

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75775 / August 27, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16292

In the Matter of

BRAVO ENTERPRISES LTD. and JACYLN
CRUZ

OPINION OF THE COMMISSION

SECTION 12(k) PROCEEDING

Suspension of Trading

Petitioners seek to terminate a trading suspension that was ordered after questions arose regarding the accuracy and adequacy of publicly disseminated information, including with respect to the relationship between the company's business prospects and the Ebola crisis, and possible market manipulation. *Held*, petition to terminate the trading suspension is denied because the Commission remains of the opinion that the public interest and the protection of investors required the trading suspension.

APPEARANCES:

Wani Iris Manly, of W. Manly, P.A., for Bravo Enterprises Ltd. and Jaclyn Cruz.

Deena R. Bernstein, Amy Gwiazda, Lauchlan Wash, and Rebecca Israel, for the Division of Enforcement.

Petition for termination filed: December 1, 2014
Last brief received: February 3, 2015

On November 20, 2014, we issued an order temporarily suspending trading in the securities of Bravo Enterprises Ltd. (ONGG) pursuant to Section 12(k)(1) of the Securities Exchange Act of 1934 (the “Trading Suspension Order”).¹ The Trading Suspension Order stated that “[q]uestions have arisen concerning the accuracy and adequacy of publicly disseminated information,” including information about the relationship between Bravo’s “business prospects and the current Ebola crisis,” and that the “Commission is of the opinion that the public interest and the protection of investors require the suspension of trading” for a period of ten business days.² Bravo and its president, Jaclyn Cruz, submitted a petition to terminate the trading suspension pursuant to Rule of Practice 550.³

Before turning to the contentions raised by petitioners, we provide an overview of the Commission’s trading-suspension authority under Exchange Act Section 12(k)(1). We then describe our practice with respect to the disposition of timely Rule 550 petitions. We conclude by applying these principles to petitioners’ Rule 550 petition and explaining why, based on our review of the information submitted by petitioners and by the Division of Enforcement (the “Division”), we remain of the opinion that the public interest and the protection of investors required suspension of trading in Bravo’s securities.

I. BACKGROUND

As described below, we have broad discretion to determine whether to temporarily suspend trading in a security. We exercise that discretion to suspend trading when, in our opinion, that step is required in the public interest and for the protection of investors.

A. **The Commission has broad discretion to determine when, in its opinion, the public interest and investor protection requires a trading suspension.**

Section 12(k)(1) of the Exchange Act is the source of the Commission’s trading-suspension authority. The provision states that, “[i]f in its opinion the public interest and the protection of investors so require, the Commission is authorized by order . . . summarily to suspend trading in any security . . . for a period not exceeding 10 business days.”⁴ This time-limited restriction of trading in a security may be imposed by the Commission “without any

¹ 15 U.S.C. § 78l(k)(1); *Bravo Enters. Ltd.*, Securities Exchange Act Release No. 73650, 2014 WL 6480286 (Nov. 20, 2014) (press release announcing suspension of trading in securities of four issuers); *Bravo Enters. Ltd.*, 2014 WL 6480308 (Nov. 20, 2014) (Trading Suspension Order).

² *Bravo Enters. Ltd.*, 2014 WL 6480308, at *1. The trading suspension expired on December 4, 2014.

³ 17 C.F.R. § 201.550.

⁴ 15 U.S.C. § 78l(k)(1).

notice, opportunity to be heard, or findings based upon a record.”⁵ While trading in a security is suspended, members of a national securities exchange, brokers, and dealers are prohibited from using any instrumentality of interstate commerce to effect transactions in, or to induce the purchase or sale of, that security.⁶ Trading suspensions under Section 12(k)(1) are limited in duration to a single, ten-day period based on any single set of circumstances.⁷

Section 12(k)(1)’s text demonstrates that Congress conferred upon the Commission broad discretion to temporarily suspend trading in a security. The relevant inquiry is whether we are of the “opinion” that a trading suspension is required in light of “public interest” and “protection of investors” considerations. Such a statutory scheme—which combines a general “public interest” standard with a provision giving the agency power to act as it considers appropriate in its opinion—gives us “wide latitude” in our decisionmaking.⁸

In particular, “public interest” is not defined by statute and is an inherently “broad” standard[] for administrative action.”⁹ Moreover, when Congress directs an agency to consider the public interest, the agency calls upon its expertise, experience, and knowledge to make a discretionary judgment in the face of potential uncertainty.¹⁰ All in all, “Congress necessarily gave [the Commission] a broad discretion” when it charged the Commission with implementing

⁵ *SEC v. Sloan*, 436 U.S. 103, 112 (1978); *see also Sloan v. SEC*, 547 F.2d 152, 158 (2d Cir. 1976) (“For a . . . ten-day suspension no prior notice or hearing is required because the proceeding is summary in nature . . .”).

⁶ 15 U.S.C. § 78l(k)(4). Under limited circumstances, a broker-dealer may consummate a trade entered into prior to the trading suspension. *See Consummation of Securities Transactions by Broker-Dealers When Trading Is Suspended*, Exchange Act Release No. 7920, 1966 WL 85545 (July 19, 1966).

⁷ 15 U.S.C. § 78l(k)(1)(A); *see also Sloan*, 436 U.S. at 111.

⁸ *GTE Serv. Corp. v. FTC*, 782 F.2d 263, 268 n.5 (D.C. Cir. 1986) (considering statute that combined an underlying “public interest” standard with authority to impose “conditions” as were appropriate “in [the agency’s] judgment”); *accord Hernandez-Cordero v. INS*, 819 F.2d 558, 562-63 (5th Cir. 1987) (en banc) (considering statute that combined “highly subjective standard” with an “in the opinion of” qualifier).

⁹ *Am. Power & Light Co. v. SEC*, 329 U.S. 90, 104 (1946); *see also FCC v. Nat’l Citizens Comm. for Broad.*, 436 U.S. 775, 810 (1978).

¹⁰ *See, e.g., MetroPCS Cal., LLC v. FCC*, 644 F.3d 410, 412-13 (D.C. Cir. 2011) (interpreting “public interest” provision of the Communications Act); *Vill. of Barrington, Ill. v. STB*, 636 F.3d 650, 657 (D.C. Cir. 2011) (Staggers Rail Act of 1980); *City of St. Louis v. DOT*, 936 F.2d 1528, 1533 (8th Cir. 1991) (Federal Aviation Act); *Porter & Dietsch, Inc. v. FTC*, 605 F.2d 294, 308 (7th Cir. 1979) (Federal Trade Commission Act).

provisions of the Exchange Act “in the public interest.”¹¹ Likewise, investor protection is an expansive mandate.¹²

Section 12(k)(1)’s use of the phrase “in its opinion” augments the breadth of the Commission’s discretion to determine whether a trading suspension is required in the public interest and for the protection of investors. The decisional reference point is our own *subjective* opinion about what action is necessary under the circumstances, as distinguished from an *objective* standard. As the D.C. Circuit has explained, there is a significant “distinction between a subjective standard (whether the agency thinks that a condition has been met) and an objective one (whether the condition in fact has been met),” with the former giving the agency more discretion to act.¹³ In sum, Congress’s inclusion of the phrase “in its opinion” demonstrates the high degree of discretion it gave us to determine when to suspend trading to protect investors or the public interest.

¹¹ *Vanasco v. SEC*, 395 F.2d 349, 353 (2d Cir. 1968) (discussing 15 U.S.C. § 78o(b)(7)).

¹² *See, e.g., NRDC v. SEC*, 606 F.2d 1031, 1050 & n.26 (D.C. Cir. 1979) (noting the “degree of discretion accorded the Commission” given the statutory grant of authority to prescribe disclosures “as necessary or appropriate for the proper protection of investors”); *Berko v. SEC*, 316 F.2d 137, 141 (2d Cir. 1963).

