

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 82551 / January 19, 2018

Admin. Proc. File No. 3-17668

In the Matter of

HELPEO, INC.

Petition filed: October 25, 2016
Last brief received: November 29, 2016

ORDER DISMISSING PETITION TO TERMINATE TRADING SUSPENSION

We dismiss the request filed by Helpeo, Inc. to terminate the Commission's order suspending trading in Helpeo's securities. The request is untimely because it was filed after the suspension's expiration. Even if the request were timely, we would have denied it on the merits because the public interest and the protection of investors required the suspension of trading.

I. Background

On September 26, 2016, we issued an order pursuant to Section 12(k)(1)(A) of the Securities Exchange Act of 1934 suspending trading in the securities of Helpeo, Inc. (HLPN) (CIK No. 0001484055) and 36 other issuers for the period beginning September 26, 2017 and ending October 7, 2017.¹ Our order stated: "[T]here is a lack of current and accurate public information concerning the securities of each of [these] issuers . . . because questions have arisen as to their operating status, if any."² As to Helpeo, the order stated that Commission staff "attempted to contact the issuer"³ and either the staff did not receive a response to its letter, the

¹ *A.A. Importing Co., Inc., et al.*, Exchange Act Release No. 78928 (Sep. 26, 2016).

² *Id.*

³ On May 19, 2016, the Division of Enforcement sent Helpeo a letter requesting that the issuer "contact us within 30 calendar days from the date of this letter and briefly describe [its] operational status." The letter cautioned that the Division "may recommend to the Commission that trading in your securities be suspended . . . without further notice." The Division did not receive any response, and its attempts to reach the issuer by phone were also unsuccessful.

letters were returned as undeliverable, or the registered agent responded that they had no forwarding address for the issuer.”⁴ Accordingly, we were “of the opinion that the public interest and the protection of investors require a suspension of trading.”⁵

The trading suspension terminated on October 7, 2016, ten business days after it began. On October 25, 2016, Helpeo filed a letter with the Commission asking that the suspension be “reconsider[ed].” The letter asserted that, “[f]or some reason,” the records of Helpeo’s registered agent had not been updated to reflect the company’s current contact information and stated that the registered agent only “recently forwarded” the suspension order to Helpeo.

We directed the parties to file briefs addressing whether Helpeo’s request for relief with respect to the trading suspension should be dismissed as untimely.⁶ Helpeo’s response did not address the timeliness of its request to “reconsider” the trading suspension.

II. Timeliness

Rule of Practice 550 governs petitions to terminate a temporary trading suspension.⁷ Helpeo’s request for relief from the suspension order is untimely under that Rule. We have held that the exclusive “means for Commission review of a Section 12(k)(1)(A) [suspension] order . . . is the filing of a petition pursuant to Rule 550(a) ‘requesting that the . . . suspension be terminated’ while the suspension order is still in effect.”⁸ Thus, “[i]f the suspension is no longer in effect when the petition is filed, the petition is untimely.”⁹ As the Eleventh Circuit has recognized, the Commission’s “deadline for submitting a petition advances important interests of efficiency and finality, and ensures a complete administrative record will be developed.”¹⁰ Helpeo’s petition is untimely because it was filed after the trading suspension expired.

In other contexts, we have held that a party seeking to file an untimely petition for review of a law judge’s initial decision or an untimely application for review of a self-regulatory organization’s disciplinary ruling must show that it has been pursuing its rights diligently and

⁴ Exchange Act Release No. 78928.

⁵ *Id.*

⁶ *Helpeo, Inc.*, Exchange Act Release No. 79250, 2016 WL 6576419 (Nov. 7, 2016).

⁷ 17 C.F.R. § 201.550.

⁸ *Accredited Business Consolidators, Corp.*, Exchange Act Release No. 73420, 2014 WL 5386875, at *1 (Oct. 23, 2014) (quoting 17 C.F.R. § 201.550(a)).

⁹ *Global Green, Inc.*, Exchange Act Release No. 73855, 2014 WL 7184234, at *1 (Dec. 16, 2014), *aff’d*, *Global Green, Inc. v. SEC*, 631 F. App’x 868 (11th Cir. 2016) (per curiam).

