

Initial Decision Release No. 1201
Administrative Proceeding
File No. 3-18038

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

In the Matter of
**Energy Edge Technologies Corp.,
Focus Gold Corp., and
New York Sub Co.**

**Initial Decision
as to New York Sub Co.**
October 25, 2017

Appearance: Kevin P. O'Rourke and Neil J. Welch, Jr., for the Division of Enforcement, Securities and Exchange Commission

Estevan R. Lucero for New York Sub Co.

Before: Cameron Elliot, Administrative Law Judge

SUMMARY

This initial decision revokes the registration of the registered securities of Respondent New York Sub Co. due to its failure to timely file required periodic reports with the Securities and Exchange Commission.

INTRODUCTION

On June 20, 2017, the Commission issued an order instituting proceedings (OIP) pursuant to Section 12(j) of the Securities Exchange Act of 1934. Respondents Energy Edge Technologies Corp. and Focus Gold Corp. defaulted and the proceeding has been resolved as to them. *See Energy Edge Techs. Corp.*, Initial Decision Release No. 1162, 2017 SEC LEXIS 2510 (Aug. 16, 2017).

The OIP alleges that Respondent New York Sub Co. has a class of securities registered with the Commission pursuant to Exchange Act Section 12(g) and is delinquent in its periodic filings. Respondent was served on June 22, 2017, and on July 18, 2017, it submitted two documents which I

construed, taken together, as its answer. *Energy Edge Techs. Corp.*, Admin. Proc. Rulings Release No. 4920, 2017 SEC LEXIS 2121 (ALJ July 19, 2017). Following a telephonic prehearing conference in which counsel for Respondent participated, I set a schedule for briefing summary disposition motions. *Energy Edge Techs. Corp.*, Admin. Proc. Rulings Release No. 4948, 2017 SEC LEXIS 2365 (ALJ Aug. 4, 2017). The Division of Enforcement timely filed a motion for summary disposition, which included a declaration of Neil J. Welch, Jr., and nine exhibits (Ex. 1-9). Respondent did not file an opposition, the Division did not file a reply, and the motion is ripe for decision.

A motion for summary disposition may be granted 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. 17 C.F.R. § 201.250(b). I have considered admissions made by Respondent, the Welch Declaration, and documentary evidence. *See id.* I have also taken official notice of the contents of Respondent's Commission filings pursuant to 17 C.F.R. § 201.323. Preponderance of the evidence has been applied as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 101-04 (1981). The filings, documents, and exhibits of record have been fully reviewed and carefully considered, and I have viewed the evidence in the light most favorable to Respondent. *See Jay T. Comeaux*, Securities Act of 1933 Release No. 9633, 2014 WL 4160054, at *2 (Aug. 21, 2014).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

New York Sub Co., Central Index Key No. 1498622, which was formerly known as Easy Organic Cookery, Inc., is a Nevada corporation domiciled in Altamonte Springs, Florida. *See Exs. 1, 2.* It registered its common stock with the Commission pursuant to Section 12(g) of the Exchange Act by filing a Form 8-A on November 17, 2011, and was formerly quoted on OTC Link under the stock symbol NSUB. *See Exs. 1, 9.* Although it filed a number of Forms 10-K and 10-Q over the succeeding four years, the company has not filed any periodic reports with the Commission since it filed a Form 10-Q on August 12, 2015. *See Ex. 2.*

Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports. Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports. *See 17 C.F.R. §§ 240.13a-1, .13a-13.* There is no genuine issue of material fact that Respondent failed to timely file periodic reports, and that it therefore violated Exchange Act Section 13(a) and Rules 13a-1 and 13a-13.

SANCTION

Under Exchange Act Section 12(j), the Commission is authorized to, among other things, revoke the registration of a security or suspend its 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. *See* 15 U.S.C. § 78l(j). In determining what sanction 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 WL 1506286, at *4 (May 31, 2006).

Two factors, seriousness and recurrence, are intertwined, because the “recurrent failure to file periodic reports” is in itself “serious.” *Impax Labs., Inc.*, Exchange Act Release No. 57864, 2008 WL 2167956, at *8 (May 23, 2008). In addition to the number of such recurring failures, the weighing of these first two *Gateway* factors involves at least four other considerations. First, failure to file a Form 10-K annual report is presumably more serious than failure to file a Form 10-Q quarterly report, because the Form 10-K conveys more information to the investing public than the Form 10-Q, and it is subject to audit rather than to the less searching interim review. *See* 17 C.F.R. § 210.10-01; 17 C.F.R. §§ 249.308a, .310; Auditing Standard No. 4105, ¶ 7 (PCAOB Release No. 2015-002, Mar. 31, 2015). Second, complete failure to file a periodic report is presumably more serious than untimely filing, and the seriousness of an untimely filing presumably increases in proportion to its lateness. Third, a pattern of non-filing that suggests the registrant has abandoned its duty to file is presumably more serious than a pattern that suggests mere inattentiveness. For instance, failure to file a Form 10-K for one fiscal year, followed by failure to file a Form 10-Q for the first quarter of the next fiscal year, is presumably more serious than failure to file a Form 10-K for one fiscal year, followed by failure to file a Form 10-Q two fiscal years later. *E.g.*, *Impax Labs., Inc.*, 2008 WL 2167956, at *7-8 (finding egregious registrant’s failure to file multiple periodic reports in a row). Fourth, a recent filing failure may be more serious than a temporally remote filing failure, because the harm from lack of disclosure can be mitigated by a later disclosure, even if untimely. *See Gallagher v. Abbott Labs.*, 269 F.3d 806, 810 (7th Cir. 2001) (“A registration statement and prospectus for a new issue of securities must be accurate when it is used to sell stock, and not just when it is filed.”).

