

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION  
100 F Street, N.E.  
Washington, DC 20549,

Plaintiff,

v.

TCMP3 PARTNERS, L.P., TCMP3 CAPITAL,  
LLC, TITAN CAPITAL MANAGEMENT, LLC,  
WALTER M. SCHENKER, AND STEVEN E.  
SLAWSON  
c/o M. William Munno, Esq.  
Seward & Kissel LLP  
One Battery Park Plaza  
New York, NY 10004,

Defendants.

Case: 1:07-cv-01990  
Assigned To : Bates, John D.  
Assign. Date : 11/5/2007  
Description: General Civil

**COMPLAINT**

Plaintiff Securities and Exchange Commission (“Commission”) alleges:

**SUMMARY OF ALLEGATIONS**

1. Defendant hedge fund TCMP3 Partners, L.P. (“TCMP3”), its investment adviser and general partner TCMP3 Capital LLC and management company Titan Capital Management, LLC (collectively, “Titan”), and Titan’s two principals Walter M. Schenker and Steven E. Slawson violated Section 5 of the Securities Act of 1933 (“Securities Act”) in connection with twenty-six unregistered securities offerings, which are commonly referred to as “PIPEs” (Private Investment in Public Equity). From mid-2003 through 2004, defendants locked in approximately

\$887,000 in ill-gotten gains as a result of the violations.

2. Typically, after agreeing to invest in a PIPE transaction, Schenker and Slawson, on behalf of TCMP3, sold short the issuer's stock. Later, once the Commission declared the resale registration statement effective, they used the PIPE shares to close out the short positions — a practice prohibited by the registration provisions of the federal securities laws.

3. The unlawful PIPE conduct involved twenty-six issuers that sought PIPE financing (collectively, "the PIPE Issuers"). During the relevant period, the common stock of each PIPE Issuer was registered with the Commission pursuant to either Section 12(b) or Section 12(g) of the Securities Exchange Act of 1934 and was quoted on the NASDAQ National Market, or traded on the New York Stock Exchange or the Over-The-Counter Bulletin Board.

4. By engaging in the acts alleged herein, the defendants engaged in, and unless permanently restrained and enjoined by the Court will continue to engage in, transactions, acts, practices and courses of business that violate Section 5 of the Securities Act [15 U.S.C. § 77e].

5. The Commission seeks a judgment from the Court: (a) enjoining the defendants from engaging in future violations of the above section of the federal securities laws; (b) ordering defendants TCMP3 Partners, L.P., TCMP3 Capital, LLC, and Titan Capital Management, LLC to disgorge, with prejudgment interest, the illegal profits and proceeds they locked in as a result of the actions described herein; and (c) ordering defendants Walter M. Schenker and Steven E. Slawson to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)].

## JURISDICTION AND VENUE

6. The Court has jurisdiction over this action pursuant to Sections 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), 77v(a)].

7. The defendants made use of the means and instrumentalities of interstate commerce or of the mails in connection with the acts, practices, and courses of business alleged herein. Venue is proper in this District pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)].

## DEFENDANTS

8. **TCMP3 Partners, L.P.**, a Delaware limited partnership, is a hedge fund that, during the relevant period, invested in PIPE offerings. Titan Capital Management, LLC is its investment manager, and TCMP3 Capital, LLC is its general partner. During the relevant period, Walter M. Schenker and Steven E. Slawson were the fund's portfolio managers.

9. **TCMP3 Capital, LLC**, a Delaware limited liability company, is owned by Walter M. Schenker and Steven E. Slawson. It is headquartered in Parsippany, New Jersey and serves as the general partner for TCMP3 Partners, L.P.

10. **Titan Capital Management, LLC**, a Delaware limited liability company, is owned by Walter M. Schenker and Steven E. Slawson. It is headquartered in Parsippany, New Jersey and serves as the investment manager for TCMP3 Partners, L.P.

11. **Walter M. Schenker**, age 60, is a resident of Pine Brook, New Jersey.

12. **Steven E. Slawson**, age 60, is a resident of Lebanon, New Jersey.

## **STATEMENT OF FACTS**

### **PIPEs Background**

13. Issuers utilize the PIPEs market when more traditional means of financing, such as a registered repeat offering, are for various reasons impractical. PIPE securities are generally issued pursuant to Section 4(2) of the Securities Act or Regulation D under the Securities Act, which provide an exemption from registration for a nonpublic offering by an issuer. Because PIPEs are unregistered offerings, PIPE investors receive restricted securities when a transaction closes. Before investors can publicly trade those restricted securities, the issuer must file, and the Commission must declare effective, a resale registration statement, a process that may take 60 to 120 days to complete. PIPE investors therefore must wait a certain period of time before they can publicly trade the securities that they received in the PIPE. To compensate investors for this temporary illiquidity, PIPE issuers customarily offer the restricted securities at a discount to market price.

14. Many PIPE investors “hedge” their investment by selling short the PIPE issuer’s securities before the resale registration statement is declared effective.

15. Defendants violated Sections 5(a), 5(b), and 5(c) of the Securities Act by covering some or all of their pre-effective date short positions with the actual shares received in the PIPE. This is because shares used to cover a short sale are deemed to have been sold when the short sale was made.

