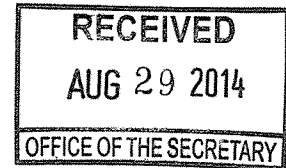


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15942



In the Matter of

Cepheus Acquisition Corp., *et al.*,

Respondents.

**DIVISION OF ENFORCEMENT'S
MOTION FOR SUMMARY DISPOSITION AND BRIEF IN SUPPORT**

Neil J. Welch, Jr.
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-6010
(202) 551-4731

COUNSEL FOR
DIVISION OF ENFORCEMENT

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MOTION FOR SUMMARY DISPOSITION

The Division of Enforcement (“Division”), by counsel, pursuant to Commission Rules of Practice 154 and 250, respectfully moves for an order of summary disposition against China Integrated Energy, Inc. (“China Integrated”) on the grounds that there is no genuine issue with regard to any material fact, and that pursuant to Section 12(j) of the Securities Exchange Act of 1934 (“Exchange Act”), the Division is entitled, as a matter of law, to an order revoking each class of securities of China Integrated registered with the Commission pursuant to Exchange Act Section 12.

BRIEF IN SUPPORT

I. Statement of Facts

China Integrated is a Delaware corporation located in Xi’an, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(b). (OIP, ¶ II.A.3; China Integrated Answer, ¶ II.1; Westlaw printout of China Integrated status with Delaware Secretary of State, attached as Exhibit (“Ex.”) 1 to the Declaration of Neil J. Welch, Jr. in Support of the Division’s Motion for Summary Disposition (“Welch Decl.”)).

On March 10, 2014, the Commission’s Division of Corporation Finance (“Corporation Finance”) sent a delinquency letter by certified mail to China Integrated. The delinquency letter stated that China Integrated appeared to be delinquent in its periodic filings and warned that it could be subject to revocation without further notice if it did not file its required reports within fifteen days of the date of the letter. (Delinquency Letter from Corporation Finance to China Integrated dated March 10, 2014, Welch Decl., Ex. 2.) The delinquency letter was received by China Integrated,

which responded to Corporation Finance through a letter from its counsel dated April 25, 2014. (China Integrated Answer, pp. 7-8, and attached letter from Eugene Licker, Esq. dated April 25, 2014.)

As of August 29, 2014, China Integrated continued to be delinquent in its periodic reports, and had not filed the required Form 8-K announcing the engagement of the second auditor which the company's counsel indicated would be necessary for the company to become current by October 31, 2014. (EDGAR printout of all filings for China Integrated, Welch Decl., Ex. 3;¹ China Integrated Answer, p. 8, and attached letter from Eugene Licker, Esq. dated April 25, 2014; Prehearing Conf. Transcript, Welch Decl., Ex. 4 at 6, 8, 10.)

As of August 29, 2014, China Integrated's stock (symbol "CBEH") was quoted on the over-the-counter markets on an unsolicited basis only. (Printout from www.otcquote.com database showing the quote activity of China Integrated stock as of August 29, 2014, Welch Decl., Ex. 5.)

II. Argument

A. Standards Applicable to the Division's Summary Disposition Motion.

Rule 250(a) of the Commission's Rules of Practice permits a party to move "for summary disposition of any or all allegations of the order instituting proceedings" before hearing with leave of the hearing officer. 17 C.F.R. § 201.250(a). Rule 250(b) provides that a hearing officer 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 summary disposition as a matter of law. 17 C.F.R. § 201.250(b); *see Michael Puorro,*

¹ The Division asks that pursuant to Rule of Practice 323, the Court take official notice of this and all other information and filings on EDGAR referred to in this brief and/or filed as exhibits with the Welch Decl.

Initial Decision Rel. No. 253, 2004 SEC LEXIS 1348, at *3 (June 28, 2004) citing 17 C.F.R. § 201.250; *Garcis, U.S.A.*, Securities Exchange Act of 1934 Rel. No. 38495 (Apr. 10, 1997) (granting motion for summary disposition).

