIZM's total outstanding shares, and approximately 44% of BIZM's total shares not bearing a restrictive legend;

- The Argentines claimed to have purchased their 8.9 million shares of BIZM at prices between \$0.003 and \$0.005 per share, spending a total of only approximately \$33,000; and
- All of the Argentines' certificates had been issued less than two months earlier, and they all purportedly acquired their shares in transactions with investors in Biozoom's predecessor company between February 26 and March 5, 2013.²

15. Because, as described above, Scarpino knew that the Argentines were connected to Panther and further knew that Panther had previously discussed Biozoom with Scarpino and the Owner, the numerous and significant red flags raised by the Argentines' share deposits – including the percentage of BIZM shares they controlled, nominal amounts they supposedly paid for the shares, the recent issuance of their share certificates, and other evidence of their connections to one another and to Panther – should have raised significant questions for Scarpino about their possible involvement in an unregistered distribution of BIZM stock coordinated by Panther. Scarpino, however, took no additional steps to investigate this possibility, and did not inform anyone else at Scottsdale about the accumulation of red flags of which he was aware.

D. Scarpino Was Aware of Additional Red Flags During the Unregistered Distribution of BIZM Stock

16. From May 28, 2013 until June 19, 2013, Scarpino offered and sold approximately 8.2 million BIZM shares through the OTCBB for proceeds of nearly \$18.6 million on behalf of the Argentines. Given that the Argentines claimed to have paid a total of \$32,700 for all of their deposited shares, they realized aggregate returns of more than 56,000% on Scarpino's sales of the shares they had supposedly purchased less than four months earlier.

17. No registration statement was filed or in effect with regards to Scarpino's offers and sales of the BIZM shares and no exemption from the registration requirements was available for those sales. Throughout the trading period, even more red flags of an illegal unregistered distribution appeared:

- The Argentines began liquidating their BIZM shares almost immediately after they were cleared for trading;
- Scarpino's offers and sales occurred amid a dramatic spike in trading of BIZM. Prior to May 16, 2013, the stock of BIZM and its predecessor company had traded once since its inception in 2007, a 300 share trade in November 2012 for \$1.02 per share. From May 16, 2013 to June 19, 2013, BIZM's stock price increased from a starting price of \$1.10 per share to as high as \$4.50 per share. Over the same period, daily volume spiked from 10,000 shares to a high of 11.6 million shares.

² Biozoom came into existence on April 1, 2013 via a reverse merger with a penny stock company named Entertainment Art, Inc. ("EERT"), followed by a name and ticker change. EERT was formed in 2007.

This market was completely inconsistent with the prior trading history of BIZM and its predecessor company;

- This spike in activity coincided with a promotional campaign touting BIZM in radio, web, and print ads. The promotional campaign also involved mailers put out by third party media sources and was supported by numerous press releases issued by the company; and
- As Scarpino completed liquidating all or substantially all of the BIZM shares on behalf of an Argentine, that Argentine quickly asked Scarpino to wire out the proceeds to offshore accounts. In total, between June 11 and June 24, the four Argentines requested to wire out nearly \$17 million, all of which was proceeds from the sale of the recently-deposited and sold BIZM shares.

18. On June 25, 2013, the Commission suspended trading in the BIZM securities. On July 3, 2013, the Commission charged four of the Argentine customers and others with violating Sections 5(a) and (c) of the Securities Act. The Commission obtained default judgments against all defendants in that matter. The Court granted injunctive relief and ordered the Argentines to pay disgorgement of \$18,535,955 and penalties of \$640,000.

E. Scarpino Did Not Engage in a Reasonable Inquiry

19. Sections 5(a) and 5(c) of the Securities Act prohibit the offer and sale of securities through interstate commerce or the mails, unless a registration statement is filed with the Commission and is in effect, or the offer and sale are subject to an exemption. 15 U.S.C. §§ 77e(a) and (c).

20. Section 4(a)(4) of the Securities Act exempts from the registration requirements of Section 5 “brokers’ transactions executed upon customers’ orders on any exchange or in the over-the-counter market but not the solicitation of such orders.” 15 U.S.C. § 77d(4). Rule 144(g)(4) provides that for a transaction to qualify as a “brokers’ transaction” under Section 4(a)(4), the broker must engage in a “reasonable inquiry” prior to the transaction, and after such inquiry he must not be “aware of circumstances indicating that the person for whose account the securities are sold is an underwriter³ with respect to the securities or that the transaction is a part of a distribution of securities of the issuer.” 15 U.S.C. § 77d(a)(4); 17 CFR § 230.144(g)(4).

21. The “reasonable inquiry” should consider, among other factors:

- the length of time the seller has held the securities;
- the nature of the transaction in which the securities were acquired; and

³ Section 2(a)(11) of the Securities Act defines an underwriter as “any person who has purchased from an issuer, with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking.” 15 U.S.C. § 77b(a)(11).

- the number of shares of the class outstanding or the relevant trading volume. Notes to 17 CFR § 230.144(g)(4).

22. However, certain facts and circumstances surrounding the transaction might require additional inquiry in order for the broker to rely on the Section 4(a)(4) exemption. For example:

A dealer who is offered a modest amount of a widely traded security by a responsible customer, whose lack of relationship to the issuer is well known to him, may ordinarily proceed with considerable confidence. On the other hand, when a dealer is offered a substantial block of a little-known security, either by persons who appear reluctant to disclose exactly where the securities came from, or *where the surrounding circumstances raise a question* as to whether or not the ostensible sellers may be merely intermediaries for controlling persons or statutory underwriters, then *searching inquiry* is called for.

