UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20973

In the Matter of

IEH Corporation,

Respondent.

DIVISION OF ENFORCEMENT'S OPPOSITION TO IEH CORPORATION'S CROSS MOTION FOR SUMMARY DISPOSITION AND IN SUPPORT OF THE DIVISION'S PENDING MOTION FOR SUMMARY DISPOSITION

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The Division of Enforcement ("Division"), by undersigned counsel, pursuant to Rules 154 and 250 of the Commission's Rules of Practice, files this opposition to Respondent's Cross Motion for Summary Disposition and in support of the Division's own pending Motion for Summary Disposition, filed on March 1, 2023. The Commission issued an Order Instituting Proceedings ("OIP") against IEH Corporation ("IEHC" or "Respondent") on August 17, 2022. At that time investors had been left without required information for over two years. On March 1, 2023, the Division filed a Motion for Summary Disposition seeking revocation of the registration of Respondent's securities. Respondent has now claimed to have cured all delinquencies and has filed a Cross Motion for Summary Disposition. Respondent's Cross Motion should be denied and the Division's Motion should be granted.

I. FACTS

Both parties agree that the facts are undisputed:

Before the OIP was issued, Respondent received a letter from the Division of Corporation Finance notifying Respondent that its reports were delinquent and that a failure to cure could result in revocation. *See* March 1, 2023 Declaration of Sandhya C. Harris at Ex. 3.

Before the OIP was issued, Respondent missed several self-imposed deadline to cure its delinquencies. *See, e.g.,* March 2023 Harris Dec. at Ex. 6 (March 18, 2021 press release promising all then-delinquent reports would be filed by June 29, 2021; September 24, 2021 press release promising resolution by the end the 2021 calendar year); *id.* at Ex. 4, p.5, ¶2 (April 1, 2022 Letter

promising delinquencies would be cured by September 30, 2022).[1]

By the time the OIP was issued, Respondent had last filed a periodic report for the fiscal period ending March 31, 2020, meaning that Respondent had failed to file nine periodic reports (the "Original Delinquencies"). *See* Cross Motion at 3. While this proceeding was pending, five more periodic reports became delinquent and Respondent concluded that three additional periodic reports had to be restated due to material deficiencies. *See* February 21, 2024 Harris Dec. at Ex. B. That brings the total delinquent reports at issue (including restatements) to seventeen.

Respondent did not make a filing purporting to cure the Original Delinquencies until June 22, 2023, after this proceeding had been pending for ten months. *See* Release No. 95518 (OIP was filed on August 17, 2022). By that time, the duration of the longest delinquency (not including the restatements) was two years and ten months. *See* Feb. 2024 Harris Dec. at Ex.'s A and B (periodic report due on August 14, 2020 was not filed until June 22, 2023). The Division of Corporation Finance has concluded that the June 22, 2023 filing Respondent made to cure the Original Delinquencies is materially deficient, leaving six of the quarterly reports still delinquent and outstanding. *See* Feb. 2024 Harris Dec. at Ex. B; Declaration of Rebekah Lindsey.

Respondent has given incongruous explanations for the cause of the Original Delinquencies. Respondent spends a large portion of its brief explaining why the annual report for its 2020 fiscal year – a report the OIP did not allege was delinquent – was late. Thus, Respondent has claimed that, because of the COVID-19 pandemic, it could not complete a required physical

[1] Respondent's statements about the progress of its efforts to become current are inconsistent. For example, on February 22, 2022, Respondent issued a press release informing investors that it was "making significant progress on getting current on all SEC filings," while conceding a month and a half later in a letter to the Division of Corporation Finance that Respondent had not even sent the auditors the information required for them to perform their work. *Compare* March 2023 Harris Dec. at Ex. 6 (February 11, 2022 press release) *with id.* at Ex. 4 at p.4 (April 1, 2022 Letter stating that auditors could begin their work once Respondent sent them "review packages").

inventory observation until May 2020:

> The untimely filings began with the Form 10-K for the fiscal year ended March 31, 2020, which, not coincidentally, coincided with the onset of the COVID-19 pandemic. These circumstances created unprecedented challenges and disruptions as the company disclosed in a Form 12b-25 notice filed on August 14, 2020. These disruptions included, but were not limited to, the unavailability of key personnel required to prepare the financial statements for the 2020 annual report. In its fiscal year 2020 Form 10-K filed on October 8, 2020, the company disclosed that it had been unable to conduct a physical inventory observation for its year-end audit until May 2020 on account of COVID-19 restrictions which prevented the required personnel from being present in the company's physical offices.

