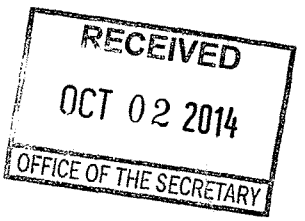
UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-~~15453~~ 15947



In the Matter of:	:
China Integrated Energy, Inc.	:
Respondents.	:
	:
	:

---------- X

RESPONDENT'S MEMORANDUM IN OPPOSITION TO

THE DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

EUGENE R. LICKER
LOEB & LOEB LLP
345 Park Avenue
New York, NY 10154
Telephone: (212) 407-4000
Facsimile: (212) 407-4990
Email: elicker@loeb.com
Attorneys for Respondent

PRELIMINARY STATEMENT

After a successful beginning, Respondent China Integrated Energy, Inc. ("China Integrated," "CBEH"[1] or the "Company"), recently has endured difficult times. In October 2007, it engaged in a share exchange and merger with a public company then called International Imaging Systems, Inc. and thereby became a public company. That process – a reverse merger – was (and still is) entirely consistent with legal requirements. The process has now garnered great criticism from those who would profit by making those critical remarks. From the time it went public until March 2011, CBEH operated profitably, made all of its filings, and benefitted its shareholders. On March 16, 2011, the world changed for CBEH.

On or about March 16, 2011, China Integrated was the subject of a short attack by "analyst" Sinclair Upton, which published a "report" on various short seller websites, including Seeking Alpha (the "Sinclair Upton Report"). The name, of course, is a pseudonym; the true identity of Sinclair Upton has never been revealed and, unlike a number of other short sellers, Sinclair Upton did not attack other companies after it launched its attack on CBEH. Shortly following the Sinclair Upton attack, on or about March 28, 2011, a second "analyst" report emerged from Alfred Little, another anonymous author. "Alfred Little" is Jon Carnes. He has been sued numerous times for defamation and is the subject of regulatory actions in Canada. His operative in China has been arrested for manufacturing false evidence.

The Sinclair Upton Report claims that China Integrated 1) transferred company funds to management insiders through fraudulent sham acquisitions and 2) fabricated its SEC financial statements. The Little Report relies on supposed video evidence collected by the International Financial Research & Analysis Group ("IFRA"), which allegedly shows that there was no

[1] The ticker symbol, which obviously does not track the Company's name, is a vestige of a prior name of the Company.

activity at China Integrated's biodiesel production facility. The Company denied the allegations, and, after a rocky start, its audit committee conducted, at great expense to the Company, a comprehensive, year-long investigation with the aid of a prestigious, independent law firm and a prestigious, independent consulting firm. At the conclusion of that investigation, the audit committee announced that it was comfortable that the allegations made by the short sellers, who profited handsomely from their own efforts, had no basis in fact.

Nonetheless, the damage was done. As happened to a number of China-based U.S. public companies, the attack by the short sellers was enough to drive away directors, officers, auditors, exchanges, and shareholders. As happened to a number of China-based U.S. public companies, the attack by the short sellers was enough to attract the attention of the class action plaintiff's bar and the regulators. The stock price plummeted, the law suits were filed (based entirely on the short sellers' self-serving and refuted allegations), and the regulators inquired. The auditors refused to certify financials until the investigation was complete and the results were released. Maintenance of the attorney client privilege and the work product protection made the latter impossible.

To be sure, some China-based companies, like some U.S.-based companies, are frauds. Equally, not all China-based, or U.S.-based companies, are frauds. The China-based companies, however, are easy marks for the short sellers. They are seven thousand miles away. The country itself, foreign to U.S. investors in every sense of the word, is a popular target for criticism, and as a major creditor of the United States, China has garnered a great deal of fear and distrust here. The Chinese people are very different from Westerners, as is their culture. Thus, the short attacks resonate with the investing public and others, such as officers, directors, and auditors, regardless of the truth of the allegations. Moreover, no one wants to be left "holding the bag,"

and so the natural instincts of the investing public, and others, such as officers, directors, and auditors, is to flee, regardless of the truth of the allegations. And so they did.