Distribution by Broker-Dealers of Unregistered Securities, Securities Act Rel. No. 4445 (Feb. 2, 1962) (emphasis added). *See also Bloomfield et al.*, Exchange Act Rel. No. 71632, at 5 (Feb. 27, 2014) (“The accounts received large blocks of privately obtained shares of obscure penny stocks. Although the securities initially traded at low prices and in low volumes, the prices of, and trading volume in, these securities quickly escalated around the time of large deposits into the [] accounts. The escalation in prices and trading volume was generally associated with coordinated transactions among the various [] accounts and often accompanied by spam email campaigns touting the issuers’ prospects. Once prices had risen substantially, the accounts started selling blocks of stocks. Eventually the stocks’ prices collapsed. These indicia raised red flags of a possible unlawful distribution and market manipulation.”); *Midas Securities, LLC and Jay S. Lee*, Exchange Act Rel. No. 66200, at 14 (Jan. 20, 2012) (holding that because “[t]he amount of inquiry required necessarily varies with the circumstances of the proposed transaction,” in certain circumstances, a broker-dealer may need to “conduct a searching inquiry to assure itself that . . . proposed sales [are] exempt from the registration requirements and not part of an unlawful distribution.”).

23. When conducting a reasonable inquiry, a registered representative may not rely on others, such as counsel’s advice, to fulfill his reasonable inquiry obligation. *Wonsover v. SEC*, 205 F.3d 408, 415-16 (D.C. Cir. 2000) (rejecting registered representative’s reliance on clearing firm, the transfer agent, counsel, and reliance on the clearance of sales by the “Restricted Stock Department” of his firm); *see also World Trade Financial Corp. v. SEC*, 739 F.3d 1243, 1249 (9th Cir. 2014) (rejecting argument that duty of reasonable inquiry was satisfied by reliance on third parties in conformity with industry practice and stating “brokers rely on third parties at their own peril, and will not avoid liability through that reliance when the duty of reasonable inquiry rests with the brokers”).

24. It is not sufficient “for [the registered representative] merely to accept ‘self-serving statements of his sellers and their counsel without reasonably exploring the possibility of contradictory facts.’” *Distribution by Broker-Dealers of Unregistered Securities*, Securities Act Rel. No. 4445 (Feb. 2, 1962) (quoting *SEC v. Culpepper*, 270 F.2d 241, 251 (2d Cir. 1959)). Nor may a broker “rely upon the absence of restrictive legends on the stock certificates when the circumstances surrounding the transaction indicate the need for a thorough investigation.”

Transactions in the Securities of Laser Arms Corporation by Certain Broker-Dealers, Exch. Act Rel. No. 34-28878, 1991 WL 292009 (Feb. 14, 1991).

25. No registration statement was filed or in effect as to Scarpino's offer and sale of the BIZM shares on behalf of the Argentines and no exemption from the registration requirements was available for these sales. Scarpino made use of means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, sell, and deliver after sale the BIZM shares to the public.

26. Scarpino was presented with numerous and significant red flags raised by the deposits of BIZM shares and subsequent sales of those shares, which should have raised questions as to whether the Argentines were engaged in an unlawful distribution by, for example, acting as underwriters. These red flags included:

- the Argentines opened new accounts and delivered physical certificates representing a large block of thinly traded and low-priced securities;
- the deposited share certificates had been recently issued and represented a large percentage of the float for the security;
- the Argentines had a pattern of depositing physical share certificates, immediately selling the shares and then wiring out the proceeds to offshore accounts;
- there was a sudden spike in volume, coupled with a rising price in, a thinly traded and low-priced security; and
- Scarpino had reason to believe the Argentines were acting in concert with one another and in coordination with an affiliate of the issuer.

27. Throughout the process of opening the Argentines' accounts, depositing their certificates, and then offering and selling those shares into the market on behalf of the Argentines, Scarpino was confronted with red flag after red flag that he was facilitating an unregistered distribution of those shares. Despite the presence of these ample and glaring red flags, Scarpino did not perform a "reasonable inquiry" regarding the facts and circumstances surrounding those transactions, let alone the "searching inquiry" he was required to perform.

Violation

28. As a result of the conduct described above, Scarpino willfully violated Sections 5(a) and 5(c) of the Securities Act.

IV.

Pursuant to this Order, Respondent Scarpino agrees to additional proceedings in this proceeding to determine what, if any, civil penalties pursuant to Section 8A(g) of the Securities Act against Respondent Scarpino are in the public interest. In connection with such additional proceedings: (a) Respondent Scarpino agrees that he will be precluded from arguing that he did not violate the federal securities laws as described in this Order; (b) Respondent Scarpino agrees

that he may not challenge the validity of this Order; (c) solely for the purposes of such additional proceedings, the allegations of the 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 Scarpino's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Scarpino shall cease and desist from committing or causing any violations and any future violations of Sections 5(a) or 5(c) of the Securities Act.

B. Respondent Scarpino be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

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,

with the right to apply for reentry after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by Respondent Scarpino will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory

organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Timothy Scarpino as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

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 proceedings, 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 by, 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 any action(s) arising out of or related to the facts in this Order ("Related Actions").

If Respondent Scarpino fails to appear at a hearing after being duly notified, Respondent Scarpino 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), 220(f), 221(f), and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

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

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, that the

Administrative Law Judge shall issue an initial decision no later than 150 days from the date of the entry of a final judgment in any Related Actions.

VI.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Brent J. Fields
Secretary