¹⁰ *Global Green, Inc. v. SEC*, 631 F. App’x 868, 870 (11th Cir. 2016) (per curiam).

that some extraordinary circumstance stood in the way of a timely filing.¹¹ In *Global Green, Inc.*, we reserved the issue of “what, if any, circumstances would warrant Commission consideration of an otherwise untimely [Rule 550] petition.”¹² We again have no occasion to decide the appropriate test for excusing an untimely Rule 550 petition here because Helpeo has not satisfied any potentially applicable standard—whether that standard be extraordinary circumstances, good cause, or excusable neglect.¹³

The party seeking to excuse an untimely filing bears the burden of showing that it is entitled to such relief.¹⁴ This is because that party will have better access to relevant information and will be in the “best position to overcome any skepticism arising out of the lateness of [its] challenge.”¹⁵ Here, Helpeo did not even attempt to justify the late filing of its request for relief from the trading suspension; its brief addressed *only* Helpeo’s failure to “respon[d] to the [staff’s prior inquiry regarding] the operational status” of Helpeo.¹⁶ As a result, Helpeo “failed to offer an acceptable excuse, or any excuse at all, for its failure” to file a timely Rule 550 petition.¹⁷ Accordingly, we enforce the deadline for filing petitions under Rule 550 and dismiss Helpeo’s untimely petition.¹⁸

¹¹ See *Jacob Keith Cooper*, Exchange Act Release No. 77068, 2016 WL 453458, at *2-4 (Feb. 5, 2016); *Walter V. Gerasimowicz*, Exchange Act Release No. 72133, 2014 WL 1826641, at *2 (May 8, 2014); Rule of Practice 420(b), 17 C.F.R. § 201.420(b).

¹² *Global Green, Inc.*, 2014 WL 7184234, at *1 n.9.

¹³ Cf. *supra* note 11; Rule of Practice 100(c), 17 C.F.R. § 201.100(c); Fed. R. Civ. P. 55(c), 60(b)(1).

¹⁴ See, e.g., *United States v. Hartsock*, 347 F.3d 1, 10 (1st Cir. 2003); *Boos v. Runyon*, 201 F.3d 178, 185 (2d Cir. 2000); *Phillips v. USPS*, 695 F.2d 1389, 1390 (Fed. Cir. 1982); *United States v. Lucas*, 597 F.2d 243, 245 (10th Cir. 1979).

¹⁵ *Hartsock*, 347 F.3d at 10 (quotation marks omitted); see also *In re Canopy Fin. Inc.*, 708 F.3d 934, 936 (7th Cir. 2013); *Bravo Enters.*, Exchange Act Release No. 75775, 2015 WL 5047983, at *12 n.66 (Aug. 27, 2015) (noting “inference that missing or unsupplied information peculiarly available to corporate insiders would have been unfavorable to an issuer seeking relief from a trading suspension”).

¹⁶ Cf. *supra* note 3.

¹⁷ *Park Corp. v. Lexington Ins. Co.*, 812 F.2d 894, 896 (4th Cir. 1987) (explaining that the party seeking relief from a missed deadline must “specif[y] any facts or circumstances that would justify relief”); accord *In re Canopy Fin. Inc.*, 708 F.3d at 937 (“litigants need to supply those details” that might “excuse [their] failure to respond”).

¹⁸ See also *Helpeo, Inc.*, 2016 WL 6576419, at *2 (order requesting written submissions regarding timeliness of Helpeo’s Rule 550 request); accord *Hubbard v. MSPB*, 605 F.3d 1363, 1366 (Fed. Cir. 2010) (holding that the “failure even to respond to the [agency’s] order directing
(footnote continued . . .)

In any case, we find that the instant circumstances would not warrant excusing Helpeo's untimely request under any standard. The record shows that Helpeo's registered agent received notice of the trading suspension in time for Helpeo to file a Rule 550 petition while it was still in effect. Records maintained by the Commission's Office of the Secretary reflect that the trading suspension order was sent via U.S. Mail to Helpeo's agent, Nevada Processing Center, Inc., on September 26, 2016, the same day it was issued. We take official notice of the United States Postal Service's service standards, which specify that First-Class mail originating from Washington, D.C., the location of the Commission's headquarters, is expected to reach Nevada, the location of Helpeo's registered agent, within three business days.¹⁹ There is no evidence that this mailing was returned as undeliverable, and we may presume that it was timely received by Helpeo's registered agent at least a week before the trading suspension's expiration.²⁰

Helpeo's October 25, 2016 letter to the Commission stated that Nevada Processing Center only "recently" forwarded the Commission's trading suspension order to the issuer because, "[f]or some reason," its registered agent did not have Helpeo's current address. The vagueness of these representations, even though the matters to which they pertain are peculiarly within Helpeo's knowledge, suggests that the truth is unhelpful to Helpeo—*i.e.*, that Helpeo may have actually received the trading suspension before its expiration.²¹ But even assuming for the sake of argument that there had been a delay in Nevada Processing Center's forwarding of the order, such delay is immaterial because notice to Helpeo's registered agent constitutes notice to Helpeo.