¹³ *Drake v. FAA*, 291 F.3d 59, 72 (D.C. Cir. 2002). In a myriad of other contexts, language such as “in the opinion” or “in the judgment” has been held to give agencies “virtually unbridled discretion.” *Id.*; *accord Webster v. Doe*, 486 U.S. 592, 600 (1988) (holding that statute authorizing termination when agency head “shall *deem* [it] necessary or advisable” rather than when it “*is*” necessary or advisable “fairly exudes deference”) (emphasis in original); *Jay v. Boyd*, 351 U.S. 345, 354 & n.17 (1956) (construing phrase “if in the opinion” as giving the agency “unfettered discretion”); *McCarthy v. Middle Tenn. Elec. Membership Corp.*, 466 F.3d 399, 406 (6th Cir. 2006) (construing phrase “in its judgment [as] may be necessary or desirable” as “accord[ing] the [agency] a great amount of discretion”); *Kalkouli v. Ashcroft*, 282 F.3d 202, 204 (2d Cir. 2002) (per curiam) (construing phrase “in the opinion of” as a “clear[er]” grant of “discretion”); *Am. Express Co. v. United States*, 262 F.3d 1376, 1379 (Fed. Cir. 2001) (construing phrase “in the opinion of” as conferring “broad discretion”); *Bd. of Trade of City of Chicago v. CFTC*, 605 F.2d 1016, 1022 (7th Cir. 1979) (construing phrase “in the Commission’s judgment” as committing decision to the agency’s discretion).

A Commission decision to suspend trading remains subject to judicial review. Exchange Act Section 12(k)(5) states that a trading suspension order “shall be subject to review . . . as provided in section 25(a)” of the Exchange Act, which is the provision governing review of final Commission orders in the courts of appeals. 15 U.S.C. §§ 78l(k)(5); 78y(a)(1).

B. The Commission may suspend trading without alleging or finding that an issuer has violated the federal securities laws.

We are not required to allege or find that an issuer has violated a specific provision of the federal securities laws before suspending trading in an issuer's securities. Instead, Section 12(k)(1) contemplates that we will employ our subjective judgment to determine whether it is in the "public interest" and for the "protection of investors" to suspend trading irrespective of whether there has been a finding of a violation. For example, we have suspended trading concurrently with instituting enforcement actions alleging that an issuer has failed to comply with periodic reporting requirements, committed an antifraud violation, or otherwise engaged in deceptive or manipulative conduct.¹⁴ We also have protected investors by suspending trading before an issuer's fraud was completed or before we have concluded an investigation.¹⁵ And we have suspended trading in situations involving fraud or manipulation by individuals unconnected with the issuer,¹⁶ when speculative rumors were swirling in the marketplace,¹⁷ or when the issuer

¹⁴ See, e.g., *Vida Life Int'l Ltd.*, Exchange Act Release No. 72236, 2014 WL 2153784, at *1 (May 23, 2014) (suspending trading); *Vida Life Int'l Ltd.*, Exchange Act Release No. 72237, 2014 WL 2153785, at *1 (May 23, 2014) (alleging that issuer was "delinquent in its periodic filings"); *ZipGlobal Holdings, Inc.*, Exchange Act Release No. 65857, 2011 WL 5999267, at *1 (Dec. 1, 2011) (suspending trading); *ZipGlobal Holdings, Inc.*, Litigation Release No. 65857, 2011 WL 7405281, at *1 (Dec. 2, 2011) (announcing civil proceeding filed on December 1, 2011 alleging, among other things, secret kickbacks and sham consulting agreements).

¹⁵ See, e.g., *Secure Solutions Holdings, Inc.*, Exchange Act Release No. 52037, 2005 WL 1661080 (July 15, 2005) (suspending trading); *Paul Harary*, Press Release No. 2007-197 (Sept. 24, 2007), available at <http://www.sec.gov/news/press/2007/2007-197.htm> (noting that the Secure Solutions "trading suspension led to the discovery of a multi-million dollar market manipulation and kickback scheme"); *Twenty First Century Health, Inc.*, Exchange Act Release No. 38345, 1997 WL 83163, at *1 (Feb. 27, 1997) (noting concerns about the accuracy of the issuer's "public announcements concerning the Commission's investigation"); *Belock Instrument Corp.*, Exchange Act Release No. 7632, 1965 WL 88922, at *1 (June 22, 1965) (noting concerns on the "basis of information so far developed" in an ongoing investigation).

¹⁶ See, e.g., *Andros Isle Dev. Corp.*, Exchange Act Release No. 57486, 2008 WL 762964, at *1 (Mar. 13, 2008) ("[c]ertain persons appear to have usurped the identity of 26 defunct or inactive publicly traded corporations"); *Power Conversion, Inc.*, Exchange Act Release No. 10002, 1973 WL 149518, at *21 (Feb. 12, 1973) (trader was "involved in a scheme to defraud and manipulate the market" in the issuer's securities).

¹⁷ See, e.g., *Crystalography Corp.*, Exchange Act Release No. 9815, 1972 WL 126330, at *1 (Oct. 11, 1972) (citing "rumors circulating in the financial community regarding deficiencies in the net capital positions of some broker-dealers" holding positions in the issuer's securities); *Microbiological Sciences, Inc.*, Exchange Act Release No. 8544, 1969 WL 96473, at *1 (Mar. 4, 1969) ("unfounded and false rumors" circulated in the marketplace "[c]ontrary to past efforts of management").

requested the suspension so that it could make an announcement.¹⁸ In each of these situations—as well as the others described *infra* at pp. 8-11—our decision to suspend trading was rooted in our opinion, based on our expertise, experience, and knowledge, that a trading suspension was in the public interest and would protect investors.

Our application of the “public interest” and “protection of investors” standards, and our recognition of their breadth, is supported by the structure of the Exchange Act and Section 12(k)(1)’s legislative history. Section 12 and its statutory predecessors include two related provisions relevant for present purposes. The first, former Section 19(a)(4), is similar to present Section 12(k)(1) and authorized the Commission to “summarily to suspend trading . . . for a period not exceeding ten days” if “in its opinion the public interest so requires.”¹⁹ The second, former Section 19(a)(2), is similar to present Section 12(j), and authorized the Commission to suspend the registration of a security for up to twelve months “if the Commission finds that the issuer . . . has failed to comply with any provision of this title or the rules and regulations thereunder.”²⁰ Thus, from the original enactment of the Exchange Act through to the present day, Congress drew a distinction between short-term, temporary trading suspensions based on our *opinion* concerning the public interest and longer suspensions based on a finding of a *failure to comply with a provision of the securities laws*.²¹ This contrast makes clear that we may temporarily suspend trading even in the absence of a specific regulatory violation.

Subsequent amendments to the Exchange Act preserved and enlarged our temporary trading-suspension authority based on the Commission’s “opinion,” without adding any requirement that the Commission first find a securities violation.²² These later amendments

¹⁸ See, e.g., *AT&T Corp.*, Exchange Act Release No. 20361, 1983 WL 403003, at *1 (Nov. 10, 1983) (suspending trading upon request of issuer to “allow time for dissemination . . . of information” relating to corporate re-organization); *Penn Central Co.*, Exchange Act Release No. 13064, 1976 WL 161852, at *1 (Dec. 13, 1976); *Subscription Television Inc.*, Exchange Act Release No. 8088, 1967 WL 88117, at *1 (May 26, 1967).

¹⁹ Section 19(a)(4) of the Exchange Act, 15 U.S.C. § 78s(a)(4) (1964).

²⁰ Section 19(a)(2) of the Exchange Act, 15 U.S.C. § 78s(a)(4) (1964). These longer-term suspensions may be imposed only after notice and the opportunity for a pre-revocation hearing.

²¹ Although the committee reports accompanying the Exchange Act do not shed much light on the meaning of these provisions, their overall tenor confirms that Congress believed that a “wide delegation of powers” was necessary and that the “complicated nature of the problems justified leaving much greater latitude of discretion” with the Commission. H.R. Rep. No. 73-1383 at p. 6, H.R. 9323 (1934).

