

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20973

In the Matter of

IEH Corporation,

Respondent.

RESPONDENT IEH CORPORATION'S
REPLY IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION

Sean M. Donahue
Paul Hastings LLP
2050 M Street, NW
Washington, DC 20036
202-551-1700
seandonahue@paulhastings.com
Counsel for Respondent

TABLE OF CONTENTS

	Page(s)
PRELIMINARY STATEMENT	1
ARGUMENT	2
I. A Review of the <i>Gateway</i> Factors Supports Respondent’s Motion for Summary Disposition without a Sanction.....	2
a. IEH’s violations do not rise to the level of seriousness that warrant a sanction.....	2
b. IEH’s violations were isolated	4
c. IEH has a low degree of culpability that does not warrant a sanction	5
d. IEH’s remedial efforts have been successful, and IEH’s assurances of future compliance are credible	6
e. A sanction would have no deterrent effect on IEH.....	7
f. Revocation is not appropriate in this case.....	7
II. CONCLUSION.....	8

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Absolute Potential, Inc.</i> , 2014 WL 1338256 (April 4, 2014)	7, 8
<i>Advanced Life Scis. Holdings, Inc.</i> , Exchange Act Release No. 81253, 2017 WL 3214455 (July 28, 2017)	5, 6, 7
<i>Am. Steller Energy, Inc. (n/k/a Tara Gold Res. Corp.)</i> , Exchange Act Release No. 64897, 2011 WL 2783483 (July 18, 2011)	4
<i>China-Biotics, Inc.</i> , Exchange Act Release No. 70800, 2013 WL 5883342 (Nov. 4, 2013)	3
<i>Cobalis Corp.</i> , Exchange Act Release No. 64813, 2011 WL 2644158 (July 6, 2011)	4
<i>Digital Brand Media & Mktg. Grp., Inc.</i> , Exchange Act Release No. 1389, 2019 WL 6118538 (Nov. 12, 2019).....	3, 5, 6, 7
<i>Eagletech Commc 'ns, Inc.</i> , Exchange Act Release No. 54095, 2006 WL 1835958 (July 5, 2006)	5
<i>Gateway Int'l Holdings, Inc.</i> , Exchange Act Release No. 53907, 2006 WL 1506286 (May 31, 2006).....	2, 3, 5, 8
<i>LegacyXChange, Inc.</i> , Exchange Act Release No. 96401, 2022 WL 17345980 (Nov. 29, 2022)	5
<i>Nature's Sunshine Prods., Inc.</i> , Exchange Act Release No. 59268, 2009 WL 137145 (Jan. 21, 2009).....	3, 8

Respondent IEH Corporation (“IEH” or the “Company”), by counsel and pursuant to Rules 154 and 250 of the Commission’s Rules of Practice, files its reply in support of its Motion for Summary Disposition (“Motion”).

PRELIMINARY STATEMENT

This case is not complicated. IEH is an 80-year-old U.S. manufacturing company. It has been an SEC registrant since the 1960s, and it has a long track record of filing its periodic reports. Beginning in 2020, the confluence of two extraordinary events—the COVID-19 pandemic and an inventory reconciliation issue—resulted in IEH missing several periodic filing deadlines. Since then, IEH has taken extraordinary efforts to bring its filings current, including hiring additional personnel, engaging outside experts, expending significant resources, and undertaking a necessary, but extremely tedious and time-consuming, manual inventory reconciliation. To date, IEH has analyzed more than one million lines of data, and physically inspected inventory and warehouses. Due to these efforts, IEH is now current in its periodic filings, and it anticipates that it will continue to be current in its filings. Indeed, on February 13, 2024—after IEH filed its Motion—IEH filed its quarterly report on Form 10-Q for the quarter ended December 31, 2023. *See* IEH Corporation, Quarterly Report (Form 10-Q) (Feb. 13, 2024); *see also* Feb. 14, 2024 Letter from Sean Donahue to Samantha Williams and Sandhya C. Harris (**Ex. A**).

The Division of Enforcement’s (the “Division”) Opposition to IEH’s Motion (the “Opposition”) includes a declaration from SEC Senior Staff Accountant Rebekah Lindsey (the “Lindsey Declaration”) claiming that the consolidated Form 10-K that IEH filed on June 22, 2023 for the fiscal years ended March 31, 2020, March 31, 2021, and March 31, 2022 and interim quarterly periods was materially deficient because it lacked certain interim footnote disclosures and interim disclosures regarding cash flow in Management’s Discussion and Analysis. (*See*

Lindsey Decl. ¶¶ 3–4). IEH disagrees with the Lindsey Declaration, but in the spirit of adherence to and compliance with the views of the SEC Staff, IEH intends to amend the consolidated Form 10-K to address the purported deficiencies as appropriate. Importantly, putting aside the validity of these limited purported deficiencies, the Lindsey Declaration takes no issue with IEH’s annual financial statements. Further, investors have now received IEH’s quarterly report on Form 10-Q for the quarter ended December 31, 2023. *See* IEH Corporation, Quarterly Report (Form 10-Q) (Feb. 13, 2024).

