

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10480 / April 12, 2018

SECURITIES EXCHANGE ACT OF 1934
Release No. 83034 / April 12, 2018

INVESTMENT COMPANY ACT OF 1940
Release No. 33072 / April 12, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18434

In the Matter of

MATTHEW T. MUSHLIN

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, PURSUANT TO
SECTION 8A OF THE SECURITIES ACT OF
1933, SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
AND SECTION 9(b) OF THE INVESTMENT
COMPANY ACT OF 1940, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Matthew T. Mushlin (“Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-And-Desist Proceedings, Pursuant

to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Section 9(b) of the Investment Company Act of 1940, Making Findings, and Imposing Remedial Sanctions and Cease-And-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

A. SUMMARY

1. Between 2012 and 2017, Matthew T. Mushlin solicited purchases of approximately \$2,000,000 worth of stock in a microcap company named Wellness Center USA, Inc. (“Wellness”) through a series of private placement offerings. Mushlin collected \$232,925 in commissions for acting as an unregistered broker in violation of the Exchange Act. During the same time period, Mushlin, in coordination with Wellness’ Chief Executive Officer Andrew Kandalepas, placed manipulative trades in Wellness stock. Mushlin frequently purchased and sold small quantities of Wellness stock in the open market to stabilize or increase Wellness’ stock price, to create the appearance that Wellness stock was actively traded, and to generate market activity in Wellness stock, and to induce others to buy Wellness stock.

B. RESPONDENT

2. **Matthew T. Mushlin (“Mushlin”)**, age 49, resides in Fort Lauderdale, Florida. From 2012 through 2017, Mushlin raised nearly two million dollars in capital for Wellness and he participated in multiple offerings of Wellness stock, which is a penny stock. From 1993 to 2001, Mushlin was a registered representative associated with a broker-dealer registered with the Commission, but he has not been associated with a registered broker-dealer since then. He is the managing member of Equinox One Consulting, LLC (“Equinox”), a Florida limited liability company that purportedly helps companies identify capital and business opportunities.

C. OTHER RELEVANT ENTITIES

3. **Wellness Center USA, Inc.** is a Nevada corporation formed in June 2010 with its principal place of business in Hoffman Estates, Illinois. Since 2012, Wellness’ common stock has been quoted on the Over-the-Counter Bulletin Board under the symbol WCUI.

4. **Andrew J. Kandalepas (“Kandalepas”)** was at all relevant times the President, Chief Executive Officer, Chief Financial Officer and Chairman of the Board of Directors of Wellness.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

D. FACTS

Background

5. Wellness was originally an online vitamin and nutritional supplement distributor, and subsequently through a series of acquisitions became the holding company for four subsidiaries involved in the alternative medicine and healthcare sectors. Since Wellness' formation in 2010, Wellness has primarily funded its operations through sales of stock, having raised approximately \$18.6 million since 2011. Kandalepas has unilaterally controlled all of Wellness' business functions and operations since its inception.

6. In 2012, Mushlin became a Wellness shareholder. Between 2012 and 2015, Mushlin acquired hundreds-of-thousands of Wellness shares on the open market and through private subscription agreements. At one point in 2015, Mushlin owned approximately 500,000 Wellness shares.

7. Beginning in or around 2012, Wellness, through Kandalepas, retained Mushlin and/or his business Equinox to provide consulting services, which included identifying and introducing the company to potential investors and funding sources. Mushlin was never a Wellness employee and, until 2017, Mushlin never had a consulting agreement with the company. Mushlin was compensated in 2013, 2015 and 2017 based on the amount of money his contacts invested in Wellness during those years.

Mushlin's 2013 And 2015 Wellness Capital Raises

8. In 2013 and 2015, Mushlin received compensation from Wellness in exchange for facilitating the purchase of approximately \$1,500,000 of Wellness securities from more than 30 investors. Mushlin was involved at every key phase of the transactions. Mushlin solicited investors for Wellness by calling individuals who previously had invested in other issuers based on Mushlin's recommendations, by sending unsolicited emails to his investor contacts, often with promotional materials attached, and by meeting with potential investors or their agents. Mushlin also solicited registered representatives that managed discretionary accounts to encourage them to buy Wellness stock for their customers.

9. Mushlin promoted Wellness as an excellent investment opportunity and made predictions about its profit potential. Mushlin advised his investor contacts that Wellness was "quickly becoming one of the most important companies of our time in the alternative medicine space" and that its stock price was positioned to increase. In phone calls with his investor contacts, Mushlin advised that Wellness was quick money, well-priced, and positioned to take-off. He also told his investor contacts that he had been successfully treated by Wellness' medical products.

10. Mushlin recommended that his contacts invest in Wellness through private placement offerings. Several investors cited his investment advice as a reason why they purchased Wellness stock.

11. In addition to soliciting investments and providing advice, Mushlin interposed himself as an intermediary between his investor contacts and Wellness at key points of the

securities transactions. He sent blank subscription agreements, warrants, and suitability questionnaires to his investor contacts, often with instructions on how to complete the forms. He instructed investors to return the completed form to him so he could pass them along to Wellness. He advised his investor contacts on how and where to send their payments to Wellness. He distributed Wellness stock certificates and warrants. Mushlin's investor contacts advised him when they sent money to Wellness and when they wanted to execute warrants. They contacted Mushlin if they had any questions regarding Wellness or their investments.