²² The Commission’s original trading suspension authority was limited to securities listed on a national exchange. In 1964, the Exchange Act was amended to authorize the Commission to temporarily suspend over-the-counter trading as well. See Securities Act Amendments of 1964, Pub. L. No. 88-467 § 6(c) (codified at former Section 15(c)(5) of the Exchange Act). In 1975, the two sections were consolidated into the present Section 12(k). See Securities Act

(footnote continued . . .)

likewise demonstrate that Congress has given us the flexibility to take decisive steps when necessary to protect investors and the public interest. Discharging this function will at times require that we act *before* there has been an opportunity to fully develop information about a situation. As the Senate Report to the Securities Act Amendments of 1964 explained, the Commission may “exercise this [trading suspension] power” and then subsequently “*proceed . . . to develop the . . . facts*” to take further action if necessary.²³ Thus, the legislative history reinforces the plain language of the statute: The “Commission’s authority to implement trading suspensions . . . with respect to individual securities . . . may be exercised upon a finding by the Commission that in its opinion the public interest and the protection of investors so requires.”²⁴ Congress did not intend to require the Commission to make any other findings.

Finally, we note that our reading of the scope of Section 12(k)(1) is supported by our consideration of the relevant policy objectives and furthers the Exchange Act’s remedial purposes. Temporary trading suspensions are a powerful tool for “alert[ing] the investing public”²⁵ about “questions the Commission has raised regarding the issuer or its securities.”²⁶ Suspensions thus “may help prevent fraud by drawing attention to the suspended . . . companies and increasing the availability of information about” them.²⁷ Our authority to temporarily suspend trading without a predicate finding of a regulatory or statutory violation gives us

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Amendments of 1975, Pub. L. No. 94-29 § 9. No substantive change resulted. *Sloan*, 436 U.S. at 105 n.1; *see* S. Rep. 94-75 at p. 106, S. 249 (1975).

²³ S. Rep. No. 88-379, at p. 67, Pub. L. No. 88-467 (1964) (emphasis added).

²⁴ H.R. Rep. No. 101-524, at p. 37, Pub. L. No. 101-432 (1990). Congress’s decision to reenact and “preserve,” *id.*, the Commission’s trading suspension authority as to individual securities on three occasions, 1964, 1975, and 1990—and, indeed, “expand[],” *id.*, and “broaden[],” 136 Cong. Rec. H8376, at H8383 (Sept. 28, 1990) (statement of Cong. Norman Lent), in other respects the Commission’s market-wide emergency authority—is evidence that Congress has acquiesced in the Commission’s longstanding and consistent administrative practice of applying Section 12(k)(1) and its predecessor provisions flexibly. *See, e.g., Bell v. New Jersey*, 461 U.S. 773, 785 & n.12 (1983); *United States v. Correll*, 389 U.S. 299, 305-06 (1967); *see also infra* Section I.C (describing variety of situations in which the Commission has suspended trading).

²⁵ *Adopting Release, Rules of Practice*, 60 Fed. Reg. 32738, 32787 (June 23, 1995).

²⁶ *Initiation or Resumption of Quotations Without Specified Information*, 56 Fed. Reg. 19148, 19154 (Apr. 25, 1991); *see also Sloan*, 436 U.S. at 116 (stating that the Commission could “reveal to the investing public” the “reasons which it thought justified the . . . summary suspension” and let them “make their own judgments”).

²⁷ Jennifer Gardner, *The SEC’s Operation Shell Expel*, 33 Rev. Banking & Fin. L. 60, 65 (2013).

flexibility to address novel or atypical scenarios that might arise in which such a measure was needed to protect investors or the public interest.²⁸

C. The Commission has exercised its trading-suspension authority in a variety of circumstances.

We have found it necessary to suspend trading in the public interest and for the protection of investors in a wide variety of circumstances. As a general matter, “the primary issues normally to be considered by the Commission in determining whether or not a 10-day suspension should be instituted are whether or not there is sufficient public information upon which to base an informed investment decision or whether the market for the security appears to reflect manipulative or deceptive activities.”²⁹

Thus, we have suspended trading in “securities of delinquent issuers” who have failed to comply with the “periodic reporting requirements of the federal securities laws” because we were of the opinion that there was a lack of current, adequate, and accurate information about the company.³⁰ We also have suspended trading when there were questions about the accuracy of publicly available information about the company, whether in press releases, public filings, or other statements.³¹ And we have suspended trading when there were questions about trading in the stock, including indicia of potential market manipulation or unusual market activity.³² These examples illustrate, but are not intended to serve as an exhaustive list of, the concerns that we take into account when determining whether, in our opinion, the public interest and the protection of investors requires a trading suspension.³³

²⁸ Cf. *Superintendent of Ins. of State of N.Y. v. Bankers Life & Cas. Co.*, 404 U.S. 6, 10 n.7 (1971) (“Novel or atypical methods should not provide immunity from the securities laws.”) (internal quotation marks omitted).

²⁹ *Adopting Release, Rules of Practice*, 60 Fed. Reg. at 32787.

³⁰ *Commission Expresses Concern with Failure of Issuers To Timely and Properly File Periodic and Current Reports*, Exchange Act Release No. 10214, 1973 WL 149348, at *1 (June 11, 1973); see, e.g., *Vantone Int’l Group, Inc.*, Exchange Act Release No. 75304, 2015 WL 3929978, at *1 (June 26, 2015); *First Am. Sci. Corp.*, Exchange Act Release No. 74778, 2015 WL 1814345, at *1 (Apr. 22, 2015).

³¹ See, e.g., *Med Pro Venture Capital, Inc.*, Exchange Act Release No. 74218, 2015 WL 500137, at *1 (Feb. 6, 2015); *Prospect Ventures, Inc.*, Exchange Act Release No. 72338, 2014 WL 2547536, at *1 (June 6, 2014).

³² See, e.g., *E-Pawn.com, Inc.*, Exchange Act Release No. 42938, 2000 WL 766524, at *1 (June 14, 2000); *Lanstar Semiconductor, Inc.*, Exchange Act Release No. 37166, 1996 WL 225963, at *1 (May 3, 1996).

³³ An oft-cited treatise identifies eight categories of situations in which the Commission has used its trading-suspension authority, including during company crises, to prevent unregistered

(footnote continued . . .)

Microcap securities—*i.e.*, low-priced, thinly traded stocks issued by very small, or shell, companies—and penny stocks often have characteristics that implicate one or more of these recurring concerns.³⁴ These over-the-counter “equity securities historically have been subject to Commission action in part because they lack transparency.”³⁵ Accurate information about a microcap or penny stock is often difficult to locate for anyone who is not an insider. Many of these companies do not file periodic reports with the Commission. They are often quoted only on the OTC Bulletin Board or the OTC Pink (also referred to as the OTC Link) marketplace, which do not require companies to apply for listing or to meet any minimum financial standards.³⁶ When reliable, publicly available information is scarce for any (or all) of these reasons, it is easier to spread false information about a company’s prospects. Furthermore, the fact that many microcaps and penny stocks trade in low volumes, are closely held, and are highly volatile makes them especially attractive targets for manipulative or deceptive trading schemes.

As a result, microcaps and penny stocks may be subject to pump-and-dumps, boiler-room operations, and a variety of other fraudulent schemes.³⁷ Such stocks may be touted by promoters

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distributions of securities, in anticipation of a delisting proceeding, when there are rumors of doubtful accuracy circulating in the market, to allow investors to study late-breaking or unexpected news, and when the Commission has been concerned about apparent wash sales or unusual trading activity. *See* Louis Loss, et al., *IV Securities Regulation* ch. 6.B.4.b n.138 at pp. 394-98 (4th ed. 2009); *see also* Martin E. Goldman & J.L. Magrino, Jr., *Suspension of Trading in Securities: Some Observations on Section 15(c)(5) of Securities Exchange Act of 1934*, 15 N.Y.L.F. 633, 649-51, 658-72 (1969) (offering a different classification); *Comment*, 18 Cath. U. L. Rev. 57, 67-73 (1968) (similar).