In view of the *Gateway* factors, IEH’s current filing status, and IEH’s demonstrated ongoing compliance with its reporting obligations, a sanction is unwarranted and the Commission should grant IEH’s Motion for Summary Disposition.

ARGUMENT

I. A Review of the *Gateway* Factors Supports Respondent’s Motion for Summary Disposition without a Sanction.

An issuer’s violation of its Section 13 reporting obligations does not automatically result in revocation of the issuer’s registration. *See Gateway Int’l Holdings, Inc.*, Exchange Act Release No. 53907, 2006 WL 1506286, at *4 (May 31, 2006) (setting forth factors the Commission considers when determining whether to impose Section 12(j) sanctions). The *Gateway* factors weigh against a sanction in this matter, and the cases the Division cites are distinguishable.

a. IEH’s violations do not rise to the level of seriousness that warrant a sanction.

IEH takes its Section 13 reporting obligations seriously (Motion at 9), and the Division is incorrect to suggest otherwise. (Opposition at 5). IEH has made no attempt to diminish the importance of Section 13’s reporting requirements. Rather, IEH contends that its failure to file periodic reports—in view of all the facts and circumstances that led to the delinquencies and IEH’s subsequent remedial measures—does not rise to the level of seriousness that warrants a sanction.

(Motion at 8–9). As the Commission acknowledged in *Gateway*, a delinquent issuer’s subsequent filing of unqualified audited financial statements and extensive efforts to stay current with its reporting obligations are relevant to determining whether the issuer’s violation is serious enough to warrant a sanction. *Gateway*, 2006 WL 1506286, at *6 (citing the Commission’s decision to remand in *e-Smart Technologies, Inc.*, Exchange Act Release No. 50514, 2004 WL 2309336 (Oct. 12, 2004)). Taking into consideration all of IEH’s facts and circumstances, including the extraordinary circumstances that caused the delinquencies, IEH’s extensive remedial measures, IEH’s filing of unqualified audited financial statements, and IEH’s continued compliance with its periodic reporting obligations, a sanction is unwarranted here.

The Division primarily relies on *China-Biotics* and *Nature’s Sunshine*. Those cases are distinguishable from IEH’s facts. Unlike IEH, *China-Biotics* involved an issuer whose auditor suspected it of engaging in illegal conduct, whose board and audit committee did not act timely or take appropriate remedial action, and whose subsequent periodic filings during the Section 12(j) proceedings continued to acknowledge material weaknesses in the issuer’s internal controls over financial reporting. *China-Biotics, Inc.*, Exchange Act Release No. 70800, 2013 WL 5883342, at *2, 6–10 (Nov. 4, 2013). And unlike the issuer in *Nature’s Sunshine*, IEH’s filing of past due reports and its continuing to file periodic reports are mitigating factors, as is IEH’s intention to address the purported deficiencies identified in the Lindsey Declaration. See *Digital Brand Media & Mktg. Grp., Inc.*, 2019 WL 6118538, Exchange Act Release No. 1389, at *6 (Nov. 12, 2019) (distinguishing *Nature’s Sunshine* and finding that the issuer’s filing of past due reports, continuing to file current reports, and responsiveness to Corporation Finance’s identification of deficiencies were “mitigating factors”); *Nature’s Sunshine Prods., Inc.*, Exchange Act Release No. 59268, 2009 WL 137145, at *6 (Jan. 21, 2009) (observing that the issuer’s efforts to ensure future

compliance were inadequate because the issuer had filed only one of the delinquent reports, the report did not include management's assessment of internal controls over financial reporting, and the report was filed during the pendency of the issuer's appeal to the Commission).

b. IEH's violations were isolated.

