

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21137

In the Matter of

GROWN ROGUE INTERNATIONAL INC.
(fka NOVICIUS CORPORATION),

Respondent.

DIVISION OF ENFORCEMENT'S
MOTION FOR SUMMARY DISPOSITION AND BRIEF IN SUPPORT

Samantha Williams (202) 551-4061
williamssam@sec.gov
Sandhya C Harris (202) 551-4882
harrissan@sec.gov
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-6011

COUNSEL FOR
DIVISION OF ENFORCEMENT

MOTION FOR SUMMARY DISPOSITION

The Division of Enforcement (“Division”), by counsel, pursuant to Commission Rules of Practice 154 and 250, moves for an order of summary disposition revoking the registration of each class of securities of Grown Rogue International Inc. (fka Novicius Corporation), (“GRUSF”) registered pursuant to Section 12 of the Securities and Exchange Act of 1934 (“Exchange Act”). There is no genuine issue concerning any material fact thus making an evidentiary hearing unnecessary.

Pursuant to Exchange Act Section 12(j) and the Commission’s precedent applying the *Gateway* factors, the Division is entitled to an order revoking the registration of each class of GRUSF securities. Consideration of the first two *Gateway* factors show that GRUSF violations are serious and recurrent, giving rise to a presumption that only revocation can adequately protect investors. GRUSF has failed to make a compelling showing on the remaining *Gateway* factors as is necessary to rebut that presumption.

BRIEF IN SUPPORT

I. FACTS

A. Issuer Background.

GRUSF (CIK No. 0001463000) is an Ontario corporation located in Ontario, Canada, with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). At the time the OIP was issued, GRUSF was delinquent in its periodic filings with the Commission, having not filed a periodic report since it filed a Form 20-F for the period ended November 15, 2018¹. Harris Decl. Ex.’s 4-5. Unsolicited quotations for the GRUSF’s common

¹ Although GRUSF’s fiscal year end is currently October 31, the last report filed before the OIP issued stated that the period covered ran through November 15, 2018.

stock were then being quoted on OTC Link operated by OTC Markets Group, Inc. Harris Decl. Ex. 2. After the OIP was issued, GRUSF filed three years' worth of delinquent Forms 20-F and filed the Form 20-F for fiscal year 2022. Harris Decl. Ex.'s 4-5. OTC Link then upgraded GRUSF's common stock from its Expert Market to OTC Pinks Current Information, where it is currently quoted. Harris Decl. Ex. 2.

B. GRUSF's Delinquencies.

The delinquencies cited in the OIP are not GRUSF's only delinquencies. Shortly before the Division of Corporation Finance ("Corporation Finance") notified GRUSF of the delinquencies at issue in the OIP, GRUSF filed a Form 20-F for the period ended August 31, 2018, over three years late. Harris Decl. Ex.'s 4-5. On June 17, 2022, Corporation Finance sent a delinquency notice covering several additional overdue periodic filings – three Forms 20-F for the periods ended October 31, 2019 through October 31, 2021. Harris Decl. at Ex.'s 4-5. The delinquency letter warned GRUSF that it could be subject to institution of a Section 12(j) proceeding without prior notice if it did not file its required reports within fifteen days. Harris Decl. at Ex. 3. GRUSF failed to file the delinquent reports during the next three months, requiring the Division to institute these proceedings.

On October 20, 2022, GRUSF filed its Answer admitting that it was delinquent in its filings. Answer at 2. On November 4, 2023, GRUSF filed the three outstanding Forms 20-F, which were 248, 613, and 977 days late respectively. Harris Decl. at Ex.'s 4-5.

II. APPLICABLE STANDARDS

Rule of Practice 250(b) provides for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to judgment as a matter of law. *See* 17 C.F.R. 201.250.

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.” 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. *Gateway International Holdings, Inc.*, Exchange Act Rel. No. 53907, 2006 SEC LEXIS 1288, at *19-20 (May 31, 2006). *See also Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) (setting forth the public interest factors that informed the Commission’s *Gateway* decision). 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.*, Exchange Act Rel. No. 71866, 2014 SEC LEXIS 1193, at *24 (April 4, 2014) (citation omitted).

III. ARGUMENT

GRUSF admits that it failed to file the reports required by Exchange Act Section 13(a) and Rule 13a-1 thereunder. Answer at 2. Therefore, whether a violation occurred is not disputed and no evidentiary hearing is necessary on that issue. The only remaining issue is the appropriate remedy for GRUSF’s violations. Because the facts relevant to the Gateway factors are not disputed, no evidentiary hearing is necessary for a remedy determination either. Under Commission precedent, the appropriate remedy is revocation.