### **The Unlawful Trading**

16. From mid-2003 through 2004, defendants engaged in conduct that resulted in their investing in PIPE offerings without incurring market risk: Defendants sold short some or all of

the hedge fund's restricted PIPE allocation before the Commission declared the resale registration statement effective and then closed out those short positions using the hedge fund's PIPE shares. The conduct enabled the hedge fund to invest in PIPE offerings without incurring market risk as to those shares sold short pre-effective date and later covered with offering shares.

17. In each of the twenty-six transactions listed below, defendants engaged in conduct that violated the registration provisions of the federal securities laws:

	PIPE Issuer	PIPE Closing Date
1	AquaCell Technologies, Inc.	07/28/03
2	Avanir Pharmaceuticals	11/26/03
3	BriteSmile, Inc.	01/02/04
4	Calypte Biomedical Corporation	06/01/04
5	China World Trade Corporation	08/24/04
6	Communication Intelligence Corporation	11/03/04
7	Diversified Security Solutions, Inc.	07/21/04
8	DynTek, Inc.	04/28/04
9	eMagin Corporation	01/09/04
10	FiberNet Telecom Group, Inc.	02/02/04
11	Focus Enhancements, Inc.	04/06/04
12	Glowpoint, Inc.	02/18/04
13	hi/fn, inc.	02/06/04
14	Immune Response Corporation	04/30/04
15	Impco Technologies, Inc.	12/22/03
16	Indus International, Inc.	02/09/04
17	Large Scale Biology Corporation	03/10/04
18	Matritech, Inc.	03/19/04
19	Metretek Technologies, Inc.	04/30/04
20	MIV Therapeutics, Inc.	03/22/04
21	Neurobiological Technologies, Inc.	03/02/04
22	NUR Macroprinters Ltd.	04/01/04
23	Pro-Pharmaceuticals, Inc.	10/03/03
24	StemCells, Inc.	06/17/04
25	V.I. Technologies, Inc.	02/11/04
26	Waste Services, Inc.	05/03/04

18. The April 2004 Indus International, Inc. (“Indus”) PIPE offering illustrates the unlawful conduct. TCMP3 invested \$155,000 in the PIPE and received 50,000 restricted Indus shares at \$3.10 per share – a discount of approximately 7% from Indus’s then-current market price of approximately \$3.33 per share. TCMP3 sold short all 50,000 of its restricted shares, garnering proceeds of \$167,000. Once the Commission declared the resale registration statement effective, Schenker and Slawson, on behalf of TCMP3, journaled the freely tradable PIPE shares to TCMP3’s short account to close out the 50,000 share short position. TCMP3’s profit was therefore locked in at the moment it executed its short sales: the \$167,000 short sale proceeds minus the \$155,000 investment, for a net profit of \$12,000.

19. Schenker and Slawson, on behalf of TCMP3, engaged in similar conduct in connection with each of the twenty-six PIPE offerings, resulting in a total of approximately \$887,000 in ill-gotten gains.

### **CLAIM FOR RELIEF**

#### **REGISTRATION AND PROSPECTUS DELIVERY Violations of Section 5 of the Securities Act**

20. The Commission realleges and reincorporates paragraphs 1 through 19 as if fully set forth herein.

21. Defendants, directly or indirectly: (a) without a registration statement in effect as to the securities, (i) made use of the means or instruments of transportation or communication or the mails to sell such securities through the use or medium of a prospectus or otherwise, or (ii) carried or caused to be carried through the mails, or in interstate commerce, by any means or instruments of transportation, such securities for the purpose of sale or for delivery after sale; (b)

carried or caused to be carried through the mails or in interstate commerce securities for the purpose of sale or for delivery after sale without being accompanied or preceded by a prospectus; and (c) made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of a prospectus or otherwise securities for which a registration statement had not been filed as to such securities.

22. By reason of their actions alleged herein, defendants violated Section 5 of the Securities Act [15 U.S.C. § 77e].

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that the Court enter a judgment:

**I.**

Finding that the defendants each violated the registration provisions of the federal securities laws as alleged herein;

**II.**

Enjoining permanently defendants TCMP3 Partners, L.P., TCMP3 Capital, LLC, Titan Capital Management, LLC, Walter M. Schenker, and Steven E. Slawson from violating Section 5 of the Securities Act [15 U.S.C. § 77e];

**III.**

Ordering defendants TCMP3 Partners, L.P., TCMP3 Capital, LLC, and Titan Capital Management, LLC to disgorge the profits and proceeds they obtained as a result of their actions alleged herein and to pay prejudgment interest thereon;

IV.

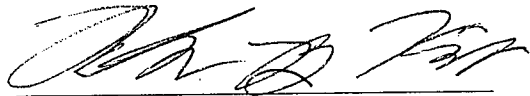
Ordering defendants Walter M. Schenker and Steven E. Slawson to pay civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)]; and

V.

Granting such other relief as this Court may deem just and proper.

Dated: November 5, 2007

Respectfully submitted,



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