

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 85411 / March 26, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19120

In the Matter of

TIBER CREEK CORP. and
JAMES M. CASSIDY,

Respondents.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, PURSUANT TO
SECTIONS 4C, 15(b), AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
AND RULE 102(e)(1)(iii) OF THE
COMMISSION'S RULES OF PRACTICE,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER

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 Sections 4C,¹ 15(b), and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice,² against Tiber Creek Corp. (“Tiber Creek”) and James M. Cassidy (“Cassidy”), (collectively, the “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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

¹ Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others; (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations issued thereunder.

² Rule 102(e)(1)(iii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

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 V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Sections 4C, 15(b), and 21C of the Securities Exchange Act of 1934, and Rule 102(e)(1)(iii) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds³ that

Summary

1. This matter involves unregistered broker activity by Tiber Creek Corp. ("Tiber Creek") and its president and sole member, James M. Cassidy, and related failures to file required ownership disclosure forms by Cassidy.

2. Tiber Creek was a business operated by Cassidy and supported by his business associate James K. McKillop that assisted private companies in going public.⁴ As part of that business, Tiber Creek created and maintained an inventory of corporations, for which Cassidy and McKillop served as the officers, directors, and fifty percent shareholders. Tiber Creek registered those corporations with the Commission and thereby created public shell companies. Tiber Creek solicited private operating companies and charged them a fee for providing services that, in most instances, resulted in the private company gaining control of one of Tiber Creek's public shells. In these instances, Tiber Creek customers often were able to take their private companies public without conducting a traditional initial public offering. Since July 2012,⁵ Tiber Creek and Cassidy effected securities transactions for over one hundred public shell companies.

3. By engaging in this activity, Tiber Creek and Cassidy acted as brokers and consequently were required to register with the Commission. However, Tiber Creek and Cassidy have never been registered with the Commission as brokers.

4. In addition, on more than 45 occasions, Cassidy failed to file timely reports on Schedule 13G as required to disclose his fifty-percent ownership of each Tiber Creek public shell. It was not until September 2015, when Cassidy became aware of the investigation by the Commission's staff, that he filed more than 45 delinquent reports on Schedule 13G. Those filings

³ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

⁴ The Commission has filed a related district court action against McKillop charging him with violations of Exchange Act Sections 15(a)(1), 13(d), and 16(a), and Rules 13d-1, 16a-2, and 16a-3 thereunder. *See Securities and Exchange Commission v. McKillop*, Civ. No. _____ (D.D.C. March ___, 2019).

⁵ Tiber Creek and Cassidy entered into a series of tolling agreements that extend the statute of limitations for these violations to cover conduct that has occurred since July 17, 2012.

contain admissions that they were past due. In at least 40 instances, Cassidy's ownership disclosure reports on Schedule 13G were more than one year late.

5. As Cassidy jointly owned the public shell companies with McKillop, and because they were coordinating their actions, Cassidy was required to properly disclose this group participation in reports on Schedule 13G. However, he failed to do so. When Cassidy ultimately filed his delinquent reports, they lacked the appropriate disclosure of his participation in a group.

6. Furthermore, Cassidy failed to timely file, and failed to file at all, numerous reports on Form 4 reflecting changes in his ownership of the Tiber Creek public shells. Cassidy was required to make timely filings on Form 4 as an officer, director, and greater than 10 percent shareholder of the public shells.

Respondents

7. **Tiber Creek Corp.** ("Tiber Creek"), a Delaware corporation with its principal place of business in Beverly Hills, California, assists companies in going public. Tiber Creek has never been registered with the Commission in any capacity. James M. Cassidy is president and sole member of Tiber Creek. James K. McKillop, Cassidy's business associate in Tiber Creek, is principally responsible for marketing; he previously consented to the issuance of a Commission order requiring him to cease and desist from violating Section 15(a) of the Exchange Act.⁶

8. **James M. Cassidy**, age 83, resides in Newport Beach, California. He is the president, director, and sole shareholder of Tiber Creek. Cassidy is licensed as an attorney in the District of Columbia and New York. Cassidy previously consented to the issuance of a Commission order for false statements made on behalf of "blank check" companies to avoid reporting obligations.⁷ Cassidy has never been registered with the Commission in any capacity.

Tiber Creek and Cassidy Acted As Unregistered Brokers

9. Cassidy created Tiber Creek to provide services to assist private companies in going public. As part of the services it offered, Tiber Creek created and maintained an inventory of public shell companies that it made available to its customers. Tiber Creek solicited potential customers through an advertising program including search engine optimization and ads, a collection of websites,⁸ videos, written solicitations, classified advertisements, and a paid referral network.

10. To engage Tiber Creek, and take advantage of its services, private operating companies paid a per-transaction fee. In exchange for this fee, Tiber Creek effected securities transactions between one of its public shells and the private operating company, in a process

⁶ *James K. McKillop*, Exch. Act Rel. No. 43712 (Dec. 12, 2000).

⁷ *James M. Cassidy and TPG Capital Corp.*, Exch. Act Rel. No. 44388 (June 4, 2001).