As one Administrative Law Judge explained,

By analogy to Rule 56 of the Federal Rules of Civil Procedure, a factual dispute between the parties will not defeat a motion for summary disposition unless it is both genuine and material. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). Once the moving party has carried its burden, ‘its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.’ *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The opposing party must set forth specific facts showing a genuine issue for a hearing and may not rest upon the mere allegations or denials of its pleadings. At the summary disposition stage, the hearing officer’s function is not to weigh the evidence and determine the truth of the matter, but rather to determine whether there is a genuine issue for resolution at a hearing. *See Anderson*, 477 U.S. at 249.

Edward Becker, Initial Decision Rel. No. 252, 2004 SEC LEXIS 1135, at *5 (June 3, 2004).

This administrative proceeding was instituted under Section 12(j) of the Exchange Act. Section 12(j) empowers the Commission to either suspend (for a period not exceeding twelve months) or permanently revoke the registration of a class of securities “if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder.” It is appropriate to grant summary disposition and revoke a registrant’s registration in a Section 12(j) proceeding where, as here, there is no dispute that the registrant has failed to comply with Section 13(a) of the Exchange Act. *See California Service Stations, Inc.*, Initial Decision Rel. No. 368, 2009 SEC LEXIS 85 (Jan.

16, 2009); *Ocean Resources, Inc.*, Initial Decision Rel. No. 365, 2008 SEC LEXIS 2851 (Dec. 18, 2008); *Wall Street Deli, Inc.*, Initial Decision Rel. No. 361, 2008 SEC LEXIS 3153 (Nov. 14, 2008); *AIC Int'l, Inc.*, Initial Decision Rel. No. 324, 2006 SEC LEXIS 2996 (Dec. 27, 2006); *Bilogic, Inc.*, Initial Decision Rel. No. 322, 2006 SEC LEXIS 2596, at *12 (Nov. 9, 2006).

B. The Division is Entitled to Summary Disposition Against China Integrated for Violations of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 Thereunder.

Section 13(a) of the Exchange Act and the rules promulgated thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file periodic and other reports with the Commission. Exchange Act Section 13(a) is the cornerstone of the Exchange Act, establishing a system of periodically reporting core information about issuers of securities. The Commission has stated:

Failure to file periodic reports violates a central provision of the Exchange Act. The purpose of the periodic filing requirements is to supply investors with current and accurate financial information about an issuer so that they may make sound decisions. Those requirements are “the primary tool[s] which Congress has fashioned for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of stock and securities.” Proceedings initiated under Exchange Act Section 12(j) are an important remedy to address the problem of publicly traded companies that are delinquent in the filing of their Exchange Act reports, and thereby deprive investors of accurate, complete, and timely information upon which to make informed investment decisions.

Gateway, 2006 SEC LEXIS 1288 at *26 (quoting *SEC v. Beisinger Indus. Corp.*, 552 F.2d 15, 18 (1st Cir. 1977)).

As explained in the initial decision in the *St. George Metals, Inc.* administrative proceeding:

Section 13(a) of the Exchange Act and the rules promulgated thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file periodic and other reports with the Commission. Exchange Act Rule 13a-1 requires issuers to submit annual reports, and Exchange Act Rule 13a-13 requires issuers to submit quarterly reports. No showing of scienter is necessary to establish a violation of Section 13(a) or the rules thereunder.

St. George Metals, Inc., Initial Decision Rel. No. 298, 2005 SEC LEXIS 2465, at *26 (Sept. 29, 2005); *accord Gateway*, 2006 SEC LEXIS 1288 at *18, *22 n.28; *Stansbury Holdings Corp.*, Initial Decision Rel. No. 232, 2003 SEC LEXIS 1639, at *15 (July 14, 2003); and *WSF Corp.*, Initial Decision Rel. No. 204, 2002 SEC LEXIS 1242 at *14 (May 8, 2002).

