

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20155**

<p><b>In the Matter of</b></p> <p><b>Dougherty's Pharmacy, Inc.,</b></p> <p><b>Respondent.</b></p>
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**DIVISION OF ENFORCEMENT'S MOTION FOR DEFAULT AND  
EXPEDITED CONSIDERATION, AND BRIEF IN SUPPORT**

**Motion**

On November 23, 2020, the Commission issued an Order Instituting Administrative Proceedings and Notice of Hearing Pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("OIP") against Dougherty's Pharmacy, Inc. ("Dougherty's" or "Respondent"), which has securities registered with the Commission under Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act") and is delinquent in filing its mandated periodic reports. The Division hereby moves that the Commission find that Dougherty's is in default in this proceeding and enter an order pursuant to Section 12(j) of the Exchange Act to revoke the registration of each class of its securities registered pursuant to Exchange Act Section 12(g). The Division further moves that the Commission expedite its consideration of this Motion and enter its decision prior to March 18, 2021, when a Form 15 filed by Dougherty's becomes effective.

## **Brief in Support**

### **I. Status of the Proceeding**

As shown in the Declaration of Timothy J. Stockwell to Assist Secretary with Record of Service filed with the Commission on December 21, 2020, Dougherty's was served with the OIP by USPS Certified Mail on December 11, 2020, in accordance with Rule 141(a)(2)(ii) of the Commission's Rules of Practice. Dougherty's was served by attempted delivery on the address shown in its then most recent filing with the Commission, a Form 8-K filed with the Commission on August 30, 2019.<sup>1</sup>

Dougherty's did not file an answer to the OIP by December 21, 2020, within 10 days of service as required by the OIP (*see also* Rule of Practice 220(b), 17 C.F.R. § 201.220(b)), and thus is in default. *See* Rule of Practice 155(a)(2), 17 C.F.R. § 201.155(a)(2).

On January 6, 2021, the Commission issued an Order to Show Cause by January 21, 2021, as to why the registration of Dougherty's securities should not be revoked by default due to its failure to file an Answer and to otherwise defend this proceeding. *See* Rel. No. 90860. The Commission also continued indefinitely the prehearing conference and the hearing. *Id.*

### **II. Motion for Default**

Rule of Practice 220(f), 17 C.F.R. § 201.220(f), provides that “[i]f a respondent fails to file an answer required by this rule within the time provided, such respondent may be deemed in default pursuant to Rule 155(a).” Rule 155(a)(2), 17 C.F.R. § 201.155(a)(2), likewise provides that a respondent that fails “to respond to a dispositive

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<sup>1</sup> As alleged in the OIP, Dougherty's also failed to respond to a delinquency letter sent to it on October 26, 2020, by the Division of Corporation Finance requesting compliance with its periodic filing obligations.

motion within the time provided” or otherwise fails to “defend the proceeding” may be deemed in default. Dougherty’s is delinquent in its filings with the Commission and has a class of securities registered pursuant to Exchange Act Section 12(g). Dougherty’s has failed to file any periodic reports since it filed a Form 10-Q/A for March 31, 2019. Dougherty’s also failed to file an Answer as required by December 21, 2020, or otherwise appear in this proceeding.

Accordingly, the Division moves for an order, pursuant to Rule 155(a)(2), finding Dougherty’s to be in default in this proceeding and ordering that the registration of each class of its securities registered pursuant to Exchange Act Section 12(g) be revoked. When a respondent is in default, the Commission may “determine the proceeding against [it] upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true.” Rule 155(a)(2); 17 C.F.R. § 201.155(a)(2) (specifically authorizing such action where a respondent fails “[t]o answer . . . or otherwise to defend the proceeding”).

