

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-19429

In the Matter of

NXChain, Inc.
f/k/a AgriVest Americas, Inc., et al.,

Respondents.

**DIVISION OF ENFORCEMENT'S RESPONSE TO
COMMISSION'S REQUEST FOR ADDITIONAL BRIEFING
CONCERNING SOUM CORP. AND MOTION FOR DEFAULT**

The Division of Enforcement ("Division"), through counsel, hereby files its brief in response to the Securities and Exchange Commission's ("Commission's") Order of November 6, 2019 ("Order") concerning SoOum Corp. ("SOUM").

The Order asked the Division to address two key points: 1) the potential deficiencies in SOUM's Form 15-12G filed with the Commission September 19, 2019; and 2) the basis, if any, for affording expedited consideration in this matter.

As discussed below, SOUM's Form 15-12G does not accurately reflect the holders of record of its stock. The SOUM's Form 15-12G, filed September 19, 2019, provides that it has 112 holders of its common stock; however, SOUM's transfer agent and other sources have confirmed that SOUM has in excess of 300 holders. Expedited consideration of the Division's Motion for Default is appropriate under the Commission's Rules of Practice, and is necessary to protect the investing public from, *inter alia*, SOUM's inability to provide the market with current,

timely, and accurate information, and the risk to potential investors by allowing SOUM to continue to trade while waiting for the Form 15 to become effective.

I. Procedural Background and Summary of SOUM's Relevant Filing History

SOUM has a class of securities registered with the Commission pursuant to Exchange Act Section 12. SOUM has failed to file any of its mandated periodic filings for any period following September 30, 2017, and has now missed a total of seven consecutive required periodic reports. *See* Declaration of David S. Frye in support of the Division's Motion for Default and Expedited Consideration as to SoOum Corp. ("Frye Decl.") Ex. 1¹. In fact, of the twenty periodic reports required since current management took control of SOOUM, only five have been timely filed. Frye Decl. Ex. 1. Although the Division of Corporation Finance sent SOUM a delinquency letter, it did not receive that letter due to its failure to maintain a current and accurate address on file with the Commission. Frye Decl. ¶¶3-5. and Frye Decl. Exs. 2-4__ a. SOUM was duly served by attempted delivery on the address from its then-most recent EDGAR filing with the Commission, yet it has failed to answer or otherwise appear in this proceeding. Frye Decl. ¶6 and Frye Decl. Ex. 5. The Division served SOUM with its Motion for Default and Expedited Consideration by both first class mail at its updated EDGAR address and by email to its President, yet it has *still* failed to answer or otherwise appear in this proceeding. Frye Decl. ¶6. To date, SOUM has not filed any of its delinquent reports. Frye Decl. ¶

¹ The Division asks, pursuant to Rule of Practice 323, that the Court take official notice of the EDGAR information referred to in Ex. 1 and all other information and filings on EDGAR referred to in this brief and/or filed as exhibits with the accompanying Frye Declaration. In order to reduce the volume of documents included in this submission, the Division has attached as exhibits excerpted copies of certain voluminous documents with just the cover page and relevant pages included. The Division will provide complete copies of any of these documents if requested by the Commission or the respondent.

II. SOUM's Form 15-12G is Inaccurate and Underreports the Number of Holders of its Stock

As noted at pages 1-2 of the Order, SOUM's Form 15-12G filed on September 19, 2019 states that it has 112 holders of record of its common stock. Frye Decl. Ex. 6. The Order further notes that SOUM's Schedule 14C, filed on March 22, 2018 states that SOUM had 382 holders of record as of March 16, 2018. Frye Decl. Ex. 7. However, SOUM's transfer agent confirmed that the company's common stock had 403 holders of record as of November 12, 2019.. Frye Decl. ¶9. In addition, the Depository Trust and Clearing Corporation ("DTCC") held positions for 40 accounts in "street name" as of September 19, 2019, thus increasing the number of holders to approximately 442. See Frye Decl. ¶10 and Frye Decl. Ex. 8. SOUM's Form 15-12G notes that it is seeking termination of its registration based on Securities Exchange Act of 1934 ("Exchange Act") Rule 12b-4(a)(1). Frye Decl. Ex. 6. As the Commission notes, Order at 2, Exchange Act Rule 12b-4(a)(1) states that under that provision, an issuer must have less than 300 holders of record to be eligible to terminate its registration. Thus, SOUM's Form 15-12G is inaccurate. Moreover, because it has more than 300 holders of record, the company is ineligible to terminate its registration based on the Exchange Act rule SOUM indicates.²

III. Expedited Consideration of the Division's Motion for Default is Appropriate

Expedited consideration of the Division's Motion for Default and revocation of SOUM's registration would protect the investing public from the risks of a security trading in the public market without adequate and accurate information. Indeed, the Division believes that expedited

² It appears that SOUM may be eligible to terminate the Exchange Act registration of its common stock based on Exchange Act Rule 12g-4(a)(2). That rule states that an issuer may terminate its registration if it has fewer than 500 holders of record and has had less than \$10 million in assets at the end of each of its most recent three fiscal years. However, SOUM failed to file annual reports for two of its most recent three fiscal years making it impossible to confirm its asset levels from its EDGAR filings.

consideration is necessary and appropriate in cases where, like here, the issuer continues to promote its stock despite its delinquent and inaccurate filings.