Through all of this, and through the marked downturn in the Chinese economy, China Integrated soldiered on. The Company maintained its business, fought the law suits, cooperated with the regulators, and tried its best to get current on its public filings. It has not succeeded, to date, in becoming current, but not for lack of effort.

Just as the Company has not turned its back on its shareholders, its shareholders have not turned their collective backs on the Company. While a few shareholders, encouraged by the plaintiff's class action bar, initiated law suits, numerous substantial shareholders continue to believe in the Company and have asked the Company's undersigned counsel to voice to the Commission their support for the Company and their opposition to this proceeding. Those comments are addressed below.

The Division of Enforcement (the "Division") urges that CBEH is a persistent non-filer that has lost the right to have its securities registered by the Commission. Given the efforts outlined above, and the hurdles faced by the Company through no fault of its own, CBEH urges that there is a genuine issue of material fact as to whether it is, in fact, a persistent non-filer. For that reason, the Division's motion for summary disposition should, with all respect, be denied.

I. STATEMENT OF FACTS[2]

Respondent CBEH is a Delaware corporation with operations in the People's Republic of China ("PRC"). CBEH is engaged in three business segments – the wholesale distribution of finished oil and heavy oil products, the production and sale of biodiesel, and the operation of

[2] There is of course no factual record for the Court's consideration. The facts are taken from CBEH's Answer in this proceeding, which are based on publicly available documents.

retail gas stations in the PRC. The Company operates through a series of contractual agreements with PRC energy company Xi'an Baorun Industrial Development Corp. ("Xi'an Baorun"). The Company has no equity interest in Xi'an Baorun, which, under PRC law, must be owned domestically. The Company has fewer than 300 shareholders of record.

A. The Short Attacks Against China Integrated

CBEH, like numerous other PRC-based public issuers, became the subject of attacks by short sellers and their associated funds and media groups in and around March 2011.

1. "Sinclair Upton" Attacks CBEH

As set forth above, on or about March 16, 2011, China Integrated was the subject of a short attack by "analyst" Sinclair Upton. The Sinclair Upton Report provides no information regarding the author's identity, background, source of information, education, business experience, legal or financial expertise, familiarity with PRC accounting standards, or any other indication of his authority as to the matters alleged in the Sinclair Upton Report. The author of the Sinclair Upton Report intentionally remains anonymous. The report begins with a disclosure that "[a]s of publication date, the author of this report has short positions in and owns options of the company covered herein and stands to realize gains in the event that the price of the stock declines." In addition, the report contains a broad disclaimer as to the veracity or accuracy of the report: "The author of this report makes no representation, express or implied, as to the accuracy, timeliness, or completeness of any such information or with regard to the results to be obtained from its use. All expressions of opinion are subject to change without notice, and the author does not undertake to update or supplement this report or any of the information contained herein."

2. Alfred Little Attacks CBEH

On or about March 28, 2011, a second "analyst" report emerged from Alfred Little, another anonymous author. Alfred Little's report (the "Little Report") purports to present the results of a "detailed investigation by the International Financial Research & Analysis Group ('IFRA')," which is alleged to have included video surveillance of the Company's biodiesel production facilities in the PRC. The alleged IFRA report on China Integrated is neither made available in the Little Report nor anywhere else. The allegation, once again based on anonymous sources, was that there was "no meaningful production activity" at the facilities, no production licenses, and no purchases of feedstock for the production of biodiesel.

"Alfred Little" is Jon Carnes. He has been sued numerous times for defamation and is the subject of regulatory actions in Canada. His operative in China has been arrested for manufacturing false evidence.