⁸ Tiber Creek owned and maintained numerous websites, such as publicshell-publicshells.com, that solicited contact information which Tiber Creek used for sales leads.

referred to by Tiber Creek as a transfer of control. Tiber Creek's fee, usually \$100,000, was not eligible for payment, under its standard agreement, unless it completed the transfer of a public shell to a customer.

11. Cassidy's compensation was drawn exclusively from the proceeds of Tiber Creek. When Cassidy redeemed his shares in the public shell during the sale transaction, he received no consideration except for the customer's fee paid to Tiber Creek.

12. Cassidy and Tiber Creek provided certain advice as to the merits of potential customers' investment in a public shell. For example, Cassidy routinely recommended to Tiber Creek customers that they recapitalize as Delaware public reporting shells and recommended that customers issue themselves five million shares of the public shell to maintain a minimum share price. Cassidy, on behalf of Tiber Creek, discussed with customers their respective needs, such as anticipated accounting and investor relation services. Cassidy did not perform any substantial duties on behalf of any particular public shell. His position with the public shells was exclusively in connection with services rendered by Tiber Creek.

13. After the customer took control of the public shell, Tiber Creek, for at least certain clients, provided investor relations services and introductions to investment bankers and broker-dealers. Tiber Creek assisted customers with, among other things, filing registration statements, obtaining and preparing filings for a market maker, and fulfilling other financial reporting requirements to comply with rules established by the Commission and the Public Company Accounting Oversight Board.

14. Since July 2012, Tiber Creek has had more than 100 private company customers that have used the firm's services to gain control of a public shell created by Tiber Creek. Of those public shell entities, at least 50 have had their registration revoked by the Commission, have voluntarily deregistered their securities, or are the subject of pending Exchange Act Section 12(j) proceedings.

Cassidy Practiced Before the Commission

15. While the standard agreement between Tiber Creek and its customers explicitly disclaimed any attorney-client relationship between Tiber Creek and the customer, Cassidy nonetheless practiced before the Commission as an attorney. Cassidy emailed each customer after engaging Tiber Creek to explain the change in control process, to advise them to file beneficial ownership reports with the Commission, and to explain that Tiber Creek would file an interim report on Form 8-K on behalf of the customer following the change in control. Cassidy offered to register the stock of the customer's shareholders, explained the mechanics of a potential reverse merger between the public shell and the customer's operating company, and advised customers to obtain audited financial statements. Cassidy also advised customers when and how to engage in an exempt offering.

Cassidy Failed to File Schedules 13G and Timely File Forms 4 and 5

16. Cassidy acquired fifty percent of the common stock of at least 46 public shells registered with the Commission pursuant to Section 10-12G and incorporated in Delaware between July 2012 and September 2015. In each instance, McKillop beneficially owned the other half of the outstanding shares. Together, Cassidy and McKillop agreed to act together for the purpose of acquiring, holding, voting, and disposing of the outstanding shares of the public shells. Cassidy was therefore required to, but failed to, file reports on Schedule 13G within 45 days after the end of the calendar year in which each public shell's Form 10-12G became effective. Cassidy did not file the required reports on Schedule 13G until September 2015, when he became aware of the staff's investigation.

17. As an officer, director, and beneficial owner of more than 10% of these public shells, Cassidy was required to disclose his transactions in the public shells' common stock within two business days. On 69 occasions between 2012 and 2017, Cassidy disposed of shares—typically 48.75% of the total shares of a public shell—without timely filing a Form 4 within two business days disclosing the transaction. On at least six occasions, Cassidy never filed a Form 4.

18. Cassidy also failed to file a Form 5 as required after the close of the fiscal years of at least six public shells from 2012 to 2015. These filings were required because Cassidy—an officer, director, and greater than 10% shareholder—had failed to file a Form 4 within two business days of the disposition of shares.

Legal Analysis

Tiber Creek and Cassidy Violated Section 15(a)(1) of the Exchange Act

19. Section 15(a)(1) of the Exchange Act prohibits any broker that is a natural person not associated with a broker or dealer from using the mails or any other means of interstate commerce to “effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security,” unless he or she is registered with the Commission as a broker in accordance with Section 15(b) of the Act.

20. Section 3(a)(4)(A) of the Exchange Act defines a “broker” as “any person engaged in the business of effecting transactions in securities for the account of others.” The Commission has taken the position that the definition of broker “should be construed broadly and that exemptions from registration requirements that flow from [Section 3(a)(4)] should be ‘narrowly drawn in order to promote both investor protection and the integrity of the brokerage community.’” *In re Wall*, Exch. Act Rel. No. 52467, 2005 WL 2291407, *3 n.9 (Sept. 19, 2005) (opinion of the Commission) *citing* *Persons Deemed Not to be Brokers*, Exch. Act Rel. No. 22172, 1985 WL 634795, *2 (June 27, 1985) (adopting release).

