

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

In the Matter of
E-Waste Systems, Inc.

Initial Decision
November 21, 2017

Appearances: Sonia G. Torrico and Virginia M. Rosado Desilets
for the Division of Enforcement,
Securities and Exchange Commission

Martin Nielson for Respondent

Before: James E. Grimes, Administrative Law Judge

Introduction

The Securities and Exchange Commission initiated this proceeding in August 2017, when it issued an order instituting administrative proceedings (OIP) under Section 12(j) of the Securities Exchange Act of 1934.¹ The OIP alleges that E-Waste Systems, Inc., has a class of securities registered with the Commission under Exchange Act Section 12(g).² The OIP further alleges that E-Waste has not filed a periodic report since it filed a Form 10-Q for the period ended September 30, 2014.³ Based on these factual allegations, the OIP alleges that E-Waste is delinquent in meeting its periodic reporting obligations and has thus violated Exchange Act Section 13(a) and Exchange

¹ OIP at 1; *see* 15 U.S.C. § 78l(j).

² OIP at 1; *see* 15 U.S.C. § 78l(g).

³ OIP at 1.

Act Rules 13a-1 and 13a-13, which require public corporations to file annual and quarterly reports with the Commission.⁴ For the reasons below, I revoke the registrations of E-Waste’s securities.

Procedural History

E-Waste did not file an answer the OIP.⁵ As a result, I ordered it to show cause by September 8, 2017, why it should not be found in default.⁶ Although E-Waste did not respond to the order to show cause, its CEO, Martin Nielson, attended a telephonic prehearing conference on September 11, 2017.⁷ Based on Nielson’s representations, I granted E-Waste seven days to show cause and answer the OIP.⁸

Seven days later, E-Waste submitted a “response” to the OIP, in which it admitted that it is delinquent in meeting its filing obligations and that it failed to give the Commission its current address.⁹ It asserted that it “has made inquiries with . . . several PCAOB audit firms” about preparing E-Waste’s delinquent reports.¹⁰ E-Waste conceded, however, that it currently lacks the funds to pay an auditor.¹¹

E-Waste asserted that funds needed to pay for audit services “will have to be sourced from professional investors under terms, which they will certainly dictate.”¹² It estimated that it will take four to six weeks to raise the

⁴ OIP at 2; *see* 15 U.S.C. § 78m(a); 17 C.F.R. §§ 240.13a-1, .13a-13.

⁵ *See E-Waste Sys., Inc.*, Admin. Proc. Ruling Release No. 5010, 2017 SEC LEXIS 2663, at *1 (ALJ Aug. 29, 2017).

⁶ *Id.*

⁷ *E-Waste Sys., Inc.*, Admin. Proc. Ruling Release No. 5042, 2017 SEC LEXIS 2800, at *1 (ALJ Sept. 11, 2017).

⁸ *Id.*

⁹ Resp. at 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 1.

\$100,000 needed to pay auditors, up to eight weeks to complete the audits, and four more weeks to prepare the delinquent reports.¹³

E-Waste added that:

For [it] to raise such capital and implement the reporting program will require that [its] shares be allowed to trade in the marketplace, and the Company requests that this be allowed. There can be no assurance that the funding sources will become available, but in the absence of any trading volume of [E-Waste] common stock there is little to no chance that the funding will be available.¹⁴

After E-Waste submitted its response, I discharged the order to show cause and set a schedule for filing motions for summary disposition.¹⁵ The Division filed a motion for summary disposition, supported by exhibits A through M, which are discussed more fully below. E-Waste did not file an opposition or cross motion for summary disposition. The Division's motion is thus unopposed.¹⁶

Findings of Fact

The findings and conclusions in this initial decision are based on the record and on facts officially noticed under Commission Rule of Practice 323, 17 C.F.R. § 201.323, including E-Waste's filing history as reflected in the Commission's EDGAR database.¹⁷ I have deemed true those allegations in

¹³ Resp. at 1–2.

¹⁴ *Id.* at 2.

