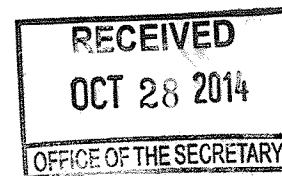


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16044



In the Matter of

QSGI Inc.,

Respondent.

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

Ryan Farney (202) 551-4543
Victor Tabak (202) 551-4433
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-5030

COUNSEL FOR
DIVISION OF ENFORCEMENT

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities.....	iii
Motion for Summary Disposition.....	1
Brief in Support	1
I. Statement of Facts	2
II. Argument.....	4
A. Standards Applicable to the Division’s Summary Disposition Motion.....	4
B. QSGI Violated Exchange Act Section 13(a) and Rules 13a-1 and 13a13 Thereunder.....	5
C. Revocation is the Appropriate Sanction for QSGI’s Serial Violations of Exchange Act Section 13(a) and Rules 13a-1 And 13a-13 Thereunder.....	7
1. QSGI’s Violations are Serious and Egregious.....	8
2. QSGI’s Violations are Recurrent and Continuous.....	8
3. QSGI’s Violations Exhibited a High Degree of Scienter.....	9
4. QSGI’s Efforts to Remedy its Past Violations and Ensure Future Compliance are Too Little and Too Late.....	9
Conclusion.....	11

TABLE OF AUTHORITIES

CASES:	<u>Page</u>
<i>Absolute Potential, Inc.</i> , Admin. Proc. File No. 3-14587, 2014 WL 1338256 (April 4, 2014).....	5, 6, 7, 9, 10
<i>Citizens Capital Corp.</i> , Admin. Proc. File No. 3-14401, 2012 WL 2499350 (June 29, 2012).....	4
<i>Freedom Golf Corp.</i> , Initial Decision Rel. No. 227, 2003 WL 21106567 (May 15, 2003).....	8
<i>Gateway Int’l Holdings, Inc.</i> , Admin. Proc. File No. 3-11894, 2006 WL 1506286 (May 31, 2006).....	5, 7, 9
<i>Imaging Diagnostic Systems, Inc.</i> , Initial Decision Rel. No. 646, 2014 WL 3778225 (Aug. 1, 2014).....	5, 6, 8, 10
<i>Impax Laboratories, Inc.</i> , Admin. Proc. File No. 3-12519, 2008 WL 2167956 (May 23, 2008).....	8
<i>Investco, Inc.</i> , Initial Decision Rel. No. 240, 2003 WL 22767599 (Nov. 24, 2003)....	8
<i>Michael Puorro</i> , Initial Decision Rel. No. 253, 2004 WL 1462250 (June 28, 2004).....	4
<i>SEC v. Beisinger Indus. Corp.</i> , 552 F.2d 15 (1 st Cir. 1977).....	5
<i>SEC v. McNulty</i> , 137 F.3d 732 (2d Cir. 1998).....	5
<i>Stansbury Holdings Corp.</i> , Initial Decision Rel. No. 232, 2003 WL 21640201 (July 14, 2003).....	7
<i>Steadman v. SEC</i> , 603 F.2d 1126 (5 th Cir. 1979).....	7
<i>WSF Corp.</i> , Initial Decision Rel. No. 204, 2002 WL 917293 (May 8, 2002).....	8
STATUTES AND REGULATIONS:	
Section 12(j) of the Securities Exchange Act of 1934.....	4, 7
Section 13(a) of the Securities Exchange Act of 1934.....	passim
Exchange Act Rule 13a-1	passim
Exchange Act Rule 13a-13.....	passim

RULES OF PRACTICE:

SEC Rule of Practice 250, 17 C.F.R. § 201.250.....1, 4, 11

SEC Rule of Practice 323, 17 C.F.R. § 201.323.....2

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING

File No. 3-16044

<p>In the Matter of</p> <p style="text-align:center">QSGI Inc.,</p> <p>Respondent.</p>

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

The Division of Enforcement (“Division”), by counsel, pursuant to Rule 250 of the Commission’s Rules of Practice, moves for an order of summary disposition of the claims in the Order Instituting Proceedings (“OIP”) in this matter against respondent QSGI Inc. (“QSGI” or the “Company”), as there is “no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law.” Rule 250(b).

BRIEF IN SUPPORT

As of the date of this Motion, QSGI has not filed a periodic report with the Commission for any reporting period subsequent to the quarter ended June 30, 2011, a period of delinquency stretching longer than three years. Moreover, the Company admits the central allegation of the OIP: that it is not current in its reporting obligations. As such, QSGI has failed to comply with Section 13(a) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78m(a)] and Rules 13a-1 and 13a-13 thereunder [17 C.F.R. § 240.13a-1 and 13a-13], and revocation of each class of its securities is warranted.