See, e.g., Respondent's Opposition to the Division's MSD at 15. Respondent also claims that an August 2019 change in its inventory tracking system required an inventory reconciliation between the old and new systems that could not be completed until September 2020:

> The migration to the new system required additional time and effort, complicated by the COVID-19 restrictions, such that IEH employees could not complete certain inventory reconciliations until September 2020.

Cross Motion at 12; *see also* March 2023 Harris Dec. at Ex. 4, p. 2 (inventory system changed in August 2019 coincided with Respondent's hiring of a new auditor). But these difficulties were overcome by October 8, 2020, when Respondent filed the annual report due for its 2020 fiscal year; these difficulties are unrelated to the Original Delinquencies.

As for the cause of the Original Delinquencies, Respondent says very little. By October 8, 2020, Respondent had concluded that, because of the change in its inventory system, prior period reports were unreliable. Cross Motion at 3. In August 2020, Respondent hired a consultant to assist with "data filtering," but Respondent provides no further information as to this consultant's work. Cross Motion at Ex. A, ¶M. In December 2020, Respondent hired an inventory expert, which concluded its work in December 2021. *Id.* ("IEH engaged the services of Be One Solutions, an SAP service partner that specializes in successful implementation and support, to assess the Company's SAP system from December 2020 to December 2021"). Notwithstanding this work, as

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of April 1, 2022, Respondent had still not developed the "database and narratives that will constitute sufficient evidence for IEH to adjust the outstanding financial statements, if necessary" or the "audit trail to bring forward to the current period." *See* March 2023 Harris Dec. at Ex. 4. The record is silent on why it took the inventory expert a year to complete its work or why, a year-and-a-half after discovering the inventory issue, Respondent still had not gathered the information needed for audited financial statements.

Even after purporting to cure the Original Delinquencies, Respondent continued to file periodic reports late – 108, 99, and 16 days late. *See* Feb. 2024 Harris Dec. at Ex.'s A and B. And, while this proceeding was pending, Respondent continued in its failure to file Forms 12b-25, which require Respondent to disclose why it could not timely file its periodic reports. Respondent's failure to File Forms 12b-25 persisted even after March 1, 2023, when the Division pointed out in its Motion for Summary Disposition that failure to file the form evinces a high degree of culpability. *See* Division MSD at 6 and Feb. 2024 Harris Dec. at Ex.'s A and B.

II. ARGUMENT

Section 12(j) empowers the Commission, where "necessary and appropriate for the protection of investors" to either suspend (for a period not exceeding twelve months) or permanently revoke a security's registration "if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder." The Commission's determination of which sanction is appropriate "turns on the effect on the investing public, including both current and prospective investors, of the issuer's violations, on the one hand, and the Section 12(j) sanctions on the other hand." *Gateway International Holdings, Inc.,* Rel. No. 53907, 2006 SEC LEXIS 1288, at *19-20 (May 31, 2006).

In making its determination, the Commission will consider, among other things: (1) the seriousness of the issuer's violations; (2) the isolated or recurrent nature of the violations; (3) the degree of culpability involved; (4) the extent of the issuer's efforts to remedy its past violations and ensure future compliance; and (5) the credibility of the issuer's assurances, if any, against future violations. *Id.* Where there is a "recurrent failure to file periodic reports," the Commission considers the violations "so serious that only a strongly compelling showing with respect to the other factors would be sufficient to avoid revocation." *Smartag International, Inc.,* Rel. No. 96755, 2023 WL 1066737, at *3 (January 26, 2023) (citations omitted).

A. Respondent's Violations Are Serious And Recurrent, Giving Rise To A Presumption Of Revocation.

1. Respondent's Violations Are Serious.

Respondent's filing failings are serious and recurrent, growing from nine periodic reports when the OIP was filed to seventeen (counting restatements) or fourteen (not counting restatements).

Respondent contends that its violations are not serious because it was current in its periodic reporting for years, it periodically issued press releases informing investors that it could not make its filings and informing them of major events, and it is not a shell company. ***All*** violations of Section 13(a)'s reporting requirements are serious because timely and accurate reporting is statutorily required and the reporting requirements are one of the primary statutory tools for protecting the integrity of the securities marketplace. *China-Biotics, Inc.,* Rel. 70800, 2013 WL 5883342, at *11 (Nov. 4, 2013). The Commission has rejected all of Respondent's arguments to the contrary.

