

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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In the Matter of :  
: INITIAL DECISION  
NATURE'S SUNSHINE PRODUCTS, INC. : November 8, 2007

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APPEARANCES: Karen L. Martinez and William B. McKean for the Division of  
Enforcement, Securities and Exchange Commission

William H. Kimball and E. Andrew Southerling of Morgan, Lewis &  
Bockius LLP for Respondent Nature's Sunshine Products, Inc.

BEFORE: Carol Fox Foelak, Administrative Law Judge

### SUMMARY

This Initial Decision revokes the registration of the common stock of Nature's Sunshine Products, Inc. (Nature's Sunshine). The revocation is based on Nature's Sunshine's failure to file required periodic reports with the Securities and Exchange Commission (Commission). Although Nature's Sunshine has been working diligently to return to compliance, at this time, it is unable to project a date when it will file past-due and current periodic reports.

### I. INTRODUCTION

#### A. Procedural Background

The Commission initiated this proceeding with an Order Instituting Proceedings (OIP), pursuant to Section 12(j) of the Securities Exchange Act of 1934 (Exchange Act), on July 12, 2007. Pursuant to 17 C.F.R. § 201.360(a)(2) and the OIP, the undersigned is required to issue an Initial Decision within 120 days of service of the OIP, that is, by November 13, 2007. At an August 23, 2007, prehearing conference, the parties requested leave to file motions for summary disposition and consented to an initial decision based on the pleadings. Leave was granted, pursuant to 17 C.F.R. § 201.250(a). Nature's Sunshine Products, Inc., Admin. Proc. No. 3-12684 (A.L.J. Aug. 23, 2007) (unpublished). The Division of Enforcement (Division) filed its motion on October 15, 2007, and Nature's Sunshine filed its motion and a supplemental submission on November 2.

This Initial Decision is based on the parties' filings of October 15 and November 2, 2007, Nature's Sunshine's Answer to the OIP, filed August 6, 2007, and the Commission's public official records concerning Nature's Sunshine, of which official notice is taken pursuant to 17 C.F.R. § 201.323. There is no genuine issue with regard to any material fact, and this proceeding may be resolved by summary disposition, pursuant to 17 C.F.R. § 201.250. Any other facts in Nature's Sunshine's pleadings have been taken as true, in light of the Division's burden of proof and pursuant to 17 C.F.R. § 201.250(a). All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

### **B. Allegations and Arguments of the Parties**

The OIP alleges that Nature's Sunshine shares are registered with the Commission pursuant to Section 12(g) of the Exchange Act and that it has not filed any annual or quarterly reports since its Form 10-Q for the quarter ended June 30, 2005. The Division requests that the registration of Nature's Sunshine stock be revoked. Nature's Sunshine states that it has taken substantial steps to return to compliance and to assure future compliance. Thus, it argues, public interest factors weigh against revocation or suspension of its securities.

### **C. Exhibits Admitted into Evidence**

The following items included in the Division's Motion for Summary Disposition, at Exhibits A through K and N through Q, are admitted as Division Exhibits A through K and N through Q:

Form 10-K for the year ended December 31, 2004 (Div. Ex. A);

Form 8-K dated April 3, 2006 (Div. Ex. B);

Bloomberg screenshot indicating Nature's Sunshine price and volume data from July 9 through September 7, 2007 (Div. Ex. C);

Form 8-K dated November 10, 2005 (Div. Ex. D);

Form 10-Q for the quarter ended September 30, 2005 (Div. Ex. E);

Form 8-K dated January 13, 2006 (Div. Ex. F);

Form 8-K dated February 17, 2006 (Div. Ex. G);

Form 8-K dated March 18, 2006 (Div. Ex. H);

Form 8-K dated April 14, 2006 (Div. Ex. I);

Form 8-K dated March 29, 2006 (Div. Ex. J);

Form 8-K dated February 2, 2007 (Div. Ex. K);

Form NT 10-K for the period ended December 31, 2006 (Div. Ex. N);

Stipulation of Nature's Sunshine Products, Inc., dated August 31, 2007 (Div. Ex. O);

Nature's Sunshine Press Release dated July 12, 2007 (Div. Ex. P); and

Yahoo! Finance screenshot indicating Nature's Sunshine price and volume data from June 29 through August 17, 2007 (Div. Ex. Q).

The following items included in Nature's Sunshine's Motion for Summary Disposition, at Exhibits 1 through 11, and in its Supplemental Submission, at Exhibit 1, are admitted as Respondent Exhibits 1 through 12:

Declaration of Stephen M. Bunker, Chief Financial Officer of Nature's Sunshine (Resp. Ex. 1);

Form 10-Q for the quarter ended June 30, 2005 (Resp. Ex. 2);

Form 8-K dated November 10, 2005 (Resp. Ex. 3);

Form 8-K dated February 17, 2006 (Resp. Ex. 4);

Form 8-K dated March 18, 2006 (Resp. Ex. 5);

Form 8-K dated March 29, 2006 (Resp. Ex. 6);

Form 8-K, as amended, dated April 14, 2006 (Resp. Ex. 7);

Form 8-K dated July 12, 2007 (Resp. Ex. 8);

Form 8-K dated August 24, 2007 (Resp. Ex. 9);

September 20, 2007, memorandum from Protiviti, Inc. (Protiviti), to Nature's Sunshine (Resp. Ex. 10);

Yahoo! Finance screenshot indicating Nature's Sunshine price and volume data from August 15 through October 8, 2007 (Resp. Ex. 11); and

Supplemental Declaration of Stephen M. Bunker, Chief Financial Officer of Nature's Sunshine (Resp. Ex. 12).

