UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16596

In the Matter of **Oraco Resources, Inc., *et al.*,** **Respondents.**	**DIVISION OF ENFORCEMENT'S REPLY TO SOLTERA MINING CORP.'S OPPOSITION TO THE DIVISION'S MOTION FOR SUMMARY DISPOSITION**

The Division of Enforcement ("Division") hereby files its Reply to Soltera Mining Corp.'s ("SLTA's") Opposition ("Opposition") to the Division of Enforcement's ("Division's") Motion for Summary Disposition and Brief in Support ("Division Brief"). As shown herein, SLTA's Opposition falls far short of making the strong showing required to avoid the sanction of revocation for its long history of delinquent periodic reports, and does not raise any genuine issues of material fact that would necessitate a live hearing or further briefing in this matter prior to the court's issuance of a revocation order.

Few things in SLTA's Opposition better highlight the seriousness of its failure to comply with the periodic reporting requirements than its characterization of revocation as a "death penalty" for the company. Opposition at 5. If the public securities market is so important to SLTA's fortunes, then the public's access to current information is equally important. The Commission recognizes this by ranking the recurrent failure to file periodic reports as by far the most important of the several *Gateway* factors used in determining an appropriate sanction in an Exchange Act Section 12(j) proceeding based on delinquent filings. As the Commission has repeatedly stated, the "'recurrent failure to

file periodic reports' is 'so serious that only a strongly compelling showing with respect to the other factors we consider would justify a lesser sanction than revocation.'" *Absolute Potential, Inc. (f/k/a Absolute Waste Services, Inc.),* Exchange Act Rel. No. 71866, 2014 SEC LEXIS 1193, at *24 (April 4, 2014) (*"Absolute")* (quoting *Impax Laboratories, Inc.,* Securities Exchange Act of 1934 Rel. No. 57864, 2008 SEC LEXIS 1197, at *27 (May 23, 2008)). In contrast, SLTA seems to be laboring under the misconception that all of the *Gateway* factors bear equal weight. Opposition at 8-10. Nothing could be further from the case.

As SLTA has admitted, and can hardly deny, its failure to timely file periodic reports is serious and well established. SLTA has yet to make a timely filing since Montanari became CEO on September 24, 2007. Division Brief at 13 and Frye Decl. Ex. 7.[1] Since 2009, the only two periods during which SLTA has made a sustained effort to meet its reporting obligations followed a delinquency letter and institution of this administrative proceeding, respectively. *Id.* Now, SLTA and its CEO promise that they will make the company's filings in the future and also promise that the company's directors have promised that they will provide adequate funds to prepare and file its periodic reports in the future. Given SLTA's long history of delinquency, and the fact that these representations come from Montanari, on whose watch SLTA has yet to file a timely report,[2] the Division's skepticism concerning SLTA's new professions of fealty to the reporting requirements could hardly be better founded.

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[1] In preparing this Reply, the Division noted one error in Frye Decl. Ex. 7. The first delinquency letter sent to SLTA was signed for by the company on March 25, 2013, not March 25, 2015. *See* Frye Decl. Ex. 5.

[2] As Frye Decl. Ex. 7 shows, SLTA has yet to file a timely periodic report on Montanari's watch, however, for the first five periods of his tenure, each late periodic report was filed before the next one came due. After missing the filing deadline for the Form 10-KSB for the period ended October 31, 2008 on

In *Absolute,* the Commission considered similar assurances of future compliance which included a new set of auditors and promises of adequate funding to meet the petitioner's reporting obligations going forward. *Absolute*, 2014 SEC LEXIS 1193 at *20-*21. The Commission rejected the petitioner's argument that these facts raised genuine issues of material fact overcoming the Division's argument for summary disposition, noting that "'[n]ot every alleged factual dispute precludes summary disposition." *Id., quoting Gately & Associates, LLC,* Exchange Act Rel. No. 62656, 2010 SEC LEXIS 2535, at *20-*21 (August 5. 2010) (citing *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 247-48 (1986). The Commission went on to hold that the "undisputed *material* facts in the record regarding Absolute's protracted delinquencies, unpersuasive explanations for those delinquencies, and the absence of concrete remedial changes [] to ensure compliance demonstrate that Absolute is likely to violate the reporting requirements in the future regardless of the viability of its funding resources." *Id.* (emphasis in original.)

As in *Absolute,* SLTA's assertions do not detract from, and often support, the Division's case for summary disposition. For example, the Division does not dispute SLTA's description of the costly, difficult, and risky nature of the mining industry, the fact that the company's officers were located outside of the United States, or that current management speaks English as a second language. All of these facts have been true throughout the period of delinquency and are still true today. However, they do not help SLTA's case: rather they only serve to underscore the seriousness of SLTA's past violations and the harm caused by SLTA's long history of delinquency to existing and

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January 29, 2009, SLTA was not completely current again until it filed its Form 10-KSB for the period ended October 31, 2014 on August 17, 2015.

prospective investors. The high degree of general and specific risks of investing in SLTA only show how essential it is for such a company to provide current and accurate information on a timely basis.