¹⁵ *E-Waste Sys., Inc.*, Admin. Proc. Ruling Release No. 5065, 2017 SEC LEXIS 2910, at *1–2 (ALJ Sept. 19, 2017).

¹⁶ The Division filed a “reply.” Because E-Waste did not file an opposition to the Division's motion, I have disregarded the Division's reply.

¹⁷ *See Am. Stellar Energy, Inc.*, Exchange Act Release No. 64897, 2011 WL 2783483, at *6 n.27 (July 18, 2011) (“Rule of Practice 323 . . . permits us to take official notice of information in the EDGAR database.”), *pet. dismissed*, 678 F.3d 557 (7th Cir. 2012).

the OIP that E-Waste did not deny.¹⁸ In making the findings below, I have applied preponderance of the evidence as the standard of proof.¹⁹

E-Waste, Central Index Key No. 1488309, is a revoked Nevada corporation located in Las Vegas, Nevada.²⁰ It adopted its current name in 2011.²¹ E-Waste registered its securities with the Commission under Exchange Act Section 12(g) in April 2012.²² By registering under Section 12, E-Waste incurred the obligation to file quarterly and annual reports with the Commission.²³

As E-Waste concedes, it has not filed a periodic report since it filed a Form 10-Q for the period ended September 30, 2014.²⁴ Including delinquent Forms 10-Q for the quarters ended June 30, 2017, and September 30, 2017, which were due after the Commission initiated this proceeding,²⁵ E-Waste has failed to file three consecutive annual Forms 10-K and nine consecutive quarterly Forms 10-Q. The last report that E-Waste filed stated:

The Company has incurred net losses of \$9,535,593 and \$4,707,375 during the nine months ended September 30,

¹⁸ See 17 C.F.R. § 201.220(c) (“Any allegation not denied shall be deemed admitted.”).

¹⁹ See *Vladislav Steven Zubkis*, Exchange Act Release No. 52876, 2005 WL 3299148, at *5 n.37 (Dec. 2, 2005).

²⁰ Div. Ex. D.

²¹ See *E-Waste Sys., Inc.*, Quarterly Report at F-6 (Form 10-Q) (May 6, 2011).

²² See *E-Waste Sys., Inc.*, Registration of Certain Classes of Securities (Form 8-A) (Apr. 17, 2012).

²³ See *Accredited Bus. Consolidators Corp.*, Exchange Act Release No. 75840, 2015 WL 5172970, at *2 (Sept. 4, 2015).

²⁴ Resp. at 1; see Div. Exs. K–L; Div. Ex. M at 462.

²⁵ Forms 10-Q are due no later than 45 days after the end of the fiscal period. See 17 C.F.R. §§ 240.13a-13(a), 249.308a(a)(1). Violations that postdate an OIP may be considered when determining a suitable sanction. See *Nature’s Sunshine Prods., Inc.*, Exchange Act Release No. 59268, 2009 WL 137145, at *6 n.27 (Jan. 21, 2009).

2014 and 2013, respectively. Cash on hand will not be sufficient to cover debt repayments scheduled as of September 30, 2014, and operating expenses and capital expenditure requirements for at least twelve months from the consolidated balance sheet date. As of September 30, 2014 and December 31, 2013, the Company had working capital deficits of \$5,726,923 and \$3,253,407, respectively. In order to continue as a going concern, the Company will need, among other things, additional capital resources. Management's plan is to seek equity and/or debt financing. However, management cannot provide any assurances that the Company will be successful in accomplishing any of its plans.²⁶

In December 2016, the Commission's Division of Corporation Finance sent E-Waste a delinquency letter concerning its failure to meet its reporting obligations.²⁷ Because it failed to maintain a current address on file with the Commission, E-Waste did not receive this letter.²⁸

E-Waste is currently listed on OTC Link operated by OTC Market Groups Inc., but the company is denoted a "grey market" due to lack of current information, and its stock is not quoted.²⁹

Conclusions of Law

Rule of Practice 250(b) governs motions for summary disposition in proceedings brought under Section 12(j).³⁰ Under Rule 250(b), an administrative law judge "may grant [a] 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 a summary disposition as a matter of law."³¹

²⁶ E-Waste Sys., Inc., Quarterly Report at F-4 (Form 10-Q) (Nov. 14, 2014).