B. The Company Responds to the Short Sellers

The Company denied the allegations contained in the Sinclair Upton Report in Chairman Gao's March 23, 2011 letter to shareholders, which was published on CBEH's website. With regard to the alleged related party transactions (allegedly involving Mr. Gao's son), Mr. Gao explained that although his son Gao Bo previously owned shares in Chonqing Tianrun, Gao Bo exited ownership of Chonqing Tianrun in November 2009, prior to its acquisition by CBEH, and that "no amounts were ever paid to Mr. Gao's son in connection with the acquisitions." The letter stated that

> In connection with the [Chongqing] Tianrun transaction, after Mr. Gao made a significant deposit from his own personal funds, Mr. Gao was allowed to, and did, designate a shareholder of Tianrun to safeguard the deposit and monitor the construction that was underway at Tianrun. Mr. Gao designated his son, Gao Bo, to act in this capacity. Gao Jiankang acted as the legal representative of Tianrun, but he is not related to Mr. Gao. Upon completion of certain construction to

> increase the capacity of the plant, in November 2009, Gao Bo exited ownership of Tianrun and the security deposit was returned to Mr. Gao. Gao Jianking remained in the capacity of the legal representative of Tianrun. We continued negotiating the acquisition.

In addition, Mr. Gao's letter also explained that the actual owners of Chonqing Tianrun at the time of its acquisition were Liao Xiadong, Wang Xiaoyong, and Xie Hui, as disclosed. However, in order to reduce the owners' tax liability, each of the owners contributed their ownership interests to Chongqing Tianrun's parent Chongqing Huaneng prior to the acquisition. Xi'an Baorun then acquired Chongqing Tianrun from Chongqing Huaneng.

With regard to the other alleged related party transaction, known as the Shenmu acquisition, Mr. Gao disclosed in his March 23, 2011 letter that in order to expedite the acquisition, "the transaction was structured so that the ownership interests would first be transferred to an individual . . . and then upon completion of the transfer of title, related permits and licenses, ownership will transfer to the Company." Thus, Shenmu's majority shareholder Lu Wenhua and shareholder Wang Zhijun transferred an 80% interest in Shenmu to Gao Bo, for the benefit of Xi'an Baorun, in exchange for a security deposit of RMB 20 million. The remaining 20% interest was transferred to Yongsheng Song, to be transferred to Xi'an Baorun upon completion of the transfer and full payment. "The aggregate purchase price is $9.2 million, and the outstanding balance will be paid to Lu Wenhua, the former shareholder, not to Gao Bo." Mr. Gao's letter also responded to the remaining allegations in the Sinclair Upton report.

In addition to Mr. Gao's refutation of the Sinclair Upton allegations, on March 28, 2011, the Company also issued a press release and Form 8-K to refute the "similar and overlapping" allegations in the Little Report. Although the Company published thorough and thoughtful refutations of the short sellers' attacks, the Audit Committee of the Board of Directors also

authorized an independent investigation of the allegations lodged in the Little and Sinclair Upton Reports.

C. The Investigation and Resignations

As has happened time and time again to China-based public companies attacked by the short sellers, when CBEH was attacked, its auditors at the time, KPMG, put pencils down and refused to proceed with their work unless and until a thorough, Independent investigation of the allegations was commenced and completed. In April 2011, the Company's audit committee retained the law firm Pillsbury Winthrop, accounting firm Deloitte, and the Chinese law firm King & Wood to investigate the allegations. The investigation commenced on April 11, 2011. On April 20, 2011, prior to the completion of the investigation, Nasdaq halted trading in CBEH stock pending the outcome of the investigation.

Regrettably, the counsel retained by the committee to assist it with the independent investigation conducted themselves in a manner that indicated to all concerned that they had begun with the premise that the allegations were true and that management had engaged in wrongdoing. Management took offense at their conduct; the relationship was anything by productive.

As a result, the investigation ground to a halt. On April 21, 2011, the day after the Nasdaq trading halt was imposed, and only 10 days after the investigation commenced, Pillsbury Winthrop, Deloitte, and King & Wood resigned, claiming a refusal by the Company's managers to supply certain requested information and their resultant inability to continue the internal investigation. Simultaneously, Larry Goldman resigned from the Board of Directors and as Chairman of the Audit Committee, also citing the committee's inability to continue its investigation. The Company's auditors, KPMG, resigned on April 26, 2011. Thereafter, the Company's Chief Financial Officer, Albert Pu, and board and audit committee member

Christopher Wang resigned on May 3, 2011, all citing the inability to conduct the investigation. Nasdaq delisted CBEH on May 16, 2011.

