

Crypto Developments 2018—Nine Trading Suspensions

APRIL 2, 2019

In its ongoing effort to combat fraud in the crypto-asset space, one of the sharpest arrows in the Securities and Exchange Commission's (SEC) enforcement quiver is its ability to issue orders that "temporarily" restrict trading in the securities of companies that the SEC believes may be engaged in fraud or may be the targets of fraudsters.

Under Section 12(k) of the Securities Exchange Act of 1934, as amended (Exchange Act), the SEC may suspend trading in a stock for up to ten trading days when it is of the opinion that a suspension is required to protect investors and the public interest.

Circumstances that might lead the SEC to suspend trading include:

- A lack of current, accurate, or adequate information about the company, for example, when a company is not current in its filings of periodic reports
- Questions about the accuracy of publicly available information, including in company press releases and reports, about the company's current operational status, financial condition, or business transactions
- Questions about trading in the stock, including trading by insiders, potential market manipulation, and the ability to clear and settle transactions in the stock

Due the manner in which Rule 15c2-11 under the Exchange Act and related FINRA Rule 6432 operate, a "temporary" trading suspension in an over-the-counter (OTC) stock virtually always results in the inability or unwillingness of broker-dealers to make any type of market in the issuer's securities. Specifically, no broker-dealer may solicit an investor to buy, or recommend that an investor buy, an OTC stock that has been subject to a trading suspension unless and until FINRA has approved a Form 211 relating to the stock. If a broker-dealer does not have confidence that a company's financial statements are reasonably current and accurate in all material respects, especially in light of the questions that may have been raised by the SEC suspension action, then a broker-dealer will be reluctant even to file a Form 211 application. Further, if there are continuing regulatory concerns about the company, its disclosures, or other factors, such as a pending regulatory investigation, a Form 211 application, even if filed, may not be approved.

Although limited or "unsolicited" trading can occur in an OTC stock that has been subject to a trading suspension after the suspension ends but before a Form 211 is approved (which permits investors to trade the stock when a

broker or adviser has not solicited or recommended such a transaction), such limited trading is highly unlikely to result in a liquid market for the stock.

So, a “temporary” trading suspension in the trading of an OTC stock is more often than not a permanent “kiss of death” on the market for the issuer’s securities. In a recent speech, SEC Commissioner Hester Peirce pointed out that this has some rather unexpected consequences for shareholders in companies whose stock is subject to a trading suspension:

“We too frequently announce regulatory actions without due consideration for how the market will understand or misunderstand what we are doing. Granted, retail investors are as free to hire a Wall Street attorney as any investment bank to decipher the effects of our actions, but I hardly think that it advances our investor protection mandate to make that a necessary condition of investing in our markets. An example I have cited before is our recent decision to suspend trading for ten days in two foreign exchange-listed crypto-based products that were being traded in the United States over-the-counter markets. The SEC was concerned that there was confusion about just what the products were because they were not being described consistently, but our action also confused investors. It is not clear to me how many retail investors holding these products understood that ‘ten days’ actually meant, as a practical matter, ‘indefinitely.’”^[1]

During the calendar year 2018, the SEC issued nine orders temporarily restricting securities in the circumstances described below. This is up from 7 in 2017 (there were none in 2016 or 2015, and only one in 2014, arising in the crypto-asset space).

In the Matter of UBI Blockchain Internet, Ltd., Securities Exchange Act Release No. 82452, (January 5, 2018).

The SEC issues an order temporarily suspending trading (from January 8, 2018 through January 22, 2018) in the securities of UBI Blockchain Internet, Ltd. (UBIA), a Delaware corporation based in Hong Kong whose shares of Class A Common Stock are quoted on OTC Link (previously “Pink Sheets”) operated by OTC Markets Group Inc. under the symbol UBIA.

