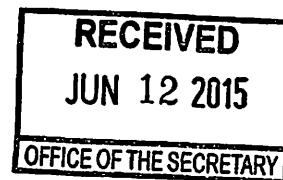


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-16418

In the Matter of

CHINA INFRASTRUCTURE
INVESTMENT CORPORATION,

Respondent.

**THE DIVISION OF ENFORCEMENT'S REPLY IN
SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION**

Respondent China Infrastructure Investment Corp. ("CIIC") admits its liability in this proceeding—it has not filed periodic reports in over three years. These serious, recurrent violations require revocation of the registration of CIIC's securities absent a compelling demonstration that CIIC lacked culpability in failing to file periodic reports, has made efforts to remedy its violations, and can credibly assure its future compliance.

CIIC has made no such showing. The only evidence it submitted in opposition to the Division of Enforcement's Motion for Summary Disposition is an unauthenticated, two-sentence letter from CIIC's former auditor withdrawing from its engagement "based on the fact that [CIIC] will no longer be a reporting company on the United States exchanges." This letter does not, as CIIC asserts, contain any advice from the auditor that CIIC had no further reporting obligations to the SEC, and in any event, revocation is

appropriate even when a company can credibly assert that a third party is responsible for its reporting violations.

CIIC's "assurances" that it will cure its past violations and comply with its reporting obligations in the future are equally unavailing. They are unsupported by sworn statements from company officials, they do not state any concrete plan for bringing the company into compliance, and they are belied by a three-year period when CIIC was apparently content not to be a "reporting company on the United States exchanges," just as it would be if its registration were revoked.

The Division is entitled to summary disposition and to an order revoking the registration of each class of securities registered with the Commission.

ARGUMENT

Both parties agree that the five *Gateway* factors should guide the analysis of whether revocation is the appropriate remedy in this case. *See Gateway International Holdings, Inc.*, Securities Exchange Act Rel. No. 53907, 2006 SEC LEXIS 1288 at *19-*20 (May 31, 2006); Mot. at 4; Opp. at 3. CIIC concedes that the first two factors weigh in favor of revocation. The substance of those concessions demands revocation unless the company can make a strongly compelling showing as to the other three factors. Here, CIIC has made no such showing, and revocation is appropriate.

I. CIIC Admits to Serious and Recurring Violations of Its Reporting Requirements

The first two *Gateway* factors are the seriousness and recurring nature of the issuer's violations. *Gateway*, 2006 SEC LEXIS 1288 at *19-*20. CIIC admits that it has not filed any quarterly or annual reports in over three years. Opp. at 2. It also does not

challenge the authorities cited in the Division's Motion demonstrating that the failure to file periodic reports for such an extended period (or for significantly lesser durations) is both egregious and recurring. *See* Mot. at 5-6. There is no dispute that these two factors weigh strongly in favor of revocation.

II. CIIC Has Not Created a Fact Issue, Let Alone Made a Compelling Showing, as to the Other *Gateway* Factors

When, as here, an issuer has repeatedly failed to file required periodic reports, “only a strongly compelling showing with respect to the other [*Gateway*] factors would justify a lesser sanction than revocation.” *See Impax Laboratories, Inc.*, Exchange Act Rel. No. 57864, 2008 SEC LEXIS 1197 at *27 (May 23, 2008) (cited in Mot. at 5-6).¹ CIIC's argument that it did not act culpably and its assertion that it will remedy its past violations and comply in the future are unsupported by any competent evidence and otherwise fail to make such a showing.

A. CIIC has not submitted evidence sufficient to create a genuine issue of material fact

The only evidence CIIC has submitted in opposition to the Division's Motion is an unauthenticated letter from its former accountant, Weinberg & Company. In its entirety, the letter reads:

Effective February 8, 2012, we will cease our services as your accountants. We have reached this decision based on the fact that your company will no longer be a reporting company on the United States exchanges.

Opp., Exhibit A.

¹ The other *Gateway* factors are the issuer's culpability, the extent of its efforts to remedy future violations and ensure compliance, and the credibility of the issuer's assurances against future violations. *Gateway*, 2006 SEC LEXIS 1288 at *19-*20.