D. The Audit Committee Conducts Its Investigation

CBEH replaced the departed directors with two new independent directors: Stephen Markscheid and Liren Wei. On May 13, 2011, the Company announced that the Audit Committee hired Shearman & Sterling LLP to replace Pillsbury Winthrop. On May 24, 2012, the Company announced the completion of its Investigation. At the conclusion of the investigation, the Company issued a public statement that "[w]hile some issues remain as to production at the Company's Tongchuan biodiesel facility, and while the investigation revealed the need to strengthen internal controls and take similar measures, the primary substance of all other allegations has been proven groundless."

E. The Company Hires Auditors and Makes a Filing

As disclosed in an 8-K filed on July 25, 2011, the Company re-engaged its former auditor, Sherb & Co., LLP ("Sherb"), as its independent principal accountant to replace KPMG. KPMG withdrew the one report it had provided, which pertained to the year ended December 31, 2010. Sherb was thus engaged to re-audit the financial statements for the year ended December 31, 2010 as well as 2011. Of course, Sherb too would not complete its work until the investigation was complete. As noted above, the audit committee took a year to complete its investigation, finishing in May 2012.

On January 14, 2014, CBEH filed the Form 10K for the year ended December 31, 2011. The Company's financial statements were certified by RBSM, an auditing firm that had entered into a business combination with Sherb subsequent to the engagement of Sherb by CBEH. The January 14, 2014 filing included financial statements for the years ended December 31, 2010 and 2011 certified by RBSM.

In late 2013, Sherb was the subject of an SEC administrative proceeding and Order (unrelated to CBEH). As a result, the year ended December 31, 2010 (which was audited by Sherb) needed to be re-audited as well. RBSM re-audited the year ended December 31, 2010 and on September 2, 2014 the Company filed a Form 10-K/A for that year.

Thus, while CBEH succeeded in filing for the year ended December 31, 2011, it has not, to date, filed for the years ended December 31, 2012 and 2013.

F. The Company Submits a Plan to Become Current

By letter dated March 10, 2014, the SEC notified the Company that it was considering commencement of what would become this action. The letter was served directly on the company by mail to Xi'an and took quite a long time to arrive. The Company (acting through its audit committee) responded by letter from counsel dated April 25, 2014.

In the April 25 letter, counsel reported the Company's plan to become current with the Company's public filings by October 31, 2014. Counsel informed the SEC that the Company recognized the need to proceed expeditiously, and, given RBSM's limited resources, had determined the need to conduct the outstanding audits and subsequent filings on dual tracks, employing dual auditors. The Company communicated its intention to have RBSM complete the 2010 audit (which it did) and to employ another qualified PCAOB registered firm simultaneously to perform the audits of the years ended December 31, 2012 and 2013. The Company emphasized that the employment of a second auditor did not reflect any issues or disagreements with RBSM but, rather, reflected only the need for expeditious action and the Company's dedication to becoming current.

CBEH began to implement its plan. Nonetheless, on or about June 24, 2014, the Commission filed the Order Instituting Administrative Proceeding against CBEH, presumably because required periodic reports had not been filed by the Company following the short-sellers'

attack, the Company's independent investigation, and the SEC's action against Sherb. While the actions of the Commission are no doubt intended to be remedial, they may in fact be causing a punitive effect upon the Company and its shareholders, inadvertently furthering the short-sellers' unlawful attacks and market manipulation.

G. The Company Is Not Yet Current

As the Division has informed the Commission, CBEH sought to retain a second auditing firm in order to meet its goal of being current by the end of October. The most obvious candidate for the job was HHC, a firm founded by Eric Huang, an alumnus of the Sherb firm who was intimately familiar with CBEH. Although Mr. Huang was not named in the SEC's administrative proceeding against Sherb and certain individuals, or subjected to any sanctions in the Order, the Company preferred to avoid the negative optics of retaining someone from the Sherb firm. Nonetheless, given the need for speed, the Company did reach out to HHC and has entered into an engagement letter with HHC.

