

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

In the Matter of

ACCREDITED BUSINESS CONSOLIDATORS CORP.,
ASHERXINO CORP.,
BAKERS FOOTWEAR GROUP, INC.,
CARD ACTIVATION TECHNOLOGIES INC.,
HIGH PLAINS GAS, INC., and
PACIFIC COPPER CORP.

INITIAL DECISION AS TO
ACCREDITED BUSINESS
CONSOLIDATORS CORP.

December 1, 2014

APPEARANCES: Neil J. Welch, Jr., for the Division of Enforcement, Securities and Exchange Commission

Andy William, Vice President, Accredited Business Consolidators Corp.

BEFORE: Cameron Elliot, Administrative Law Judge

SUMMARY

This Initial Decision revokes the registration of the registered securities of Respondent Accredited Business Consolidators Corp. (Accredited).¹ The revocation is based on Accredited's failure to timely file required periodic reports with the Securities and Exchange Commission (Commission). Accredited is delinquent in its periodic filings, having failed to file any periodic reports since it filed a Form 10-Q for the period ended September 30, 2012.

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 31, 2014.

¹ This proceeding has ended as to AsherXino Corp., Bakers Footwear Group, Inc., Card Activation Technologies Inc., and Pacific Copper Corp. *See Accredited Bus. Consolidators Corp.*, Initial Decisions Release No. 666, 2014 SEC LEXIS 3261 (Sept. 9, 2014). The remaining respondent, High Plains Gas, Inc. (High Plains), filed a Form 15 on August 5, 2014, to voluntarily deregister its securities. The Division of Enforcement's resulting motion to dismiss High Plains from this proceeding is pending.

Accredited filed an Answer on August 18, 2014, in which it admitted most key factual allegations. A prehearing conference was held on September 8, 2014, at which a schedule for motions for summary disposition was established. *See Accredited Bus. Consolidators Corp., Inc.*, Admin. Proc. Rulings Release No. 1778, 2014 SEC LEXIS 3258 (Sept. 9, 2014).

The Division of Enforcement (Division) filed a Motion for Summary Disposition (Motion), attaching a declaration and eight exhibits, on October 6, 2014.² Accredited filed an opposition (Opposition) on November 5, 2014,³ attaching eight exhibits.⁴ The Division filed a reply (Reply) on November 10, 2014, attaching a supplemental declaration and a ninth exhibit.⁵

This Initial Decision is based on the Division's Motion, Accredited's Opposition, and the Division's Reply, as well as the Commission's public official records concerning Accredited, of which official notice is taken pursuant to Rule 323 of the Commission's Rules of Practice, 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 Rule 250, 17 C.F.R. § 201.250. 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 Accredited's securities are registered with the Commission pursuant to Section 12(g) of the Exchange Act and that it has not filed any required periodic reports since filing a Form 10-Q for the period ended September 30, 2012. OIP at 1. The Division requests

² Division Exhibit (Div. Ex.) 1 is a copy of the delinquency letter sent by the Commission's Division of Corporation Finance to Accredited, dated May 21, 2014; Div. Ex. 2 is a printout from the Commission's EDGAR database showing all filings by Accredited as of October 6, 2014; Div. Ex. 3 is a printout from the www.otcquote.com database showing the trading status for Accredited's stock as of October 6, 2014; Div. Ex. 4 is a copy of Accredited's Form 8-K filed on November 4, 2013; Div. Ex. 5 is a copy of a press release issued on behalf of Accredited on November 4, 2013; Div. Ex. 6 is a copy of an email from Andy William to Neil J. Welch, Jr., dated September 16, 2014; Div. Ex. 7 is a copy of 15 Pa. Cons. Stat. § 1755(a); and Div. Ex. 8 is a copy of excerpted pages from Accredited's by-laws attached to the Form 8-A filed on November 8, 1995.

³ This Opposition was filed two business days after the November 3, 2014, deadline for oppositions to motions for summary disposition. *See Accredited Bus. Consolidators Corp.*, Admin. Proc. Rulings Release No. 1778, 2014 SEC LEXIS 3258 (Sept. 9, 2014). It was negligibly late, with no apparent prejudice to the Division, and I will consider it as if timely filed. *See* 17 C.F.R. § 201.111.

⁴ Accredited Exhibit (Resp. Ex.) A is the Declaration of Andy William; Resp. Ex. B is a copy of an email sent by a Commission staff accountant to Andy William regarding a Form 8-K filed by Accredited on May 9, 2014; and Resp. Ex. C is a United States Postal Service tracking number for the delinquency letter sent by the Division of Corporation Finance.