The Division relies on *Tara Gold* and *Cobalis* to contend that IEH's violations were recurrent. The Division's reliance on those proceedings is misplaced. *Tara Gold* involved a relatively new registrant with a record of delinquent filings stretching over *nine years*, not the mere two years the Division claims in its Opposition. *Compare Am. Steller Energy, Inc. (n/k/a Tara Gold Res. Corp.)*, Exchange Act Release No. 64897, 2011 WL 2783483, at *4 (July 18, 2011) ("For significant periods during this time (*e.g.*, May 16, 2002–December 16, 2004; February 9, 2006–March 22, 2007; and July 10, 2008–July 2, 2010), the Company failed to file any periodic reports. . . . This pattern of delinquencies establishes that Tara Gold's violations are recurrent.") *with* Opposition at 7–8 (citing *Tara Gold* and stating, "2-year delinquency was recurrent"). Similarly, in *Cobalis* the Commission found that the issuer's violations "were recurrent and have extended over a lengthy period" because the issuer had not "filed audited financial statements or other required periodic or current reports for *more than three years*," not the mere two years the Division claims in its opposition. *Compare Cobalis Corp.*, Exchange Act Release No. 64813, 2011 WL 2644158, at *4 (July 6, 2011) (emphasis added), *with* Opposition at 8 (citing *Cobalis* and stating, "2-year delinquency was recurrent."). IEH's current compliance with its reporting obligations also distinguishes it from the issuer *Cobalis* which provided no credible basis for when it would return to compliance. *Cobalis Corp.*, 2011 WL 2644158, at *6. *Eagletech Communications*, upon which the Division also relies, is distinguishable because, unlike IEH, the issuer "stated that its violations will continue unless and until it receives a monetary recovery" in

a civil litigation, and the “amount, timing, and likelihood” of that recovery were “at best speculative.” *Eagletech Commc’ns, Inc.*, Exchange Act Release No. 54095, 2006 WL 1835958, at *3 (July 5, 2006) (“as Eagletech concedes, there is no cure in sight.”). The Division has not cited any authority analogous to IEH’s facts: an 80-year-old company with more than 60 years of periodic filings that temporarily missed periodic filing deadlines due to circumstances beyond its control and that is now current in its reporting obligations.

c. IEH has a low degree of culpability that does not warrant a sanction.

The Division primarily relies on *LegacyXChange* to contend that a high degree of culpability exists when a company knows of its filing obligations and knows that it is not meeting them. (Opposition at 8); *see also LegacyXChange, Inc.*, Exchange Act Release No. 96401, 2022 WL 17345980, at *4 (Nov. 29, 2022) (finding that the issuer’s delinquencies were particularly serious because the issuer transitioned to a shell company during its period of delinquency). Under the Division’s interpretation of the culpability factor, every delinquent company subject to Section 12(j) proceedings would be highly culpable, rendering this *Gateway* factor mostly irrelevant. This is incorrect. Instead, the degree of culpability bears on whether an issuer commits a violation in knowing disregard of its regulatory responsibilities or for purposes of concealment, such as an effort to conceal a “parlous financial condition.” *See Advanced Life Scis. Holdings, Inc.*, Exchange Act Release No. 81253, 2017 WL 3214455, at *3 (July 28, 2017); *Digital Brand Media & Mktg. Grp., Inc.*, 2019 WL 6118538, at *5. Far from concealing the reasons for its delays (which did not involve financial distress), IEH took steps to inform investors regarding the status of its remedial efforts. (Motion at 10–11). Also, unlike *Advanced Life Sciences*, where the issuer claimed to have encountered problems that resulted in it failing to make a periodic filing for “over six years,” IEH, when faced with a once-in-a-generation pandemic and inventory reconciliation issue, implemented

remedial measures even before the OIP and now has brought its filings current. *See Advanced Life Scis. Holdings, Inc.*, 2017 WL 3214455, at *3–5; (Motion at 13).

d. IEH’s remedial efforts have been successful, and IEH’s assurances of future compliance are credible.

The Division’s Opposition and accompanying Lindsey Declaration acknowledge that IEH’s remedial efforts have been effective. (Opposition at 10) (“Respondent *has* cured some of its delinquencies”) (emphasis added). Specifically, the Opposition asserts that nine IEH periodic reports were deficient when the Order Instituting Proceedings was filed, and this number grew to seventeen (counting restatements) or fourteen (not counting restatements). (Opposition at 5). After extensive remedial efforts, IEH filed all the required outstanding reports. IEH believes these reports to be compliant. Even assuming, however, that the Lindsey Declaration correctly has identified deficiencies, the Division’s current position is that only eight (counting restatements) or six (not counting restatements) periodic reports have deficiencies. (Opposition at 10–11). IEH’s substantial progress contradicts the Division’s argument that IEH’s remedial measures “have been ineffective” (Opposition at 10), and the purported deficiencies do not warrant a sanction. *Cf. Digital Brand Media & Mktg. Grp., Inc.*, 2019 WL 6118538, at *6 (concluding that filing non-audited interim financials for quarters up to three years old “offers limited benefit to investors and the public”).