³⁴ The term “microcap securities” is not defined under the federal securities laws; we use the term in the general or colloquial sense. *See, e.g., Proposed Rule, Publication or Submissions of Quotations without Specified Information*, 63 Fed. Reg. 9661, 9661-62 & n.8 (Feb. 25, 1998). We recognize that not all securities traded in this market sector are affected by fraud. *See id.*

³⁵ *See Order Granting Accelerated Approval of a Proposed Rule Change, As Modified by Amendment Nos. 1 and 2, To Amend FINRA Rule 6433 (Minimum Quotation Size Requirements for OTC Equity Securities)*, Exchange Act Release No. 67208, 2012 WL 2247467, at *18 & n.142 (June 15, 2012).

³⁶ Domestic equity securities quoted on the OTC Bulletin Board must make filings pursuant to Exchange Act Sections 13 or 15(d). *See* FINRA Rule 6530(a). The OTC Pink marketplace has no minimum reporting standards.

³⁷ In *Ronald S. Bloomfield*, we described a typical pump-and-dump scheme:

In a pump-and-dump scheme, the price of a stock is manipulated upward, typically by stock promoters, investor relations firms, and/or broker-dealers who make undisclosed deals with a company to recommend its stock, provide false or misleading information

(footnote continued . . .)

who look to the news headlines for ideas about attractive investment ideas to promote—for example, marijuana-related businesses, virtual currencies such as Bitcoin, and natural disasters such as Hurricane Sandy.³⁸ Press releases and promoters may promise high returns based on the promise of huge profits from the latest innovation, technology, product, or fad.

In light of these risks, we have been vigilant in exercising our trading-suspension authority in the context of microcaps and penny stocks. We have suspended trading in over 800 dormant shell companies through our Operation Shell Expel initiative based on concerns about the accuracy and adequacy of publicly disseminated information concerning each company's operating status.³⁹ We also have suspended trading when there were indications that a pump-

(. . . footnote continued)

about the company, and enter trades into the market designed to create the illusion of market demand and induce others to buy the stock. These undisclosed deals often include cash and the issuance of the company's stock to promoters and investor relations firms who acquire the stock directly from the company or its insiders, *i.e.*, past and present officers or directors, at nominal prices Participants in the scheme make substantial profits when they sell their stock to the public at the artificially inflated prices. Once the scheme is over, the stock's price usually plummets, and innocent investors who paid a premium price are left holding often virtually worthless shares.

Exchange Act Release No. 71632, 2014 WL 768828, at *3 (Feb. 27, 2014) (footnotes and quotation marks omitted).

³⁸ See, *e.g.*, Securities and Exchange Commission, Office of Investor Education and Advocacy, *Investor Alert: Marijuana-Related Investments* (May 16, 2014), available at <http://investor.gov/news-alerts/investor-alerts/investor-alert-marijuana-related-investments>; Securities and Exchange Commission, Office of Investor Education and Advocacy, *Investor Alert: Bitcoin and Other Virtual Currency-Related Investments* (May 7, 2014), available at <http://investor.gov/news-alerts/investor-alerts/investor-alert-bitcoin-other-virtual-currency-related-investments>; Securities and Exchange Commission, Office of Investor Education and Advocacy, *Investor Alert: Be on the Lookout for Investment Scams Related to Hurricane Sandy* (Nov. 1, 2012), available at <http://investor.gov/news-alerts/investor-alerts/investor-alert-be-lookout-investment-scams-related-hurricane-sandy>. All websites were last visited July 31, 2015 unless otherwise noted.

³⁹ *Adex Media, Inc.*, Exchange Act Release No. 74398, 2015 WL 860720 (Mar. 2, 2015); *Able Energy, Inc.*, Exchange Act Release No. 71465, 2014 WL 357253 (Feb. 3, 2014); *3CI Complete Compliance Corp.*, Exchange Act Release No. 69678, 2013 WL 2390723 (June 3, 2013); see also Gardner, *supra* note 27, 33 Rev. Banking & Fin. L. at 61-64 (describing Operation Shell Expel and common abuses involving microcap shell companies, including reverse mergers and pump-and-dump schemes).

and-dump or manipulative trading scheme was underway, such as an increase in spam emails or other touting activity.⁴⁰ And we have exercised this authority when questions have arisen regarding the accuracy of information about a company or its stock, such as potentially misleading statements in company press releases and reports.⁴¹ In all these cases, our determination that, in our opinion, the public interest and the protection of investors required a trading suspension was based on consideration of the specific record before us.

II. ANALYSIS

A. The Commission will reach the merits of the arguments raised in a timely Rule 550 petition.

We believe that it is appropriate and in the public interest to entertain petitioners' challenge to the Trading Suspension Order because they timely sought to terminate the suspension pursuant to Rule of Practice 550.⁴² Further, our decision to address the substance of petitioners' arguments promotes the development of the record in the event they seek judicial review.⁴³

As discussed above, Section 12(k) authorizes the Commission to temporarily suspend trading on an *ex parte* basis. This is often critical to protecting investors and the public interest. It enables us to act quickly when necessary to stop ongoing manipulation or to draw attention to potentially inaccurate information about an issuer circulating in the market. And in all cases, the

⁴⁰ See, e.g., *Amogear Inc.*, Exchange Act Release No. 71514, 2014 WL 507320, at *1 (Feb. 10, 2014) (citing recent "spam e-mails touting the company's shares"); *Beverage Creations, Inc.*, Exchange Act Release No. 57476, 2008 WL 762958, at *1 (Mar. 12, 2008) (noting that the market appeared to be reacting to "manipulative forces or deceptive practices," including a "widely distributed promotional mailer" and "several stock promotion websites"); *The Alternative Energy Tech. Ctr., Inc.*, Exchange Act Release No. 57600, 2008 WL 203849, at *1 (Apr. 2, 2008); *Courtside Prods., Inc.*, Exchange Act Release No. 51087, 2005 WL 711712, at *1 (Jan. 28, 2005); *Tel-One, Inc.*, Exchange Act Release No. 45323, 2002 WL 84254, at *1 (Jan. 23, 2002).

⁴¹ See, e.g., *FusionPharm, Inc.*, Exchange Act Release No. 72177, 2014 WL 1998520, at *1 (May 16, 2014); *Imogo Mobile Techs., Corp.*, Exchange Act Release No. 71568, 2014 WL 635645, at *1 (Feb. 19, 2014); *Am. Pac. Rim Commerce Group*, Exchange Act Release No. 64612, 2011 WL 2207538, at *1 (June 7, 2011); *Advanced Powerline Techs. Inc.*, Exchange Act Release No. 55420, 2007 WL 1260842, at *1 (Mar. 8, 2007); *Twenty First Century Health, Inc.*, Exchange Act Release No. 38345, 1997 WL 83163, at *1 (Feb. 27, 1997).

⁴² The Division does not dispute that petitioners are "adversely affected" by the trading suspension within the meaning of Rule 550.

⁴³ E.g., *Woodford v. Ngo*, 548 U.S. 81, 89 (2006); *Amerco v. NLRB*, 458 F.3d 883, 887-88 (9th Cir. 2006).

ex parte process avoids giving advance notice to insiders of an impending trading suspension—which might cause insiders to dump their shares on unsuspecting investors in advance of the suspension.⁴⁴

The Commission has “establish[ed] a special mechanism to allow persons adversely affected by a suspension to petition for relief” after a suspension goes into effect, and thereby obtain an opportunity to be heard.⁴⁵ This procedure is set out in Rule of Practice 550, which provides that, while the suspension is still in effect, any adversely affected person “may file a sworn petition with the Secretary [of the Commission], requesting that the suspension be terminated.”⁴⁶ The petition must set forth the “reasons why the petitioner believes that the suspension of trading should not continue.”⁴⁷ Rule 550 goes on to provide that the Commission, “in its discretion, may schedule a hearing on the matter, request additional written submissions, or decide the matter on the facts presented in the petition and any other relevant facts known to the Commission.”⁴⁸

After the Rule 550 petition was filed in this matter, we directed the Division to file all of the non-privileged factual information that was before the Commission at the time of the Trading Suspension Order’s issuance.⁴⁹ We then permitted the parties to make additional submissions.⁵⁰

⁴⁴ See, e.g., *Accredited Bus. Consolidators Corp.*, Exchange Release No. 73420, 2014 WL 5386875, at *2 & n.17 (Oct. 23, 2014) (observing that there “are sound reasons that the Commission does not provide advance notice to a company that it is considering a trading suspension,” including the need to “maintain the effectiveness of any related investigation we may be conducting”) (quotation marks omitted).