The instant proceeding is part of the Division's Delinquent Filings Program ("DFP") which has become the primary tool for addressing violations of the periodic reporting requirements imposed on Exchange Act Section 12 issuers. Since its revitalization in 2004, the program has resulted in revocation of the registrations of over 5,000 Exchange Act Section 12 issuers. Frye Decl. ¶11 and Frye Decl. Ex. 9. SOUM, along with over 2,000 of the revoked issuers, had common stock which was quoted on OTC Link, or its predecessor the Pink Sheets, had market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3), a situation which magnified the inherent risks to the market of its delinquencies. Frye Decl. Ex. 11. On similar facts in contested proceedings, the Commission has revoked the securities registration of literally thousands of defaulting respondents.

The failure to grant expedited consideration and revoke the registrations of issuers that file Forms 15-12G after institution of a 12(j) proceeding could have several negative consequences. First, it could substantially weaken the deterrent effect of the DFP. Second, it could provide a road map for future issuers who fail to receive or, if received, fail to respond to delinquency letters to avoid sanction for their violations. Third, it could weaken the principal purpose and benefit of the DFP—to remove these stocks from the public market.³ Fourth, it rewards issuers who ignore the administrative process and fail to file any response. Fifth, it allows issuers, including unscrupulous ones, to delay revocation. Thus, the expedited consideration is appropriate to protect investors.

As the Commission notes in the Order, the Division's and the Commission's approach toward Exchange Act Section 12(j) ("12(j)") respondents that file Forms 15-12G has not been

³ As in other cases, there would be nothing to prevent SOUM from re-registering its securities when it has gotten its financial and business house in order.

consistent. Due to the large volume of cases brought under the DFP, and limited staff resources, the Division has, in some cases in the past, agreed to wait ninety days to allow the Form 15 to become effective. However, the Division's exercise of its discretion in past cases does not foreclose its ability to seek expedited treatment of certain cases where, in its discretion, it believes appropriate.⁴ In circumstances where a company, like SOUM, is putting inaccurate information out to the market, allowing it to continue trading despite its delinquency, the Division believes that it is inappropriate to wait and, in fact, can and should seek expedited consideration to protect investors who are trading on a lack of information and/or inaccurate information. SOUM's Form 15-12G underscores the importance of the need to act in an expedited manner—it continues to inaccurately report information about the company, namely, the number of holders of its stock.

Even assuming that SOUM corrects the inaccuracies in its Form 15-12G, and that it is otherwise eligible for termination⁵, it could file a new or amended Form 15-12G to terminate its registration. However, while a valid Form 15-12G suspends a registrant's duty to file periodic reports, it does not relieve a registrant of any liability for filings it has already missed. Having left the market in the dark for two years, SOUM has given no indication that it intends to make those filings. SOUM's history of late or missing periodic reports demonstrates its lack of regard for providing timely and accurate information to its shareholders. But its disregard for its public shareholders does not end there – since taking control of the company SOUM has implemented

⁴ The Division has pending motions for default against several other 12(j) respondents who filed 15-12Gs. *See, e.g.*, Pan Ocean Container Supplies Ltd. a/k/a Red Wolf Enterprises Int. or Red Wolf Enterprises, Inc.. Admin. Proc. File No. 3-19325 (motion filed October 23, 2019); Ystrategies Corp. Admin. Proc. File No. 3-19443 (motion filed October 22, 2019); Paracap Corporation, Admin. Proc. File No. 3-19310 (motion filed October 1, 2019); and Kama Resources, Inc. Admin. Proc. File No. 3-19317 (motion filed September 27, 2019). Expedited consideration was requested in all of these Motions except for Paracap, which filed its 15-12G on October 3, 2019, after the motion was filed. The Division believes that the registration of each of these issuers should be revoked prior to the dates their Forms 15-12G become effective.