The seriousness of a failure to file periodic reports cannot be mitigated by making other required filings, such as the filing of Form 12b-25 reports:

> In addition, China-Biotics's Form 12b-25 notices do not mitigate its failures to provide the investing public with timely disclosure about its business and financial results. If an issuer knows it will not be able to meet a periodic reporting deadline, it is required to file a Form 12b-25 notifying the Commission of the reasons for the delay. While not filing a Form 12b-25 may be an aggravating factor, filing a required Form 12b-25 is not mitigating.

Id. at n.72 (citations omitted).[2]

Moreover, providing investors with some information through Forms 8-K is no "substitute for periodic reports containing audited or reviewed financial statements." *Natures Sunshine Prod., Inc.*, Rel. No. 337, 2007 WL 3331973, *5 (Nov. 8, 2007), *aff'd* Rel. No. 59268, 2009 WL 137145 at *8 (Jan. 21, 2009). Similarly, the fact that a registrant is not a shell company does not mitigate the seriousness of reporting violations:

> Nature's Sunshine argues that revocation is unwarranted because it is not a "shell company," but a "healthy, viable company with substantial revenues, assets, and operations." In rejecting a substantially similar argument in Gateway, we stated, "Our observation in e-Smart [Technologies, Inc., 57 S.E.C. 964, 969 n.14 (2004)] about the utility of revocation under Section 12(j) against 'shell companies' should not be construed as indicating that such a sanction is not appropriate when the issuer is not a shell company."

Natures Sunshine, 2009 WL 137145 at *8.

Respondent also argues that its violations are not serious because Section 12(j) is only meant to address fraud or manipulation. Respondent is wrong. As the Commission has explained time and time again:

> 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

[2] Forms 12b-25 are required filings. *See* Compliance and Disclosure Interpretations, Questions and Answers of General Applicability (March 31, 2020), https://www.sec.gov/divisions/corpfin/guidance/exchangeactrules-interps.html.

> reports, and thereby deprive investors of accurate, complete, and timely information upon which to make informed investment decisions.

Gateway, 2006 SEC LEXIS 1288, at *26 (citation omitted). Harm to investors does not need to rise to the level of potential fraud before the Commission will protect investors through revocation. The Commission will order revocation when "existing and prospective shareholders alike are harmed where, as here, the required filings about the issuer are not available and, as a result, existing and prospective shareholders cannot make informed investment decisions[.]" *Natures Sunshine Prod., Inc.*, 2009 WL 137145 at *8.

2. Respondent's Violations Are Recurrent and Continuous.

Respondent next claims that its filing failures, which persisted for almost three years, are not recurrent or continuous. According to Respondent, these delinquencies are isolated because Respondent has a track record of timely filings. As explained in *China-Biotics*, "Exchange Act Section 12(j) does not require a minimum number of missed filings before an administrative proceeding may be brought or before revocation may be considered. Nor do we agree that only the company's pre-OIP filing record should be considered." *China-Biotics, Inc.*, 2013 WL 5883342 at *11. The Commission has not hesitated to find that delinquencies were ***not*** isolated despite a past history of timely filings. *See, e.g., American Stellar Energy, Inc. n/k/a Tara Gold*, Rel. No. 64897, 2011 WL 2783483, at *2, *4 (Jul. 18, 2011) (2-year delinquency was recurrent notwithstanding issuer's history of timely filings).

Respondent also appears to argue that the delinquency should be viewed as isolated because it was caused by circumstances unlikely to be repeated, specifically, the change in its inventory system and the COVID-19 pandemic. The Commission has held that issuers facing similar sudden or unexpected events still committed recurring violations by repeatedly failing to file required reports. *See, e.g., Tara Gold*, 2011 WL 2783483, at *2, *4 (2-year delinquency was

recurrent notwithstanding fact that it was caused by replacement of issuer's existing line of business); *Eagletech Communications, Inc.,* Rel. No. 54095, 2006 SEC LEXIS 1534 at *6 (July 5, 2006) (3-year delinquency was recurrent notwithstanding fact that it was caused by third-party criminal activity); *Cobalis Corporation,* Rel. No. 64813, 2011 WL 2644158 at *4 (July 6, 2011) (2-year delinquency was recurrent notwithstanding fact that it was caused by issuer's involuntary bankruptcy).