⁴⁵ *Adopting Release, Rules of Practice*, 60 Fed. Reg. at 32787; *Summary Suspensions*, Exchange Act Release No. 12361, 93 SEC Docket 482 (Apr. 22, 1976).

⁴⁶ 17 C.F.R. § 201.550(a); see, e.g., *Global Green, Inc.*, Exchange Act Release No. 73855, 2014 WL 7184234, at *1 (Dec. 16, 2014) (explaining that the “means for Commission review of a Section 12(k)(1)(A) order” is the timely filing of a Rule 550 petition; dismissing petition as untimely), *appeal docketed*, No. 15-10222 (filed 11th Cir. Jan. 15, 2015); *Accredited Bus.*, 2014 WL 5386875, at *1 (dismissing petition as untimely).

⁴⁷ 17 C.F.R. § 201.550(a).

⁴⁸ *Id.* § 201.550(b).

⁴⁹ *Bravo Enters. Ltd.*, Exchange Act Release No. 73898, 2014 WL 7243175, at *1 (Nov. 20, 2014). On the same day that the trading suspension went into effect, the Division contacted Liu, Bravo’s operations director, to convey the bases for the Commission’s concerns. Given this conversation, and the Division’s subsequent filing of the specific factual information before the Commission, we consider moot petitioners’ request that the “alleged inaccuracy or inadequacies” underlying the trading suspension be “identified.”

⁵⁰ *Id.*

We have determined to resolve the petition without scheduling an in-person hearing; no party has requested one and we do not believe that one is necessary.⁵¹

We have the authority to entertain challenges to the Trading Suspension Order despite the fact that, as the Division observes, the trading suspension ended on December 4, 2014, and the petitioners request only that we “enter an order terminating the suspension of trading in [Bravo’s] securities.” That authority was timely invoked by the filing of a Rule 550 petition before the trading suspension’s expiration.⁵² As in other contexts, the Commission generally has the power to modify or reconsider its determinations before it loses jurisdiction over a matter, as, for example, when exclusive jurisdiction vests in the court of appeals pursuant to Exchange Act Section 25(a)(3).⁵³ It is appropriate to exercise this power in the situation presented here, because entertaining timely challenges to trading-suspension orders enables us to consider adversely affected parties’ objections and to develop the record before any subsequent judicial review occurs. In short, we have the authority to consider a timely filed Rule 550 petition and vacate an expired trading-suspension order in appropriate circumstances.⁵⁴

⁵¹ Cf. Rule of Practice 550(b), 17 C.F.R. § 201.550(b) (stating that the Commission may schedule a hearing “in its discretion”); *Kobach v. U.S. Election Assistance Com’n*, 772 F.3d 1183, 1197 n.10 (10th Cir. 2014) (noting that agencies have “flexibility” to decide that an evidentiary hearing is unnecessary in an informal adjudication”). Specifically, we believe that our decisional process would not be significantly aided by holding a hearing and that our consideration of the written submissions affords the parties a reasonable opportunity to address the matters before us.

⁵² See *Accredited Bus.*, 2014 WL 5386875, at *2.

⁵³ *Id.* at *2 & n.21; see also *Tokyo Kikai Seisakusho, Ltd. v. United States*, 529 F.3d 1352, 1360-61 (Fed. Cir. 2008). Provided it is exercised within a reasonable time after the decision, “[t]he power to reconsider is inherent in the power to decide,” *Eifler v. Office of Workers’ Comp. Programs*, 926 F.2d 663, 666 (7th Cir. 1991), at least in the absence of a jurisdictional or “specific statutory limitation,” *Macktal v. Chao*, 286 F.3d 822, 825-26 (5th Cir. 2002), which no party has argued is present here. The Commission need not determine whether the Rule 550 petition is moot in a technical sense. See, e.g., *Ass’n of Bus. Advocating Tariff Equity v. Hanzlik*, 779 F.2d 697, 700 n.4 (D.C. Cir. 1985); *Climax Molybdenum Co. v. MSHA*, 703 F.2d 447, 451 (10th Cir. 1983).

⁵⁴ Given our disposition of the petition, we do not address whether or how relief might be sought with respect to the potential collateral consequences of an expired trading suspension order. Cf. *United Gas Improvement Co. v. Callery Props., Inc.*, 382 U.S. 223, 229 (1965) (“An agency, like a court, can undo what is wrongfully done by virtue of its order.”).

B. Bravo and Cruz’s Rule 550 petition does not establish an entitlement to relief.

Upon review of the information and arguments in the petition and briefs, we remain of the opinion that the public interest and the protection of investors required the suspension of trading pursuant to Section 12(k)(1) of the Exchange Act.

1. The information before the Commission at the time of the Trading Suspension Order’s issuance provided grounds for our opinion that the public interest and the protection of investors required a trading suspension.

When we issued the Trading Suspension Order, we reviewed the information before us and were of the “opinion that the public interest and the protection of investors require[d] the suspension of trading” in Bravo’s securities given that “[q]uestions ha[d] arisen concerning the accuracy and adequacy of publicly disseminated information, including information about the relationship between the company’s business prospects and the current Ebola crisis.”⁵⁵

Bravo is a Nevada corporation whose securities are registered with the Commission pursuant to Exchange Act Section 12(g). As of October 31, 2014, Bravo’s common stock was quoted on OTC Link and had eleven market makers. The company has changed names eight times and pursued a variety of business models since being incorporated in 1983. For example, between April 2009 and June 2012, the company, then (as now) led by Cruz, was called Organa Gardens International Inc. and planned to develop a “rotary hydroponics vertical farming system.” In its present incarnation, the company is engaged in the business of selling air-to-water harvesting units that produce drinkable water from humidity in the surrounding air. Bravo has a retail store located in Vancouver, British Columbia.

At the time we issued the Trading Suspension Order, our opinion that a trading suspension was in the public interest and for the protection of investors was based on our consideration of the information summarized below.⁵⁶

a) Claims about Bravo’s relationship with FEMA

On February 5, 2014, Bravo issued a press release entitled “FEMA Approval and Phil Esposito Assists Bravo’s AirWell 3000 Marketing.” Bravo announced that the company had

⁵⁵ *Bravo Enters. Ltd.*, 2014 WL 6480308, at *1.

⁵⁶ The recitation below reflects our judgment as to the relative weights to be afforded to the material in the record before us. That said, as explained *supra* (at pp. 2-8), the imposition of a trading suspension under Section 12(k)(1) does not require any specific findings of historical fact; all that is necessary is a “finding by the Commission that in its opinion the public interest and the protection of investors” requires the suspension of trading. *See* H.R. Rep. No. 101-524 at p. 37, Pub. L. No. 101-432 (1990).