²⁷ See Torrico Decl. at 2; Div. Exs. H, I.

²⁸ See Resp. at 1; Torrico Decl. at 2; Div. Exs. H, I; 17 C.F.R. § 201.220(c); OIP at 1-2.

²⁹ OTC Mkts. Grp., *EWSI: E-Waste Systems, Inc.*, OTCMarkets, <https://www.otcm Markets.com/stock/EWSI/quote> (last visited Nov. 21, 2017).

³⁰ See 17 C.F.R. § 201.250(b).

³¹ *Id.*

“[S]ummary disposition is appropriate in proceedings . . . brought” under “Exchange Act Section 12(j), where the issuer has not disputed the facts that constitute the violation.”³² E-Waste concedes that it failed to timely file any periodic report since it filed its Form 10-Q for the period ended September 30, 2014.³³ Summary disposition is thus appropriate.

Under Exchange Act Section 13(a) and Rules 13a-1 and 13a-13, the issuer of any security registered with the Commission under Section 12 of the Exchange Act must file annual and quarterly reports with the Commission.³⁴ This requirement serves to “protect[] . . . investors and . . . insure fair dealing’ in the company’s securities.”³⁵ Scierter is not required to establish a violation.³⁶

Because E-Waste is the issuer of securities registered with the Commission under Section 12, it was required to file annual and quarterly reports with the Commission.³⁷ But it failed to file twelve consecutive required periodic reports over a three-year period. As a result, E-Waste failed to comply with Section 13(a) and Rules 13a-1 and 13a-13.

The Commission may, “as it deems necessary or appropriate for the protection of investors,” revoke or suspend for up to twelve months the registration of a security if it finds that the issuer of the “security has failed to comply with *any* provision of” the Exchange Act or rules thereunder.³⁸ Given E-Waste’s three-year failure to comply with its periodic filing

³² *Citizens Capital Corp.*, Exchange Act Release No. 67313, 2012 WL 2499350, at *8 (June 29, 2012).

³³ Resp. at 1; *see* 17 C.F.R. § 201.220(c).

³⁴ 15 U.S.C. § 78m(a); 17 C.F.R. §§ 240.13a-1, .13a-13(a).

³⁵ *China-Biotics, Inc.*, Exchange Act Release No. 70800, 2013 WL 5883342, at *10 (Nov. 4, 2013) (quoting 15 U.S.C. § 78m(a)).

³⁶ *Id.* at *10 n.60.

³⁷ 15 U.S.C. § 78m(a); 17 C.F.R. §§ 240.13a-1, .13a-13(a).

³⁸ 15 U.S.C. § 78l(j) (emphasis added); *Advanced Life Scis. Holdings, Inc.*, Securities Act Release No. 81253, 2017 WL 3214455, at *2 (July 28, 2017).

requirements under the Act, the registration of the company's securities is subject to suspension or revocation.³⁹

Sanctions

The Commission considers a number of factors when it determines the appropriate sanction in proceedings under Exchange Act Section 12(j) involving violations of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13. These factors include “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.”⁴⁰ This list of *Gateway* factors “is non-exclusive and no single factor is dispositive.”⁴¹

A. Consideration of the *Gateway* factors supports revocation.

1. E-Waste’s failures are serious. The requirement that issuers file periodic reports is “a central provision of the Exchange Act.”⁴² The periodic reporting requirements exist “to supply the investing public with current, accurate financial information about an issuer so that investors may make informed decisions.”⁴³ Indeed, periodic reports are among “the primary sources of information available to guide the decisions of the investing public.”⁴⁴

When an issuer fails to meet its reporting obligations, it “depriv[es] both existing and prospective holders of its registered stock of the ability to make

³⁹ See *Advanced Life*, 2017 WL 3214455, at *3.

⁴⁰ *Gateway Int’l Holdings, Inc.*, Exchange Act Release No. 53907, 2006 WL 1506286, at *4 (May 31, 2006).

⁴¹ *China-Biotics*, 2013 WL 5883342, at *12.

⁴² *Advanced Life*, 2017 WL 3214455, at *3.

⁴³ *Am. Stellar Energy*, 2011 WL 2783483, at *5.

⁴⁴ *United States v. Arthur Young & Co.*, 465 U.S. 805, 810 (1984); see *America’s Sports Voice*, Exchange Act Release No. 55511, 2007 WL 858747, at *4 n.17 (Mar. 22, 2007) (“[r]eporting requirements are the primary tools ... for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of stock and securities.”) (citation omitted).

informed investment decisions based on current and reliable information” about the issuer.⁴⁵ An issuer’s “recurrent failure” to meet its reporting obligations is thus “so serious that only a strongly compelling showing with respect to the other [*Gateway*] factors . . . would justify a lesser sanction than revocation.”⁴⁶

E-Waste has not filed a required periodic report in over three years, a period encompassing twelve consecutive reports. E-Waste’s ongoing failure to fulfill its reporting obligation has deprived the investing public of important information to which it is entitled. To make matters worse, E-Waste’s silence followed a Form 10-Q reporting significant financial problems.⁴⁷ Both current and potential investors have been left for an extended period to guess as to E-Waste’s financial status. Given the foregoing, E-Waste’s violations are serious.⁴⁸

2. From 2014 to the present, E-Waste has not filed any of the twelve quarterly and annual reports it was required to file. E-Waste’s delinquencies were thus recurrent and were not isolated.⁴⁹

3. E-Waste’s failure to file its reports reflects a “high degree of culpability.”⁵⁰ E-Waste knew that it was required to file periodic reports; the

⁴⁵ *Advanced Life*, 2017 WL 3214455, at *3.

⁴⁶ *Impax Labs., Inc.*, Exchange Act Release No. 57864, 2008 WL 2167956, at *8 (May 23, 2008).

⁴⁷ See *E-Waste Systems, Inc.*, Quarterly Report at F-4 (Form 10-Q) (Nov. 14, 2014).

⁴⁸ Cf. *Accredited*, 2015 WL 5172970, at *2 (holding that not filing “any periodic reports for over two years” were serious violations); *China-Biotics*, 2013 WL 5883342, at *10 (finding a respondent’s “violations were serious,” where it failed to “file a single periodic report for more than a year and a half”); *Impax Labs.*, 2008 WL 2167956, at *7-8 (holding that the failure to file eight reports was serious).

⁴⁹ See *Accredited*, 2015 WL 5172970, at *2 (no reports for two years was deemed recurrent); *Impax Labs.*, 2008 WL 2167956, at *7 (eight missing reports during the time period covered by the OIP); *Gateway*, 2006 WL 1506286, at *5 (seven missing reports).

⁵⁰ *Absolute Potential, Inc.*, Exchange Act Release No. 71866, 2014 WL 1338256, at *4 (Apr. 4, 2014).

Commission's EDGAR database reflects that after it first registered its securities, E-Waste consistently filed periodic reports. It nonetheless failed to file twelve consecutive reports. E-Waste also largely failed to comply with the mandatory requirement to file a Form 12b-25 seeking an extension and "disclos[ing] . . . its inability to" timely file periodic reports when it was unable to file a Form 10-Q or 10-K.⁵¹ These failures reflect a lack of concern for the investing public and demonstrate E-Waste's culpability.⁵²

4. E-Waste has not taken effective steps to remedy its past violations. When the Commission instituted this proceeding, E-Waste had ten outstanding reports. As of the date of this initial decision, the number of outstanding reports has grown to twelve.

Two months ago, E-Waste proposed a timeline during which it hoped to raise funds to retain an auditor so that it could eventually file all of its delinquent reports. Since then, it failed to oppose the Division's dispositive motion and has submitted nothing to show that it has taken steps to raise the necessary funds, let alone moved toward curing its delinquencies.

5. There is no evidence that E-Waste has taken any steps to ensure its future compliance with its reporting obligations. To the contrary, it has not bothered to oppose the Division's dispositive motion. E-Waste's failure to oppose after I gave it a second chance to participate in this proceeding, in combination with its financial condition, suggests that it will not be able to achieve and maintain compliance in the future.

B. No other factors weigh in E-Waste's favor.

In its response to the order to show cause, E-Waste says that its ability to become current will depend on its ability to raise funds "from professional investors," but concedes that it can provide "no assurance that" it will be able

⁵¹ See 17 C.F.R. § 240.12b-25(a). In determining the "appropriate sanction," the Commission considers a delinquent issuer's failure to file Forms 12b-25. See *Accredited*, 2015 WL 5172970, at *3 n.17. E-Waste filed only one Form 12b-25 during its period of delinquency, regarding its Form 10-K for the year ended December 31, 2014. Div. Ex. J.

⁵² See *Accredited Bus.*, 2015 WL 5172970, at *3 ("That Accredited knew of its reporting obligations but failed to comply with them is evidence of a high degree of culpability."); *Absolute Potential*, 2014 WL 1338256, at *4 (noting an issuer's failures over a period of years to file periodic reports or Forms 12b-25).

to do so.⁵³ Given E-Waste’s failure to oppose the Division’s motion for summary disposition, it is evident that E-Waste has either lost interest in the outcome of this proceeding or has been unsuccessful in its attempts to raise funds. Neither possibility weighs in favor of an outcome other than revocation.

In its response, E-Waste also says that it “believes that it is in the best interests of independent shareholders that it be given this opportunity to restore its fully reporting status and then to carry on [its] business plan.”⁵⁴ The argument that revocation will harm current shareholders is a refrain frequently heard in cases brought under Section 12(j).⁵⁵ Possible harm to existing shareholders, however, is not “the determining factor” in cases brought under Section 12(j).⁵⁶ Instead, the Commission’s concern focuses on the fact that both current and potential shareholders of delinquent issuers face ongoing harm resulting from the “continuing lack of current and reliable financial information for the Company” that would allow investors to make informed decisions.⁵⁷ And focusing only on current shareholders ignores the harm to potential shareholders “who can be substantially hindered in their ability to evaluate an issuer in the absence of current filings.”⁵⁸

For the reasons described above, I find that E-Waste has not made a “strongly compelling showing . . . [that] would justify a lesser sanction than revocation.”⁵⁹ It is therefore necessary and appropriate for the protection of investors to revoke the registration of each class of E-Waste’s registered securities.

⁵³ Resp. at 1–2.

⁵⁴ *Id.* at 2.

⁵⁵ See *Impax Labs.*, 2008 WL 2167956, at *10; *America’s Sports Voice*, 2007 WL 858747, at *4.

⁵⁶ *America’s Sports Voice*, 2007 WL 858747, at *4.

⁵⁷ *Id.*; see *Impax Labs.*, 2008 WL 2167956, at *10.

⁵⁸ *America’s Sports Voice*, 2007 WL 858747, at *4.

⁵⁹ *Impax Labs.*, 2008 WL 2167956, at *8.

Order

The Division's motion for summary disposition is GRANTED and, under Section 12(j) of the Securities Exchange Act of 1934, the registration of each class of registered securities of E-Waste Systems, Inc., is hereby REVOKED.⁶⁰

This initial decision shall become effective in accordance with and subject to the provisions of Rule 360, 17 C.F.R. § 201.360. Under 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. 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 undersigned's order resolving such motion to correct a manifest error of fact.

This 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.

James E. Grimes
Administrative Law Judge

⁶⁰ This order applies to all classes of E-Waste'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.