

INITIAL DECISION RELEASE NO. 405
ADMINISTRATIVE PROCEEDING
FILE NO. 3-13918

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER OF :
 :
 :
 VIKONICS, INC., : INITIAL DECISION AS TO
 VISION TEN, INC., : RESPONDENT VOICEIQ, INC.
 VIZACOM, INC., : (N/K/A YOHO RESOURCES, INC.)
 VOICEFLASH NETWORKS, INC. : OCTOBER 22, 2010
 (d/b/a THE DATAFLASH CORP.), :
 VOICEIQ, INC. :
 (n/k/a YOHO RESOURCES, INC.), :
 VOYUS, LTD., and :
 VSI HOLDINGS, INC. :

APPEARANCES: David S. Frye, Paul W. Kisslinger, and Neil J. Welch, Jr., for the
Division of Enforcement, Securities and Exchange Commission.

Guy P. Lander and Barry S. Neuman for Respondent Yoho
Resources, Inc. (f/k/a VoiceIQ, Inc.)

BEFORE: Brenda P. Murray, Chief Administrative Law Judge.

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on June 1, 2010, pursuant to Section 12(j) of the Securities Exchange Act of 1934 (Exchange Act), against VoiceIQ, Inc. (VoiceIQ) (n/k/a Yoho Resources, Inc.) (Yoho), and others.¹ In relevant part, the OIP alleges that VoiceIQ is an Ontario corporation with a class of securities registered with the Commission pursuant to Section 12(g) of the Exchange Act and that it has failed to file any periodic reports with the Commission for any period after it filed a Form 20-FR registration statement on July 13, 2001. The OIP charges that Respondents, including VoiceIQ, failed to comply with Section 13(a) of the Exchange Act and Exchange Act

¹ All other Respondents named in the OIP have defaulted. See Vikonics, Inc., Exchange Act Release No. 62662 (Aug. 9, 2010).

Rules 13a-1 and 13a-13 or 13a-16. The Division of Enforcement (Division) promptly notified Yoho of the opportunity to inspect and copy its investigative file.

In its Answer filed on June 14, 2010, Respondent denies many of the allegations in the OIP. It states that, since December 2004, Yoho has been a corporation located in Calgary, Alberta, Canada, and that, prior to that date, it operated under the name VoiceIQ, located in Markham, Ontario, Canada. (Answer at 2-3.) Respondent admits that it has not filed a periodic report since a Form 6-K, Report of Foreign Issuer, was filed on September 5, 2001. (Answer at 2.) Respondent denies that its stock, (symbol “YOHOF.PK”) was traded on the over the counter markets as of May 19, 2010, but admits that “Yoho’s stock price is reported in the Pink Sheets in the ‘Grey Market.’” (Answer at 4.) Yoho explained that, until it received the OIP, its management had no knowledge that its corporate predecessor had registered a class of securities pursuant to Section 12 of the Exchange Act and that the Division had rejected its offer to withdraw immediately from Section 12 registration on the grounds that the OIP had been instituted. (Answer at 5.)

At a telephonic prehearing conference on June 25, 2010, Yoho insisted that its stock did not have market makers and is not traded on any market and that it could not prevent quotes in the “Grey Market” even if its registration were revoked. (Tr. 8.) Yoho’s oral motion to dismiss the proceeding contingent on its filing a Form 15 was denied. (Tr. 11.) The parties were given leave to file cross-motions for summary disposition. (Order of June 28, 2010.)

On July 16, 2010, the Division filed its Motion for Summary Disposition and Brief in Support (Division’s Motion) and the Declaration of David S. Frye in Support of Division of Enforcement’s Motion for Summary Disposition with Exhibits 1 through 12 (Frye Declaration).

On August 2, 2010, Yoho filed a Cross-Motion for Summary Disposition and Brief in Support of Cross-Motion and in Opposition to Division of Enforcement’s Motion for Summary Disposition with four exhibits (Yoho’s Opposition and Cross-Motion) and the Declaration of Brian McLachlan in Support of Yoho’s Motion for Summary Disposition with four exhibits (McLachlan Declaration). The Division filed a Reply Brief in support of its motion and in opposition to Yoho’s Cross-Motion on August 6, 2010. Yoho submitted a Reply Brief in support of its Cross-Motion on August 25, 2010.