“received official recognition from the United States Federal Emergency Management Agency, better known as FEMA.” Although Bravo had activated a registration on FEMA’s System of Award Management (“SAM”) website in October 2013, SAM’s purpose is to help agencies locate vendors to submit bids on potential business opportunities with the federal government. FEMA employees confirmed that registration with SAM does not imply “official recognition” from FEMA and that there is no such thing as a “FEMA-approved company.”

b) Claims about the suitability and supply of Bravo’s commercial or industrial air-to-water machines for the Ebola crisis

On August 27, 2014, Bravo issued a press release entitled “Bravo Confirms Water is Top Priority in Ebola Outbreak” in which it stated that “tens of thousands of people have been barricaded” in Monrovia, Liberia’s capital city, in an “effort to contain the spread of Ebola.” The company stated that its “air to water machines would be of great assistance in this desperate situation” and that its “selection of commercial and industrial machines” could be an “alternative water supply for Liberia and countries like it.” These statements implied that Bravo’s business prospects stood to be improved because it was well situated to sell its products in response to the Ebola crisis. Yet, according to a referral from the Financial Regulatory Authority (“FINRA”), an individual associated with Bravo told FINRA staff that Bravo had never sold any commercial or industrial—as distinguished from home or office—air-to-water machines. Further, Bravo’s Form 10-K for the fiscal year ending December 31, 2013 (filed on April 15, 2014) stated that Bravo had generated minimal revenues to date, that there were doubts Bravo would continue as a going concern, and that the company did not foresee spending any funds on the development of air-to-water machine in the next 12 months.

c) Inadequate disclosure about Bravo’s officers

Bravo’s Form 10-K for the fiscal year ending December 31, 2013 lists its executive officers as full-time employees and does not disclose any outside business activities. But according to a FINRA referral, Bravo’s president (Cruz) and its CFO (Matt Kelly) also serve as officers and directors of two other, OTC microcap issuers that are located at the same address as Bravo. As stated by another FINRA referral, the person acting as Bravo’s operations director (May Joan Liu) is an alleged Vancouver-based stock promoter with a Canadian disciplinary history.

d) Other indicia of a potential market-manipulation scheme, including suspicious trading activity

According to a FINRA referral, Bravo may have been the subject of a market-manipulation scheme in the first half of 2014. This scheme involved the issuance of shares to a group of related individuals purportedly as part of an agreement with Water-For-The-World-Manufacturing Inc. (“WFTW”), which had appointed Bravo as its exclusive sale representative for WFTW’s air-to-water machines in exchange for 120 million shares of Bravo. The FINRA referral stated that these individuals apparently sold large amounts of Bravo’s stock, resulting in increased trading volumes from December 2013 to July 2014. The Division independently

identified suspicious touting and trading activity. According to the Division's Internet Promotion Monitoring Database, Bravo was the subject of 48 penny-stock touts. Its August 27, 2014 press release coincided with a paid stock alert on hotStocked.com referencing FEMA's supposed official recognition of Bravo. Following that press release, OGNG's daily trading volume increased 184%, from 317,000 shares to 901,000 shares.

2. Upon review, we remain of the opinion that the public interest and the protection of investors required a trading suspension.

Petitioners contend that the trading suspension was not in the public interest and unnecessary for the protection of investors. We have reviewed the additional arguments and information submitted and remain of the opinion that the public interest and the protection of investors required suspension of trading in Bravo's securities.

a) Petitioners' challenges to the factual basis of the trading suspension are without merit.

According to petitioners, Bravo's disclosures were adequate and accurate and there was no manipulative or deceptive trading activity. We find these contentions to be without merit.

i. Claims about Bravo's relationship with FEMA

Petitioners concede that the statements in Bravo's February 5, 2014 press release touting its "official recognition" by FEMA were "in error" and therefore not accurate. Yet petitioners insist that Bravo genuinely, albeit mistakenly, believed at the time that "vendor registration in [FEMA's SAM] database . . . meant that it would be at an advantage" to sell products to the government. Petitioners also contend that Bravo "clarified its FEMA affiliation" in a November 25, 2014 press release issued after we suspended trading.

We find that Bravo's professed lack of intent to mislead, even if credited, does not change our analysis concerning whether a trading suspension was necessary for the protection of investors.⁵⁷ Regardless of Bravo's motive in making the February 5 press release, Bravo's concededly inaccurate statements about its relationship with FEMA posed a risk of misleading investors. Similarly, we do not credit Bravo's partial corrective disclosures, which occurred only *after* the Trading Suspension Order's issuance.⁵⁸ The fact that Bravo later clarified its lack of affiliation further supports our determination that the February 5 press release included potentially misleading statements. By promoting the public dissemination of accurate information, the trading suspension advanced the public interest and the protection of investors.

⁵⁷ A trading suspension may be imposed without a showing of scienter (or, indeed, any culpability on the part of the issuer). *See supra* pp. 5-6.

⁵⁸ We say partial because Bravo's November 2014 press release misleadingly stated that Bravo "will not renew its registration with SAM." It thus failed to disclose that Bravo's SAM registration had in fact expired two months before, in September 2014.

- ii. Claims about the suitability and supply of Bravo’s commercial or industrial air-to-water machines for the Ebola crisis

Petitioners argue that Bravo’s August 27, 2014 press release did not contain misleading statements because it made only an “incidental” mention of how the Ebola crisis had provoked water shortages and never claimed that Bravo had a cure for Ebola. But our concerns were not linked to whether Bravo had an Ebola cure. Our concerns instead arose from the press release’s suggestion that Bravo—despite a lack of concrete business prospects—was poised to sell commercial or industrial scale air-to-water machines to alleviate the shortage of water in Africa. And that concern appears to have been justified given the petitioners’ admission in their brief that Bravo “has not sold . . . commercial units in the last 24 months.”

Petitioners also argue that some of the information before us at the time of the trading suspension’s issuance was incorrect. Petitioners assert that Bravo representatives did not tell FINRA staff that the company had *never* sold a commercial or industrial unit. We reject that assertion and find that a Bravo representative made exactly that statement. In response to FINRA staff’s question “What is the average turnaround time for when an order for a commercial or industrial model is received by Bravo . . . and when Bravo . . . ships the particular model out,” Liu, Bravo’s operations director, wrote “No orders for commercial *to date*.” (Emphasis added.) And in response to the question “Who does Bravo . . . use to ship and deliver commercial and industrial air-to-water models,” Liu wrote “No orders no deliveries.” Further, in other correspondence from that email chain, Liu took pains to “confirm” that Bravo “has never stated that it has ever sold a commercial and industrial machine, only that the Company has tried to market and sell the large machines.”⁵⁹ But even if Bravo’s statement to FINRA about its sales was limited to the past twenty-four months, it would not have addressed our concern that the August 27 press release suggested that Bravo was poised to sell commercial- or industrial-grade units to those in need in Africa on account of the Ebola crisis.

- iii. Inadequate disclosure about Bravo’s officers

Petitioners concede that Bravo’s president and CFO (Cruz and Kelly, respectively) also serve as officers of Golden Star Enterprises, Ltd. and Wee-Cig International Corporation, two

⁵⁹ Bravo asserts that it has a retail location in Vancouver that displays air-to-water machines and that sales have totaled \$98,677 through September 2014. Bravo does not claim, however, that it has sold any *commercial or industrial* models (as opposed to residential or office models). Likewise, we do not consider germane Bravo’s assertion that it was “introduced to another party with interest in developing a new line of air to water machines” in May 2014. Apparently, Bravo’s licensing agreement with WFTW for the manufacture and distribution of air-to-water machines ended in February 2014. And there is no evidence that Bravo has manufactured or sold any commercial or industrial models from this “new line” of machines, which Bravo said “combine[d] all the finer points in each of the *home and office* machines currently manufactured and marketed” by the company. (Emphasis added.)

microcap issuers operating from the same address as Bravo. They maintain that Bravo never attempted “to hide this fact in its disclosure[s],” pointing to this statement in its most recent Form 10-K: “During 2004, the Company received . . . shares of Golden Star . . . , a public company with directors and significant shareholders in common.” But this vague statement omits any reference to Wee-Cig International and does not identify which of Bravo’s executive officers were also officers of Golden Star. Moreover, petitioners ignore the root of our concern—namely, that the Form 10-K elsewhere states that Cruz and Kelly are *full-time employees* of Bravo, which is inconsistent with their simultaneously being officers and directors of other companies operating at Bravo’s address. This omission had the potential to mislead investors about the personnel resources available to Bravo.

