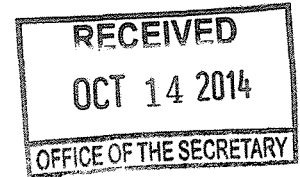


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-15942

In the Matter of

Cepheus Acquisition Corp., *et al.*,

Respondents.

**DIVISION OF ENFORCEMENT'S BRIEF
IN REPLY ON ITS MOTION FOR SUMMARY DISPOSITION**

Introduction

The Court should revoke the registration of the securities of respondent China Integrated Energy, Inc. ("China Integrated") because it has failed to raise a genuine issue of any material fact regarding application of the factors laid out by the Commission in *Gateway Int'l Holdings, Inc.*, Securities Exchange Act of 1934 Rel. No. 53907, at 10, 2006 SEC LEXIS 1288, at *19-20 (May 31, 2006) ("*Gateway*") (quoting *SEC v. Beisinger Indus. Corp.*, 552 F.2d 15, 18 (1st Cir. 1977)). China Integrated's Opposition ("*Opp.*") is full of factual allegations, but its brief fails to cite to or attach any sworn evidence in support of these allegations.

Argument

1. China Integrated failed to offer evidence that raises a genuine issue of material fact, so the Division is entitled to summary disposition as a matter of law. China Integrated's Opposition consists entirely of its counsel's argument unsupported by

citation to any submitted evidence. While respondent's counsel submitted a declaration, the declaration merely attached unsworn emails from four current stockholders of China Integrated. No other documents supporting the various factual allegations made in the Opposition are attached. A respondent "may not use its attorney to make unsworn factual representations on its behalf" in opposition to a motion for summary disposition. *Alyn Corp.*, Initial Decision Rel. No. 401 at 4 n.2, 2010 SEC LEXIS 2933, at *8 n.2 (Sept. 7, 2010); *see Lorsin, Inc.*, Initial Decision Rel. No. 250, 2004 SEC LEXIS 961, at *4 (May 11, 2004) quoting *SEC v. Lybrand*, 200 F. Supp. 2d 384, 391 (S.D.N.Y. 2002) (quoting *Ying Jing Gan v. City of New York*, 996 F.2d 522, 532 (2d Cir. 1993)) ("A non-moving party must produce evidence in the record and 'may not rely simply on conclusory statements or on contentions that the affidavits supporting the motion are not credible.'"); *see also Johnson v. Southwestern Bell Tel. Co.*, 819 F. Supp. 578, 582 (E.D. Tex. 1993), *aff'd*, 22 F.3d 1094 (5th Cir. 1993) ("The evidence produced to defeat a properly supported motion for summary judgment must adduce affirmative evidence. Naked assertions of an actual dispute unsupported by facts will not suffice, . . . the nonmovant cannot rely upon argument alone to defeat a properly supported motion for summary judgment."); *Jersey Central Power & Light Co. v. Township of Lacey*, 772 F.2d 1103, 1109-10 (3rd Cir. 1985) ("Legal memoranda and oral argument are not evidence and cannot by themselves create a factual dispute sufficient to defeat a summary judgment motion.").

2. China Integrated admits that its potential new second auditor, HHC, "has yet to commence its audit," but attributes this to its current auditor, RBSM, because "RBSM has not completed its work on the outstanding quarterly filings." China Integrated Opp.

at 11. However, on October 3, 2014, HHC confirmed to the Division of Enforcement (“Division”) that China Integrated has still not given HHC authorization to communicate with RBSM so HHC can complete its pre-engagement procedures. Supplemental Declaration of Neil J. Welch, Jr. in Support of the Division’s Motion for Summary Disposition (“Supp. Welch Decl.”), ¶ 1; *see* Motion for Summary Disposition at 10-11. Moreover, on October 13, 2014, China Integrated’s counsel advised the Court by letter that RBSM resigned as an auditor on October 9, 2014, and that “it will not be possible for [China Integrated] to meet its goal of being current with its filings by the end of this month.” (Supp. Welch Decl., Ex. 6.) Thus, it is clear that China Integrated is not doing all it can to get current in its periodic reports in an expeditious manner, nor has it “demonstrate[d] the Company’s dedication to becoming current,” China Integrated Opp. at 14, and its assurances against future violations are not credible.

