

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 9645 / September 10, 2014**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 73067 / September 10, 2014**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16096**

**In the Matter of**

**GARY H. RABIN,**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTION 8A OF THE SECURITIES ACT  
OF 1933 AND SECTION 21C OF THE  
SECURITIES EXCHANGE ACT OF 1934,  
MAKING FINDINGS, AND IMPOSING A  
CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Gary H. Rabin (“Rabin” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. These proceedings arise out of violations of the beneficial ownership reporting requirements of the federal securities laws. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity securities, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

2. While subject to these reporting requirements as an officer and director of Advanced Cell Technology, Inc. ("Advanced Cell"), Rabin violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder on multiple occasions by failing to timely or accurately file reports of his transactions and holdings in Advanced Cell's securities.

3. Rabin also violated Sections 17(a)(2) and 17(a)(3) of the Securities Act by failing to timely or accurately file reports of transactions and holdings in Advanced Cell's securities and by signing Advanced Cell's Forms 10-K and proxy statements that were false in that they failed to disclose Rabin's untimely or missing Section 16(a) reports. Rabin likewise violated Section 14(a) of the Exchange Act and Rule 14a-9, and caused Advanced Cell's violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder.

#### Respondent

4. **Gary H. Rabin ("Rabin" or "Respondent")**, age 48, resides in Santa Monica, California. Rabin began serving as a director of Advanced Cell in 2007; as interim CEO, CFO and chairman of the board of Advanced Cell in December 2010; and as permanent CEO, CFO and chairman of the board in July 2011. On January 21, 2014, Rabin left all of his positions with Advanced Cell when the company did not renew his contract. At all relevant times, Rabin participated in the offering of Advanced Cell stock, a penny stock. Before joining Advanced Cell,

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Rabin was employed by various investment banking firms and hedge funds. Rabin obtained a Series 7 license in 1989, a Series 63 license in 1990, and a Series 24 license in 2003.

**Issuer**

5. **Advanced Cell** is a Delaware corporation with its principal place of business in Marlborough, Massachusetts. Advanced Cell’s common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and is quoted on the OTC Bulletin Board under the symbol “ACTC.” On June 20, 2011, Advanced Cell filed a registration statement on Form S-8 that incorporated by reference all future annual reports and proxy statements to be filed by Advanced Cell until the filing of a post-effective amendment ending the securities offering. Advanced Cell has not yet filed such a post-effective amendment ending the securities offering.

**Respondent Failed To File Required Section 16(a) Reports on a Timely Basis**

6. After becoming a director of Advanced Cell in December 2007, Rabin repeatedly failed to timely file reports with the Commission required by Section 16(a) of the Exchange Act reflecting his holdings and transactions in Advanced Cell stock. Within ten days of his appointment as a director, in this case, no later than January 7, 2008, Rabin was required to file a Form 3 disclosing whether he owned any securities in Advanced Cell and, if so, how many shares he owned. Rabin never filed that required Form 3.

7. Rabin’s noncompliance with Section 16(a)’s reporting requirements continued after he became Advanced Cell’s interim CEO, CFO, and chairman in December 2010, and permanent CEO, CFO, and chairman effective July 1, 2011. From February 2010 to the end of June 2012, Rabin never made a timely filing of his Section 16(a) required reports. Specifically, during this period Rabin late filed Forms 4 reporting the following 11 transactions:

<b><u>Date of Trans.</u></b>	<b><u>Due Date</u></b>	<b><u>Date Filed</u></b>	<b><u>No. of Days Late</u></b>	<b><u>Trans. Type</u></b>	<b><u>No. of Shares</u></b>	<b><u>Gross Proceeds</u></b>
2/4/2010	2/8/2010	5/4/2010	85	Acquisition	5,890,993	NA
12/14/2010	12/16/2010	2/8/2011	54	Acquisition	5,000,000 + Misc. Stock Options	NA
1/3/2011	1/5/2011	2/8/2011	34	Acquisition	5,000,000	NA
3/15/2011	3/17/2011	5/25/2011	69	Sale	1,196,000	\$192,415.80
3/17/2011	3/21/2011	5/25/2011	65	Sale	4,000	628.00
5/20/2011	5/24/2011	6/3/2011	10	Sale	750,000	\$150,525.00
7/1/2011	7/6/2011	8/25/2011	50	Acquisition	10,000,000 + Misc. Stock Options	NA