Because RBSM has not completed its work on the outstanding quarterly filings,[3] HHC has yet to commence its audit. Should this Court be inclined to take some action with regard to the Company's registration, the Company respectfully requests that this Court choose instead to suspend the registration for a period of time (for example, through the end of the year), to give the Company that opportunity.

II. THERE ARE GENUINE ISSUES OF MATERIAL FACT MAKING SUMMARY DISPOSITION UNAVAILABLE

The parties do not disagree about the applicable law. The disagreement comes in the application of those legal standards.

---

[3] RBSM's pace is not due to any delays on the part of the Company.

In *in the Matter of Gateway International Holdings, Inc.*, Securities Exchange Act Rel. No. 53907, 2006 SEC LEXIS 1288 (May 31, 2006), the Commission stated that its determination with regard to the advisability of sanctions needed to "ensure that investors will be adequately protected" would turn on the tension between "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." *Id.* at *19. In making that determination, the Commission looked to the following: "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." *Id.* at 19-20.

A. There is a genuine issue as to the seriousness of the issuer's violations.

There can be no doubt that CBEH has failed to file two Forms 10-K, as well as quarterly filings. It cannot be, however, that the Commission meant to look to whether a filing was made or not as the litmus test for seriousness. Were that the case, then every failure to file would be serious. Moreover, the Commission looked in the *Gateway* case beyond simple non-filing. While some of the rudimentary facts in *Gateway* are present here as well – such as the passage of time, the absence of some notices of inability to file, and coming current (if at all) only belatedly – those factors are, once again, present in virtually every contested case.

Unlike Gateway, however, which had eight wholly owned subsidiaries, CBEH is a straightforward operating company with three sectors of business. Each has been fully vetted through a thorough investigation. While the Company admittedly has not provided the transparency that the Commission has a right to demand, that transparency is near as CBEH works to become current.

Accordingly, once the full record is developed, the Commission could easily determine that the violation was not serious. In any event, at the current stage of the litigation, that is a contested fact.

B. There is a genuine issue as to the isolated or recurrent nature of the violations.

The Division contends that CBEH's violation are recurring because it fell behind and has not yet caught up. Once again, the Company has dedicated substantial resources, first to an investigation and then to becoming current. This Court must determine whether the violations are likely to recur, and there is absolutely no factual record on which this Court could conclude that they are.

C. There is a genuine issue as to the degree of culpability involved.

The Division's arguments are *a foriori*, basing its claim of culpability on the simple fact of noncompliance. CBEH urges the Commission to consider what actually happened here. A promising and viable company was sorely, though not mortally, wounded by self-serving, and untrue, attacks by short sellers. It lost its auditors and was unable to keep current on its filings for reasons not of its own making. While that is not a defense to noncompliance with the reporting requirements, it does go to the degree of culpability. At best, therefore, the culpability of the Company is a question of fact.

D. There is a genuine issue as to 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.

The Division offers no evidence negating CBEH's multiple assurances that it desires to come current and stay current, or that its motivation was anything other than to avoid penalties. The Company's efforts to date, evidenced by the filing of the Form 10-K for calendar 2011 and the amended Form 10-K for calendar 2010, demonstrate the Company's dedication to becoming current. In the absence of a factual record, summary disposition here is unwarranted.

E. There is a genuine issue of fact as to the appropriate remedy.

The arguments above are directed to whether there need be a remedy at all, and CBEH strongly urges that no remedy is required. If the Commission feels otherwise, however, it has a choice of suspension or de-registration. As between these two choices, the Commission should be guided by its view of each of the above factors and the overall factual context. Without a developed factual record, however, the Commission cannot make that determination.