⁵ The ninth exhibit (Div. Ex. 9) is a copy of a comment letter sent by the Division of Corporation Finance to Accredited, dated September 24, 2012.

that the registration of Accredited's securities be revoked, citing its continuous two-year delinquency, its failure to prepare any of the delinquent periodic reports, and its inability to ensure future compliance. Mot. at 5, 7-8, 11-13. The Division further alleges that Accredited's officers and majority shareholder violated Exchange Act Section 16(a) and that Accredited failed to file required proxy statements, arguing that these additional violations demonstrate Accredited's culpability. *Id.* at 9-11.

Accredited admits that it is delinquent in making its periodic filings, but claims that the Division has failed to demonstrate any need to protect Accredited's investors. Answer at 2; Opp'n at 2. It also argues that revocation will harm the company and its shareholders. Opp'n at 2. Accredited states that it is actively seeking a public accountant in Nicaragua who is willing to file with the Public Company Accounting Oversight Board (PCAOB), noting the dearth of accountants in Nicaragua with PCAOB membership and its understanding based on discussions with Commission staff that its auditor must be from the country where Accredited's office are located.⁶ *Id.* at 2-3. Accredited also claims that it never received the delinquency letter sent by the Commission's Division of Corporation Finance regarding its missing filings because it was sent to Accredited's Nicaragua address, despite the fact that other Commission staff were actively communicating with Accredited using email, fax, and mail to its U.S.-based registered agent. *Id.* at 2. Accredited suggests that a six-month to one-year suspension of its registration statement would be a more appropriate remedy for its delinquent periodic filings. *Id.*

II. FINDINGS OF FACT

Accredited, Central Index Key No. 933425, is a Pennsylvania corporation located in Managua, Nicaragua, with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). OIP at 1; Answer at 1. As of October 6, 2014, Accredited traded on the over-the-counter markets. Div. Ex. 3. Accredited is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2012, which it filed on November 20, 2012. OIP at 1; Answer at 1; Div. Ex. 2. Accredited last filed a Form 10-K annual report, for the year ended December 31, 2011, on March 8, 2012. Div. Ex. 2. Accredited has not filed any Forms 12b-25 seeking an extension of time to make its periodic filings since August 16, 2013. *Id.* On May 21, 2014, the Division of Corporation Finance sent a delinquency letter by registered mail to the address appearing on Accredited's most recent filing with the Commission, a Form 8-K filed on May 9, 2014. Div. Ex. 1. There is no evidence that Accredited received the delinquency letter. *See* Div. Br. at 1.

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. "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, 2007 SEC LEXIS 1241, at *12 (Mar. 22, 2007), *mot. for*

⁶ The Division disputes that Commission staff suggested that Accredited should use an auditor based in Nicaragua, submitting as an exhibit a September 2012 letter from the Division of Corporation Finance to Accredited noting that "the audit report of a registrant (that is not a foreign issuer) should ordinarily be rendered by an auditor licensed in the United States." Reply at 2; Div. Ex. 9.

recons. denied, Exchange Act Release No. 55867, 2007 SEC LEXIS 1239 (June 6, 2007). Scierter 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). There is no genuine issue of material fact that Accredited failed to timely file required periodic reports. Accordingly, Accredited violated Exchange Act Section 13(a) and Rules 13a-1 and 13a-13.

SANCTION

Under Exchange Act Section 12(j), the Commission is authorized, “as it deems necessary or appropriate for the protection of investors,” to revoke the registration of a security or suspend for a period not exceeding twelve months if it finds, after notice and an opportunity for hearing, that the issuer of the security has failed to comply with any provision of the Exchange Act or rules thereunder. In proceedings pursuant to Exchange Act Section 12(j) 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.” *Gateway Int’l Holdings, Inc.*, Exchange Act Release No. 53907, 2006 SEC LEXIS 1288, at *19 (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.” *Id.* at *19-20.