Section 12(j) authorizes the Commission as it deems “necessary or appropriate for the protection of investors” to suspend for 12 months or less or revoke the registration of an issuer’s securities that has failed to make required filings. 15 U.S.C. § 78l(j). The Commission applies a multifactor test to determine an appropriate sanction:

“[W]e will consider, among other things, the seriousness of the issuer’s violations, the isolated or recurrent nature of the violations, the degree of culpability involved, the extent of the issuer’s efforts to remedy its past violations and ensure future compliance, and the credibility of its assurances, if any, against further violations.

*See Gateway Int’l Holdings, Inc.*, Exch. Act Rel. No. 53907, 2006 WL 1506286, at \*4 (May 31, 2006). Although these factors are nonexclusive, and no single factor is

dispositive, the Commission has held that “a respondent’s repeated failure to file its periodic reports on time is ‘so serious’ a violation of the Exchange Act that only a ‘strongly compelling showing’ regarding the other *Gateway* factors would justify a sanction less than revocation.” *Calais Res., Inc.*, Exch. Act Rel. No. 67312, 2012 WL 2499349, at \*4 (June 29, 2012) (quoting *Nature’s Sunshine Prods., Inc.*, Exch. Act Rel. No. 59268, 2009 WL 137145, at \*7 (Jan. 21, 2009)).

Dougherty’s violations are recurrent in that it has now failed to file required annual and quarterly reports during a period of 19 months. *See Impax Labs., Inc.*, Exch. Act Release No. 57864, 2008 SEC LEXIS 1197, at \*25-26 (May 23, 2008) (respondent’s failure to make eight filings over an eighteen-month period covered by the OIP considered recurrent); *NXChain, Inc. f/k/a AgriVest Americas, Inc.*, Exch. Act Rel. No. 87652, 2019 WL 6528959 at \*4 (Dec. 3, 2019) (failure to file for over two years was recurrent) (citing *Accredited Bus. Consolidators Corp.*, Exch. Act Rel. No. 75840, 2015 WL 5172970, at \*2 (Sept. 4, 2015) and *Nature’s Sunshine*, 2009 WL 137145, at \*5). These violations are serious because “reporting requirements are the primary tools which Congress has fashioned for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of stock and securities.” *Id.* (quoting *America’s Sports Voice, Inc.*, Exch. Act Rel. No. 55511, 2007 WL 858747, at \*4 n.17 (Mar. 22, 2007) (citing *SEC v. Beisinger Indus. Corp.*, 552 F.2d 15, 18 (1st Cir. 1977))). Further, Dougherty’s “‘long history of ignoring . . . reporting obligations’ evidences a ‘high degree of culpability.’” *See, e.g., id.* (quoting *Citizens Capital Corp.*, Exch. Act Rel. No. 67313, 2012 WL 2499350, at \*5 (June 29, 2012) (quoting *America’s Sports Voice*, 2007 WL 858747, at \*3)); *see also Earth Dragon Resources, Inc.*, Initial Decision Rel. No.

786, 2015 WL 1968391 at \*2 (May 4, 2015) (“[Respondent] is culpable because it knew, or should have known, of its obligation to file periodic reports.”) (citing 17 C.F.R. §§ 249.308a, 310, Commission Forms 10-Q, 10-K)). Finally, because Dougherty failed to answer the OIP or otherwise defend against the proceedings, it has submitted no evidence of any efforts to remedy its past violations and ensure future compliance, nor has it offered any assurances against future violations. *Id.*; *see also Earth Dragon Resources*, 2015 WL 1968391 at \*2.