The Weinberg letter does not create a genuine issue of fact as to CIIC's culpability. A party opposing a motion for summary disposition is not entitled to the benefit of unreasonable inferences drawn from the evidence it presents, nor can it rely on mere assertion or speculation. *Stine v. U.S. Fed. Bureau of Prisons*, 508 F. App'x 727, 731 (10th Cir. 2013) ("Although our summary judgment standard requires us to view the facts in the light most favorable to the non-moving party, it does not require us to make unreasonable inferences in favor of the non-moving party."); *Reed v. City of St. Charles, Mo.*, 561 F.3d 788, 791-92 (8th Cir. 2009) (a court "is not required to "accept unreasonable inferences or sheer speculation as fact"); *Caban Hernandez v. Philip Morris USA, Inc.*, 486 F.3d 1, 8 (1st Cir. 2007) (a court need not "draw *unreasonable* inferences or credit bald assertions, empty conclusions, rank conjecture, or vitriolic invective" in favor of non-moving party).²

It is unreasonable to infer from the Weinberg letter that CIIC's accountant advised the company that it did not have to file periodic reports. In the letter, Weinberg asserts a fact: CIIC will no longer be a reporting company. Nothing in the letter constitutes advice from Weinberg. The letter does not refer to prior advice from Weinberg regarding CIIC's reporting obligations. The letter sheds no light on who decided that CIIC would stop filing periodic reports or how that decision was made. The text of the letter offers no basis for an inference that Weinberg ever advised CIIC that it no longer had an obligation

² The Commission construes Rule of Practice 250(b) to be consistent with Federal Rule of Civil Procedure 56. *In the Matter of Jaycee James*, Release No. 649 (Apr. 2, 2010) (citing *In the Matter of Jeffrey L. Gibson*, SEC Release No. 2700, 2008 WL 294717 (Feb. 4, 2008) ("cases construing [Rule 56] clarify the obligations a motion for summary disposition places on the party opposing it").

to file periodic reports with the SEC.

Other than the Weinberg letter, CIIC has produced no evidence to support its reliance argument. It has not provided any sworn statement from a representative of CIIC or Weinberg attesting to any advice Weinberg may have given. Nor has it produced any documents memorializing any such advice.³ CIIC's argument amounts to rank assertion and speculation and therefore does not present a genuine issue of material fact. *See In the Matter of Jaycee James*, Rel. No. 649 (Apr. 2, 2010) (party opposing summary disposition "must set forth specific facts showing a genuine issue for a hearing and may not rest upon mere allegations or denials of its pleadings"); *Fujitsu Ltd. v. Fed. Exp. Corp.*, 247 F.3d 423, 428 (2d Cir. 2001) ("the nonmoving party may not rely on conclusory allegations or unsubstantiated speculation"); *Harding v. Gray*, 9 F.3d 150, 154 (D.C. Cir. 1993) (the non-moving party "must support his allegations . . . with facts in the record; a mere unsubstantiated allegation . . . creates no genuine issue of fact").

As to the fourth *Gateway* factor, CIIC does not contend that it has made any actual efforts to bring itself into compliance. It merely asserts that if in fact it was obligated to file periodic reports between 2012 and 2015, then it is "prepared to file all of the required back reports and maintain current reports . . . to make up for its error." Opp.

³ CIIC argues that summary disposition is inappropriate because it needs time to secure the testimony of a Weinberg representative. Opp. at 3. But a declaration from CIIC's management or documents memorializing Weinberg's "advice" or even referring to it should already be available to CIIC. CIIC has not shown good cause for its failure to submit *any* evidence to support the assertions in its Opposition. *See* 17 C.F.R. § 201.250(b) (the hearing officer shall deny a motion for summary disposition if the non-moving party can show good cause why it could not present evidence sufficient to oppose the motion).

at 2-3.⁴ It certainly has submitted no evidence to demonstrate any efforts to bring itself into compliance.

Finally, as to the fifth *Gateway* factor, CIIC has not submitted any sworn statement from its current management that the company actually intends to bring itself into compliance. Nor has it produced any documents, like an engagement letter with a new audit firm or even an internal memorandum memorializing its decision to begin filing periodic reports again, that would lend credence to the statement in its Opposition that it intends to comply with its filing obligations going forward. CIIC's bald assertion that it will comply with the reporting laws going forward is incompetent to create a genuine issue of material fact. *See Caban Hernandez*, 486 F.3d at 8.