I. Statement of Facts

1. QSGI (CIK No. 27960) is a Delaware corporation located in West Palm Beach, Florida as reflected in information on file with the Florida Secretary of State. (Printout from sunbiz.org attached as Exhibit 1 to the Declaration of Ryan Farney in Support of Division's Motion for Summary Disposition ("Farney Dec."); Respondent's Amended Answer Dated September 15, 2014 ("Respondent's Answer") at ¶ 1) The Company, then known as WindsorTech, Inc., filed a Form 10-SB with the Commission on May 23, 2003 to register its common stock pursuant to Exchange Act Section 12(g).¹ (Farney Dec. Ex. 2)

2. On April 30, 2014, the Division of Corporation Finance sent QSGI a delinquency letter, warning the Company that it was not in compliance with the reporting requirements of Exchange Act Section 13(a). (Farney Dec. Ex. 3; Respondent's Answer at ¶ 2)

3. Prior to the issuance of the April 30, 2014 delinquency letter, the most recent reporting period for which Respondent had filed a periodic report was the quarter ended March 31, 2011, for which it filed a Form 10-Q on March 19, 2012. (EDGAR printout showing Respondent's filings since July 12, 2010 attached as Farney Dec. Ex. 4; Respondent's Answer at ¶ 3)

4. Following the issuance of the delinquency letter, Respondent filed a Form 10-Q for the period ended June 30, 2011 on May 22, 2014. (Farney Dec. Ex. 4; Respondent's Answer at ¶ 4)

5. Subsequent to that filing, Respondent sent a letter to the Division of Corporation Finance on May 27, 2014, in which the Company indicated that it would be filing all past due reports "over the next several months." The Company stated that it was in the process of finding

¹ The Division respectfully requests that, pursuant to Rule of Practice 323, this 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 Declaration of Ryan Farney in Support of Division's Motion for Summary Disposition.

new accountants, but added that these new accountants would be “constrained by the practical concerns of... our ability to pay in catching up with our filing obligations.” (Farney Dec. Ex. 5)

6. On June 26, 2014, the Division of Corporation Finance sent a second letter to QSGI, reiterating that the Company had still not fulfilled all of its reporting requirements. (Farney Dec. Ex. 6; Respondent’s Answer at ¶ 5) The June 26, 2014 letter also noted that the Form 10-Q filed by the Company on May 22, 2014 appeared to be deficient and questioned how QSGI management was able to represent that the Company’s disclosure controls and procedures (as defined in Exchange Act Rule 13a-15(e)) were effective given that the Form 10-Q was “years past due” when filed. (Farney Dec. Ex. 6)

7. On August 27, 2014, over two months after receiving the second letter from the Division of Corporation Finance, Respondent filed an amended Form 10-Q for the quarter ended June 30, 2011 in which it acknowledged that the Company’s disclosure controls and procedures were not effective. This remains the most recent reporting period for which Respondent has filed a periodic report. (Farney Dec. Ex. 4; Respondent’s Answer at ¶ 8)

8. Throughout its three years of delinquency, QSGI did not file a Form 12b-25 seeking an extension to make its periodic filings. (Farney Dec. Ex. 4)

9. In addition to failing to cure all of its reporting delinquencies, QSGI is now on its third auditor in 2014. Effective May 27, 2014, QSGI dismissed its then-auditor as reflected in a Form 8-K (subsequently amended) filed on May 28, 2014. (Farney Dec. Ex. 7) The replacement auditor subsequently ended its client-auditor relationship with QSGI two months later as indicated in a letter dated July 31, 2014 to the Commission’s Chief Accountant referenced in a Form 8-K (subsequently amended) filed by the Company on August 7, 2014. (Farney Dec. Ex. 8) According to that Form 8-K, the second auditor withdrew its services after the Commission

instituted an administrative proceeding against QSGI's Chief Executive Officer, and instituted a settled administrative proceeding against QSGI's former Chief Financial Officer, alleging, among other things, violations of the antifraud and lying to auditors provisions of the federal securities laws. (OIPs from Admin Proc. File Nos. 3-15991 and 3-15992, attached as Farney Dec. Exs. 9 and 10)

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. 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*, Initial Decision Rel. No. 253, 2004 WL 1462250, at *3 (June 28, 2004).

