UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20847

In the Matter of

Advanzeon Solutions, Inc.,

Respondent.

DIVISION OF ENFORCEMENT'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION AGAINST ADVANZEON SOLUTIONS, INC.

The Commission should revoke the registration of the securities of respondent Advanzeon Solutions, Inc. ("Advanzeon") because it has failed to raise a genuine issue of any material fact regarding application of the factors set forth in *Gateway Int'l Holdings, Inc.*, Exchange Act Rel. No. 53907, at 10, 2006 WL 1506286 (May 31, 2006), or introduce evidence to support anything less than revocation for its serial delinquencies.

Advanzeon does not deny any of the essential facts alleged in the order instituting proceedings pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act"), or any of the facts set forth in the Declaration of Paul Hopker ("Hopker Decl.") and exhibits attached thereto, submitted in support of the Division of Enforcement's ("Division") Rule 250 Motion for Summary Disposition. Advanzeon admits that "it has not filed any required periodic filing since its Form 10-Q for the period ended September 30, 2020" (Response, at 5), but argues that "the circumstances" – including the Commission's role as "an adversary to Respondent in bankruptcy proceedings" – do not warrant revocation. Perhaps in recognition that its long-

OS Received 08/02/2022

standing deficiencies warrant some remedy, Advanzeon argues that "the appropriate sanction is to suspend Respondent's registration for a period of up to one year." (*Id.*).

The Commission should reject Advanzeon's invitation to impose anything less than a revocation for several reasons. First, it is now nearly two years since Advanzeon has complied with its periodic filing requirements under Exchange Act 13(a), which 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." *Gateway,* 2006 WL 1506286, at *6 n.32 (quoting *SEC v. Beisinger Indus. Corp.*, 552 F.2d 15, 18 (1st Cir. 1977)). Advanzeon's stock has been (and still is) able to trade on an unsolicited basis[1] while it is delinquent in its periodic filings, depriving investors of timely financial and material information about the company for nearly two years.

Second, Advanzeon's Response offers nothing new beyond the vague and unsupported allegations in its Answer that it did not intend to be delinquent and "has taken tangible steps towards assuring compliance." (Response, at 5). Even if Advanzeon had offered evidence on either point – and it has not – neither Advanzeon's intentions nor ongoing efforts to become current should prevent revocation.

Regarding intent, the law is clear that "no showing of scienter is necessary to establish a violation of Section 13(a) or the rules thereunder." *St. George Metals, Inc.*, Initial Decision Release No. 298, 2005 WL 2397240, at *3 (Sept. 29, 2005); *accord Gateway*, 2006 WL 1506286, at *4, *5 n.28; *Stansbury Holdings Corp.*, Initial Decision Release No. 232, 2003 WL 21640201, at *5 (July 14, 2003); *WSF Corp.*, Initial Decision Release No. 204, 2002 WL

[1] Due to its delinquent SEC reporting status, Advanzeon's common stock CHCR is only eligible for unsolicited quotations on OTC Link operated by OTC Markets Group, Inc. (Hopker Decl. ¶9). While brokers and dealers are not be able to solicit trades in the stock, investors can still trade its stock on an unsolicited basis.

917293, at *6 (May 8, 2002). Advanzeon's argument that it did not intend to violate its Section 13(a) obligations are also belied by the fact that the issuer "is aware of the delinquent reports" but has not bothered to file even one Form 12b-25 seeking an extension to make its periodic filings. (Hopker Decl. ¶11, Ex. 9).

Instead, Advanzeon points to other circumstances as reasons for the delinquencies: the COVID-19 pandemic, the Federal Motor Safety Administration's Moratorium on medical exams for certain commercial driver license renewals and, of course, the SEC's participation in Advanzeon's bankruptcy proceeding. In fact, Advanzeon's *only* support in opposition to the Division's Rule 250 motion is the Declaration of its Director, Mark Heidt, who claims that Advanzeon's process to become current "has been frustrated by a number of factors, including the impact of the COVID-19 pandemic" on the company's operations, and "the SEC's role in opposing Respondent's bankruptcy reorganization plan." (Heidt Decl. ¶¶ 5, 6). Mr. Heidt does not provide details, or otherwise explain how the SEC's participation in that proceeding has "significantly impacted" Advanzeon's ability to become current. The only document attached to Mr. Heidt's declaration is a copy of Advanzeon's 41-page plan of reorganization filed with the bankruptcy court (Heidt Decl., Exh. 1), which has no relevance to this administrative proceeding.