B. Respondent Has Not Made A Compelling Showing On The Remaining *Gateway* Factors Sufficient To Rebut The Presumption Of Revocation.

Where the issuer's violations are serious and recurrent, the Commission applies "a strong presumption in favor of revocation" that can only be rebutted by "a strongly compelling showing with respect to the other factors." *Absolute Potential, Inc. (f/k/a Absolute Waste Services, Inc.),* Rel. No. 71866, 2014 WL 1338256 at *6 (April 4, 2014) (citation omitted). Respondent has not made a compelling showing on any of the remaining *Gateway* factors.

1. Respondent's Violations Were Knowingly Committed, Establishing A High Degree of Culpability.

An issuer acts with a high degree of culpability when it knows of its filing obligations and knows that it is not meeting them. *LegacyXChange, Inc.*, Rel. No. 96401, 2022 WL 17345980, at *5 (Nov. 29, 2022) ("Legacy committed these violations with a high degree of culpability [where] Legacy demonstrated that it was aware of its periodic and other filing obligations . . . [y]et, despite such awareness, Legacy has repeatedly failed to file periodic reports" for more than four years). *See also China-Biotics, Inc.,* 2013 WL 5883342 at n.60 (low level of culpability is for "inadvertent or accidental," as distinguished from knowing, filing failures, which evidence a "high degree of culpability").

As Respondent itself points out, it has a track-record of filing required reports, so it knew reports were required, and admitted in its Forms 8-K and Forms 12b-25 that it was not filing required reports. Cross Motion at 10; Opposition to the Division's MSD at 14**.** Those facts alone establish a high degree of culpability. *Id.* Additional evidence of culpability is the fact that Respondent stopped filing Form 12b-25 reports before this proceeding was instituted, committed new Form 12b-25 filing failures after this proceeding was filed, and committed yet more Form 12b-25 filing failures after the Division pointed out in its Motion for Summary Disposition that failing to file Form 12b-25 reports was evidence of a high degree of culpability. *See, e.g., LegacyXChange, Inc.*, 2022 WL 17345980, at *4 (Legacy's "failure to file these required Forms 12b-25, despite its awareness of the need to do so, further supports our finding that Legacy's violations were committed with a high degree of culpability"); *See* Feb. 2024 Harris Dec. at Ex.'s A and B.

Notwithstanding these authorities, Respondent argues that it should not be found culpable because the Original Delinquencies were caused by issues with its inventory tracking system. As set forth above, Respondent has failed to explain why its inventory issues, discovered by October 2020, took years to resolve. Setting that issue aside, Respondent's own authority shows that the Commission has rejected similar arguments:

> 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 Scis. Holdings, Inc., Rel. No. 81253, 2017 WL 3214455 at *3 (July 28, 2017) (cited by Respondent at 6, 13, and 18 of its Cross Motion). *See also Advanzeon Sols., Inc.*, Rel. No.

98674, 2023 WL 6458592 at *4 (Oct. 2, 2023) (registrant's claim that delinquencies were due to "difficulties imposed … by the [COVID-19] pandemic and other related reasons," including issues with prior accounting firms, the need to seek a new accounting firm, a decrease in revenue, and reduced staff" did not mitigate registrant's culpability for failing to file period reports).

Finally, Respondent urges the Commission to abandon the existing test for culpability in favor of a new test under which only registrants who miss periodic filings in "an attempt to conceal the Company's financial condition" or for the purpose of other "intentional wrongdoing" are deemed highly culpable. Cross Motion at 13. The Commission has repeatedly rejected similar arguments from other registrants. A registrant's "assertion that it has 'never intended to avoid filing any required periodic report' is immaterial, as scienter is not required to find a violation of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13." *Advanzeon Sols., Inc.*, 2023 WL 6458592 at *3. *See also Citizens Capital Corp.*, Rel. No. 67313, 2012 WL 2499350 at *5 (June 29, 2012) (rejecting registrant's argument that its "state of mind is highly relevant in determining the remedy to impose," because "a finding of scienter is not required to establish a violation of the Exchange Act's periodic reporting requirements.").

2. Respondent's Efforts To Cure Its Delinquencies Have Been Ineffective As Are The Remedial Measures Instituted To Ensure Future Compliance.