One consideration that is not normally at issue, however, is Respondent's compliance with other securities laws. Section 12(j) permits the Commission to revoke an issuer's registration for "fail[ure] to comply with any provision" of the Exchange Act. 15 U.S.C. § 78l(j). But the Commission typically does not exercise its authority so broadly. Instead, it normally invokes Section 12(j) for alleged delinquent filing but not for other alleged misconduct, such as anti-fraud violations or false registration statements, and it institutes separate proceedings to adjudicate other Exchange Act violations. *See GO EZ Corp.*, Exchange Act Release No. 81694, 2017 WL 4231979 (Sept. 25, 2017) (OIP instituted under Section 12(j) after adjudication of administrative proceeding pursuant to Section 8(d) of the Securities Act); *China Ruitai Int'l Holdings Co.*, Initial Decision Release No. 651, 2014 WL 3835770, at *1, *6-7 (ALJ Aug. 5, 2014) (noting that the Commission instituted both a proceeding pursuant to Section 10(b) (among other laws) and a separate proceeding pursuant to Section 12(j) on the same day), *finality order*, Exchange Act Release No. 73292, 2014 WL 4925209 (Oct. 2, 2014). When the Commission has considered "matters that fall outside of the OIP in assessing appropriate sanctions," it has typically limited such matters to uncharged misconduct by corporate officers (which is relevant to evaluating the likelihood of future compliance) and to uncharged delinquent filings. *See Citizens Capital Corp.*, Exchange Act Release No. 67313, 2012 WL 2499350, at *7 (June 29, 2012); *Gateway Int'l Holdings, Inc.*, 2006 WL 1506286, at *5 & n.30. Therefore, an issuer's violation of securities laws other than Section 12(j) is normally not relevant to evaluating the seriousness and recurrence of any Section 12(j) violation, but may be considered insofar as it bears on other *Gateway* factors.

New York Sub Co.'s failures fall on the egregious end of all four considerations, because it has failed to file any Form 10-K or 10-Q since August 2015. *See Ex. 2.* There is no evidence mitigating these failures. Respondent's misconduct has therefore been both serious and recurrent, and "only a strongly compelling showing with respect to the other factors . . . would justify a lesser sanction than revocation." *Impax Labs.*, 2008 WL 2167956, at *8.

The other factors do not justify a lesser sanction. Respondent has a relatively "long history of ignoring . . . reporting obligations," which "evidences a 'high degree of culpability.'" *Calais Res., Inc.*, Exchange Act Release No. 67312, 2012 WL 2499349, at *4 (June 29, 2012); *see Gateway Int'l Holdings, Inc.*, 2006 WL 1506286, at *6 (respondent's "noncompliance with the periodic filing requirements for nearly a two-year period" shows that "it fail[ed] to appreciate the seriousness of its reporting obligations"). Furthermore, according to Respondent's Form 10-K for the fiscal year ended July 31, 2014, Respondent appointed Daniel R. Patterson as its sole officer

and director on July 15, 2014. *See* New York Sub Co., Annual Report at 20-21 (Form 10-K) (Nov. 13, 2014). But Patterson never filed a Form 3 disclosing his appointment, as required under Exchange Act Section 16(a) and rules thereunder. Ex. 2; 15 U.S.C. § 78p(a); 17 C.F.R. § 249.103. And the Commission warned Respondent in a letter dated November 30, 2016, that the present OIP might issue, but Respondent did not respond until after the Commission suspended trading in its stock in June 2017. *See* Exs. 3-6. Such omissions “bring[] into question the likelihood of the Company’s future compliance with Section 13(a) and the rules thereunder.” *Citizens Capital Corp.*, 2012 WL 2499350, at *7. Moreover, although Respondent’s counsel represented during the prehearing conference that he expected all of Respondent’s delinquent filings to be “ready by August 15,” they have not been filed. Prehr’g Tr. at 4; *see* Ex. 2. As of August 29, 2017, Respondent had not even formally engaged an auditor. *See* Welch Decl. at 2-3. Lastly, by declining to file an opposition to the motion, Respondent has offered no assurances against further violations.

Considering the *Gateway* factors, it is necessary and appropriate for the protection of investors to revoke the registration of each class of Respondent’s registered securities.

ORDER

It is ORDERED that, pursuant to Section 12(j) of the Securities Exchange Act of 1934, the registration of each class of registered securities of Respondent New York Sub Co. is REVOKED. This order applies to all classes of Respondent’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.

This initial decision shall become effective in accordance with and subject to the provisions of Rule 360, 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, 17 C.F.R. § 201.111(h). If a motion to correct a manifest error of fact is filed by a party, then any 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.

Also pursuant to Rule 360, this initial decision will not become final until the Commission enters an order of finality. 17 C.F.R. § 201.360(d). 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. *Id.* If any of these events occur, the initial decision shall not become final as to that party. *Id.*

Cameron Elliot
Administrative Law Judge