Petitioners also concede in their brief that Bravo’s operations director (Liu) has a Canadian disciplinary history. Specifically, they acknowledge that in the 1980s, Liu was subject to an undertaking not to act as a director of any Canadian public company for a period of five years.⁶⁰ They assert that she is not legally disqualified from serving as a Bravo officer because that sanction expired decades ago. Yet a trading suspension need not be premised on a finding that a specific violation of the securities laws has occurred. The accuracy and adequacy of an issuer’s disclosures about its officers or promoters, while generally not dispositive standing alone, can appropriately be taken into account by the Commission in forming the opinion that the public interest and the protection of investors make a trading suspension necessary.⁶¹ Here, for example, despite Liu’s evident importance to Bravo’s operations—she took the lead in responding to FINRA’s inquiries, for example—there was no mention of her in Bravo’s required periodic filings.

⁶⁰ In addition, we take official notice that in 2009, Liu was found in contempt of court by the Supreme Court of British Columbia for willfully and contumaciously defying a court order that found that she had received fraudulent conveyances in violation of British Columbia law. *See 374787 B.C. Ltd. v. Golden Spirit Enterprises Ltd.*, Docket No. S087288, 2009 BCSC 1746 (June 12, 2009); *cf.* Rule of Practice 323, 17 C.F.R. § 201.323; *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo*, 971 F.2d 244, 248 (9th Cir. 1992) (holding that notice may be taken of “proceedings in other courts, both within and without the federal judicial system”).

⁶¹ *See, e.g., Lonisson Commc’ns Corp.*, Exchange Act Release No. 51437, 2005 WL 711755, at *1 (Mar. 28, 2005) (noting, among other things, concerns regarding the accuracy of statements concerning “disciplinary history of [the issuer’s] counsel”); *Elec. Med. Mgmt., Inc.*, Exchange Act Release No. 28610, 1990 WL 322208, at *1 (Nov. 13, 1990) (noting, among other things, “questions . . . about the adequacy and accuracy of publicly disseminated information concerning . . . the background of [the issuer’s] promoters”); *accord 800AMERICA.COM, Inc.*, Exchange Act Release No. 46820, 2002 WL 31513274, at *1 (Nov. 13, 2002); *Interactive Multimedia Publishers, Inc.*, Exchange Act Release No. 38014, 1996 WL 713312, at *1 (Dec. 3, 1996). In the cited examples, as here, we considered the adequacy and accuracy of disclosure about the background of individuals associated with the issuer as one factor among many informing our opinion that a trading suspension was necessary.

iv. Other indicia of a potential market-manipulation scheme, including suspicious trading activity

As to FINRA's referral regarding potential market-manipulation activity in early 2014, petitioners assert that the referral mistakenly indicated that Bravo was then called Organa; all parties agree that Bravo has been Bravo since June 2012. But the Division's error in summarizing the FINRA referral does not change the substance of the referral or detract from the weight we afford it. Furthermore, the Division independently identified suspicious trading (*e.g.*, anomalously high volume) and promotional activity (*e.g.*, paid stock alerts and touts) around the time that Bravo issued its August 27, 2014 press release, none of which petitioners deny. All of these circumstances raised concerns regarding possible manipulation in the market.

In sum, after our review of the additional information submitted by petitioners, we continue to be of the opinion that a trading suspension was in the public interest and for the protection of investors.

b) Petitioners' legal arguments are without merit.

Petitioners also argue that we applied the wrong legal standard, considered inadmissible evidence, and failed to take into account the harm to Bravo's investors. We reject all of these broad-based arguments against the trading suspension.

As a threshold matter, petitioners argue that the trading suspension was "unwarranted" and "not in the public interest" because we failed to show that Bravo "acted in a fraudulent, deceitful, or manipulative manner," that Bravo was not "current in its disclosure filings," or that Bravo otherwise "violated any regulatory requirement." This argument rests on the mistaken premise that the standard for suspending trading under Exchange Act Section 12(k)(1) is identical to that for establishing a violation of the federal securities laws. But as described above (*see supra* Sections I.A and I.B), Section 12(k)(1) empowers us to act when we are of the opinion that the public interest and the protection of investors require a temporary suspension of trading. We are not required to conclude that any particular statement violated the antifraud provisions or that manipulative trading was in fact occurring as a prerequisite to determining that a trading suspension would protect investors or the public interest.⁶² And here, as detailed above, our opinion that a trading suspension was necessary rested on, among other things, concerns regarding the accuracy and adequacy of publicly disseminated information regarding Bravo.⁶³

⁶² See also *Sloan*, 547 F.2d at 156 (holding that there was "sufficient evidence of *probable* manipulation" and false statements to warrant the Commission's opinion that it was in the public interest to suspend trading) (emphasis added).

⁶³ *Bravo Enters. Ltd.*, 2014 WL 6480308, at *1.

Petitioners next assert that we should not have relied on the FINRA referral because it was overly “inconclusive and speculative.” We reject this argument and hold that we may appropriately consider information from FINRA referrals. Rule of Practice 550(b) provides that the Commission may resolve petitions to terminate a trading suspension “on the facts presented in the petition and *any other relevant facts known to the Commission.*”⁶⁴ This provision authorizes the consideration of facts however they become “known” to us, including through information gathered by persons outside the Commission. It is consistent with, and furthers the purposes of Section 12(k)(1), because the Commission must have the flexibility to suspend trading while information about a situation that threatens the public interest or investor protection is further developed.⁶⁵

We carefully consider the relevance, materiality, and reliability of evidence in determining the weight to be afforded it. The referrals from FINRA here appear to be relevant, material, and reliable. In fact, petitioners do not controvert the substance of the information contained in those referrals—*e.g.*, the identity and affiliations of Bravo’s president, CFO, and operations director and Bravo’s past relationship with WFTW.⁶⁶ Instead, petitioners ascribe significance to the fact that Bravo “has not heard anything” further from FINRA and therefore believed that the matter with FINRA was “closed.” Even if we assumed that FINRA had resolved its own inquiry without taking further action, that would not necessarily mean that FINRA had concluded that the underlying information that it provided to the Commission was unreliable; FINRA has enforcement discretion.⁶⁷ Moreover, regardless of FINRA’s determinations, we have our own independent, statutorily conferred trading-suspension authority that we may exercise upon consideration of all the facts and circumstances before us.⁶⁸ Indeed,

⁶⁴ 17 C.F.R. § 201.550(b) (emphasis added).

⁶⁵ *Sloan*, 436 U.S. at 115 (contemplating that the ten-day period of a trading suspension allows for the “*gathering* [of] necessary evidence”) (emphasis added); *see also supra* notes 21-24 and accompanying text.

⁶⁶ In some situations, we might be entitled to draw the inference that missing or unsupplied information peculiarly available to corporate insiders would have been unfavorable to an issuer seeking relief from a trading suspension. *Cf.* Rule of Practice 550(b), 17 C.F.R. § 201.550(b) (“If the petitioner fails to cooperate with, obstructs, or refuses to permit the making of an examination by the Commission, such conduct shall be grounds to deny the petition.”); *see generally Graves v. United States*, 150 U.S. 118, 121 (1893). We need not and do not apply any such adverse inference here.

⁶⁷ *E.g.*, *Robert Conway*, Exchange Act Release No. 70833, 2013 WL 5960703, at *6 (Nov. 7, 2013); *Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 WL 3554584, at *15 n.73 (Sept. 13, 2010).

⁶⁸ *Order Approving Proposed Rule Change of the National Association of Securities Dealers Amending the Rules of Fair Practice and Schedule D of the By-Laws To Provide Trading Halt Procedures*, Exchange Act Release No. 25669, 1988 WL 239563, at *7 (May 5, 1988) (explaining that the “ability of self-regulatory organizations to regulate effectively their

even if we had previously investigated Bravo and elected to not take any action, that would not have precluded us from subsequently issuing the Trading Suspension Order upon a finding that we were of the opinion that the protection of investors and the public interest so required.⁶⁹

Finally, petitioners raise concerns regarding the effect of the trading suspension on Bravo and its shareholders. They assert that the Trading Suspension Order has “limited [Bravo’s] access to the capital markets and eliminated the market places [sic] through which the securities of BRAVO have been traded.” We find this argument unconvincing for three reasons.