On September 24, 2010, the Division filed a Supplement to the Record (Record Supplement) with the Declaration of Neil J. Welch, Jr., and the Declaration of Cecile F. Peters (Peters Declaration) in response to an Order Requiring Division of Enforcement to Supplement the Record issued September 16, 2010.² The Division acknowledged that the OIP is in error and that VoiceIQ filed a Form 20-F, Annual Report Pursuant to Section 13 or 15(d) of the Exchange Act, not a Form 20-FR, Registration Statement Pursuant to Section 12(b) or (g) of the Exchange Act, on July 13, 2001. (Record Supplement at 1; Frye Declaration, Exhibit 1.) The Record Supplement also states that: (1) Yoho’s predecessor, BCB Voice Systems, Inc. (BCB Voice Systems), filed a Form 20-FR on April 6, 1999, which was assigned the Central Index Key (CIK)

² I found the use of Yoho for its corporate predecessor, VoiceIQ, confusing at times so I tried to identify the specific entity.

No. 1084142; (2) BCB Voice Systems was assigned CIK No. 1070931 when it made filings as a foreign private issuer under Exchange Act Rule 12g3-2(b) and was exempt from registering its securities under Section 12(g) of the Exchange Act; and (3) VoiceIQ was assigned CIK No. 1141782 when it filed a Form 20-F on July 13, 2001 and a Form 15 on July 7, 2010. (Record Supplement at 1-3; Peters Declaration Exhibit 2; Frye Declaration Exhibit 3.) The Division states that, as a foreign private issuer that registered pursuant to Form 20-F, Yoho was required by Rule 13a-16 to furnish quarterly and other reports under cover of Form 6-K under certain conditions and because Rule 13a-16 required Yoho to file Forms 6-K, Yoho was exempt from the requirement in Rule 13a-13 of filing quarterly reports on Form 10-Q. (Record Supplement at 3.) On September 30, 2010, Yoho filed a Response to the Division's Record Supplement (Yoho's Response).

SUMMARY DISPOSITION

Rule 250(a) of the Commission's Rules of Practice provides that, after a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying, a party may make a motion for summary disposition of any or all allegations of the OIP with respect to that respondent. The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted pursuant to Rule 323 of the Commission's Rules of Practice. The hearing officer may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law.

Yoho does not dispute any of the factual assertions contained in the Division's Motion. (Yoho's Opposition and Cross-Motion at 1, Yoho's Response at 1.)

FINDINGS OF FACT

I take official notice of the exhibits accompanying the parties' pleadings, and, based on those materials and Yoho's Answer, I make the following findings. See 17 C.F.R. § 201.323.

Yoho is incorporated under the laws of Alberta, Canada, and its headquarters are located in Calgary, Alberta, Canada. (Answer at 2-4; McLachlan Declaration at 1.) Yoho's corporate predecessor, VoiceIQ, was incorporated under the laws of Ontario, Canada, and was headquartered in Markham, Ontario, Canada, until December 2004. (Answer at 3; McLachlan Declaration at 1.) Thereafter, VoiceIQ has also been headquartered in Calgary, Alberta. (Answer at 3-4.) In December 2004, VoiceIQ was reorganized under Canadian bankruptcy law. The reorganization was among VoiceIQ, Yoho, VIQ Solutions, Inc., and VoiceIQ's shareholders and creditors. All of VoiceIQ's business was transferred to VIQ Solutions, Inc., which changed its name to Yoho and continues in business. (Id.; McLachlan Declaration at 1-2, Exhibits A-B.) Permanent management was installed at Yoho on February 1, 2005. (McLachlan Declaration at 2.)

On April 6, 1999, BCB Voice Systems, the corporate predecessor of VoiceIQ, filed a registration statement with the Commission for a class of securities pursuant to Section 12(g) of

the Exchange Act. (Record Supplement at 1.) VoiceIQ filed its most recent periodic report on Form 20-F on July 13, 2001. (Frye Declaration, Exhibits 1, 3.) Yoho has never filed any periodic reports with the Commission under the name Yoho. (Frye Declaration, Exhibit 3.)

Yoho's common stock is listed and posted for trading on the TSX Venture Exchange in Canada. (Answer at 3; Frye Declaration at 2, Exhibit 5.) Yoho's stock price is reported in the United States on the Pink Sheets, operated by Pink OTC Markets Inc. (Answer at 4.)

The Commission's Division of Corporation Finance (Corporation Finance) is the staff office responsible for monitoring issuers' periodic filings. On August 17, 2005, Corporation Finance sent a letter to VoiceIQ in Markham, Ontario, Canada, stating that the issuer appeared to be delinquent in its periodic reporting obligations. (Frye Declaration, Exhibit 2.) The letter was returned to the Commission unopened.