IEH’s substantial progress also contradicts the Division’s argument that IEH’s “assurances of future compliance are not credible” (Opposition at 11), especially because IEH filed on February 13, 2024 its quarterly report on Form 10-Q for the quarter ended December 31, 2023. *See* IEH Corporation, Quarterly Report (Form 10-Q) (Feb. 13, 2024). The Division’s Opposition completely omits any reference to IEH’s recently-filed Form 10-Q. In this regard, IEH is unlike *Advanced Life Sciences* upon which the Division relies. *Advanced Life Sciences* involved an issuer

that *never filed* its Form 10-K and did not bring its filings up to date even after the Division commenced Section 12(j) proceedings, thereby depriving investors of the ability to make informed investment decisions. *See Advanced Life Scis. Holdings, Inc.*, 2017 WL 3214455, at *4.

e. A sanction would have no deterrent effect on IEH.

The Opposition suggests that a parade of horrors will result if the Commission does not revoke IEH's registration: other issuers will be emboldened to violate their periodic reporting requirements, which will undercut Section 13(a)'s purpose and harm all investors. (Opposition at 15). The Division's concerns about enabling wrongdoing are unfounded because IEH's circumstances are extraordinary: IEH's filings were delinquent because of the confluence of the COVID-19 pandemic and the manual inventory reconciliation, IEH undertook extraordinary measures to bring its filings current, and IEH is now current in its reporting obligations. Contrary to the Division's hyperbole, declining to sanction IEH is likely to have a salutary effect: it will encourage other delinquent issuers to take extraordinary measures to bring their periodic filings into compliance in order to preserve their registrations, thereby protecting investors and facilitating capital formation. Revocation of IEH's registration would not send a productive message to issuers who have experienced challenges but who have undertaken and completed significant remedial measures to come back into compliance.

f. Revocation is not appropriate in this case.

Like *Digital Brand*, IEH is a real company with real revenue, not a shell company. *Digital Brand Media & Mktg. Grp., Inc.*, 2019 WL 6118538, at *2. Like *Digital Brand*, IEH was affected by real problems—the confluence of the COVID-19 pandemic and an inventory reconciliation issue—that it has been able to resolve through extraordinary effort. *Id.* Tellingly, despite IEH citing *Digital Brand* in multiple locations in its Motion, the Division makes no attempt to distinguish *Digital Brand* from IEH, choosing instead simply to ignore it. Unlike *Absolute*

Potential, IEH has provided an explanation for its delinquencies and has honored its commitment to bring IEH into compliance. *Cf. Absolute Potential, Inc.*, 2014 WL 1338256, at *4 (April 4, 2014) (observing Absolute’s “tardy and unilluminating” explanation for five years of noncompliance).

Unlike issuers that may try to “game the system” by complying with their reporting obligations only when they are confronted by imminent revocation, IEH made genuine efforts to address the underlying causes of the delinquency and file timely periodic reports, IEH took—and continues to take—its reporting obligations seriously, IEH was forthcoming with its shareholders about the reasons for the delay, and IEH has cured the delinquencies by bringing its periodic reports current. (*See* Motion at 9, 17, 18); *Nature’s Sunshine Prods., Inc.*, 2009 WL 137145, at *8. In short, IEH has ensured that it has fulfilled the critical purposes of Section 13: current and prospective investors are in receipt of accurate and timely information.

II. Conclusion.

The Commission should grant IEH’s Motion for Summary Disposition because it is current in its reporting obligations and the *Gateway* factors weigh against a sanction. IEH has a long history of filing periodic reports with the Commission. It has expended significant resources and taken concrete steps to regain compliance with its periodic reporting obligations and to ensure that it will be able to comply with its reporting obligations going forward. Further, the Division of Corporation Finance found no issues with the financial statements in IEH’s consolidated Form 10-K, IEH intends to address the purported deficiencies identified in the Lindsey Declaration as appropriate, and IEH has continued to comply with its reporting obligations by recently filing its Form 10-Q for the quarter ended December 31, 2023. Respectfully, a sanction is unwarranted, and the Commission should grant IEH’s Motion for Summary Disposition.

Dated: March 4, 2024

/s/ Sean M. Donahue
Paul Hastings LLP
2050 M Street, NW
Washington, DC 20036
202-551-1700
seandonahue@paulhastings.com
Counsel for Respondent