Finally, Advanzeon argues that its alleged "tangible steps towards assuring compliance" is a factor that, under *Gateway*, weighs "in favor of suspension rather than revocation." (Response, at 5). While an issuer's efforts to remedy its past violations and ensure future compliance is one of the five *Gateway* factors, making efforts to bring delinquent filings current – even if true – does not raise an issue of fact sufficient to preclude revocation. *See Bilogic, Inc.*, Initial Decision Release No. 322, 2006 WL 3253634 *3 (Nov. 9, 2006) (issuer's argument that it was making efforts to make filings current, and assurances of future compliance, did not raise a

OS Received 08/02/2022

genuine dispute of material fact warranting revocation). This is particularly true where, as here, the issuer has not met any of the other *Gateway* factors.

Moreover, Advanzeon has introduced *no evidence* that it has in fact taken concrete steps to become current. Through its attorney in its Response, Advanzeon claims that it "has retained a new accounting firm to assist with preparing and filing the delinquent reports and prepared a draft Form 10-K for 2020." (Response, at 5). But in the very next sentence, Advanzeon states that it "need[s] to seek a new accounting firm to prepare and finalize" the periodic reports, including the Form 10-K for 2020. (*Id.* at 5-6). This is exactly the same contention Advanzeon made in its Answer filed May 4, nearly two months ago. (Advanzeon's Answer, at 4). "As a general matter, a respondent cannot defeat the Division's motion for summary disposition by using its attorney to make vague, generalized representations about its beliefs and aspirations. This is especially true here, because previous forecasts by Respondent's counsel have proven to be inaccurate." *Bilogic, Inc.*, 2006 WL 3253634 *4.

Mr. Heidt, Advanzeon's Director, provides no additional details beyond these vague allegations and assurances, stating in his Declaration that he is "aware of Repondent's efforts to comply with the periodic report requirements of the Exchange Act" (Heidt Decl. ¶4), without actually setting forth those efforts. Mr. Heidt further explains that Respondent "has made progress towards the filing of delinquent reports including identifying and hiring an accounting firm to prepare and file the reports" (*Id.* at ¶7), but does not provide details, identify what filings have been prepared and reviewed by an accounting firm, or even provide the name of the accounting firm that Advanzeon has actually hired to prepare and file the reports. These general allegations are simply insufficient. *AIC Int'l, Inc.*, Initial Decision Release No. 324, 2006 WL 3794352 (Dec. 27, 2006) ("The accuracy of an issuer's forecast that it will complete all

delinquent filings at some point in the future is not the relevant issue, but rather what steps it has already performed to remedy its past violations or ensure future compliance."); *Talon Real Est. Holding Corp.*, Exchange Act Release No. 87614, 2019 WL 6324601 (November 25, 2019) (issuer's assertions that it was "working systematically to remedy its delinquencies" insufficient to prevent revocation).

These generalized allegations and assurances fall short of providing support for any remedy short of revocation.

Conclusion

For the reasons set forth above, and in the Division's Motion for Summary Disposition and Memorandum in Support, and supporting Declaration and Exhibits, the Division asks that the Commission revoke the registration of each class of Advanzeon's securities registered under Exchange Act Section 12.

Dated: August 2, 2022

Respectfully submitted,

TERESA VERGES

Digitally signed by TERESA VERGES
Date: 2022.08.02 09:14:59 -04'00'

Teresa J. Verges
Regional Trial Counsel
Direct Line: (305) 982-6376
VergesT@sec.gov

DIVISION OF ENFORCEMENT
SECURITIES AND EXCHANGE COMMISSION
801 Brickell Avenue, Suite 1950
Miami, FL 33131
Phone: (305) 982-6300
Fax: (703) 813-9526

CERTIFICATE OF SERVICE

Pursuant to Rule 150 of the Commission's Rules of Practice, I hereby certify that on August 2, 2022, the foregoing Division's Reply in Support of its Motion for Summary Disposition Against Advanzeon Solutions, Inc., was filed using the eFAP system and that a true and correct copy of the document has been served via email on the following person entitled to notice:

Advanzeon Solutions, Inc.
c/o Matt Mueller, Esq.
Fogarty Mueller Harris, PLLC 100 E.
Madison Street
Suite 202
Tampa, FL 33602
matt@fmhlegal.com

TERESA VERGES
Digitally signed by TERESA VERGES
Date: 2022.08.02 09:15:57 -04'00'

Teresa Verges
Regional Trial Counsel