

INITIAL DECISION RELEASE NO. 454  
ADMINISTRATIVE PROCEEDING  
File No. 3-14581

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

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In the Matter of :  
: INITIAL DECISION  
CHINA-BIOTICS, INC. : February 22, 2012

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APPEARANCES: Michael D. Foster and John J. Kaleba for the  
Division of Enforcement, Securities and Exchange Commission

Jerome S. Fortinsky and Lindi L. Beaudreault of Shearman & Sterling LLP  
for Respondent China-Biotics, Inc.

BEFORE: Carol Fox Foelak, Administrative Law Judge

### SUMMARY

This Initial Decision revokes the registration of the registered securities of China-Biotics, Inc. (China-Biotics). The revocation is based on China-Biotics's failure to file required periodic reports with the Securities and Exchange Commission (Commission).

### 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 October 7, 2011. At a December 19, 2011, prehearing conference, the Division of Enforcement (Division) requested leave to file a motion for summary disposition. Leave was granted, pursuant to 17 C.F.R. § 201.250(a); the due dates for the motion for summary disposition, opposition, and reply were January 10, 17, and 24, 2012, respectively. China-Biotics, Inc., Admin. Proc. No. 3-14581 (A.L.J. Dec. 19, 2011) (unpublished). The pleadings were timely filed.

This Initial Decision is based on China-Biotics's Answer to the OIP, the pleadings, and the Commission's public official records concerning China-Biotics, 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 China-Biotics'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 China-Biotics's securities are registered with the Commission pursuant to Section 12(g) of the Exchange Act and that China-Biotics had not filed any required periodic reports since filing a report for the quarter ended December 31, 2010. China-Biotics argues that summary disposition is inconsistent with due process and would foreclose it from the opportunity to prepare its case and bring itself into compliance.

## **C. Procedural Issues**

### **1. Summary Disposition**

China-Biotics's argument that summary disposition is inconsistent with due process is unavailing. Pursuant to 17 C.F.R. § 201.250(a), the facts of its pleadings "shall be taken as true," and pursuant to 17 C.F.R § 201.250(b), summary disposition may be granted "if there is no genuine issue with regard to any material fact."<sup>1</sup> See also Gary M. Kornman, Exchange Act Release No. 59403 (Feb. 13, 2009), 95 SEC Docket 14246, 14254 n.24, petition for review denied, 592 F.3d 173 (2010); Conrad P. Seghers, Advisers Act Release No. 2656 (Sept. 26, 2007), 91 SEC Docket 2293, 2299-300, petition for review denied, 548 F.3d 129 (2008).

### **2. Investigative File**

China-Biotics "requests that the Division be ordered to provide China-Biotics with access to the entire investigative file." The issues to which China-Biotics alludes have been fully addressed, including at prehearing conferences on November 17 and December 19, 2011. See China-Biotics, Inc., Administrative Proceedings Rulings No. 689 (A.L.J. Dec. 6, 2011); China-Biotics, Inc., Admin. Proc. No. 3-14581 (A.L.J. Dec. 19, 2011) (unpublished), (A.L.J. Nov. 17, 2011) (unpublished). China-Biotics does not argue that the Division has failed to comply with the disclosure ordered by the undersigned. Accordingly, the undersigned will not reopen any issues related to the investigative file.

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<sup>1</sup> China-Biotics has affirmatively declined to identify any issue of material fact, arguing that to do so would provide the Division with discovery to which it is not entitled.

## II. FINDINGS OF FACT

China-Biotics (CIK No. 1271057)<sup>2</sup> is a Delaware corporation located in Shanghai, People's Republic of China, with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(b). Answer at 1; official notice. Common shares of China-Biotics were quoted on OTC Link, operated by OTC Markets Group (symbol "CHBT").<sup>3</sup> Answer at 1. The Commission's public official records contained in EDGAR<sup>4</sup> show that, at the time this proceeding was initiated, China-Biotics was delinquent in its periodic filings with the Commission, having not filed any periodic reports since its filing, on February 14, 2011, of Form 10-Q for the quarter ended December 31, 2010. The company has filed Forms 12b-25 (Notification of Late Filing) during its subsequent periods of delinquency to state the reasons for its failure to file Forms 10-K and 10-Q. China-Biotics is unable predict when it will return to compliance: its latest Form 12b-25, filed on February 9, 2012, states:

China-Biotics, Inc. (the "Company") is unable to timely file its Quarterly Report on Form 10-Q for the period ended December 31, 2011 (the "Form 10-Q") by the prescribed due date of February 9, 2012 as a result of the Company's inability to provide audited financial statements for the fiscal year ended March 31, 2011. The Company is unable to provide audited financial statements due to the resignation of its independent auditor, BDO Limited, on June 22, 2011. The Company has not yet retained a new auditor.