Yoho's permanent management in place since February 1, 2005, was unaware until the initiation of this proceeding that: BCB Voice Systems had registered with the Commission under the Exchange Act; VoiceIQ had filed periodic reports with the Commission; and VoiceIQ had failed to file other periodic reports. (Answer at 5; McLachlan Declaration at 3.) Yoho did not receive any delinquency notices from the Commission and it did not make any filings with the Commission until after this proceeding began. (*Id.*)

On July 7, 2010, Yoho filed with the Commission a Form 15, Notice of Termination of Registration under Section 12 of the Exchange Act, seeking to deregister its securities voluntarily. (Frye Declaration, Exhibit 4.) Yoho represented that its approximate number of holders of record was 153 as of July 7, 2010. (*Id.*) The termination of registration became effective on October 5, 2010—ninety days after July 7, 2010.³

DISCUSSION AND CONCLUSIONS

Section 13(a) of the Exchange Act and the regulations thereunder require issuers of securities registered with the Commission pursuant to Section 12 of the Exchange Act to file periodic and other reports with the Commission. The purpose of the periodic reporting requirement is to supply the investing public with current, accurate financial information about an issuer so that the investing public may make informed decisions. As stated in SEC v. Beisinger Indus. Corp., 552 F.2d 15, 18 (1st Cir. 1977) (quoting legislative history):

The reporting requirements of the [Exchange Act are] 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

³ Section 12(g)(4) of the Exchange Act provides that registration of any class of registered security shall be terminated ninety days, or such shorter period as the Commission may determine, after the issuer files a certification with the Commission that the number of holders of record of such class of securities is reduced to less than 300 persons. "An issuer may withdraw its Form 15 at any time before the termination of registration becomes effective. See generally 17 C.F.R. § 340-12g-4(b)." Enamelon, Inc., 86 SEC Docket 2944, n.3 (Dec. 15, 2005).

extended the reporting requirements even to companies which are “relatively unknown and insubstantial.”

It is uncontested that VoiceIQ and Yoho have failed to file any periodic reports for any period after July 13, 2001. Thus, VoiceIQ and Yoho have violated Section 13(a) of the Exchange Act and Exchange Act Rule 13a-1.⁴

Under Section 12(j) of the Exchange Act, the Commission is authorized, “as it deems necessary or appropriate for the protection of investors,” to revoke the registration of a security or to suspend the registration of a security for a period not exceeding twelve months if it finds that the issuer of such security has failed to comply with any provision of the Exchange Act or the rules and regulations thereunder.

The only remedy available where an issuer has failed to file required periodic reports is either the revocation or suspension of its registered securities. The fact that this is the only relief the Commission can order is probably why the Commission has consistently dismissed Section 12(j) proceedings against Respondents who no longer have a class of securities registered under Section 12(g) of the Exchange Act. See World Assocs., Inc., 94 SEC Docket 12054 (Dec. 1, 2008); TelcoBlue, Inc., 93 SEC Docket 7335 (June 30, 2008); Enamelon, 86 SEC Docket at 2944. These administrative proceedings include situations where issuers withdrew from registration before an OIP was issued under Section 12(j), where issuers did not file Forms 15 until after an OIP was issued under Section 12(j), and where the withdrawal from registration became effective before an Administrative Law Judge issued an Initial Decision.

In each situation cited above, the Division filed a motion to dismiss the proceeding based on the deregistration. Here, however, the Division argues that the voluntary deregistration by delinquent filers constitutes a “loophole,” an “end around,” and a “fire escape,” and raises unspecified “programmatic concerns.” This could well be true, however, it appears that a rule change would be necessary to reach a different result. Accordingly, consistent with prior Commission actions, I dismiss the proceeding as to VoiceIQ, Inc. (n/k/a Yoho Resources, Inc.), because there is no registration left in place to revoke or suspend.

ORDER

Based on the findings and conclusions set forth above, I ORDER that the Division of Enforcement’s motion for summary disposition is denied, the cross-motion for summary disposition of VoiceIQ, Inc. (n/k/a Yoho Resources, Inc.), is granted; and the proceeding is dismissed.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission’s Rules of Practice. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the decision. A party may also file a motion to correct a manifest error of fact within ten days of the

⁴ I am not ruling on the allegation that there has been a violation of Exchange Act Rule 13a-16 because the record is not clear.

Initial Decision pursuant to Rule 111 of the Commission's Rules of Practice. 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 unless the Commission determines on its own initiative to review this Initial Decision as to any party. If any of these events occur, the Initial Decision shall not become final as to that party.

Brenda P. Murray
Chief Administrative Law Judge