There is no dispute that as of the date the OIP was instituted, China Integrated had failed to file its periodic reports for over two years, *i.e.*, any of its periodic reports after the Form 10-K for the year ended December 31, 2011, which was filed late on January 14, 2014. (OIP, ¶ II.A.3; China Integrated Answer, ¶ II.2; EDGAR printout of all filings for China Integrated, Welch Decl., Ex. 3.) There is therefore no genuine issue with regard to any material fact as to China Integrated's violations of Exchange Act Section 13(a) and the rules thereunder, and the Division is entitled to an order of summary disposition as to China Integrated as a matter of law. *See Chemfix*, 2009 SEC LEXIS 2056 at *21-*23 (summary disposition granted in Section 12(j) action); *AIC Int'l, Inc.*, 2006 SEC LEXIS 2996 at *25 (same); *Bilogic, Inc.*, 2006 SEC LEXIS 2596 at *12 (same); *Investco, Inc.*, Initial Decision Rel. No. 240, 2003 SEC LEXIS 2792, at *7 (Nov. 24, 2003) (same); *Nano World Projects Corp.*, Initial Decision Rel. No. 228, 2003 SEC LEXIS 1968, at *3 (May 20, 2003) (Division's motion for summary disposition in

Section 12(j) action granted where certifications on filings and respondent's admission established failure to file annual or quarterly reports); and *Hamilton Bancorp, Inc.*, Initial Decision Rel. No. 223, 2003 SEC LEXIS 431, at *4-*5 (Feb. 24, 2003) (summary disposition in Section 12(j) action).

**C. Revocation is the Appropriate Sanction for China
Integrated's Serial Violations of Exchange Act Section
13(a) and Rules 13a-1 and 13a-13 Thereunder.**

Exchange Act Section 12(j) provides that the Commission may revoke or suspend a registration of a class of an issuer's securities where it is "necessary or appropriate for the protection of investors." The Commission's determination of which sanction is appropriate "turns on the effect on the investing public, including both current and prospective investors, of the issuer's violations, on the one hand, and the Section 12(j) sanctions on the other hand." *Gateway*, 2006 SEC LEXIS 1288, at *19-*20. In making this determination, the Commission has said it will consider, among other things: (1) the seriousness of the issuer's violations; (2) the isolated or recurrent nature of the violations; (3) the degree of culpability involved; (4) the extent of the issuer's efforts to remedy its past violations and ensure future compliance; and (5) the credibility of the issuer's assurances against future violations. *Id.*; see also *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) (setting forth the public interest factors that informed the Commission's *Gateway* decision). Although no one factor is controlling, *Stansbury*, 2003 SEC LEXIS 1639, at *14-*15; and *WSF Corp.*, 2002 SEC LEXIS 1242 at *5, *18, the Commission has stated that it views the "recurrent failure to file periodic reports as so serious that only a strongly compelling showing with respect to the other factors we consider would justify a lesser sanction than revocation." *Impax Laboratories, Inc.*, Exchange Act Rel. No.

57864, 2008 SEC LEXIS 1197 at *27 (May 23, 2008). An analysis of the factors above confirms that revocation of China Integrated's securities is appropriate.

The Commission's decision in *Cobalis Corporation*, Exchange Act Rel. No. 64813, 2011 SEC LEXIS 2313 (July 6, 2011), is instructive. There, the Division sought summary disposition in a Section 12(j) proceeding where the respondent had failed to make any of its delinquent filings despite promising to do so. *Id.*, at *6-7. The respondent in *Cobalis Corporation* argued that it was making efforts to bring its filings current and made assurances that it would comply in the future, yet had not made any actual EDGAR filings. The Commission rejected this argument, found that there was no genuine dispute of any fact material to the application of the *Gateway* factors and, accordingly, ordered that the respondent's registrations be revoked. *Id.* at *25. The Commission noted that revocation will "further the public interest by reinforcing the importance of full and timely compliance with the Exchange Act's reporting requirements." *Id.* at *23 (quoting *Nature's Sunshine Products, Inc.*, Exchange Act Rel. No. 59268, 2009 SEC LEXIS 81, at *37 (Jan. 21, 2009)). The same analysis applies here, and China Integrated's securities registration should be revoked.