The SEC bases its order of suspension on: (i) questions regarding the accuracy of assertions, since at least September 2017, by UBIA in filings with the SEC regarding the company’s business operations (including the company’s billing itself as aiming to harness blockchain technology to aid customers in “ [tracing] a food or drug product from its original source”); and (ii) concerns about recent, unusual and unexplained market activity in the company’s Class A common stock since at least November 2017.

In the Matter of Cherubim Interests, Inc., Securities Exchange Act Release No. 82724 (February 15, 2018); SEC Press Release No. 2018-20 (February 16, 2018).

The SEC issues an order temporarily suspending trading (from February 16, 2018 through March 2, 2018) in the securities of Cherubim Interests, Inc. (CHIT), a Nevada corporation with its principal place of business listed as Bedford, Texas, and with a class of securities registered with the SEC pursuant to Section 12(g) of the Exchange Act. The stock of CHIT is quoted on OTC Link (previously “Pink Sheets”) operated by OTC Markets Group, Inc. under the ticker symbol CHIT.

The SEC bases its order of suspension in significant part on concerns regarding the accuracy and adequacy of information in the marketplace about, among other things, the nature of the company’s business operations and the value of its assets, including in press releases issued beginning on January 3, 2018, about CHIT’s acquisition of AAA-rated assets from a subsidiary of a private equity investor in cryptocurrency and blockchain technology, among other things, and CHIT’s execution of a financing commitment to launch an initial coin offering

The SEC notes in its release that, in August 2017, it warned investors to be on alert for companies that may publicly announce ICO or coin/token related events to affect the price of the company’s common stock.

In the Matter of PDX Partners, Inc., Securities Exchange Act Release No. 82725 (February 15, 2018); SEC Press Release No. 2018-20 (February 16, 2018).

The SEC issues an order temporarily suspending trading (from February 16, 2018 through March 2, 2018) in the securities of PDX Partners, Inc. (PDXP), a Wyoming corporation with its principal place of business listed as Portland, Oregon, whose stock is quoted on OTC Link (previously “Pink Sheets”) operated by OTC Markets Group, Inc. under the ticker symbol PDXP.

The SEC bases its order of suspension on concerns regarding the accuracy and adequacy of information in the marketplace about, among other things, the nature of the company’s business operations and the value of its assets, including in press releases issued beginning on January 4, 2018 about PDXP’s acquisition of AAA-rated assets from a subsidiary of a private equity investor in cryptocurrency and blockchain technology, among other things

The SEC notes in its release that, in August 2017, it warned investors to be on alert for companies that may publicly announce ICO or coin/token related events to affect the price of the company’s common stock.

In the Matter of Victura Construction Group, Inc., Securities Exchange Act Release No. 82726 (February 15, 2018); SEC Press Release No. 2018-20 (February 16, 2018).

The SEC issues an order temporarily suspending trading (from February 16, 2018, through March 2, 2018) in the securities of Victura Construction Group, Inc. (VICT), a Wyoming corporation with its principal place of business listed as Bedford, Texas, whose stock is quoted on OTC Link (previously “Pink Sheets”) operated by OTC Markets Group, Inc. under the ticker symbol VICT.

The SEC bases its order of suspension on concerns regarding the accuracy and adequacy of information in the marketplace about, among other things, the nature of the company’s business operations and the value of its assets, including in press releases issued beginning on January 4, 2018 about VICT’s acquisition of AAA-rated assets from a subsidiary of a private equity investor in cryptocurrency and blockchain technology, among other things.

The SEC notes in its release that, in August 2017, it warned investors to be on alert for companies that may publicly announce ICO or coin/token related events to affect the price of the company’s common stock.

In the Matter of HD View 360 Inc., Securities Exchange Act Release No. 82800 (March 1, 2018).

The SEC issues an order temporarily suspending trading (from March 2, 2018, through March 15, 2018) in the securities of HD View 360 Inc. (HDVW), a Florida corporation with its principal offices in Miami, Florida, and whose common stock is quoted on OTC Link (previously “Pink Sheets”) operated by OTC Markets Group Inc. under the ticker symbol HDVW.