Accredited’s failure to file required periodic reports is serious because it violates a central provision of the Exchange Act. The purpose of periodic reporting is “to supply investors with current and accurate financial information about an issuer so that they may make sound [investment] decisions.” *Id.* at *26. The reporting requirements are the primary tool that Congress fashioned for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of securities. *SEC v. Beisinger Indus. Corp.*, 552 F.2d 15, 18 (1st Cir. 1977). Accredited’s violations are also recurrent in that it repeatedly failed to file periodic reports for a period of nearly two years. See *Nature’s Sunshine Prods., Inc.*, Exchange Act Release No. 59268, 2009 SEC LEXIS 81, at *20 (Jan. 21, 2009) (failure to file seven required periodic reports due over a two-year period); *Impax Labs., Inc.*, Exchange Act Release No. 57864, 2008 SEC LEXIS 1197, at *25-26 (May 23, 2008) (failure to make eight filings over an eighteen-month period considered recurrent).

With respect to culpability, the record shows that Accredited knew of its reporting obligations, but failed to comply with them. Accredited has filed ten Forms 8-K in the last two years, following Exchange Act provisions requiring it to report material events. Div. Ex. 2. It has also filed several Forms 12b-25, providing information regarding its delinquent periodic filings, yet has not done so for the past year despite its continued delinquency. *Id.* Clearly, Accredited understood the reporting obligations imposed by the Exchange Act, yet repeatedly failed to file its required periodic reports.

Accredited has made no creditable effort to remedy its past violations. According to a Form 8-K/A filed on May 29, 2014, Accredited dismissed its previous auditor on May 9, 2014, after the auditor’s registration with PCAOB was revoked. Six months have elapsed since that

time, and Accredited has thus far failed to hire a new auditor. Opp'n at 2. Accredited attributes this failure to the fact that "there are no PCAOB auditors in Nicaragua," yet also represents that it could locate such an auditor within six months.⁷ Opp'n at 2 and Ex. A. Accredited provides no explanation for how or why it expects in that time frame to find a Nicaraguan auditor that is willing to register with the PCAOB. Opp'n at 3. An email sent by Accredited's acting president on September 16, 2014, states that Accredited is negotiating with two auditing companies and hopes to engage one of the companies by the following week. Div. Ex. 6. The fact that months later, no progress has been made on securing a new auditor, weakens Accredited's claim that it will soon be able to engage an auditor to prepare the delinquent periodic reports. Accredited promised in its August 18, 2014, Answer to bring its filings current "as soon as practicable," a vague assurance that it has been unable to fulfill, further casting doubt on its ability to secure an auditor in the near future.

For the same reasons, Accredited's efforts to ensure future compliance fall short. It has not yet hired an auditor to prepare future periodic reports and has offered no evidence that it is close to doing so, nor has it caught up on any of its past-due filings. Opp'n at 2-3. In addition, Accredited acknowledged in a Form 8-K/A filed on May 29, 2014, that it "has minimal assets, substantial debt, and only a small amount of revenue," calling into question its financial ability to engage, and maintain engagements with, accounting personnel to prepare the company's future financial reports. That the company and its management failed to comply with other Exchange Act reporting requirements casts additional doubt on the company's future compliance with Section 13(a) and the rules thereunder. *See Citizens Capital Corp.*, Exchange Act Release No. 67313, 2012 SEC LEXIS 2024, at *32 (June 29, 2012). Exchange Act Section 16(a) requires an issuer's officers, directors, and principal shareholders to file initial statements disclosing the amount of all equity securities of the issuer of which the person is the beneficial owner, as well as statements disclosing any changes in such ownership and annual statements of the amounts owned. *See* 15 U.S.C. § 78p(a). None of these filings have been made by any of Accredited's officers or directors. Div. Ex. 2. Nor has Accredited filed proxy or information statements as required under Exchange Act Section 14.⁸ *Id.* Accredited also fails to explain why it was delinquent in its periodic filings far before the dismissal of its previous auditor, further undermining its claim that the hiring of a new auditor will ensure its future compliance.

In its Opposition, Accredited argues that revocation of its securities' registration would only serve to harm the company and its shareholders. Opp'n at 2. While revocation might affect Accredited's financial position, the securities laws are designed principally to protect company investors, not the financial positions of the underlying business entities. *See Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 195 (1976) (discussing principal purpose of the Exchange Act and

⁷ Nor is it clear that a PCAOB-registered auditor must be based in Nicaragua. Section 106 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7216, as amended by Section 929J of the Dodd Frank Wall Street Reform and Consumer Protection Act, expressly anticipates that an issuer may hire a U.S.-based registered accounting firm but have a foreign accounting firm perform material auditing work.