## **II. FINDINGS OF FACT**

Nature's Sunshine (CIK 0000275053)<sup>1</sup> is a Utah corporation headquartered in Provo, Utah, that manufactures and markets nutritional and personal care products to consumers worldwide through a system of independent direct sales distributors. Div. Ex. A at Item 1. As of December 31, 2004, it had 1,069 employees. Div. Ex. A at Item 1. The financial statements included in its Form 10-K for 2004 indicated sales of about \$331 million and net income of about \$17 million for the year. Div. Ex. A. Nature's Sunshine common stock has been registered with the Commission pursuant to Section 12(g) of the Exchange Act since 1978, and the company remained in compliance with the reporting requirements of the Exchange Act for twenty-seven years.

As the Commission's public official records show, Nature's Sunshine has not filed any annual or quarterly reports since its Form 10-Q for the quarter ended June 30, 2005. The immediate cause of its failure to file was the lack of an independent registered public accounting firm to perform the required audit or review of financial statements included with a Form 10K or 10-Q. On or about March 18, 2006, the company disclosed that its financial statements from 2002 onward could not be relied on. Resp. Ex. 5 at Item 4.02. On March 31, 2006, the company's independent registered public accounting firm, KPMG LLP (KPMG), resigned in connection with an internal investigation (conducted by independent counsel retained by a special committee of the company's audit committee) that related principally to the company's international operations. Resp. Ex. 6 at 3-4. These events were discussed in a series of current reports on Form 8-K filed with the Commission in March and April 2006, as subsequently amended. Div. Ex. B; Resp. Exs. 5, 6, 7. Due to its failure to file periodic reports, Nature's Sunshine common stock was delisted from The Nasdaq National Market effective April 5, 2006, and has since been quoted on the Pink Sheets. Div. Ex. B.

Immediately following KPMG's resignation, Nature's Sunshine commenced discussions with several independent registered public accounting firms regarding a possible engagement, but the firms requested that the company defer such discussions until after the internal investigation was completed. Resp. Ex. 1 at 4. In late August 2006, after substantial completion of the internal investigation, discussions resumed, and, in January 2007, Deloitte & Touche LLP (Deloitte) informed Nature's Sunshine that it had approved the company for engagement. Resp. Ex. 1 at 5. Accordingly, on February 2, 2007, the company engaged Deloitte as its independent registered public accounting firm. Div. Ex. K; Resp. Ex. 1 at 5. Since then, Deloitte has performed approximately 23,900 hours of audit work in seventeen countries on the company's financial statements for the 2004, 2005, and 2006 years. Resp. Ex. 1 at 6-9. Nature's Sunshine has also added personnel and consultants and increased the work hours of its staff to support the audit. Resp. Ex. 1 at 6. Additionally, Nature's Sunshine hired Protiviti, a provider of internal audit and risk consulting services, to review the company's internal controls at its facilities around the world and to assist in implementing effective remediation as required; through September 30, 2007, Protiviti has performed approximately 13,400 hours of field work. Resp. Ex. 1 at 9-11, Resp. Ex. 10. Nature's Sunshine's audit committee has approved the engagement of Deloitte for the company's 2007 audit. Resp. Ex. 1 at 9, Resp. Ex. 12 at 2.

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<sup>1</sup> The CIK number is a unique identifier for each corporation in the Commission's EDGAR database. The user can retrieve filings of a corporation by using its CIK number.

Despite Deloitte's efforts and the company's support, the audit work is not complete, and the record does not indicate when this might occur. Deloitte has provided regular updates to Nature's Sunshine's audit committee regarding its progress and the remaining challenges and next steps to be taken. Resp. Ex. 12 at 3-4. However, to date, Deloitte has not provided the company with an anticipated date certain for the completion of the audit due to the ongoing nature of the audit process and Deloitte's own internal review process. Resp. Ex. 1 at 6, Resp. Ex. 12 at 2. Accordingly, Nature's Sunshine has yet to file Forms 10-K and 10-Q for the missing periods. Recently, however, the company filed Forms 8-K that disclosed selected, preliminary, unaudited, unreviewed, financial information for the year ended December 31, 2006, and for the following two quarters. Resp. Exs. 8, 9. The company cautioned that the results were preliminary and may be subject to significant adjustment in connection with a likely restatement of historical results following the completion of Deloitte's audit.