First, petitioners’ characterization of the Trading Suspension Order’s effects is inaccurate. To begin with, the Trading Suspension Order did not amount to a determination of liability against Bravo or to a finding by the Commission that Bravo had violated any law.⁷⁰ Even while the trading suspension was in effect, it did not prevent Bravo from continuing to operate its business. Nor did it prevent Bravo from trying to secure other sources of funding (such as obtaining a loan from a bank) that did not involve transactions in its securities.

Further, the Trading Suspension Order expired ten business days after its issuance, on December 4, 2014. As of December 5, 2014, investors or prospective investors were (and continue to be) permitted to buy and sell Bravo’s shares. Although Bravo currently is a “grey market” stock—that is, one that is “not listed, traded, or quoted on any stock exchange, or the over-the-counter bulletin board”—investors still “may trade ‘grey market’ stocks through brokers on an unsolicited basis.”⁷¹ As we have explained, the fact that a broker-dealer might not be able to “publish[] quotations” for Bravo’s securities “does not prevent [an] investor[] from

(. . . footnote continued)

marketplaces” through trading halts is independent of Section 12(k)); *see also* Loss, IV *Securities Regulation*, *supra* note 33, at ch. 6.B.4 (contrasting the suspension authority of exchanges and self-regulatory organizations with the “emergency suspension power . . . given the Commission directly by § 12(k)”).

⁶⁹ *See, e.g., Capital Funds, Inc. v. SEC*, 348 F.2d 582, 588 (8th Cir. 1965) (rejecting argument that the Commission should be estopped from pursuing a matter because the “Commission investigated the . . . situation at that time but took no action”); *William H. Gerhauser, Sr.*, Exchange Act Release No. 40639, 1998 WL 767091, at *4 (Nov. 4, 1998) (holding that a “regulatory authority’s failure to take early action neither operates as an estoppel against later action nor cures a violation”).

⁷⁰ *See Initiation or Resumption of Quotations Without Specified Information*, 56 Fed. Reg. at 19153 (explaining that the factors cited in a trading suspension order “as the basis for the trading suspension do not constitute an adjudication of fact or law”).

⁷¹ *Citizens Capital Corp.*, Exchange Act Release No. 67313, 2012 WL 2499350, at *8 n.48 (June 29, 2012); *see also Champion Parts, Inc. v. Oppenheimer & Co.*, 878 F.2d 1003, 1007-08 (7th Cir. 1989) (holding that an issuer has no protectable property interest in the market for its shares of stock).

engaging in transactions in [that] security,” including by having a broker-dealer submit quotations on his or her behalf.⁷²

Second, and more fundamentally, we do not find potential harm to Bravo or its investors to be a sufficient countervailing consideration. Although a trading suspension potentially could be to the detriment of *current* shareholders prevented from selling their holdings while the suspension is in effect,⁷³ we also must consider the interests of *prospective* or *potential* investors who might be harmed because they purchase shares in reliance on potentially inaccurate or inadequate information about the issuer. What we have said in the context of proceedings to revoke the registration of a company’s securities pursuant to Exchange Act Section 12(j) is equally apt here: The “extent of any harm that may result to existing shareholders cannot be the determining factor in our analysis,” and therefore “[i]n evaluating what is necessary or appropriate to protect investors, regard must be had not only for existing stockholders of the issuer, but also for potential investors.”⁷⁴

⁷² Proposed Rule, *Initiation or Resumption of Quotations Without Specified Information*, 54 Fed. Reg. 39194-02, 39198 n.51 (Sept. 25, 1989). Specifically, Exchange Act Rule 15c2-11 regulates the initiation and resumption of quotations for securities not listed on a national securities exchange. See 17 C.F.R. § 240.15c2-11. Once there has been a lapse in two-way quotations for more than four business days for any reason, including a trading suspension, a broker-dealer cannot re-initiate quotations without complying with the informational and other requirements of Rule 15c2-11 and filing a Form 211 with FINRA, or otherwise demonstrating that it qualifies for an exception or exemption under Rule 15c2-11(f) or (h). See *id.*; FINRA Rule 6432.

Yet “[t]he situation in which broker-dealers may be precluded from publishing quotations for a security because they lack the information required by . . . Rule [15c2-11] should be distinguished from a trading suspension.” *Initiation or Resumption of Quotations Without Specified Information*, 56 Fed. Reg. at 19152 n.44. Regardless of whether any broker-dealer is willing to take the steps required by Exchange Act Rule 15c-11 and then file a Form 211, unsolicited trading in Bravo’s securities became permissible again as soon as the suspension ended, subject to the other requirements of the securities laws, including the antifraud provisions. See *Goldmark Mining Co.*, Exchange Act Release No. 19284, 1982 WL 522353, at *2 (Dec. 1, 1982) (noting that a broker-dealer effecting unsolicited transactions must take care that it is not “aiding and abetting violations of the federal securities laws by others”).

⁷³ In the early stages of many pump-and-dump schemes, the company’s shares will principally be in the hands of insiders or affiliates involved in the stock tout. That fact would, if established, be highly relevant to the Commission’s assessment of potential harm to existing shareholders. Because there is no evidence one way or the other on this point, we do not rely on this consideration in our determination here.

⁷⁴ *Gateway Int’l Holdings, Inc.*, Exchange Act Release No. 53907, 2006 WL 1506286, at *7 (May 31, 2006) (internal quotation marks omitted); *accord Absolute Potential, Inc.*, Exchange Act Release No. 71866, 2014 WL 1338256, at *6 (Apr. 4, 2014).

Third, the issuance of a trading-suspension order may elicit more information from the issuer.⁷⁵ Both existing and prospective investors, as well as the public interest more generally, benefit from the disclosure of additional, accurate information about a company's business prospects.⁷⁶

We undertook a delicate balancing of essentially predictive judgments when we determined that a trading suspension was necessary in this case. And having done that, we reject petitioners' arguments regarding potential harm to Bravo or its investors in favor of the public interest and the greater harm that could befall prospective investors.

* * *

In detailing the bases of our opinion that the public interest and the protection of investors required a trading suspension, we do not imply that a suspension would have been unwarranted on a lesser or more limited showing. We apply Section 12(k)(1) flexibly, and the determination whether, in our opinion, a trading suspension is necessary in the public interest and for the protection of investors depends on all the facts and circumstances of the case. Because we were, and remain, of the opinion that the public interest and the protection of investors required suspension of trading in the securities of Bravo Enterprises Ltd. for the full period specified in the Trading Suspension Order, we deny the petition.⁷⁷

By the Commission (Chair WHITE and Commissioners AGUILAR, GALLAGHER, STEIN, and PIWOWAR).

Brent J. Fields
Secretary

⁷⁵ One study found that investor and market participant reaction to the Commission's use of its trading suspension authority was "uniformly favorable." Francis M. Wheat, *Disclosure to Investors—A Reappraisal of Federal Administrative Practices Under the 1933 and 1934 Acts* 389-390 (1969), available at http://www.sechistorical.org/museum/galleries/tbi/gogo_d.php. In particular, a "number of comments were made concerning the value and significance of the information about certain companies pried loose by suspension of trading." *Id.* at 390. Another commentator has remarked on the Commission's "successful use of trading suspension[s] to detect" fraud, citing a case in which a multi-million dollar market manipulation scheme was discovered through a trading suspension. Gardner, *supra* note 27, 33 Rev. Banking & Fin. L. at 65.

⁷⁶ See, e.g., *China-Biotics, Inc.*, Exchange Act Release No. 70800, 2013 WL 5883342, at *11 (Nov. 4, 2013).

⁷⁷ We have considered all of the parties' contentions. We have rejected or accepted them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75775 / August 27, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16292

In the Matter of
BRAVO ENTERPRISES LTD. and JACYLN
CRUZ

ORDER DENYING PETITION FOR TERMINATION OF TRADING SUSPENSION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the petition filed by Bravo Enterprises Ltd. and Jaclyn Cruz requesting termination of the Commission's November 20, 2014 order suspending trading in the securities of Bravo Enterprises Ltd. (OGNG) for a period of 10 days be denied.

By the Commission.

Brent J. Fields
Secretary