An agent's knowledge is generally "imputed, as a matter of law," to the principal.²² Under this "rule of imputation," the "principal is chargeable with the knowledge the agent has acquired, whether the agent communicates it or not."²³ And under Nevada law, "any . . . notice . . . to be served upon, or delivered to, a corporation may be served upon, or delivered to, the registered agent" designated by the corporation—including with respect to

[the petitioner] to file evidence and argument demonstrating that the appeal was timely filed or that good cause exists" warranted dismissal of appeal) (internal quotation marks omitted).

¹⁹ See United States Postal Service, *USPS Service Standards Map*, https://ribbs.usps.gov/modernservicestandards/ssmaps/find_map.cfm (last visited Jan. 19, 2018); Rule of Practice 323, 17 CFR § 201.323.

²⁰ See, e.g., *Hagner v. United States*, 285 U.S. 427, 430 (1932) (setting forth "well settled" presumption of receipt); *In re Cendant Corp. Prides Litig.*, 311 F.3d 298, 304 (3d Cir. 2002).

²¹ See *Bravo Enters.*, 2015 WL 5047983, at *12 n.66; see also *In re Canopy Fin. Inc.*, 708 F.3d at 936.

²² See, e.g., *St. Paul Mercury Ins. Co. v. Am. Bank Holdings, Inc.*, 819 F.3d 728, 733-34 (4th Cir. 2016); Restatement (Third) of Agency § 5.03.

²³ *St. Paul Mercury Ins.*, 819 F.3d at 734 (quotation marks omitted); *N.Y. Univ. v. First Fin. Ins. Co.*, 322 F.3d 750, 753 & n.2 (2d Cir. 2003); Restatement (Third) of Agency § 5.02 cmt. b.

corporations, such as Helpeo, whose corporate charter has been revoked.²⁴ It was Helpeo’s duty to ensure that its registered agent had up-to-date and accurate contact information for the issuer. Any “neglect of [Helpeo’s registered agent] in communicating . . . to [Helpeo] was [at most] neglect of an agent . . . , and did not affect the validity” of notice.²⁵ Even if mere excusable inadvertence could warrant relief from the Rule 550 deadline,²⁶ Helpeo failed to present any evidence about why it was unable to file a timely request. Specifically, it failed to explain the precautions it had in place to ensure the prompt and reliable receipt of official communications—such as the Commission’s trading suspension order—via its registered agent.²⁷ In short, Helpeo’s request is untimely under Rule 550, we have no reason to overlook that lateness, and we accordingly dismiss the request.

III. Merits

Even if Helpeo had filed a timely Rule 550 petition to terminate the trading suspension, we would deny relief on the independent ground that its request lacks merit.²⁸ We continue to be

²⁴ See Nev. Rev. Stat. §§ 78.090, 78.750; *Canarelli v. Dist. Ct.*, 265 P.3d 673, 675 n.2 (Nev. 2011) (“[S]ervice of process on a dissolved corporation may be made on . . . the registered agent[.]”); see also *In re Martin-Trigona*, 763 F.2d 503, 505 (2d Cir. 1985) (“[F]ailure . . . to change the address for service of process with the Secretary of State constitutes a willful disregard of legal process.”) (per curiam).

²⁵ See *Knox County v. Harshman*, 133 U.S. 152, 156 (1890); see also *Sieg v. Int’l Envtl. Mgmt., Inc.*, 375 S.W.3d 145 (Mo. App. 2012); *Goodman Associates, LLC v. WP Mt. Properties, LLC*, 222 P.3d 310, 322 (Colo. 2010); *Rose v. Forester*, 688 S.E.2d 118, 2009 WL 3818848, at *3 (N.C. App. 2009). There is no evidence that Nevada Processing Center was acting adversely to Helpeo or had abandoned it such that it was no longer acting as Helpeo’s agent. Cf. *Holland v. Florida*, 560 U.S. 631, 652-53 (2010) (explaining that equitable tolling might be appropriate under extraordinary circumstances).

