

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19864

In the Matter of

Trans-Pacific Aerospace Company, Inc.
and Vertical Computer Systems, Inc.,

Respondents.

**DIVISION OF ENFORCEMENT’S RESPONSE TO MOTION TO FILE AMICUS
BRIEF AND PROPOSED AMICUS BRIEF OR, ALTERNATIVELY, TO STATE VIEWS**

The Division of Enforcement (“Division”), by counsel, pursuant to Rule 154 of the Commission’s Rules of Practice, respectfully responds to the Motion of Non-Party Steven Infanti, Sr. (“Infanti”) to File an Amicus Brief or, Alternatively, to State Views (the “Motion”) concerning Vertical Computer Systems, Inc. (“VCSY”). Based on VCSY’s failure to file periodic reports for 20 months, revocation of the registration of its securities, and not a six-month suspension, is the appropriate remedy for the protection of investors.

PROCEDURAL BACKGROUND ON RESPONSE TIMING

Infanti did not serve the Motion on the Division. *See* Motion at p. 12 (Certificate of Service). And, despite being dated July 21, 2020, the Motion was not posted on SEC.gov, under this administrative proceeding until on or about August 19, 2020. The Division learned of the Motion on Tuesday, August 18, 2020, when the Order Granting Leave to File Statement of Views was served upon the Division by the Office of the Secretary and displayed on the SEC’s website. Accordingly, the Division promptly reviewed and prepared this response.

RESPONSE

VCSY's deficiencies are not in dispute. "VCSY has not filed any periodic reports for the past 20 months." Motion, at p. 7. The Division agrees. However, Infanti argues that a six-month suspension of VCSY's registration is a sufficient redress for VCSY's failure to file annual and quarterly reports over a two-year period. While anyone can state views pursuant to Rule 210(e) of the SEC's Rules of Practice, revocation is the appropriate remedy to protect investors.

Section 13(a) of the Exchange Act and the rules promulgated thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file periodic and other reports with the Commission. As explained in the Initial Decision in *St. George Metals, Inc.*:

Section 13(a) of the Exchange Act and the rules promulgated 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 Rule 13a-1 requires issuers to submit annual reports, and Exchange Act Rule 13a-13 requires issuers to submit quarterly reports. No showing of scienter is necessary to establish a violation of Section 13(a) or the rules thereunder.

St. George Metals, Inc., Initial Decision Rel. No. 298, 2005 SEC LEXIS 2465, at *26 (Sept. 29, 2005); accord *Gateway Int'l Holdings, Inc.*, Securities Exchange Act Rel. No. 53907, 2006 SEC LEXIS 1288 (May 31, 2006) at * 18, *22 n.28; *Stansbury Holdings Corp.*, Initial Decision Rel. 6 No. 232, 2003 SEC LEXIS 1639, at* 15 (July 14, 2003); and *WSF Corp.*, Initial Decision Rel. No. 204,2002 SEC LEXIS 1242 at *14 (May 8, 2002).

Exchange Act Section 13(a) is the cornerstone of the Exchange Act, establishing a system of periodically reporting core 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 International Holdings, Inc., Securities Exchange Act Rel. No. 53907, 2006 SEC LEXIS 1288 at *26 (quoting *SEC v. Beisinger Indus. Corp.*, 552 F.2d 15, 18 (1st Cir. 1977)).

The Commission has already rejected the idea that suspension is an appropriate remedy for a delinquent issuer. For instance, in *Advanced Life Sciences Holdings, Inc.*, the Commission stated that:

[A] suspension would discourage consistent, timely filings. It would reward those issuers who fail to file required periodic reports when due and make last-minute filings only after becoming the subject of Exchange Act Section 12(j) proceedings. A suspension would encourage the opportunistic practice of complying with regulatory requirements only when the issuer has concluded that its continued failure to do so will result in significant adverse consequences. Revocation is necessary to deter issuers from disregarding their obligations to present accurate and timely information to the investing public until spurred by the institution of proceedings.

Advanced Life Sciences Holdings, Inc., Securities Exchange Act Rel. No. 81253, 2017 SEC LEXIS 2297 at *19 (July 28, 2017).