The present administrative proceeding was instituted under Section 12(j) of the Exchange Act, which 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 Citizens Capital Corp.*, Admin. Proc. File No. 3-14401, 2012 WL 2499350 (June 29, 2012) (affirming grant of summary disposition against issuer who

did not dispute delinquency allegations in OIP); *Absolute Potential, Inc.*, Admin. Proc. File No. 3-14587, 2014 WL 1338256 (April 4, 2014) (affirming grant of summary disposition against delinquent issuer despite fact that issuer became current in its filings prior to issuance of initial decision); *Imaging Diagnostic Systems, Inc.*, Initial Decision Rel. No. 646, 2014 WL 3778225 (Aug. 1, 2014) (summary disposition granted against issuer who was delinquent for just over one year and who had promised to become current and claimed to have retained an auditing firm for that purpose).

B. OSGI Violated Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 Thereunder

Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 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 a cornerstone of the Exchange Act, establishing a system for periodically reporting invaluable 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 Int’l Holdings, Inc., Admin. Proc. File No. 3-11894, 2006 WL 1506286, at *6 (May 31, 2006), quoting *SEC v. Beisinger Indus. Corp.*, 552 F.2d 15, 18 (1st Cir. 1977). No showing of scienter is necessary to establish a violation of Section 13(a) or the rules thereunder. *Gateway*, 2006 WL 1506286 at *15 n.28; *SEC v. McNulty*, 137 F.3d 732, 740-41 (2d Cir. 1998).

Here, QSGI admits in its Answer to the OIP that it has not filed a periodic report for any reporting period subsequent to the quarter ended June 30, 2011. Thus, there is no genuine issue of material fact as to QSGI's violations of Exchange Act Section 13(a) and the rules thereunder, and the Division is entitled to summary disposition as a matter of law.

In its answer to the OIP, QSGI makes unsupported assertions that it has taken steps toward becoming current, such as developing a plan with its auditor to cure the deficiencies and entering into a "written agreement" with an accounting firm for bookkeeping and accounting services. Respondent's Answer at ¶ 8. This plan is unverifiable; as QSGI has not made any filings for any reporting period prior to the Company's emergence from bankruptcy, there is no way to tell whether the Company has the financial resources necessary to follow through on its obligations. Even accepting QSGI's assertions as true, however, does not change the fact that the Company has been delinquent in its required periodic filings for over three years or that summary disposition is appropriate. In *Imaging Diagnostic Systems*, for example, the Administrative Law Judge granted summary disposition in a Section 12(j) proceeding against an issuer that had been delinquent for just over one year, even though the issuer claimed that it had paid a \$26,000 retainer fee to an auditing firm and made representations that it expected to file all of its delinquent reports within a matter of months. 2014 WL 3778225, at *3-4.² In *Absolute Potential*, the Commission upheld a grant of summary disposition against an issuer that not only promised to become current, as QSGI has done, but actually *did* become current after being served with the OIP and before the issuance of the Initial Decision. The Commission explained that revocation was warranted under the circumstances "to address not only the harm to current

² Key for the ALJ in that matter was the fact that the issuer, like QSGI, had not made audited financials available to investors during the delinquency period and that, like here, fraud had been alleged relating to the company's public filings and key officers had agreed to injunctions barring them from further securities fraud. 2014 WL 3778225, at *4.

and prospective investors” but also the “broader systemic harm that follows from registrants who ‘game the system’ by complying with their unambiguous reporting obligations only when they are confronted by imminent revocation”:

A sanction other than revocation would "reward those issuers who fail to file required periodic reports when due over an extended period of time" and "make last-minute filings [only after becoming the subject of Exchange Act Section 12(j) proceedings] in an effort to bring themselves current with their reporting obligations." Such conduct prolongs "indefinitely the period during which public investors would be without accurate, complete, and timely reports" and significantly detracts from the Exchange Act's reporting requirements.

2014 WL 1338256, at *7 (citations omitted).

C. **Revocation is the Appropriate Sanction for QSGI'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 WL 1506286 at *4. 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, if any, 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 Holdings Corp.*, Initial Decision Rel. No. 232, 2003 WL 21640201, at *5 (July 14, 2003), 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.*, Admin. Proc. File No. 3-12519, 2008 WL 2167956, at *8 (May 23, 2008). Applying the *Gateway* factors here supports the revocation of QSGI’s securities registrations.