<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>	<u>No. of Days Late</u>	<u>Trans. Type</u>	<u>No. of Shares</u>	<u>Gross Proceeds</u>
6/11/2012	6/13/2012	6/19/2012	6	Sale	175,029	\$13,127.18
6/13/2012	6/15/2012	6/19/2012	4	Sale	300,000	\$21,240.00
6/14/2012	6/18/2012	6/19/2012	1	Sale	350,000	\$25,095.00
6/29/2012	7/3/2012	7/9/2012	6	Acquisition	1,000,000	NA

8. From February 2011 through January 2013, Rabin completely failed to file the reports he was required by Section 16(a) to file regarding his sales of Advanced Cell stock on 27 separate trading days. Indeed, even as Rabin was filing some untimely Forms 4, as noted above, those Forms 4 did not disclose all of his sales of Advanced Cell stock. These undisclosed sales included, in aggregate, the sale of 12,115,963 shares of Advanced Cell stock for proceeds of \$1,508,506.75. These sales constituted 66.9% of Rabin's holdings in Advanced Cell stock. Rabin reported the 27 sales late in a Form 4 filed on April 15, 2013:

<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>	<u>No. of Days Late</u>	<u>No. of Shares</u>	<u>Gross Proceeds</u>
2/7/2011	2/9/2011	4/15/2013	796	250,000	\$48,700.00
2/9/2011	2/11/2011	4/15/2013	794	250,000	\$47,225.00
2/28/2011	3/2/2011	4/15/2013	775	390,993	\$68,071.88
4/26/2011	4/28/2011	4/15/2013	718	733,102	\$130,125.61
5/4/2011	5/6/2011	4/15/2013	710	266,898	\$51,938.35
8/9/2011	8/11/2011	4/15/2013	613	667,000	\$110,321.80
8/10/2011	8/12/2011	4/15/2013	612	135,100	\$21,940.24
8/11/2011	8/15/2011	4/15/2013	609	707,913	\$115,956.15
8/12/2011	8/16/2011	4/15/2013	608	539,987	\$91,689.79
10/12/2011	10/14/2011	4/15/2013	549	491,650	\$71,387.58
10/13/2011	10/17/2011	4/15/2013	546	787,429	\$111,657.43
10/14/2011	10/18/2011	4/15/2013	545	720,920	\$104,389.22
1/23/2012	1/25/2012	4/15/2013	446	625,000	\$109,500.00
5/3/2012	5/7/2012	4/15/2013	343	199,910	\$16,652.50
5/7/2012	5/9/2012	4/15/2013	341	122,000	\$9,821.00
5/11/2012	5/15/2012	4/15/2013	335	290,000	\$20,793.00

<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>	<u>No. of Days Late</u>	<u>No. of Shares</u>	<u>Gross Proceeds</u>
5/14/2012	5/16/2012	4/15/2013	334	388,090	\$26,584.17
5/24/2012	5/29/2012	4/15/2013	321	95,471	\$7,666.32
5/25/2012	5/30/2012	4/15/2013	320	80,000	\$6,440.00
5/29/2012	5/31/2012	4/15/2013	319	24,500	\$1,960.00
6/15/2012	6/19/2012	4/15/2013	300	350,000	\$25,375.00
8/27/2012	8/29/2012	4/15/2013	229	1,000,000	\$78,400.00
9/5/2012	9/7/2012	4/15/2013	220	608,556	\$50,023.30
9/6/2012	9/10/2012	4/15/2013	217	391,444	\$32,098.41
10/22/2012	10/24/2012	4/15/2013	173	350,000	\$25,025.00
10/23/2012	10/25/2012	4/15/2013	172	650,000	\$45,565.00
1/10/2013	1/14/2013	4/15/2013	91	1,000,000	\$79,200.00
<b>TOTAL</b>				<b>12,115,963</b>	<b>\$1,508,506.75</b>

9. Rabin never filed annual Forms 5 regarding his initial holdings of Advanced Cell stock or his transactions in Advanced Cell stock in 2011 and 2012. Rabin was required to file annual Forms 5 no later than February 14, 2009, 2012, and 2013 respectively, because of his untimely and unfiled Form 3 and Forms 4.

10. Pursuant to Section 16(a), Rabin was required to timely disclose his transactions in Advanced Cell stock. There was a substantial likelihood that the disclosure of Rabin's sales of Advanced Cell stock would have been viewed by a reasonable investor as significantly altering the total mix of available information given, among other things, Rabin's position as CEO, the frequency with which he was selling Advanced Cell stock, and the number of shares and gross proceeds from his sales, particularly in relation to his holdings.

