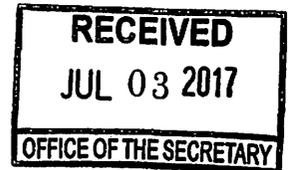


**HARD COPY**

**UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION**



**ADMINISTRATIVE PROCEEDING**

**File No. 3-17550**

**In the Matter of**

**TOD A. DITOMMASO, ESQ.,**

**Respondent.**

**DIVISION OF ENFORCEMENT'S  
MOTION TO AMEND INITIAL  
DECISION TO INCLUDE A  
CEASE-AND-DESIST ORDER**

On March 21, 2017, the Honorable Judge Foelak granted the Division's Motion for Summary Disposition, concluding that, as alleged in the Order Instituting Proceedings ("OIP"), Respondent Tod A. DiTommaso violated Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") through his issuance of ten attorney opinion letters concerning the safe harbor of Securities Act Rule 144 for transactions in the stock of Fusion Pharm, Inc. ("FSPM"). *In the Matter of Tod A. DiTommaso, Esq.*, Release No. 1142, 2017 WL 2570718, at \*1 (June 13, 2017). Following a hearing held on May 10, 2017, on the issue of sanctions, the Hearing Officer ordered DiTommaso to pay disgorgement of \$1,475 and a civil penalty of \$1,475. The Initial Decision noted that, while the OIP authorized the Division to seek a cease-and-desist order, the Division did not specifically request that sanction in its prehearing brief or at the hearing. *DiTommaso*, 2017 WL 2570718, at \*3 n.5. The failure to request a cease-and-desist order was an oversight by the Division.<sup>1</sup> The Division respectfully requests that the Hearing Officer, under the authority granted by Rule 111 "to do all things necessary and appropriate to discharge his or

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<sup>1</sup> The parties both waived post-hearing filings. *DiTommaso*, 2017 WL 2570718, at \*1.

her duties,” amend her Initial Decision and enter a cease-and-desist order against Mr. DiTommaso from further violations of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and (c).

For substantially the same reasons that the Court ordered Mr. DiTommaso to pay disgorgement and a civil penalty, a cease-and-desist order is appropriate here. In determining whether the public interest requires sanctions, the following factors are to be considered: the egregiousness of the actions; the isolated or recurrent nature of the infractions; the degree of scienter involved; the sincerity of a respondent’s assurances against future violations; a respondent’s recognition of the wrongful nature of his or her conduct; and the likelihood that a respondent’s occupation will present opportunities for future violations. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979). Other factors include the extent to which a sanction will have a deterrent effect and the likelihood of future violations. *Mark Feathers*, Initial Dec. Rel. No. 605, 2014 WL 2418472, at \*3 (May 30, 2014), *aff’d* SEC Release No. 7634, 2014 WL 6449870 (Nov. 18, 2014) (citing *Schild Mgmt. Co.*, Exchange Act Rel. No. 53253, 2006 WL 231642, at \*8 & n.46 (Jan. 31, 2006)).

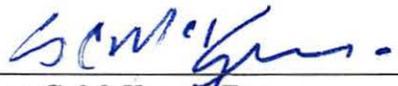
In determining whether a cease-and-desist order is appropriate and in the public interest, in addition to the *Steadman* factors listed above, the Commission further considers: “whether there is a risk of future violations, whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings.” *Steven E. Muth*, Initial Dec. Rel. No. 262, 2004 WL 2270299, at \*39 (Oct. 8, 2004) (citing *KPMG Peat Marwick LLP*, Exchange Act Rel. No. 1360, 2001 WL 47245 (Jan. 19, 2001)). In applying these factors, the Commission has held that “although some risk of future

violation is necessary, it need not be very great to warrant issuing a cease-and-desist order and . . . in the ordinary case and absent evidence to the contrary, a finding of past violation raises a sufficient risk of future violation.” *KPMG Peat Marwick LLP*, Exchange Act Rel. No. 1374, 2001 WL 223378, at \*6 (Mar. 8, 2001) (internal quotation marks and citation omitted).

Given Respondent’s failure to engage in independent due diligence prior to signing the opinion letters, that were “ghostwritten” by another attorney, and his acknowledged failure to follow up on “red flags [that were] all over the place” in connection with ten separate opinions issued over two years (*DiTommaso*, 2017 WL 2570718, at \*3), there is risk that, absent a cease-and-desist order, he will continue to violate the federal securities laws and harm investors by facilitating the issuance of unregistered securities.<sup>2</sup> An order directing Mr. DiTommaso to cease-and-desist from such conduct is thus appropriate under Section 8A of the Securities Act.

For these reasons, the Division respectfully requests that the Hearing Officer amend her Initial Decision to order Mr. DiTommaso cease-and-desist from further violations of Sections 5(a) and 5(c) of the Securities Act. The Division has reached out to Mr. DiTommaso to ask if he opposes this request and, if so, intends to file opposition papers, but has not received a response.

Respectfully submitted this 30<sup>th</sup> day of June, 2017.

  
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Securities and Exchange Commission  
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<sup>2</sup> DiTommaso testified that he did not intend to issue Rule 144 opinion letters in the future, but he remains a licensed attorney with the potential for future violations.

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the Division of Enforcement's Motion to Amend Initial Decision to Include a Cease-and-Desist Order was served on the following on this 30<sup>th</sup> day of June, 2017, in the manner indicated below:

Securities and Exchange Commission  
Brent Fields, Secretary  
100 F Street, N.E.  
Mail Stop 1090  
Washington, D.C. 20549  
(By Facsimile and original and three copies by UPS)

Hon. Judge Carol Fox Foelak  
100 F Street, N.E.  
Mail Stop 2557  
Washington, D.C. 20549  
(By Email)

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Elinor Blomgren  
Trial Paralegal