While Respondent has cured some of its delinquencies, Respondent still has six quarterly reports outstanding because its curative filing was materially deficient. More particularly, the Division of Corporation Finance has concluded that there are no interim financial statement footnote disclosures for the quarterly periods ended December 31, 2021, September 30, 2021, June 30, 2021, December 31, 2020, September 30, 2020 and June 30, 2020 as required by Article 8-03(b) of Regulation S-X. *See* Declaration of Rebekah Lindsey**.** In addition, the reports for the quarterly periods ended December 31, 2019 and September 30, 2019, which are restatements, are

missing: (1) the interim revenue footnote disclosures required by ASC 270-10-50-1A; (2) the footnote disclosures regarding risks and uncertainties inherent in customer concentrations of receivables and revenue required by ASC 270-10-50-7; (3) the footnotes affected by the restatements, including inventory footnote disclosures; and (4) Management's Discussion and Analysis of material changes in all items listed in 303(b) of Regulation S-K, including the material changes in liquidity and capital resources shown on Respondent's cash flow statement. *Id.*

Even if Respondent had cured all of its delinquencies, as noted above, because it has not provided a cogent explanation as to the reason for its delinquencies, it has failed to establish that any remedial measures it adopted would prevent those causes from resulting in future delinquencies. The only concrete remedial measures that Respondent identifies either pre-date the delinquencies or did not prevent them, meaning that the measures are either not remedial or not effective (or both). In its Cross Motion, Respondent claims that the remedial measures it had adopted by October 8, 2020, will prevent delinquencies from occurring in the future. *See* Cross Motion at n.17 (identifying remedial measures described in its October 8, 2020 filing of its 2020 Form 10-K). But these measures did not prevent the Original Delinquencies, which occurred between August 14, 2020 and June 22, 2023. *See* Feb. 2024 Harris Dec. at Ex.'s A and B. Nor did they prevent delinquencies from continuing to accrue during the pendency of this proceeding. *Id*. There is no reason to believe that the measures described in Respondent's October 8, 2020 filing will be more effective now than they have been in the past.[3]

3. Respondent's Assurances Of Future Compliance Are Not Credible.

[3] In prior papers, Respondent identified as a remedial measure its hiring of a new auditor in August 2019, which did not prevent the delays Respondent attributes to the Covid-19 pandemic (March 2020) or the change in Respondent's inventory tracking system (August 2019). Nor did the August 2019 hiring of the new auditor, the June 2020 hiring of a new CFO, the August 2020 hiring of a consultant, or the December 2021 completion of the consultant's work prevent the delinquencies which continued for at least the next year-and-a-half.

Respondent argues that it has made adequate assurances against future violations by repeatedly stating that it intends to comply with its reporting obligations. But this factor is not concerned with the making of assurances. It is concerned with whether the assurances are credible. The fact that, as of the time of this filing, Respondent has not cured all of its delinquencies and the fact that the remedial measures Respondent instituted to ensure future compliance proved ineffective cast significant doubt on Respondent's assurances that it will not commit future reporting violations.

Evidence of an issuer's failure to meet self-imposed deadlines also undermines the credibility of assurances against future violations. *Advanced Life Sciences Holdings, Inc*., 2017 WL 3214455 at *4. As noted above, Respondent repeatedly assured investors that it was dedicated to become current and staying current but missed all of its promised deadlines. *See,* March 2023 Harris Dec. at Ex. 6. On April 1, 2022, Respondent told the Division of Corporation Finance that it would become current by September 2022, but missed that deadline too. *Id.* at Ex. 4, p.5, ¶2. Respondent's admission that a sanction from Commission would not deter it from missing additional filing deadlines also impugns the credibility of Respondent's assurances that future filings will be timely made. *See* Cross Motion at 12 ("a sanction would have no deterrent effect").

4. Revocation Is Required For Investor Protection.

Respondent argues that revocation is not in the best interests of existing shareholders. If, after revocation, Respondent is able to meet the relevant requirements, it may file a Form 10 to re-register its securities under Exchange Act Section 12(g). *See Talon Real Est. Holding Corp.*, Rel. No. 87614, 2019 WL 6324601 at n.27 (Nov. 25, 2019).

Moreover, the Commission's evaluation of investor protection is not limited to existing shareholders. "Revocation is a prospective remedy and is imposed based on [the Commission's]

concern about protecting future investors in the company." *Citizens Capital Corp.* 2012 WL 2499350, at *8. *See also Accredited Bus. Consolidators*, Rel. No. 75840, 2015 WL 5172970, at *2 (September 4, 2015) (an issuer's filing failures deprive "both existing and prospective holders of its registered stock of the ability to make informed investment decisions based on current and reliable information.").