⁵ *See* fn.1 *supra*.

reverse stock splits of 1:1000 on October 1, 2015 and 1:500 on November 13, 2017, thereby twice wiping out the value of preexisting shareholders. Frye Decl. ¶11 and Frye Decl. Ex. 11 The harm from SOUM's reverse splits is more than hypothetical because as of August 16, 2016, SOUM's common stock was quoted on OTC Link, had seven market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).⁶ Frye Decl. Ex. 10. Moreover, the DTCC position sheets show that there are over 2.5 billion shares held by accounts in "street name," *i.e.* by public shareholders. Frye Decl. Ex. 8. Thus, the potential harm from continued trading of SOUM's stock is quite real.

Moreover, by registering its securities under the Exchange Act, SOUM represented to the market that it would hold itself to a higher standard and created a market expectation that it would comply with the regulatory requirements it had undertaken. Now, having ignored those requirements, and engaged in a 1:500 reverse split during its period of delinquency, SOUM seeks to simply walk away from those requirements and continue its status as a publicly traded entity. If anything, SOUM's filing of a materially deficient Form 15-12G provides further evidence of SOUM's lack of good faith and extended flouting of its legal obligations, both of which support the sanction of revocation.

Form 15-12G and its potential Kryptonite-like effect on a 12(j) proceeding presents unique challenges for the Division not present in other Enforcement actions. Significantly, Exchange Act Rule 12d2-2(d)(4) provides that a 12(j) proceeding halts the delisting process of an exchange-traded security registered under Exchange Act Section 12(b), thus preserving the Commission's ability to revoke or suspend the security's registration. There is no similar provision for Exchange

⁶ SOUM's eligibility for the "piggyback" exception was lost when the Commission issued a ten day trading suspension simultaneously with the institution of this proceeding.

Act Section 12(g) registered securities. Exchange Act Rule 12h-6(a)(1) requires a foreign private issuer wishing to terminate its registration via a Form 15-12F⁷ to have been subject to the reporting requirements of Exchange Act Section 13(a) for at least twelve months preceding the filing and to have filed all reports required for that period and have filed at least one annual report. Again, there is no similar provision applicable to domestic issuers. For domestic respondents in a 12(j) proceeding that file a 15-12G, the Commission's only option is to revoke or suspend before the Form 15-12G becomes effective or dismiss the case.

The failure to act in an expedited manner will foreclose the remedy the Division seeks and allow delinquent filers to continue to trade their stock without providing investors with current, timely, and accurate information. Indeed, nothing in the statute or rules requires the Commission to dismiss a 12(j) proceeding where a respondent files a valid Form 15-12G after institution and prior to that form becomes effective. Similarly, there is nothing that constrains the Division's discretion to continue to argue for the remedial sanction of revocation and request expedited consideration if it believes the facts warrant that result. Therefore, the Division submits that the Commission should rule that a motion by the Division for expedited consideration of its motion for default revocation is proper; an alternative holding from the Commission would render 12(j) proceedings moot in all circumstances in which a company files a valid Form 15-12G after institution, thereby allowing companies with unscrupulous motives and/or inaccurate filings to continue to trade without recourse.⁸

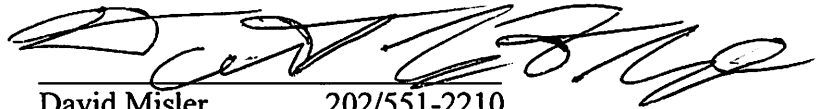
⁷ Form 15-12F is the form filed by a foreign private issuer to terminate its registered status.

⁸ Additionally, the Order Instituting Proceedings in this matter contemplates that this matter be determined promptly by directing that it proceed under the thirty-day timeframe of Rule of Practice 360(a)(2)(i).

Based on the foregoing, and the entire record in this action, the Division prays that the Commission grant the Division's request for expedited consideration, issue an order of default, and revoke the registration of each class of SOUM's securities registered pursuant to Exchange Act Section 12(j).

Dated: November 13, 2019

Respectfully submitted,



David Misler 202/551-2210
David S. Frye 202/551-4728
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-6010

COUNSEL FOR
DIVISION OF ENFORCEMENT

CERTIFICATE OF SERVICE

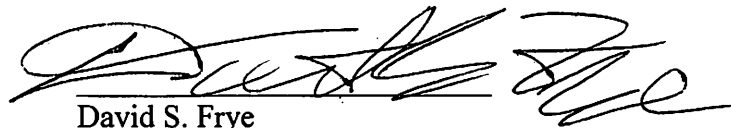
I hereby certify that I caused true copies of the Division of Enforcement's Response to Commission's Request for Additional Briefing Concerning SoOum Corp. and our Motion for Default and Expedited Consideration, Declaration of David S. in Support and Exhibits thereto, to be served on the following on November 13, 2019, in the manner indicated below:

By Email:

apfilings@sec.gov

By First Class Mail and Email (where indicated):

SoOum Corp.
590 Madison Avenue, Suite 1800
New York, NY 10022
will@sooum.com
jones@corplaw.net



David S. Frye