⁸ Accredited's by-laws and Pennsylvania state law require Accredited to hold at least one meeting of the shareholders in each calendar year to elect directors. Div. Exs. 7, 8. Assuming Accredited adhered to this obligation, Exchange Act Section 14(a) required it to file either an information statement or a proxy statement with the Commission. *See* 15 U.S.C. §§ 78n(a), (c).

citing congressional record). Further, the Commission has made clear that “any harm to existing shareholders is not the determining factor in evaluating whether an issuer’s securities registration should be revoked.” *Nature’s Sunshine Prods., Inc.*, Exchange Act Release No. 59268, 2009 SEC LEXIS 81, at *32 (Jan. 21, 2009). Existing and prospective shareholders are both harmed when required periodic reports are not available and they cannot make informed investment decisions. *See id.*

Accredited also claims that it did not receive the delinquency letter sent by the Division of Corporation Finance prior to the Commission’s institution of this proceeding. Opp’n at 2. This letter stated that Accredited was not in compliance with the reporting requirements of Section 13(a) of the Exchange Act, and requested that Accredited file, within fifteen days, all required reports. Div. Ex. 1. It also warned that failure to file the reports within fifteen days might result in an administrative proceeding to revoke its registration pursuant to Section 12(j) of the Exchange Act – that is, the present proceeding. *Id.* Accredited claims that because it did not receive the delinquency letter, it had “no idea that the Commission had an issue with the late filings.” Opp’n at 2. Had it received the letter, Accredited argues, “it could have taken action.” *Id.*

Section 12(j) of the Exchange Act gives the Commission the authority to suspend or revoke the registration of a security “by order” if the issuer has failed to comply with the Act’s periodic filing requirements. 15 U.S.C. § 78l(j). There is no requirement in this provision that the Commission give an issuer notice prior to the issuance of an OIP. *Id.* And, Accredited does not argue that it was unaware of the delinquent filings; rather, it claims that it was unaware that the Commission knew and cared about them. Opp’n at 2. This line of argument hurts rather than helps Accredited’s case, as it provides further evidence of Accredited’s culpability in knowingly ignoring its filing obligations until the Commission took an interest in its delinquency. In any event, Accredited has not shown that its failure to receive the letter resulted in any prejudice. To the contrary, Accredited requested an additional six months to continue searching for an auditor, belying any suggestion that it could have found an auditor and filed its delinquent reports in the fifteen days provided for in the letter. Resp. Ex. A; Div. Ex. 1. Even if a U.S.-based auditor could have been engaged more quickly, Accredited has failed to provide any evidence suggesting that it could have located such an auditor, provided it with its books and records for the periods in question, and left the auditor with enough time to prepare six Forms 10-Q and two Forms 10-K, the reports that were delinquent at the time the letter was sent.⁹ *See* Div. Ex. 3.

Finally, even if Accredited were able to become current on its periodic filings within six months, the 120-day period allowed to decide this case would have lapsed. *See* OIP at 4; 17 C.F.R. § 201.360(a)(2). In any case, the Commission has made clear that becoming current does not mean that revocation will necessarily be avoided. *See Absolute Potential, Inc.*, Exchange Act Release No. 71866, 2014 SEC LEXIS 1193 (Apr. 4, 2014) (revoking the registration of a delinquent issuer despite it becoming current during summary disposition briefing). In *Absolute Potential*, the Commission emphasized the importance of deterring issuers “from disregarding their obligations to present accurate and timely information to the investing public until spurred

⁹ In the period between the issuance of the OIP and this Initial Decision, Accredited also failed to file Forms 10-Q for the periods ended June 30, 2014, and September 30, 2014. *See* Div. Ex. 2; *see also Nature’s Sunshine Prods.*, 2009 SEC LEXIS 81, at *22 n.27 (filing failures subsequent to the OIP may be considered in assessing appropriate sanctions).

by the institution of proceedings,” noting that “[d]eterrence is meaningful only if a lengthy delinquency, in the absence of strongly compelling circumstances regarding the other *Gateway* factors, results in revocation.” *Id.* at *24. I find that Accredited has failed to present any sufficiently compelling circumstances.

Considering the law and facts set forth above, it is necessary and appropriate for the protection of investors to revoke the registration of Accredited’s registered securities.

ORDER

It is hereby ORDERED that the Division of Enforcement’s Motion for Summary Disposition is GRANTED.

It is FURTHER 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 Accredited Business Consolidators Corp. 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.

Cameron Elliot
Administrative Law Judge