Until a new auditor is retained and an audit of the Company's financial statements is completed, the Company will be unable to provide the necessary financial statements to file the Form 10-Q. At this time, the Company cannot predict when it will be in a position to file the Form 10-Q, but it intends to file the Form 10-Q as soon as reasonably practicable.

Prior to its current delinquency, China-Biotics made every required periodic filing since it became a public company. Respondent's Brief Opposing Motion for Summary Disposition (Opposition) at 2; official notice. After China-Biotics has completed bringing its filings up to date with financial statements that have been certified by a new auditor, it will return to its long-established practice of timely submitting its periodic filings. Opposition at 15.

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<sup>2</sup> The CIK number is a unique identifier for each corporation in EDGAR. The user can retrieve filings of a corporation by using its CIK number.

<sup>3</sup> OTC Markets has since discontinued the display of quotes for CHBT. Instead it displays a "skull-and-crossbones" symbol for CHBT and warns "Caveat Emptor." See [www.otcmarkets.com](http://www.otcmarkets.com) (last visited Feb. 22, 2012).

<sup>4</sup> Reference to any required filings of China-Biotics is supported by the Commission's public official records contained in EDGAR, of which official notice is taken pursuant to 17 C.F.R. § 201.323.

### III. CONCLUSIONS OF LAW

Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder require public corporations to file annual and quarterly reports with the Commission. “Compliance with those requirements is mandatory and may not be subject to conditions from the registrant.” America’s Sports Voice, Inc., Exchange Act Release No. 55511 (Mar. 22, 2007), 90 SEC Docket 879, 885, recon. denied, Exchange Act Release No. 55867 (June 6, 2007), 90 SEC Docket 2419. Scinter, 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. See SEC v. McNulty, 137 F.3d 732, 740-41 (2d Cir. 1998); SEC v. Wills, 472 F. Supp. 1250, 1268 (D.D.C. 1978). It is undisputed that China-Biotics failed to timely file its required periodic reports for any period after the quarter ended December 31, 2010, and that it cannot predict when it will return to compliance.

Accordingly, China-Biotics violated Exchange Act Section 13(a) and Exchange Act Rules 13a-1 and 13a-13.

### IV. SANCTION

The Division requests that the registration of China-Biotics’s securities be revoked.<sup>5</sup> 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 thereunder, 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.” Gateway Int’l Holdings, Inc., Exchange Act Release No. 53907 (May 31, 2006), 88 SEC Docket 430, 438-39 (citing Steadman v. SEC, 603 F.2d 1126, 1139-40 (5th Cir. 1979)). 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.” Id. at 439.

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.”

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<sup>5</sup> The only remedies available in this proceeding, pursuant to Section 12(j) of the Exchange Act, to address the company’s reporting violations are revocation or suspension of registration of its securities.

SEC v. Beisinger Indus. Corp., 552 F.2d 15, 18 (1st Cir. 1977) (quoting legislative history); accord e-Smart Techs., Inc., Exchange Act Release No. 50514 (Oct. 12, 2004), 57 S.E.C. 964, 968-69.

China-Biotics's violations are recurrent in that it has repeatedly failed to file periodic reports. Concerning culpability, China-Biotics knew of its reporting obligations but failed to comply with them. What China-Biotics argues is a mitigating factor, that its delinquency has, so far, extended for one year, not many years, is somewhat diminished by the facts that the company does not have an auditor and cannot predict when it will return to compliance. In fact, China-Biotics has made no representations concerning its efforts to remedy its past and ongoing violations. Although it intends to return to compliance, its violations will continue for an indeterminate period.

In sum, dismissal of this proceeding or a lesser sanction, such as a suspension of registration for a period of twelve months or less, is not an appropriate disposition.<sup>6</sup> Rather, revocation of the registration of China-Biotics's registered securities will serve the public interest and the protection of investors, pursuant to Section 12(j) of the Exchange Act. Accord, Nature's Sunshine Products, Inc., Exchange Act Release No. 59268 (Jan. 21, 2009), 95 SEC Docket 13488; Impax Labs., Inc., Exchange Act Release No. 57864 (May 23, 2008), 93 SEC Docket 6241. Of course, at any time following the revocation, China-Biotics may re-register its securities under Exchange Act Section 12(g) by filing a Form 10 with the Commission, after it has engaged a new auditor and has audited financial statements.

## 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 registered securities of China-Biotics, 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

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<sup>6</sup> Compare e-Smart Techs., Inc., Exchange Act Release No. 50514 (Oct. 12, 2004), 57 S.E.C. 964, 969-70 (2004), stating 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. In the instant case, there are no subsequent filings of periodic reports, so that the investing public still does not have access to accurate financial information about the issuer.

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