1. China Integrated's violations are serious and egregious.

As established by the record in this proceeding, China Integrated's conduct is serious and egregious. China Integrated has not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2011. Given the central importance of the reporting requirements imposed by Section 13(a) and the rules thereunder, Administrative Law Judges have found violations of these provisions of less duration to be egregious, and China Integrated's violations support an order of revocation for each

class of its securities. *See WSF Corp.*, 2002 SEC LEXIS 1242, at *14 (respondent failed to file periodic reports over two-year period); and *Freedom Golf Corp.*, Initial Decision Release No. 227, 2003 SEC LEXIS 1178, at *5 (May 15, 2003) (respondent's failure to file periodic reports for less than one year was egregious violation).

2. China Integrated's violations of Section 13(a) have been not just recurrent, but continuous.

China Integrated's violations are not unique and singular, but continuous. China Integrated has failed to file any of its periodic reports since the year ended December 31, 2011. China Integrated also failed to file any Forms 12b-25 seeking extensions of time to make its periodic filings for any of its periodic reports for 2011 through 2014. (Welch Decl., Ex. 4.) *See Investco, Inc.*, 2003 SEC LEXIS 2792, at *6 (delinquent issuer's actions were found to be egregious and recurrent where there was no evidence that any extension to make the filings was sought). The serial and continuous nature of China Integrated's violations of Exchange Act Section 13(a) further supports the sanction of revocation here.

3. China Integrated's degree of culpability supports revocation of its securities registration.

For many of the same reasons that China Integrated's violations were long-standing and serious, they suggest a high degree of culpability. In *Gateway*, the Commission stated that, in determining the appropriate sanction in connection with an Exchange Act Section 12(j) proceeding, one of the factors it will consider is "the degree of culpability involved." The Commission found that the delinquent issuer in *Gateway* "evidenced a high degree of culpability," because it "knew of its reporting obligations, yet failed to file" twenty periodic reports and only filed two Forms 12b-25. *Gateway*, at

10, 2006 SEC LEXIS 1288, at *21. Similar to the respondent in *Gateway*, China Integrated has not filed any of its required Forms 12b-25 seeking extensions of time to make its periodic filings for the past three years. Because China Integrated knew of its reporting obligations and nevertheless failed to file its periodic reports, and failed to file the required Forms 12b-25 informing investors of the reasons for its delinquency and the plan to cure its violations for the past three years, it has shown more than sufficient culpability to support the Division's motion for revocation.

China Integrated's culpability is further demonstrated by its failure to file proxy statements. Under Delaware law, China Integrated is required to elect at least one-third of its directors annually. DEL. CODE. ANN. tit. 8 § 141 (West 2013). However, it has also failed to comply with Exchange Act Sections 14(a) and/or 14(c) and rules thereunder by not filing the required proxies regarding annual elections of directors for any years except for 2010 and 2013. (Welch Decl., Ex. 3.)

4. China Integrated's efforts to remedy its past violations and ensure future compliance are too little and too late and its assurances against future violations are not credible.

On April 25, 2014, the company's counsel sent a letter to Corporation Finance representing that "the Company intends to have RBSM complete the 2009 audit and employ another qualified PCAOB registered firm (we are currently in discussions with several firms) to perform the audits of the years ended December 31, 2012 and 2013." (Eugene R. Licker letter dated April 25, 2014 attached to China Integrated's Answer, at 2.)

In its July 16, 2014 Answer, China Integrated stated that its counsel's April 25, 2014 letter to Corporation Finance "communicated its intention to have RBSM complete

the 2009 audit and employ another qualified PCAOB registered firm simultaneously to perform the audits of the years ended December 31, 2012, and 2013.”

At the July 29, 2014 prehearing conference, China Integrated’s counsel represented that the company had “undertaken” to “employ two sets of auditors so as to save time and get ’12 and ’13 done as well.” And, that the company “is doing yeoman’s work here.” “[T]hey’re double-tracking to try to get this thing done.” (Prehearing Conf. Transcript, Welch Decl., Ex. 4 at 5-6, 8.)