### III. CONCLUSIONS OF LAW

Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 require public corporations to file annual and quarterly reports with the Commission. By failing to file the required reports, Nature's Sunshine violated Exchange Act Section 13(a) and Rules 13a-1 and 13a-13.

### IV. SANCTION

The Division requests that the registration of Nature's Sunshine's securities be revoked,<sup>2</sup> while Nature's Sunshine requests that the proceeding be dismissed.

In proceedings pursuant to Section 12(j) of the Exchange Act against issuers that violated Exchange Act Section 13(a) and Rules 13a-1 and 13a-13, the determination "of what sanctions will ensure that investors will be adequately protected . . . turns on the effect on the investing public, including both current and prospective investors, of the issuer's violations, on the one hand, and the Section 12(j) sanctions, on the other hand."<sup>3</sup> Gateway Int'l Holdings, Inc., 88 SEC Docket 430, 438-39 (May 31, 2006). The Commission "consider[s], among other things, the seriousness of the issuer's violations, the isolated or recurrent nature of the violations, the degree of culpability involved, the extent of the issuer's efforts to remedy its past violations and ensure future compliance, and the credibility of its assurances, if any, against further violations." Gateway, 88 SEC Docket at 439.

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<sup>2</sup> The only remedies available in this proceeding, pursuant to Section 12(j) of the Exchange Act, to address Nature's Sunshine's reporting violations are revocation or suspension of registration of its securities.

<sup>3</sup> Further, the Commission has warned that "many publicly traded companies that fail to file on a timely basis are 'shell companies' and, as such, attractive vehicles for fraudulent stock manipulation schemes." e-Smart Techs., Inc., 83 SEC Docket 3586, 3590-91 n.14 (Oct. 12, 2004). Nature's Sunshine, however, is not a shell company.

The violations were serious in that failure to file periodic reports violates a crucial provision of the Exchange Act. The purpose of the periodic reporting requirements is to publicly disclose current, accurate financial information about an issuer so that investors may make informed decisions:

The reporting requirements of the Securities Exchange Act of 1934 is the primary tool which Congress has fashioned for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of stock and securities. Congress has extended the reporting requirements even to companies which are “relatively unknown and insubstantial.”

SEC v. Beisinger Indus. Corp., 552 F.2d 15, 18 (1st Cir. 1977) (quoting legislative history); accord e-Smart Techs., Inc., 83 SEC Docket 3586, 3590 (Oct. 12, 2004).

Nature’s Sunshine’s violations were recurrent in that it has failed to file several periodic reports. Concerning culpability, scienter<sup>4</sup> is absent, and Nature’s Sunshine has filed several reports on Form 8-K disclosing the circumstances of KPMG’s resignation and its internal investigation of wrongdoing and advising that financial statements for prior periods cannot be relied on. It has made extensive efforts to remedy its past violations and ensure future compliance, but these efforts have not yet borne fruit in the form of past-due and current periodic reports. Its violations will continue until Deloitte has completed its audit so that Nature’s Sunshine can file past-due and future reports. Mitigating factors are that the company vigorously investigated the internal wrongdoing that impaired the accuracy of its financial statements once management learned of it and that individuals who engaged in or failed to uncover the wrongdoing have been terminated from management. While the company filed informative reports on Form 8-K and warned the public that its previous financial statements could not be relied on, this laudatory openness cannot fully substitute for periodic reports containing audited or reviewed financial statements. In sum, while Nature’s Sunshine has, to date, made extensive efforts toward remedying its past violations and forestalling future violations, the investing public still does not have access to past and current audited financial information, and Nature’s Sunshine is currently unable to predict a date when this will occur. Thus, neither dismissal of the proceeding, as requested by Nature’s Sunshine, nor a suspension of registration for a period of twelve months or less is an appropriate disposition.<sup>5</sup> Rather, revocation of the registration of the stock of Respondents will serve the public interest and the protection of investors, pursuant to Section 12(j) of the Exchange Act.

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<sup>4</sup> Scienter, which is often described as “a mental state embracing intent to deceive, manipulate, or defraud,” is not required to establish violations of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13.

<sup>5</sup> Compare e-Smart Techs., Inc., 83 SEC Docket 3586 (Oct. 12, 2004), e-Smart Techs., Inc., 84 SEC Docket 2979 (A.L.J. Feb. 3, 2005). In that case, the Commission stated that a company’s “subsequent filing history is an important factor to be considered in determining whether revocation is ‘necessary or appropriate for the protection of investors’” within the meaning of Section 12(j) of the Exchange Act. e-Smart Techs., Inc., 83 SEC Docket at 3592 (emphasis added). By contrast, in the instant case, a subsequent filing history is lacking.

## V. ORDER

IT IS ORDERED that, pursuant to Section 12(j) of the Securities Exchange Act of 1934, 15 U.S.C. § 78l(j), the REGISTRATION of the common stock of Nature's Sunshine Products, Inc., IS REVOKED.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Carol Fox Foelak  
Administrative Law Judge