11. Notwithstanding Rabin's Section 16(a) noncompliance, Advanced Cell's fiscal year 2011 Form 10-K, filed on March 1, 2012, falsely states that:

[T]he Company believes that during its fiscal year ended December 31, 2011, all Reporting Persons timely complied with all applicable filing requirements, except that Form 3s were not timely filed for [three new directors] and have since been filed.

This statement in the fiscal year 2011 Form 10-K was false and misleading as to Rabin's compliance for at least two reasons: (1) Rabin had untimely filed three Forms 4 during 2011 disclosing his three acquisitions and three sales of Advanced Cell stock, and (2) Rabin had sold Advanced Cell stock twelve times in 2011 without filing any reports disclosing such sales which

were required under Section 16(a). Rabin nevertheless signed the fiscal year 2011 Form 10-K, and continued to sell Advanced Cell stock while these materially false and misleading statements were outstanding.

12. Rabin also signed preliminary and definitive proxy statements filed by Advanced Cell, which contained false and misleading statements identical to the above statement in the 2011 Form 10-K, on March 1, 2012 and March 12, 2012 (collectively, the “2012 Proxy Statement”).

13. Advanced Cell made similar misstatements in its fiscal year 2012 Form 10-K, filed on March 7, 2013. That Form stated that during the fiscal year ended December 31, 2012: “Gary Rabin, our Chairman and Chief Executive Officer, filed Forms 4 late with respect to four transactions,” but failed to disclose that Rabin had never reported selling Advanced Cell stock on fourteen other trading days in 2012. Rabin nevertheless signed the fiscal year 2012 Form 10-K.

14. Rabin’s failures to timely disclose his transactions in Section 16(a) reports, and the false and misleading statements in Advanced Cell’s Forms 10-K and 2012 Proxy Statement regarding Rabin’s compliance with the reporting requirements of Section 16(a) were material. Item 405 of Regulation S-K requires an issuer to disclose the Section 16(a) reporting violations of its insiders in its annual proxy statement and annual report in a clearly marked section. See 17 CFR 229.405(a). Rabin’s sales would have been viewed by a reasonable investor as significantly altering the total mix of available information given, among other things, his position as CEO, the frequency with which he was selling Advanced Cell stock, and the size of his sales.

15. Rabin was negligent in: (1) signing and certifying Advanced Cell’s fiscal year 2011 Form 10-K and fiscal year 2012 Form 10-K, and in signing its 2012 Proxy Statement because he failed to act with reasonable care in ensuring that these filings included all material information necessary to make the filings not misleading with regard to whether he had complied with Section 16(a); and (2) failing to act with reasonable care to ensure that he timely file required reports pursuant to Section 16(a) of the Exchange Act.

16. As a result of the conduct described above, Rabin violated Section 17(a)(2) of the Securities Act, which prohibits obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in the offer or sale of securities.

17. As a result of the conduct described above, Rabin violated Section 17(a)(3) of the Securities Act, which prohibits engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit in the offer or sale of securities.

18. As a result of the conduct described above, Rabin violated Section 14(a) of the Exchange Act and Rule 14a-9 thereunder, which prohibit the use of proxy statements containing false or misleading statements with respect to any material fact or which omit to state any material fact necessary in order to make the statements therein not false or misleading.

19. As a result of the conduct described above, Rabin violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder, which require timely and accurate filings of Forms 3, 4, and 5 with the Commission.

20. As a result of the conduct described above, Rabin caused Advanced Cell's violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 12b-20 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission information, documents, and annual reports as the Commission may require, and mandate that periodic reports contain such further material information as may be necessary to make the required statements not misleading.

#### IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Rabin's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act and Sections 13(a), 14(a), and 16(a) of the Exchange Act and Rules 12b-20, 13a-1, 14a-9, and 16a-3 thereunder.

B. Respondent shall pay civil penalties of \$175,000 to the Securities and Exchange Commission. Payment shall be made in the following installments: \$45,000 within five days of entry of this Order; \$32,500 within 180 days of entry of this Order; \$32,500 within 240 days of entry of this Order; \$32,500 within 300 days of entry of this Order; and \$32,500 within 360 days of entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance plus any additional interest accrued pursuant to 31 U.S.C. 3717 shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Rabin as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Lorraine B. Echavarria, Associate Regional Director, Securities and Exchange Commission, 444 S. Flower St., 11<sup>th</sup> Floor, Los Angeles, CA 90071.

By the Commission.

Jill M. Peterson  
Assistant Secretary