### **III. Dougherty’s Form 15 and the Division’s Request for Expedited Consideration of this Motion**

On December 18, 2020, presumably in response to this proceeding, Dougherty’s filed a Form 15 to terminate the registration of its securities under Exchange Act Section 12(g). This form will take effect on March 18, 2021, 90 days from filing. *See* 15 U.S.C. § 78l(g)(4); 17 C.F.R. § 240.12g-4. Once an issuer “no longer has a class of securities registered under Section 12 of the Exchange Act” – *e.g.*, upon the effectiveness of a Form 15 – dismissal of a Section 12(j) proceeding like this one is appropriate “[b]ecause revocation and suspension of registration are the only remedies available in a proceeding instituted under Section 12(j).” *NXChain, Inc. f/k/a AgriVest Americas, Inc.*, Exch. Act Rel. No. 87479, 2019 WL 5784734 at \*2 & n.12 (Nov. 6, 2019) (collecting cases). The Division therefore requests that the Commission give expedited consideration of this Motion such that any final order be entered prior to the effective date of the Form 15. *See NXChain*, 2019 WL 6528959 at \*3 (“[I]n circumstances like these – where the issuer files a Form 15 only after the institution of proceedings, the Division seeks expedited consideration, and the issuer ignores the administrative process – we would generally be

inclined to grant expedited consideration and exercise our discretion to prioritize the resolution of the Section 12(j) proceeding in question.”).

While Dougherty’s duty to file periodic reports is suspended after it filed the Form 15, it does not erase or forgive its past violations of the reporting requirements. *See Blink Technologies, Inc.*, Initial Decision Rel. No. 17865, AP File No. 3-17865, 2017 WL 1953457 at \*8 (May 11, 2017) (“If [respondent] is allowed to withdraw its registration, there will be no recognition of the risk it caused to investors by failing to file periodic reports and nothing to cabin the potential for future harm.”). Withdrawal would inappropriately allow Dougherty’s to “exit gracefully, without any consequences for the years of reports it failed to file and the harm such conduct caused.” *Id.*

Furthermore, only revocation under Exchange Act Section 12(j) prohibits members of a national securities exchange, brokers or dealers from effecting any transaction in any security where its registration has been revoked. *Id.* at 8-9. Thus, if Dougherty’s Form 15 becomes effective prior to revocation, its securities will continue to trade in the over-the-counter markets and be quoted by broker-dealers, but it will not be required to file periodic reports anymore. *Id.*

Administrative Law Judges in similar situations have held that the filing of a Form 15 does not preclude entry of a revocation order in similar situations. *See, e.g., id.* (contested proceeding); *NXChain, Inc.*, 2019 WL 6528959 at \*3-4 (on entry of default). In *Earth Dragon Resources, Inc.*, Initial Decision Rel. No. 786, 2015 WL 1968391 at \*3 (May 4, 2015), the Commission accepted the Division’s position “that revocation should occur despite [respondent’s] filing of a Form 15 ... because voluntary termination of its registration would allow for continued quoting and trading of its securities by broker-

dealers, and by failing to Answer or participate in this proceeding, [respondent] forfeited the opportunity to explain why unrestricted trading of its securities should continue despite its continued failure to provide public information about the company”).<sup>2</sup>

#### **IV. Conclusion**

For the reasons set forth above, the Division respectfully requests that the Commission grant the Division’s Motion for Default as to Dougherty’s and enter an order revoking the registration of each class of its securities registered pursuant to Exchange Act Section 12(g). The Division further requests that the Commission consider its Motion on an expedited basis with a final decision being entered prior to March 18, 2021, *i.e.* the effective date of the Form 15, after which the Commission will lose jurisdiction to enter the remedies available under Exchange Act Section 12(j).

Dated: January 14, 2021

Respectfully submitted,

s/ Timothy J. Stockwell

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<sup>2</sup> The Commission also stated in its Order to Show Cause in this proceeding (Rel. No. 90860) that “Dougherty’s Pharmacy Inc. should be aware that it may be deemed to be in default and the registration of its securities revoked before its Form 15 becomes effective if it does not file an answer or otherwise respond to this show cause order.”

**CERTIFICATE OF SERVICE**

Timothy J. Stockwell, an attorney, certifies that on January 14, 2021, he caused a true and correct copy of the foregoing filing to be served on the following by mail:

Dougherty's Pharmacy, Inc.  
16250 Knoll Trail #210  
Dallas, TX 75248

s/ Timothy J. Stockwell  
Timothy J. Stockwell  
Trial Counsel