²⁶ We have reserved decision on whether the party seeking to excuse a late Rule 550 petition must demonstrate extraordinary circumstances or satisfy a less stringent standard, such as good cause or excusable neglect. See *supra* note 13 and accompanying text.

²⁷ See, e.g., *Baez v. S.S. Kresge Co.*, 518 F.2d 349, 350 (5th Cir. 1975) (“We think rather minimal internal procedural safeguards could and should have been established”); *Hensel Phelps Const. Co. v. Drywall Sys. Inc. of S. Florida*, 2007 WL 2433839, at *3 (S.D. Fla. Aug. 22, 2007); see also *In re Canopy Fin. Inc.*, 708 F.3d at 937; *Park Corp.*, 812 F.2d at 896-97.

²⁸ Our briefing order directed that the briefs be limited to the issue of timeliness. See *Helpeo, Inc.*, 2016 WL 6576419, at *2. Nevertheless, both parties chose to address the merits of the trading suspension, and so we see no prejudice in doing the same. If we were persuaded that a timely filed Rule 550 petition had merit, we would have the authority to provide appropriate relief with respect to the potential collateral consequences of a trading suspension notwithstanding the suspension’s expiration while we were disposing of the timely petition. See *Bravo Enters.*, 2015 WL 5047983, at *6 & n.54.

of the opinion that the public interest and the protection of investors required the suspension of trading in Helpeo’s securities. Section 12(k)(1) of the Exchange Act provides 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 up to ten business days.²⁹ The text, structure, and legislative history of this provision show that Congress conferred upon the Commission broad discretion in determining when to temporarily suspend trading in a security.³⁰ Thus, we are empowered to suspend trading without determining that an issuer has violated the securities laws.³¹ Our inquiry turns solely on whether we are of the “opinion” that a trading suspension is required in light of the “public interest” and the need for the “protection of investors.” “Congress did not intend to require the Commission to make any other findings.”³²

This trading suspension authority is an important tool for alerting the public about our concerns about an issuer, protecting investors against unfair or disorderly markets, and increasing the availability of information in the marketplace. Consequently, we have found it necessary to suspend trading in a variety of circumstances.³³ For example, we have suspended trading when there was a lack of current, adequate, and accurate information about an issuer or when an issuer did not file required periodic reports with the Commission.³⁴

Our decision to suspend trading in Helpeo’s securities implicated a number of these concerns. When we suspended trading, Helpeo was a public issuer whose securities were quoted, on the OTC Link inter-dealer quotation system operated by OTC Markets Group, under the ticker symbol HLPN. At that time, Helpeo’s license to do business in Nevada, its state of incorporation, expired on January 31, 2014 and its corporate status in Nevada had been revoked. Additionally, Helpeo had not filed any information with the Commission or submitted any information to OTC Markets Group since April 2013.³⁵ These facts before the Commission at the time of the trading suspension’s issuance—which Helpeo does not dispute—constitute

²⁹ 15 U.S.C. § 78l(k)(1).

³⁰ *Bravo Enters.*, 2015 WL 5047983, at *2-4; *see also Myriad Interactive Media, Inc.*, Exchange Act Release No. 75791, 2015 WL 5081238, at *1-2 (Aug. 28, 2015).

³¹ *Bravo Enters.*, 2015 WL 5047983, at *3-4; *see also Myriad Interactive Media, Inc.*, 2015 WL 5081238, at *8 n.31.

³² *Bravo Enters.*, 2015 WL 5047983, at *4; *see also* H.R. Rep. No. 101-524, at p. 37, Pub. L. No. 101-432 (1990).

³³ *Bravo Enters.*, 2015 WL 5047983, at *3 & nn.14-18, *5 & nn.30-32, 39-41.

³⁴ *Id.* at *5 nn.30-32.