21. The Exchange Act does not define what constitutes being “engaged in the business,” but courts have interpreted the phrase to connote “a certain regularity of participation in securities transactions at key points in the chain of distribution.” *SEC v. Hansen*, 1984 U.S. Dist. LEXIS 17835, *25 (S.D.N.Y. Apr. 6, 1984) (quoting *Massachusetts Financial Services, Inc. v.*

Securities Investor Protection Corp. 411 F. Supp. 411, 415 (D. Mass.), *aff'd*, 545 F.2d 754 (1st Cir. 1976), *cert. denied*, 431 U.S. 904 (1977)).

22. As described in detail above, Cassidy and Tiber Creek regularly participated at key points in the business chain of distribution, solicited securities transactions, structured those transactions, advised customers as to the merits of the securities transactions, negotiated with private operating companies concerning the transfer of control of public shells, and received compensation based on the successful completion of securities transactions.

Cassidy Violated Section 13(d) of the Exchange Act and Rule 13d-1 Thereunder

23. Section 13(d) of the Exchange Act and Rule 13d-1 together require any person who has acquired, directly or indirectly, beneficial ownership of more than five percent of a voting class of equity securities registered pursuant to Section 12 of the Exchange Act to file a statement with the Commission reporting ownership. Certain individuals or entities may comply with this requirement by filing a Schedule 13G with the Commission within 45 days after the end of the calendar year in which the person became obligated to report the person's beneficial ownership, as of the last day of the calendar year. *See* Rule 13d-1(d). Scierter is not required to establish a violation of Section 13(d).

24. Between May 2008 and October 2014, Cassidy acquired 50% of the common stock for at least 46 public shells. However, he failed to timely file with the Commission forms on Schedule 13G within 45 days of the year-end in which he became obligated to report his beneficial ownership. Cassidy did not file Schedules 13G for any of these 46 public shells until September 2015. His Schedule 13G filings were delinquent by a range of 30 to 344 weeks.

25. As Cassidy and McKillop had formed a group for purposes of acquiring, holding, voting, and disposing of their shares in Tiber Creek's public shells, *see* Exchange Act Rule 13d-5(b), they were required to identify each other as group members in their Schedule 13G filings. *See* Exchange Act Rule 13d-1(k)(2). In the 46 delinquent Schedules 13G filed in September 2015, Cassidy and McKillop failed to disclose the identity of the other group members. Consequently, Cassidy and McKillop's delinquent filings violated Section 13(d) of the Exchange Act and Rule 13d-1 thereunder.

Cassidy Violated Section 16(a) of the
Exchange Act and Rules 16a-2 and 16a-3 Thereunder

26. Section 16(a) of the Exchange Act and Rules 16a-2 and 16a-3 thereunder require that direct or indirect beneficial owners of more than ten percent of a class of equity securities registered under Section 12, and directors and officers, file reports of ownership and changes of beneficial ownership with the Commission. Changes in holdings must be reported on a Form 4 within two business days of the change. A Form 5 is required by the end of any fiscal year in which the beneficial ownership has changed but that change was not previously reported.

27. As an officer and director of each of the public shells, and an owner of more than ten percent of each company's stock, Cassidy was required to comply with the reporting

requirements of Section 16(a) of the Exchange Act and Rules 16a-2 and 16a-3 thereunder. However, on 69 occasions between 2012 and 2017, Cassidy disposed of shares without timely filing a Form 4 within two business days disclosing the transaction. On at least six occasions, Cassidy failed to file a Form 5 at the end of the fiscal to disclose otherwise unreported transactions.

Findings

28. Based on the foregoing, the Commission finds that Tiber Creek and Cassidy willfully⁹ violated Section 15(a)(1) of the Exchange Act. Based on the foregoing, the Commission also finds Cassidy willfully violated Sections 13(d) and 16(a) of the Exchange Act, and Rules 13d-1, 16a-2, and 16a-3 thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Sections 4C, 15(b), and 21C of the Exchange Act, and Rule 102(e)(1)(iii) of the Commission's Rules of Practice, it is hereby ORDERED that:

A. Respondent Tiber Creek cease and desist from committing or causing any violations and any future violations of Section 15(a) of the Exchange Act.

B. Respondent Cassidy cease and desist from committing or causing any violations and any future violations of Sections 13(d), 15(a), and 16 of the Exchange Act and Rules 13d-1, 16a-2, and 16a-3 thereunder.

C. Respondent Tiber Creek 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.

D. Respondent Cassidy 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.

E. Respondents Tiber Creek and Cassidy are permanently barred from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act.

F. Any reapplication for association by the Respondents will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned

⁹ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)).

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 Respondents, 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.

G. Respondent Cassidy is denied the privilege of appearing or practicing before the Commission as an attorney.

H. Respondents shall, within 10 days of the entry of this Order, pay, jointly and severally, disgorgement of \$117,000.00, prejudgment interest of \$17,697.54, and a civil money penalty in the amount of \$75,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. § 3717.

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

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 Tiber Creek Corp. and James Cassidy as Respondents 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.

J. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor

Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

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.

Vanessa A. Countryman
Acting Secretary