

Initial Decision Release No. 1150
Administrative Proceeding
File No. 3-17935

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

In the Matter of

**Biovest International, Inc.,
Olie, Inc. (n/k/a Syndicate
Business Development Corp.),
StarGate Entertainment, Inc., and
Three Sigma Ventures, Inc.**

**Initial Decision on Default as
to Biovest International, Inc.**
June 29, 2017

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

Before: Brenda P. Murray, Chief Administrative Law Judge

On April 20, 2017, the Securities and Exchange Commission issued an order instituting proceedings (OIP) pursuant to Section 12(j) of the Securities Exchange Act of 1934, alleging that Respondents have securities registered with the Commission pursuant to Section 12(g) of the Exchange Act and are delinquent in their periodic filings. The proceeding has ended as to all Respondents except Biovest International, Inc. *Biovest Int'l, Inc.*, Initial Decision Release No. 1143, 2017 SEC LEXIS 1721 (ALJ June 14, 2017). As of May 26, 2017, Biovest had indicated that it was willing to settle the proceeding.

Biovest was served with the OIP by May 1 and its answer was due by May 15, 2017. *Biovest Int'l, Inc.*, Admin. Proc. Rulings Release No. 4794, 2017 SEC LEXIS 1399 (ALJ May 11, 2017). Biovest did not file an answer or appear at the prehearing conference on May 18, 2017. On June 16, 2017, I ordered Biovest to show cause by June 26, 2017, why the registration of its securities should not be revoked by default due to its failure to file an answer, appear at the prehearing conference, or otherwise defend the proceeding. *Biovest Int'l, Inc.*, Admin. Proc. Rulings Release No. 4874, 2017 SEC LEXIS

1800. To date, Biovest has not filed an answer or responded to the show cause order.

Biovest is therefore in default for failing to file an answer, appear at the prehearing conference, or otherwise defend the proceeding. *See* OIP at 3; 17 C.F.R. §§ 201.155(a)(1)-(2), .220(f), .221(f). Accordingly, I find the allegations in the OIP to be true as to Biovest.

Findings of Fact

Biovest, Central Index Key No. 704384, is a void Delaware corporation located in Tampa, Florida, with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). The company 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 December 31, 2013, which reported a net loss of \$2.098 million for the prior three months.

In addition to its repeated failure to file timely periodic reports, Biovest failed to heed a delinquency letter sent to it by the Commission's Division of Corporation Finance requesting compliance with its periodic filing obligations or, through its failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letter.

Conclusions of Law

Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 require issuers of securities registered with the Commission pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in annual and quarterly reports, even if the registration is voluntary under Exchange Act Section 12(g). *See* 17 C.F.R. §§ 240.13a-1, .13a-13. Compliance with these reporting requirements is mandatory. *America's Sports Voice, Inc.*, Exchange Act Release No. 55511, 2007 SEC LEXIS 1241, at *12 (Mar. 22, 2007), *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 thereunder. *SEC v. McNulty*, 137 F.3d 732, 740-41 (2d Cir. 1998). By failing to timely file required annual and quarterly reports, Biovest 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 the registration 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. 15 U.S.C. § 78l(j). In determining what sanctions will adequately protect investors, 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 Int’l Holdings, Inc.*, Exchange Act Release No. 53907, 2006 SEC LEXIS 1288, at *19-20 (May 31, 2006).

Biovest’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. *Eagletech Commc’ns, Inc.*, Exchange Act Release No. 54095, 2006 SEC LEXIS 1534, at *12 (July 5, 2006) (quoting *SEC v. Beisinger Indus. Corp.*, 552 F.2d 15, 18 (1st Cir. 1977)). The violation is recurrent in that Biovest failed to file any periodic reports since 2014. *See Nature’s Sunshine Prods., Inc.*, Exchange Act Release No. 59268, 2009 SEC LEXIS 81, at *20 (Jan. 21, 2009) (respondent failed 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) (respondent’s failure to make eight filings over an eighteen-month period considered recurrent).

Biovest is culpable because it knew, or should have known, of its obligations to file periodic reports. *China-Biotics, Inc.*, Exchange Act Release No. 70800, 2013 SEC LEXIS 3451, at *37 & n.60 (Nov. 4, 2013) (holding that scienter is not necessary to establish grounds for revocation); *Robert L. Burns*, Investment Advisers Act of 1940 Release No. 3260, 2011 SEC LEXIS 2722, at *41 n.60 (Aug. 5, 2011) (stating that the Commission has “repeatedly held that ignorance of the securities laws is not a defense to liability thereunder”). By not participating in this proceeding, Biovest forfeited an opportunity to show it made efforts to remedy its past violations and to offer assurances against further violations.

On these facts, it is necessary and appropriate for the protection of investors to revoke the registration of each class of Biovest’s registered securities.

Order

I ORDER that, pursuant to Section 12(j) of the Securities Exchange Act of 1934, the registration of each class of registered securities of Biovest International, Inc., is REVOKED.¹

This initial decision shall become effective in accordance with and subject to the provisions of Rule of Practice 360. *See* 17 C.F.R. § 201.360. Pursuant to that Rule, I FURTHER ORDER that a party may file a petition for review of this initial decision within twenty-one days after service of the initial decision. *See* 17 C.F.R. § 201.360(b). A party may also file a motion to correct a manifest error of fact within ten days of the initial decision, pursuant to Rule of Practice 111. *See* 17 C.F.R. § 201.111. If a motion to correct a manifest error of fact is filed by a party, then a party shall have twenty-one days to file a petition for review from the date of the 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 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.

A respondent has the right to file a motion to set aside a default within a reasonable time, stating the reasons for the failure to appear or defend, and specifying the nature of the proposed defense. 17 C.F.R. § 201.155(b). The Commission can set aside a default at any time for good cause. *Id.*

Brenda P. Murray
Chief Administrative Law Judge

¹ This order applies to all classes of Biovest's securities registered under Section 12 of the Exchange Act, whether or not such securities are specifically identified by ticker symbol or otherwise in this initial decision.