³⁵ Generally, domestic equity securities may be quoted on the OTC Link marketplace only if the issuer makes periodic filings under Exchange Act Sections 13 or 15(d). *Id.* at *5 n.36 (citing FINRA Rule 6530(a)(2)).

sufficient grounds for the Commission’s opinion that a temporary suspension of trading was in the public interest and necessary for investor protection.³⁶

Helpeo has urged the Commission to “reconsider [the] suspension.” But we remain of the opinion that the public interest and the protection of investors required the suspension of trading. Although Helpeo asserted that “it would be in full compliance” with its filing obligations “on or before December 31, 2016,” that date has passed. Helpeo remains delinquent in its periodic filings,³⁷ and the issuer has not been restored to active corporate status.³⁸ Moreover, even if Helpeo subsequently had provided some updated information about its operations—which it has not—current and accurate information was not available to the public when the Commission initially suspended trading. An issuer’s “corrective disclosures, which occurred only after the Trading Suspension Order’s issuance[,]” often will confirm the propriety of our having suspended trading, “because [by] promoting the public dissemination of accurate information, the trading suspension advanced the public interest and the protection of investors.”³⁹

Helpeo notes further that “finances are always a challenge” for microcap companies. But an asserted lack of resources does not relieve an issuer from its disclosure obligations under the securities laws. Indeed, it highlights the risks posed by the microcap and penny stock market and the corresponding need to be “vigilant in exercising our trading-suspension authority” in this context in order to protect the public interest and investors.⁴⁰

Helpeo also argues that the trading suspension is “detrimental to the existing stakeholders and [its] staff incentive plans” and that vacatur of the suspension would “preserve the value of the [issuer]” and relieve it from having an “adverse regulatory” action on its records. We disagree for three reasons. First, Helpeo’s characterization of the trading suspension’s effects is inaccurate. The trading suspension “did not amount to a determination of liability against

³⁶ See, e.g., *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); Jennifer Gardner, *The SEC’s Operation Shell Expel*, 33 Rev. Banking & Fin. L. 60, 61-64 (2013) (describing common abuses involving dormant microcap companies); see also *Bravo Enters.*, 2015 WL 5047983, at *5 & nn.30, 39 (collecting cases).

³⁷ We take official notice of the information and filings in the Commission’s EDGAR database pursuant to Rule of Practice 323, 17 C.F.R. § 201.323.

³⁸ We take official notice of Nevada Secretary of State’s records pursuant to Rule of Practice 323, 17 C.F.R. § 201.323. See Nevada Secretary of State, *Nevada Business Search*, available at <http://nvsos.gov/sosentitysearch/> (last visited Jan. 19, 2018).

³⁹ *Immunotech Labs., Inc.*, Exchange Act Release No. 75790, 2015 WL 5081237, at *7 (quoting *Bravo Enters.*, 2015 WL 5047983, at *9).

⁴⁰ *Bravo Enters.*, 2015 WL 5047983, at *5; see also *Myriad Interactive Media, Inc.*, 2015 WL 5081238, at *7.

[Helpeo] or to a finding by the Commission that [Helpeo] had violated any law. Even while the trading suspension was in effect, it did not prevent [Helpeo] from continuing to operate its business. Nor did it prevent [Helpeo] from trying to secure other sources of funding (such as obtaining a loan from a bank) that did not involve transactions in its securities.”⁴¹ Second, the trading suspension has already expired; thus, existing shareholders are permitted to transact in Helpeo’s shares.⁴² Moreover, in determining to issue a trading suspension, we must also “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.”⁴³ Third, our concerns about the availability of current and accurate information regarding Helpeo persist; it has been more than *four years* since Helpeo last filed a periodic report. As a result, even if we considered Helpeo’s untimely submission on the merits, we would remain of the opinion that the public interest and the protection of investors required a trading suspension.⁴⁴

* * *

It is ORDERED that Helpeo’s request to terminate the trading suspension is DISMISSED as untimely.⁴⁵

By the Commission.

Brent J. Fields
Secretary

⁴¹ *Bravo Enters.*, 2015 WL 5047983, at *12 (citations and footnotes omitted).

⁴² *Id.* at *12 & n.72.

⁴³ *Id.* at 13 (emphasis added); *Immunotech Labs., Inc.*, 2015 WL 5081237, at *10.

⁴⁴ *See, e.g., Immunotech Labs., Inc.*, 2015 WL 5081237, at *10; *Bravo Enters.*, 2015 WL 5047983, at *12-13.

⁴⁵ As described above, even if timely, we would reject Helpeo’s request on the independent ground that it is without merit. *See supra* Section III. 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 order.