3. Like the delinquent issuer in *Gateway*, China Integrated has not accepted responsibility for its failure to meet its reporting obligations, and this also points to the need for revocation. *Gateway*, Securities Exchange Act of 1934 Rel. No. 53907, at 11, 2006 SEC LEXIS 1288, at *25. Instead, China Integrated blames attacks by “short sellers,” Opp. at 2-5, the resignations of its law firm and auditor, *Id.* at 8, and the Commission’s administrative proceeding, *Id.* at 10-11. The Commission has previously rejected delinquent issuers’ arguments that they “cannot be held accountable for filing delinquencies if the delinquencies resulted from the actions of a third party.” *Cobalis Corporation*, Exchange Act Rel. No. 64813 at 9, 2011 SEC LEXIS 2313, *20 (July 6, 2011).

4. Contrary to China Integrated's contention, Opp. at 14, there is no issue as to the appropriate remedy in this case. Revocation of China Integrated's securities registration is the only appropriate remedy. The Division is unaware of a suspension ever being issued under Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act"), and this is because it is just not a practical solution in a delinquent filing case. One ALJ has determined that if he suspended the registration for a period of time, and the delinquent issuer failed to get current before the deadline, the ALJ could not convert the suspension to a revocation. The Commission would have to initiate a new administrative proceeding. *Stansbury Holdings Corp.*, Initial Decision Rel. No. 232, 2003 SEC LEXIS 1639, at *17-18 (July 14, 2003); and *WSF Corp.*, Initial Decision Rel. No. 204, 2002 SEC LEXIS 1242 at *18 (May 8, 2002).

5. Even if the unsworn emails of the current China Integrated stockholders are considered in this case, the Commission's decision in *Gateway* instructs that "[t]he extent of any harm that may result to existing shareholders cannot be the determining factor." *Gateway*, Securities Exchange Act of 1934 Rel. No. 53907, at 14, 2006 SEC LEXIS 1288, at *31. "In evaluating what is necessary or appropriate to protect investors, 'regard must be had not only for existing stockholders of the issuer, but also for potential investors.'" *Id.* (citations omitted).

6. Moreover, "[t]his proceeding is not an extension of time to file delinquent reports or correct filing deficiencies as sometimes occurs during the normal filing process." *Citizens Capital Corp.*, Initial Decision Rel. No. 433, at 7, 2011 SEC LEXIS 3307, *18-19 (Sept. 23, 2011); *Bio-Life Labs, Inc.*, Initial Decision Rel. No. 424, at 5, 2011 SEC LEXIS 2546, *9-10 (July 25, 2011). Even if China Integrated should get all of

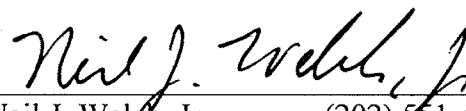
its delinquent filings submitted before this Court rules on summary disposition, the respondent's securities registration should still be revoked based on its violations of the Exchange Act. In *Absolute Potential, Inc.*, Exchange Act Rel. No. 71866, 2014 SEC LEXIS 1193 (April 4, 2014), the Commission revoked the registration of the delinquent issuer despite the fact that it became current during summary disposition briefing. "[I]t is necessary to deter Absolute and other issuers from disregarding their obligations to present accurate and timely information to the investing public until spurred by the institution of proceedings. Deterrence is meaningful only if a lengthy delinquency, in the absence of strongly compelling circumstances regarding the other *Gateway* factors, results in revocation." 2014 SEC LEXIS 1193, *24.

Conclusion

For the reasons set forth above, and in the initial brief, 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: October 14, 2014

Respectfully submitted,



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