However, China Integrated has not filed the required Form 8-K announcing the engagement of a second auditor. (Welch Decl., Ex. 3.) On August 4, 2014, Division counsel telephoned China Integrated’s counsel and asked for the identity of the second auditor. Mr. Licker said he would have to follow up to see who the company hired. On August 11, 2014, Mr. Licker sent Division counsel an email stating that auditor HHC had been engaged to audit China Integrated. (Welch Decl., ¶ 2.) On August 12, 2014, Division counsel telephoned the sole proprietor of HHC, Mr. Huan-Chao “Eric” Huang, and Mr. Huang said that while China Integrated did send him a letter on August 11, 2014 “engaging” HHC as its auditor, he had not yet agreed to HHC’s engagement because he was not yet finished with his required acceptance procedures. (Welch Decl., ¶ 3.) On August 26, 2014, Mr. Huang sent Division counsel an email stating that HHC had not received the authorization letter from China Integrated so it could ask the company’s current auditor some questions before agreeing to the engagement of HHC, and that China Integrated told Mr. Huang that it wanted to wait until it finished its 2010 10-K filing before authorizing HHC to conduct pre-engagement procedures with the current auditor. (Welch Decl., ¶ 4.)

Thus, while the company has been claiming since April that it was going to hire a second auditor to “dual-track” the audits to get its delinquent periodic filings done in a timely manner, it has yet to hire the promised second auditor, and is instead holding up the second auditor’s pre-engagement procedures. Therefore, it is clear that China Integrated has not made adequate efforts to remedy its past violations, and its assurances against future violations are not credible.

D. Revocation is the Appropriate Remedy for China Integrated.

As discussed above, a full analysis of the *Gateway* factors establishes that revocation is the appropriate remedy for China Integrated’s long-standing violations of the periodic filings requirements. China Integrated’s recurrent failures to file its periodic reports have not been outweighed by “a strongly compelling showing with respect to the other factors” which “would justify a lesser sanction than revocation.” *Impax Laboratories, Inc.*, 2008 SEC LEXIS 1197 at *27.

Moreover, revocation will not be overly harmful to whatever business operations, finances, or shareholders China Integrated may have. The remedy of revocation will not cause China Integrated to cease being whatever kind of company it was before its securities registration was revoked. The remedy instead will ensure that until China Integrated becomes current and compliant on its past and current filings, its shares cannot trade publicly on the open market (but may be traded privately). *See Eagletech Communications, Inc.* Exchange Act Rel. No. 54095, 2006 SEC LEXIS 1534, at *9 (July 5, 2006) (revocation would lessen, but not eliminate, shareholders’ ability to transfer their securities). Revocation will not only protect current and future investors in China Integrated, who presently lack the necessary information about China Integrated because

of the issuer's failure to make Exchange Act filings; it will also deter other similar companies from becoming lax in their reporting obligations.

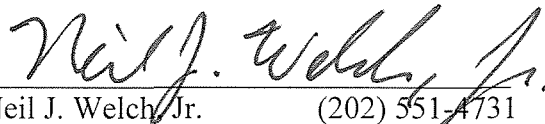
A new registration process will place all investors on an even playing field. All current investors will still own the same amount of shares in China Integrated that they did before registration, though their shares will no longer be devalued because of the company's delinquent status. All investors, current and future alike, will also benefit from the legitimacy, reliability, and transparency of a company in compliance. The time-out will protect the status quo, and will give China Integrated the opportunity to come into full compliance, to calmly and thoroughly work through all of its remaining issues with its consultants, auditors, and management, and to complete its financial statements in compliance with Regulations S-K and S-X.

III. Conclusion

For the reasons set forth above, the Division respectfully requests that the Commission revoke the registration of each class of China Integrated's securities registered under Exchange Act Section 12.

Dated: August 29, 2014

Respectfully submitted,



Neil J. Welch, Jr. (202) 551-4731
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-6010

COUNSEL FOR
DIVISION OF ENFORCEMENT