A suspension of registration for a period of twelve months or less is not an appropriate disposition because a sanction of anything less than revocation “would reward issuers who fail to file required periodic reports over an extended period and become current only after enforcement proceedings are brought against them, essentially providing an automatic lengthy postponement of the prescribed filing dates for such issuers to the detriment of the public interest and investors.” *In the Matter of Law Enforcement Associates Corp., et al. [as to Sonnen]*, Initial Decision Rel. No. 487, 2013 SEC LEXIS 1436, at *12-13 (May 15, 2013). Moreover, the Commission in *Sonnen* noted:

Revocation also furthers the public interest by reinforcing the importance of full and timely compliance with the Exchange Act's reporting requirements. *Cobalis*

Corp., 101 SEC Docket at 43389, *Nature's Sunshine Prods., Inc.*, Exchange Act Release No. 59268 (Jan. 21, 2009), 95 SEC Docket 13488, 13503. Likewise, revocation accords with the public interest in finality in administrative proceedings. *Cobalis Corp.*, 101 SEC Docket at 43389, *Nature's Sunshine*, 95 SEC Docket at 13499.

Id. at *15, n. 9.

Infanti argues that a six month suspension would be in the best interest of VCSY shareholders (both current and prospective). Motion at p. 2. However, the Commission repeatedly has rejected that argument. For example, in *Tamir Biotechnology, Inc.*:

The Commission has stated, however, that “any harm to existing shareholders is not the determining factor in evaluating whether an issuer’s securities registration should be revoked.” *Nature's Sunshine Prods., Inc.*, 95 SEC Docket at 13500-01. Existing and prospective shareholders are both harmed when required periodic reports are not available and they cannot make informed investment decisions. *See id.*

In the Matter of Medis Technologies Ltd., et al. [as to Tamir], Initial Decision Rel. No. 488, 2013 SEC LEXIS 1489 at *13-14 (May 22, 2013).

Infanti also argues that VCSY is delinquent due to problems with management, and since there is a plan to change management and have VCSY become current with its SEC filings, then VCSY’s registration should not be revoked. (Motion at pp. 6-9). The Commission has rejected attempts to place conditions on compliance:

Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder require public corporations to file annual and quarterly reports with the Commission. “Compliance with those requirements is mandatory and may not be subject to conditions from the registrant.” *America's Sports Voice, Inc.*, Exchange Act Release No. 55511 (Mar. 22, 2007), 90 SEC Docket 879, 885, *motion for reconsideration denied*, Exchange Act Release No. 55876 (June 6, 2007), 90 SEC Docket 2419.

Tamir, 2013 SEC LEXIS 1489 at *7-8.

Other issuers have argued, to no avail, that internal problems caused delinquency. For instance, the Commission rejected such an argument in *Advanced Life Sciences Holdings, Inc.*:

ADLS argues that it was unable to make the required filings because it was confronted with many problems. These problems included a lack of staff, difficulties finding part-time legal and accounting professionals to help with the filings, and a need to focus on the restructuring of a bank note. But ADLS's business difficulties do not excuse its failure to file; indeed, information about these difficulties would have been significant to both current and potential investors in evaluating whether they wanted to buy, sell or hold ADLS securities.

Advanced Life Sciences Holdings, Inc., 2017 SEC LEXIS 2297 at *11 – 12.

Infanti's allegation that VCSY's CEO has "largely abdicated his managerial responsibilities and breached the fiduciary duties he owes to VCSY's shareholders," (Motion at p. 3), further demonstrates the need for revocation. Infanti's allegations thus raise concerns beyond delinquent filings and underscores the need for revocation to protect investors. *See Talon Real Estate Holding Corp.*, Securities Exchange Act Rel. No. 87614, 2019 SEC LEXIS 4822 at *21 ("Revocation is a prospective remedy and is imposed based on our concern about protecting future investors in the company."). Indeed, Infanti admits that he "cannot provide any guarantee that the action plan described ... will be successful." Motion at p. 9. Therefore, revocation is necessary. *See Citizens Capital Corp.*, Securities Exchange Act Rel. No. 67313, 2012 SEC LEXIS 2024 at *36, n. 50 (June 29, 2012) ("Without revocation, the Company's stock can still be traded on an unsolicited basis, and nothing would prevent its future trading on the over-the-counter markets if it satisfied the necessary requirements."); *Bluforest, Inc.*, Initial Decision Rel. No. 1363, 2019 SEC LEXIS 350 at *10 (March 7, 2019) ("Revocation will help ensure that the corporate shell is not later put to an illicit use involving publicly traded securities manipulated to the detriment of market participants.").

For the reasons set forth above, the Commission should reject Infanti's request that it suspend VCSY's registration for a period of six months, and should instead revoke VCSY's registration.

Dated: August 26, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true copies of the Division of Enforcement's Response To Motion To File Amicus Brief And Proposed Amicus Brief Or, Alternatively, To State Views were served on the following on this 26th day of August, 2020, in the manner indicated below:

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