B. CIIC's Assertions, Even If True, Are Not Strongly Compelling

Because they are unsupported by evidence in the record, the assertions in CIIC's Opposition regarding its culpability and its efforts to remedy its violations and ensure future compliance do not create any genuine issue of material fact. But in any event, they do not constitute a "strongly compelling showing" that would warrant a lesser remedy than revocation. The Commission has repeatedly held that revocation is appropriate even where an issuer has presented evidence that its failure to file periodic reports "resulted from the actions of a third party." *See, e.g., In the Matter of Cobalis Corporation*, Exchange Act Rel. No. 64813, 2011 WL 2644158 at *6 (July 6, 2011); *see also Eagletech Communications, Inc.* Exchange Act Rel. No. 54095, 2006 WL 1835958 (July

⁴ CIIC stops short of explicitly admitting that it violated the securities laws, and instead argues that *if* it violated the securities laws, it did so on the advice of its auditor. That careful wordplay is inconsistent with the image CIIC would otherwise present of a candid, contrite issuer determined to comply with its reporting obligations.

5, 2006). In *Cobalis*, the issuer argued that it had been prevented from filing its periodic reports by a creditor and shareholder that forced the issuer into bankruptcy and prevented it from earning an income. In *Eagletech*, the issuer argued that it had been the victim of multiple market manipulations that left it financially unable to file its periodic reports. In both cases, the Commission affirmed the Administrative Law Judge's summary disposition and revocation of the registration of the issuer's securities. As the Commission explained in *Cobalis*, "scienter is not necessary to establish grounds for revocation," and so the Commission need not "find that the Company was aware of, or intentionally ignored, its reporting obligations." *Cobalis*, 2011 WL 2644158 at *5.

An issuer's explanation for its past violations, even if it establishes a lack of culpability, is primarily relevant "to evaluate the issuer's past efforts to return to compliance and the credibility of any assurances against future violations." *Id.* at *6. In *Eagletech*, for example, the issuer's argued that its financial condition prevented it from making periodic filings. But that same poor financial condition undermined Eagletech's assurance of future compliance and ultimately weighed in favor in revocation. *Eagletech*, 2006 WL 1835958 at *4.

In this case, CIIC's claims it failed to file its periodic reports because its auditor had advised it that it was "no longer a reporting company on the United States exchanges." But if CIIC in fact believed for three years that it had lost its status as a "reporting company on the United States exchanges," it also made no effort to reestablish that status at any time between February 2012 and June 2, 2015, when it filed its Opposition. CIIC was apparently content for years not to have its securities registered with the Commission. CIIC has not explained what has changed and why it suddenly

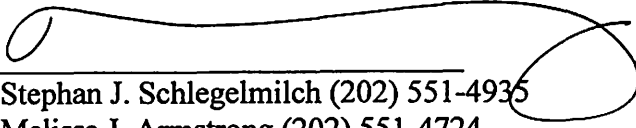
wants its securities to be registered and assume the attendant burden of filing periodic reports. Just as Eagletech's explanation for its failure to file periodic reports ultimately undermined any assurance of its future compliance, so here CIIC's explanation undermines the credibility of its assertion that it desires and intends to cure its past deficiencies and comply in the future to preserve its status as a registrant.

CONCLUSION

For the reasons set forth in its Motion and above, the Division respectfully requests that the Commission revoke the registration of each class of CIIC's securities registered under Exchange Act Section 12.

Dated: June 12, 2015

Respectfully submitted,



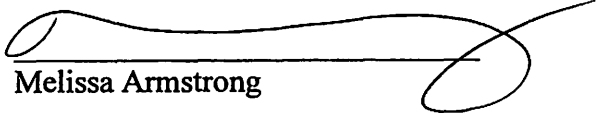
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CERTIFICATE OF SERVICE

I hereby certify that true copies of The Division Of Enforcement's Reply In Support Of Its Motion For Summary Disposition was served by email on the following on this 12th day of June, 2015:

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