1. QSGI’s Violations are Serious and Egregious

As established by the record in this proceeding, QSGI’s violative conduct is serious and egregious. The Company has not made its required periodic filings for more than three years. 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 than QSGI’s to be egregious. *See Imaging Diagnostic Systems, Inc.*, 2014 WL 3778225 (one year delinquency); *Freedom Golf Corp.*, Initial Decision Rel. No. 227, 2003 WL 21106567 (May 15, 2003) (one year delinquency); *WSF Corp.*, Initial Decision Rel. No. 204, 2002 WL 917293 (May 8, 2002) (two year delinquency).

2. QSGI’s Violations are Recurrent and Continuous

QSGI’s violations are not unique and singular, but continuous, stretching back over a period of more than three years and encompassing three consecutive delinquent annual reports and 12 consecutive delinquent quarterly reports (not counting the Form 10-Q for the period ended June 11, 2011, which was late, or the Form 10-Q for the most recent quarter ended September 30, 2014, which is pending but not yet delinquent). Throughout this period, QSGI failed to file even one Form 12b-25 seeking an extension to make its periodic filings. *See Investco, Inc.*, Initial Decision Rel. No. 240, 2003 WL 22767599, at *3 (Nov. 24, 2003) (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 QSGI's violations further supports the sanction of revocation.

3. QSGI's Violations Exhibited a High Degree of Culpability

The third *Gateway* factor, the degree of culpability involved, also supports revocation. 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" seven periodic reports and only filed two Forms 12b-25. *Gateway*, 2006 WL 1506286 at *5. As discussed above, QSGI certainly knew of its reporting obligations. Respondent's Answer at ¶ 7. Despite this, the Company did nothing to address its delinquencies for nearly three years; filed one past-due Form 10-Q only when prompted by the Division of Corporation Finance; and notably failed to file a single Form 12b-25 seeking an extension throughout the entire delinquency period. In so doing, QSGI essentially thumbed its nose at the reporting requirements until confronted with the institution of this proceeding. Revocation is warranted. *See Absolute Potential*, 2014 WL 1338256 at *4 (violations involved a high degree of culpability where issuer "ignored its reporting obligations until it was ultimately confronted with revocation through the institution" of an administrative proceeding).

4. QSGI's Efforts to Remedy its Past Violations and Ensure Future Compliance are Too Little and Too Late

The two remaining *Gateway* factors concern QSGI's remedial efforts and the credibility of its assurances against future violations. As noted above, QSGI has acknowledged its reporting deficiencies in its Answer to the OIP but has done little to actually cure those deficiencies beyond making vague and unsubstantiated promises to become current. In response to letters from the Division of Corporation Finance earlier in 2014, QSGI has managed to file just one past-due report (the previously noted Form 10-Q for the quarter ended June 30, 2011), which

itself was deficient and had to be amended due to management's incorrect representations concerning the effectiveness of the Company's disclosure controls and procedures. No other reports of any kind have been forthcoming, nearly six months after the Division of Corporation Finance's initial delinquency letter and five months after the Company promised to file its past-due reports "over the next several months." (Farney Dec. Ex. 5)

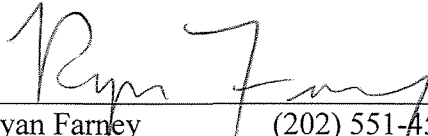
Furthermore, the Company's assurances that it can get current and remain current are not credible, given the extended length of the Company's delinquency period and the above-referenced turnover of its auditors in 2014. As reflected in its May 27, 2014 letter to the Division of Corporation Finance (Farney Dec. Ex. 5), QSGI's capacity to file its past-due reports is subject to financial constraints and the Company's "ability to pay" its accountants. In short, the protection of investors demands revocation of QSGI's securities. *See Imaging Diagnostic Systems, Inc.*, 2014 WL 3778225 (summary disposition granted against delinquent issuer who promised to become current and claimed to have retained an auditing firm for that purpose); *Absolute Potential*, 2014 WL 1338256 at *5 and n.35 (issuer's remedial efforts "insufficient" to overcome need for revocation where issuer became current only after administrative proceedings were instituted; Commission "not persuaded by [issuer's] vague representations that it will take 'all necessary steps to ensure ongoing compliance,' and that it has established 'regular and reliable relationships with new accountants and auditors'").

CONCLUSION

For the reasons stated herein, the Division respectfully requests that the Court grant its motion for summary disposition of this action against Respondent QSGI pursuant to Rule 250 of the Commission's Rules of Practice; grant the relief requested; and grant such other and further relief as this Court may deem just and proper.

Dated: October 28, 2014

Respectfully submitted,



Ryan Farney (202) 551-4543
Victor Tabak (202) 551-4433
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-5030

COUNSEL FOR
DIVISION OF ENFORCEMENT