12. In exchange for his fundraising efforts and involvement at key points of the transactions, Mushlin received transaction-based compensation. Wellness paid Mushlin approximately 10% of the total amount of funds he raised for the company. The timing and amount of Mushlin's compensation were directly tied to when, and how much, his investor contacts invested in Wellness. For example, in August 2013, Wellness paid Mushlin more than \$38,000 in commissions tied to investments made by his investor contacts. In October 2013, it paid him nothing. If Mushlin did not secure investments, then he did not get paid.

13. Mushlin documented his payment arrangement with Wellness in communications with Kandalepas. At one point in 2013, Mushlin sent Kandalepas a list of investors that he was responsible for securing with the amounts each invested, and calculated his 10% fee based on those investments.

14. In 2013, Wellness paid Mushlin \$156,950 for his efforts in soliciting and securing investments for Wellness.

15. In 2015, Wellness paid Mushlin's company, EquinoxOne, \$35,975 for Mushlin's efforts in soliciting and securing investments for Wellness.

Mushlin's 2017 Wellness Capital Raise

16. In or around April 2017, Mushlin continued to solicit investments for Wellness. In April 2017, one of Mushlin's contacts made a \$400,000 "strategic investment" in Wellness, with Mushlin helping to connect the investor with Wellness. The same month, Wellness paid Mushlin \$40,000 – equal to 10% of his contact's investment – ostensibly for business consulting services pursuant to a consulting agreement entered into in late March or early April 2017.

Mushlin's Manipulative Wellness Trading

17. Between March 2012 and July 2015, Mushlin purchased and sold nearly 4,000,000 shares of Wellness securities on the open market. During this time, Mushlin coordinated his trading of Wellness stock with Kandalepas to support Wellness' stock price. Much of the trading occurred during periods when Mushlin was raising capital for Wellness through private placement offerings and was touting the stock to his investor contacts.

18. Kandalepas and Mushlin were in daily contact during this period, and Kandalepas regularly told Mushlin to buy Wellness stock in the open market. Kandalepas would contact Mushlin nearly every trading day, sometimes multiple times in a day, to ask Mushlin to help prop up Wellness stock price. Kandalepas instructed Mushlin to buy Wellness stock "at the offer."

Mushlin understood this to mean that he was to purchase Wellness stock on the open market at the then-current best offer price, resulting in a boost to Wellness' stock price. Mushlin and Kandalepas worked in tandem and bought Wellness stock on the same day to boost the stock price and generate volume.

19. Mushlin executed these trades to stabilize or increase Wellness' stock price, to create the appearance that Wellness was an actively traded stock, and to generate market activity and volume. He did this to induce others to buy Wellness stock in the open market and to make the stock more attractive as he raised money in private placements.

20. Mushlin intentionally limited the quantity of Wellness stock he purchased on any given day to give himself the ability to trade more often. Mushlin understood that an actively traded stock was more appealing to potential investors and that his trades were needed to increase the price of Wellness stock. So, Mushlin purchased relatively small quantities of Wellness stock over the course of several days, months, and years. Despite owning several hundreds-of-thousands of Wellness shares, Mushlin made approximately 650 Wellness trades of 5,000 shares or less and approximately 300 Wellness trades of 1,000 shares or less. These small trades served no economic purpose, especially in light of the transaction costs Mushlin incurred to make them.

21. Between March 2012 and July 2015, Mushlin executed over 800 transactions involving Wellness stock, trading nearly every day the market was open. On multiple occasions, Mushlin both purchased and sold Wellness stock without any apparent trading strategy.

Violations

22. As a result of the conduct described above, Mushlin willfully violated Section 15(a) of the Exchange Act, which prohibits any broker from using interstate commerce to effect a transaction in securities or to induce or attempt to induce the purchase or sale of any security unless the broker is registered with the Commission or associated with a registered broker-dealer.

23. As a result of the conduct described above, Mushlin willfully violated Sections 17(a)(1) and (3) of the Securities Act and Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

Undertaking

24. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Respondent Mushlin (1) agrees to appear and be interviewed by the Commission staff at such times and places as the staff requests upon reasonable notice; (2) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by the Commission staff; (3) appoints his undersigned attorneys as agents to receive service of such notices and subpoenas; (4) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Rules of Civil Procedure and any applicable local rules,

provided that the party requesting the interview or testimony reimburse his travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (5) consents to personal jurisdiction over him in any United States District Court for purposes of enforcing any such subpoena.

25. In determining whether to accept Respondent Mushlin's Offer, the Commission has considered this undertaking.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Mushlin's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent Mushlin cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent Mushlin be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization;

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Any reapplication for association by the Respondent Mushlin will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for

the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent Mushlin shall, within 14 days of the entry of this Order, pay disgorgement of \$232,925.00, prejudgment interest of \$23,101.36, and a civil money penalty of \$240,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717 and SEC Rule of Practice 600.

Payment must be made in one of the following ways:

- (1) Respondent Mushlin may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent Mushlin may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent Mushlin may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Matthew T. Mushlin as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Jeffrey A. Shank, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 175 W. Jackson Boulevard, Suite 1450, Chicago, Illinois 60604.

E. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent Mushlin agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent Mushlin's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent Mushlin agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the

amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a “Related Investor Action” means a private damages action brought against Respondent Mushlin by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary