

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

Administrative Proceedings Rulings
Release No. 6393 / December 10, 2018

Administrative Proceeding
File No. 3-18017

In the Matter of

**Can-Cal Resources Ltd.,
China Fruits Corp., and
SkyStar Bio-Pharmaceutical Co.**

**Order Requesting
Additional Briefing**

After this proceeding was reassigned to me, the Division of Enforcement and Respondent Can-Cal Resources Ltd. submitted a joint proposal agreeing that further proceedings as to Can-Cal should take place on the existing summary disposition record. The parties also filed additional briefing. Can-Cal's supplemental brief argued that it has become current in its periodic reports with the Securities and Exchange Commission, and despite its prior failings, the registration of its securities should not be revoked or suspended. Can-Cal Supp. Opp'n at 2-3 (Oct. 17, 2018). It attached its Form 10-Q for the quarterly period ended June 30, 2018.¹ The Division's submission simply argued that even though Can-Cal has "come back into compliance with its filings of periodic reports," its securities must be revoked because of its lengthy period of non-compliance under the Commission's opinion in *Absolute Potential, Inc.*, Securities Exchange Act of 1934 Release No. 71866, 2014 SEC LEXIS 1193 (Apr. 4, 2014). Div. Reply to Can-Cal's Supp. at 1 (Oct. 31, 2018).

However, there are factors that distinguish the present situation from the one in *Absolute Potential*. *Absolute* was a shell company with only \$27 in total assets and an accumulated deficit of over \$1.9 million. *Absolute*

¹ I take official notice of the fact that Can-Cal has since filed its quarterly report for the period ended September 30, 2018. Can-Cal Res. Ltd., Quarterly Report (Form 10-Q) (Nov. 14, 2018) ("Sept. 30, 2018, 10-Q"); 17 C.F.R. § 201.323.

Potential, Inc., 2014 SEC LEXIS 1193, at *3. Absolute’s one employee presented an unilluminating explanation of why the company ignored its reporting obligations until it was faced with a revocation proceeding, and two of the company’s latest quarterly reports contained inaccuracies. *Id.* at *4, *14, *17. Moreover, the Commission did not find the company’s assurances that it would continue to receive sufficient funding to complete future reports to be credible; although another company had expressed willingness to “provide extensive financial support, through loans, it was not legally bound to do so.” *Id.* at *21. The Commission concluded that “Absolute’s protracted delinquencies, unpersuasive explanations for those delinquencies, and the absence of concrete remedial changes to ensure compliance demonstrate that Absolute is likely to violate the reporting requirements in the future regardless of the viability of its funding resources.” *Id.* (footnote omitted).

The facts here may be distinguishable. Can-Cal appears to have come back into compliance with its reporting obligations and has been filing new reports in a timely fashion for the better part of a year. Can-Cal is not a shell company, but is receiving revenue from a property it owns. The company’s most recent 10-Q states that the material supply agreement approved by court order in its recent settlement of a shareholder lawsuit, “sets out immediate and future lava product sales to [Candeo Lava Products Inc.], the receipts of which will cover accounts payables as well as near term basic operating costs.” Sept. 30, 2018, 10-Q at 18. Further, Can-Cal’s reason for its years of delinquency is reasonably concrete. Its chairman represents that the company did not have funding to file reports because of the shareholder litigation, which has now concluded. Can-Cal Opp’n, Decl. of Casey Douglass, at 2 (Jan. 5, 2018). Finally, Can-Cal’s chairman represents that the court-approved settlement agreement the company entered into in resolving the shareholder lawsuit “includes language that will ensure Can-Cal will not fall behind in its obligations to file regular reports with the Commission in the future.” *Id.*²

Can-Cal’s completion of its delinquent filings and its recent timely reports are encouraging, but several considerations relevant to the public interest analysis are underdeveloped in the current record, such as the specific circumstances that led to Can-Cal’s reporting delinquency, the extent to which the court-ordered settlement agreement ensures Can-Cal’s future compliance with its reporting obligations, the company’s financial outlook in the near- and long-term, and its internal controls to prevent future delinquency. Accordingly, I direct Can-Cal to file a supplemental brief.

² It is not completely clear, however, what language in the settlement agreement Mr. Douglass is referring to.

Further, in its reply to Can-Cal's initial opposition, the Division stated that it is unaware of a suspension under Section 12(j) of the Exchange Act ever being issued and that a suspension would be impractical. Div. Reply at 3 (Jan. 16, 2018). Since I wish to consider the full range of options available to me, I direct the Division to file an additional brief which, in addition to addressing any issues raised in Can-Cal's supplemental brief, also addresses why suspension is an impractical remedy.

Finally, the relief Can-Cal is seeking—dismissal of the proceeding—is unavailable given the current procedural posture of the case. The Division has filed a motion for summary disposition, which Can-Cal has opposed, but Can-Cal has not filed its own summary disposition motion. If I deny the Division's motion, the case will have to proceed to hearing. *S.W. Hatfield, CPA*, Exchange Act Release No. 73763, 2014 SEC LEXIS 4691, at *10 (Dec. 5, 2014) (“[W]here a respondent has not filed its own Rule 250 motion, our rules make no express provision for the law judge to sua sponte dismiss the proceeding without a hearing . . .”).

I ORDER Can-Cal to file a supplemental brief by January 4, 2019. The Division shall respond to Can-Cal's filing by January 16, 2019.

Cameron Elliot
Administrative Law Judge