The fact that the company has brought itself current does not lead to the conclusion that no sanction is warranted. SLTA's remediation of its delinquencies only occurred after institution of this administrative proceeding. As the Commission noted in *Absolute,* which also involved an issuer that became current after the proceeding was instituted, one of the primary functions of the revocation sanction is deterrence: "revocation may be warranted in these circumstances to address not only the harm to current and prospective investors in the non-compliant issuer but also to address 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." *Absolute,* 2014 SEC LEXIS 1193 at *27. These concerns are especially relevant here because SLTA, under the same management, has rushed to remedy its delinquencies in response to prompting by the Commission or its staff not once, but twice.

SLTA correctly notes that the Division has not alleged fraud or material misstatements in SLTA's filings, but fraud or scienter is not a required element of an Exchange Act Section 13(a) violation. Division Brief at 7-8. Moreover, Exchange Act Section 12(j) does not even use the term "violation" – instead it uses the term "failure to comply" with any provision of the Exchange Act as a predicate for determining whether it is necessary and appropriate for the protection of investors to impose a sanction. SLTA also repeats the refrain sung by every delinquent filer that attempts to avoid revocation,

lamenting the harm to existing shareholders that will flow from a revocation order. The Commission has repeatedly rejected this argument as a basis for avoiding revocation, focusing instead on harm to prospective investors caused by the failure to file periodic reports as the more important factor in determining whether to revoke. *Absolute,* 2014 SEC LEXIS 1193 at *23.

Concerning the Division's argument relating to the lack of proxy materials and/or information statements pursuant to Exchange Act Sections 14(a) and/or 14(c), SLTA admits that it has not held an election for directors since 2005. Opposition at 7. Thus, while SLTA did not violate Exchange Act Sections 14(a) or 14(c), it did fail to follow its own By-Laws which require an annual shareholders' meeting for the election of directors. Frye Decl. Ex. 11.[3] SLTA's disregard for its obligations to its shareholders under its By-Laws provides additional evidence of the company's culpability and disregard for the interests of its current and prospective shareholders. The fact that no shareholder has held SLTA accountable for this breach does not detract from the fact that such a breach occurred.

SLTA's recent efforts are too little and too late because the harm from SLTA's long history of delinquency cannot be undone. Section 13(a) of the Exchange Act requires that registered companies provide periodic reports so that investors can remain

[3] SLTA alleges that Section 2.2 of its By Laws, Frye Decl. Ex. 11 at 5, which gives the board the power to move the date of the annual meeting, as a provision that "allows the directors to avoid holding useless annual meetings." Opposition at 7. This effort goes beyond interpretation and completely changes the meaning of this provision, which states that '*[a]nnual* meetings of the stockholders, commencing with the year 2005, *shall* be held . . .." *Id.* (emphasis added.) The board has discretion only to change the annual meeting date, not to cancel the meeting itself. *Id.* SLTA implicitly concedes this in citing Nev. Rev. Stat. §78.345, which gives shareholders the right to file suit in Nevada court to compel a meeting to elect directors if at least 18 months has elapsed since the last meeting for election of directors. Opposition at 7-8. This provision provides shareholders with an enforcement mechanism should a corporation fail to adhere to Nev. Rev. Stat. §78.330's requirement that at least one-fourth of a corporation's board to be elected every year.

apprised of important company events *as those events unfold.* Since Montanari's appointment as CEO, SLTA has not filed a single timely periodic report and at times was more than four years delinquent in its periodic reports. Frye Decl. Ex. 7. SLTA's recent filings do not erase the harm already inflicted on current and prospective investors.

To be sure, by having filed its delinquent reports during the pendency of this administrative proceeding, SLTA has placed itself in a different position from the bulk of other registrants whose securities have been revoked in 12(j) proceedings. But, ultimately, it is a distinction without a difference. The core question remains what level of sanction is appropriate for SLTA's undisputed violations. The Division urges the Court that revocation is the appropriate sanction in this case.

For the reasons set forth above, and in the Division's Motion for Summary Division, and the entire record in this proceeding, the Court should grant the Division's motion, and enter an initial decision revoking the Exchange Act Section 12(g) registration of each class of SLTA's registered securities.

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Dated: September 3, 2015

CERTIFICATE OF SERVICE

I hereby certify that true copies of the Division of Enforcement's Reply to Soltera Mining Corp.'s Opposition to the Division's Motion for Summary Disposition, was served on the following on this 3rd day of September, 2015, in the manner indicated below:

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