Respondent argues that a lesser sanction than revocation is justified because it has become current in its periodic filings. Setting aside the fact that six quarterly reports remain outstanding, the Commission has repeatedly held that revocation is required to protect investors even where issuers became current during the pendency of the revocation proceeding. A registrant's filing of "reports that were delinquent at the time of the OIP . . . does not provide a defense to the OIP's allegations of reporting violations or preclude revoking the registration of" an issuer's securities. *See LegacyXChange, Inc.*, 2022 WL 17345980, at *4. Otherwise, there would be little incentive for issuers to timely file reports, harming all investors:

> Dismissal [of the revocation proceeding] also would reward those issuers who fail to file required periodic reports when due over an extended period of time, become the subject of Exchange Act Section 12(j) revocation proceedings, and then, on the eve of hearings before the law judge or, in this case, oral argument on appeal, make last-minute filings in an effort to bring themselves current with their reporting obligations, while prolonging indefinitely the period during which public investors would be without accurate, complete, and timely reports (that comply with the requirements of the Exchange Act and its rules and regulations) to make informed investment decisions.

Natures Sunshine Prod., Inc., 2009 WL 137145 at *8. Revocation is required in this circumstance to deter other issuers from violating the reporting requirements that protect all investors:

> As we have recognized, revocation may be warranted in these circumstances to address not only the harm to current and prospective investors in the non-compliant issuer but also to address the broader systemic harm that follows from registrants who "game the system" by complying with their unambiguous reporting obligations only when they are confronted by imminent revocation.

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Absolute Potential, Inc., 2014 WL 1338256 at *7. *See also Talon Real Est. Holding Corp.*, 2019 WL 6324601 at *5 (a "sanction other than revocation would fail to protect the public from an issuer like Talon whose delinquencies cover an extended period of time and who makes last minute filings only after becoming the subject of Exchange Act Section 12(j) proceedings") (internal punctuation omitted); *Advanced Life Sciences,* 2017 WL 3214455 at *5 ("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."); *Accredited Bus. Consolidators Corp.*, 2015 WL 5172970 at n.18 ("Deterrence is meaningful only if a lengthy delinquency, in the absence of strongly compelling circumstances regarding the other Gateway factors, results in revocation."); *China-Biotics, Inc.*, 2013 WL 5883342, at *13 (filings made pending revocation proceeding do not "obviate the public interest in revocation"); *Calais Res. Inc.*, Rel. No. 67312, 2012 WL 2499349 at *7 (June 29, 2012) (extended delinquencies that are only cured by filings made after the institution of a revocation proceeding "must be addressed with meaningful sanctions."); *Tara Gold,* 2011 WL 2783483 at *7 (allowing an issuer who engages in extended delinquencies to avoid sanction by curing delinquencies pending a revocation proceeding "significantly detracts from the Exchange Act's reporting requirements."); *Cobalis Corp.*, 2011 2011 WL 2644158 at n32 (declining to sanction an issuer who cures extended delinquencies during a revocation proceeding "would undermine the reporting requirements").

Respondent argues that that these cases are inapposite because its efforts to bring the company current started before the OIP was issued. Setting aside the fact that Respondent has failed to identify any pre-OIP cure efforts taken after December 2021 (when its inventory consultant finished its work), the fact remains that, at the time the OIP was issued, Respondent had not even sent review packages to its auditor, *see* March 2023 Harris Dec. at Ex. 4, p.4, and did not

make a curative filing until ten months after the OIP was issued. **Feb. 2024 Harris Dec. at Ex.'s A and B.** This case falls squarely within the holdings set forth above.

Allowing Respondent to escape revocation would signal to other issuers that filing failures do not result in a significant sanction. That message would undercut Section 13(a)'s reporting requirements to the detriment of all investors. The protective purpose served by deterrence requires revocation here.

III. CONCLUSION

For the reasons set forward above the Division requests that its Motion for Summary Disposition be granted, that Respondent's Cross-Motion be denied, and that the Commission revoke the registration of each class of Respondent's Exchange Act Section 12 registered securities.

Dated: February 21, 2024

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CERTIFICATE OF SERVICE

I hereby certify that I caused true copies of the forgoing paper and supporting Exhibits and Declarations, to be served on the following on this 21 day of February, 2024, in the manner indicated below:

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