E. Shareholders would be hurt by de-registration.

Both parties agree that the focus of Section 12(j) is protection. For that reason, action by the Commission under Section 12(j) is discretionary (the Commission's action is authorized "as it deems necessary or appropriate for the protection of investors"). The exercise of that discretion depends on the underlying factual record. CBEH urges, respectfully, that it is clear that revocation or even suspension of registration will do more harm to investors than good, given the facts of this case. In any event, unless and until that factual record is developed, the Commission, acting through this Court, cannot conclude that as a matter of uncontested fact shareholders would be <u>better</u> off with de-registration.

Moreover, and most tellingly, several shareholders have voiced to CBEH their strong conviction that de-registration is not in their best interest. Malcomb Cork and his wife own more

than 1,000,000 shares of CBEH and have held them for more than three years. He wrote Company counsel and stated, among other things, "De-registration by the SEC would do nothing to protect longtime U.S. shareholders, such as us, and would rather isolate those shareholders to their detriment. We urge the Commission not to harm shareholders thru an Order of De-registration." Mr. Cork's full statement is submitted herewith as Exhibit A to the Declaration of Eugene Licker, dated October 3, 2014 ("Licker Dec."). Min Zhang, also a three-year holder of stock, owning 210,000 shares, stated, "Investors like myself in CBEH have seen the company make a concerted effort to become current and surely do not feel that a de-registration by the SEC would protect U.S. shareholders. If fact it would cause irreversible damage and I urge the commission not to harm shareholders thru their Order." Min Zhang's fill statement is submitted herewith at Licker Dec., Ex. B. Athanasios Tomaras holds 429,000 shares and has held his shares for nearly three years. In his statement (a full copy of which is submitted herewith at Licker Dec., Ex. C), he also states, "Investors like myself in CBEH have seen the company make a concerted effort to become current and surely do not feel that a de-registration by the SEC would protect U.S. shareholders. If fact it would cause irreversable [sic] damage and I urge the commission not to harm shareholders thru thier [sic] Order."[4]

Adam Waldo is chairman of Lismore Partners, an LLC that holds more than 500,000 shares of CBEH. His statement (Licker Dec. Ex. 4) could not be more emphatic or clear:

> I am writing to express my strong opposition to the Securities and Exchange Commission's Order to Institute Proceedings issued regarding China Integrated Energy Inc. (CBEH) on June 24, 2014. I emphatically request that the SEC take no action to de-register the Company, as I believe strongly that a suspension or revocation of CBEH's SEC registration would unfairly and severely harm the

[4] Clearly, these investors worked together to craft their statements. That fact strengthens their position rather than undermines it. That the shareholders have banded together illustrates their strength and refutes the notion of vulnerability.

> many U.S. citizen shareholders of the Company by depriving them of any liquid market for their securities.

These four stockholders alone account for approximately 10% of the outstanding "float." (*See* Form 10-K for FYE 12/31/2011 at 73). These are significant statements made by substantial stockholders who plead with the Commission not to de-register the Company.

These shareholder comments are notable for three reasons. First, they echo the Company's position that de-registration is not in the best interests of the shareholders. Second, their willingness to weigh in on behalf of the Company demonstrates the level of shareholder participation in Company affairs that, while not substituting for mandatory public disclosure, at least evidences the ability of shareholders to communicate with the Company, seek, to the extent possible under the securities laws, information, and to protect themselves. Finally, and most importantly, these three shareholders are emblematic of the cadre of active, long-term shareholders who believe in this Company and want to see it weather this storm. Unlike the short sellers who caused all of the disruption, these are investors who are in it for the

III. CONCLUSION

For the reasons stated above, CBEH respectfully requests that this Court deny the Division's motion for Summary Disposition. Should the Court determine that summary disposition is appropriate, CBEH urges that a short suspension, giving the Company time to become current, would be more appropriate than a revocation.

Dated: October 2, 2014

Respectfully submitted,

LOEB & LOEB LLP

By: _____

Eugene R. Licker
345 Park Avenue
New York, New York 10154-0037
212-407-4000
Fax: 212-407-4990

Attorneys for Respondent
China Integrated Energy, Inc.