The SEC bases its order of suspension on questions: (i) concerning the accuracy and adequacy of publicly available information about the company, including, among other things, certain statements made in a February 5, 2018 press release regarding enhancing a subsidiary of HD View 360 Inc. with blockchain technology and (ii) regarding potential manipulative activity in HDVW’s stock, since January 31, 2018.

In the Matter of IBITX Software Inc., Securities Exchange Act Release No. 83084 (April 20, 2018).

The SEC issues an order temporarily suspending trading (from April 23, 2018 through May 4, 2018) in the securities of IBITX Software Inc. (IBXS), a New York corporation whose principal place of business is listed as the Philippines and whose common stock is quoted on OTC Link (previously “Pink Sheets”) operated by OTC Markets Group Inc. under the ticker symbol IBXS.

The SEC bases its order of suspension on questions regarding the accuracy of assertions by IBXS, in press releases to investors and disclosure statements concerning, among other things, the company’s development of alternative forms of currency, and the company’s operation of a cryptocurrency platform.

In the Matter of Evolution Blockchain Group Inc., Securities Exchange Act Release No. 83518 (June 25, 2018).

The SEC issues an order temporarily suspending trading (from June 26, 2018 through July 10, 2018) in the securities of Evolution Blockchain Group Inc. (EVBC), a Nevada corporation whose common stock is quoted on OTC Link LLC (previously Pink Sheets) operated by OTC Market Group, Inc. under the ticker symbol EVBC.

The SEC bases its order of suspension on:

- Questions about the accuracy and adequacy of information in the marketplace since at least May 17, 2018, including the accuracy of information contained in a company press release dated May 17, 2018, referencing a whitepaper
- Concerns since at least May 15, 2018, about recent unusual and unexplained market activity in the company's common stock

In the Matter of Certain Bitcoin/Ether Tracking Certificates, Securities Exchange Act Release No. 84063 (September 9, 2018).

The SEC issues an order temporarily suspending trading (from September 9, 2018, through September 20, 2018) in the securities of Bitcoin Tracker One (CXBTF) and Ether Tracker One (CETHF). CXBTF and CETHF are listed and trade on the NASDAQ/OMX in Stockholm and have recently been quoted on OTC Link (previously "Pink Sheets") operated by OTC Markets Group, Inc.

The SEC bases its order of suspension on "confusion amongst market participants regarding these instruments." In this regard, the order notes that "[t]he broker-dealer application materials submitted to enable the offer and sale of these financial products in the United States, as well as certain trading websites, characterize them as 'Exchange Traded Funds.' Other public sources characterize the instruments as 'Exchange Traded Notes.' By contrast, the issuer characterizes them in its offering materials as 'non-equity linked certificates.'"

In the Matter of American Retail Group, Inc., Securities Exchange Act Release No. 84460 (October 19, 2018); SEC Press Release No. 2018-242 (October 22, 2018).

The SEC issues an order temporarily suspending trading (from October 22, 2018, through November 2, 2018) in the securities of American Retail Group, Inc. (ARGB), a Nevada-based company (aka Simex, Inc.).

The SEC bases its order of suspension on questions surrounding ARGB's statements about partnering with a claimed SEC-qualified custodian for use with cryptocurrency transactions and a purportedly registered public offering of preferred stock; specifically, two August 2018 press releases claimed that the company had partnered with an SEC qualified custodian for use with cryptocurrency transactions that would be "under SEC Regulations," and that the company was conducting a token offering that was "officially registered in accordance [with] SEC requirements."

In each of the orders described above, the SEC cautioned:

- Brokers and dealers to be alert to the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the trading suspension, no quotation may be entered unless and until they have strictly complied with all the provisions of the rule
- If any broker or dealer enters any quotation that is in violation of the rule, the SEC will consider the need for prompt enforcement action

[1]SEC Commissioner Hester M. Pierce, *Regulatory Apparitions*, Remarks at the Exchequer Club (November 28, 2018).

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