A. GRUSF’s violations of Section 13(a) are serious and recurrent giving rise to a presumption the revocation is required to protect investors.

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. As 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, 2006 SEC LEXIS 1288, at *26 (quoting *SEC v. Beisinger Indus. Corp.*, 552 F.2d 15, 18 (1st Cir. 1977)).

GRUSF’s reporting violations were especially serious because they coincided with GRUSF going public through a reverse takeover in November 2018. Answer at 1. See *China-Biotics, Inc.*, Exchange Act Rel. 70800, 2013 SEC LEXIS 3451, at *37 (Nov. 4, 2013) (delinquencies were especially serious where the periods coincided with significant changes to financial results, changes to its business model, turnover in management, and major financial investments); *Citizens Capital Corp.*, Exchange Act Rel. No. 67313, 2012 SEC LEXIS 2024, at *41 (June 29, 2012) (reporting violations were especially significant when they “occurred during a period when the [c]ompany admittedly engaged in various and significant changes in its business”).

GRUSF’s failure to file three years of reports also constitutes recurrent and continuous violations under the second *Gateway* factor. “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.” *China-Biotics, Inc.*, 2013 SEC LEXIS 3451, at * 23. Moreover, “the company’s pre-OIP filing record should be considered.” *Id.* Here, the most recent report GRUSF filed before the OIP issued was over three years late. The oldest of the three reports outstanding when the OIP was filed was over two-and-a-half years late. Shorter delinquencies for fewer reports have been held to be continuous and recurrent. *See, e.g., iBIZ Technology Corp.*, Initial Decision, Exchange Act Rel. No. 312, 2006 WL 1675913, at *4 (June 16, 2006) (failure to file one Form 10-K and two Forms 10-Q was serious and recurrent).

GRUSF claims that it learned in 2020 that it needed to re-audit its 2017 and 2018 financial statements to comply with the Public Company Accounting Oversight Board (PCAOB) standards. Answer at 1. GRUSF states that its delinquencies were due to its auditor being “extremely slow to respond” and being “noncommunicative for months.” *Id.* at 2. But, as in *Advanced Life Sciences Holdings, Inc.*, Exchange Act Rel. No. 81253, 2017 WL 3214455 at *3 (July 28, 2017), GRUSF’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 GRUSF’s securities. Further, the Commission has repeatedly held that third party conduct does not excuse an issuer’s failure to comply with its periodic filing obligations. *See Eagletech Communications, Inc.*, Exchange Act Rel. No. 54095, 2006 SEC LEXIS 1534 at *6 (July 5, 2006) (third-party criminal activity); *Cobalis Corporation*, Exchange Act Rel. No. 64813, 2011 SEC LEXIS 2313 at *20 (July 6, 2011) (actions of shareholder in forcing involuntary bankruptcy proceeding and forcing issuance of stock did not excuse Exchange Act violations).

B. GRUSF has not rebutted the presumption of revocation with a compelling showing on the remaining *Gateway* factors. Indeed, those factors confirm that revocation is required to protect investors.

GRUSF's violations are serious and recurrent and it has failed to make a compelling showing rebutting the presumption of revocation as required to avoid revocation.

1. GRUSF's violations were knowingly committed, establishing a high degree of culpability.

Evidence that a violation was "inadvertent or accidental" establishes a low level of culpability. *China-Biotics, Inc.*, 2013 SEC LEXIS 3451, at *37. Evidence that an issuer knew of its reporting obligations but failed to comply with them, or persisted in noncompliance after receiving multiple warnings, establishes "a high degree of culpability." *Id.* (issuer had a "high degree of culpability" where it "did not file a single periodic report for more than a year and a half" and continued in its delinquencies "despite multiple warnings and the institution of [revocation] proceedings"). *See also LegacyXChange, Inc.*, Exchange Act 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); *Gateway*, 2006 SEC LEXIS 1288, at *21 (issuer "evidenced a high degree of culpability," because it "knew of its reporting obligations, yet failed to file" twenty periodic reports and only filed two Forms 12b-25); *Citizens Capital*, Exchange Act Rel. 67313, 2012 SEC LEXIS 2024, at *20 (respondent's long history of ignoring reporting obligations evidenced a high degree of culpability).

GRUSF's filing failures were not inadvertent or accidental. GRUSF understood that it was required to file Forms 20-F, having filed eight Forms 20-F since February 2010. Harris Decl. at Ex. 4. Corporation Finance's delinquency notice warned GRUSF about the need to file

the outstanding periodic reports however that notice was returned to sender due to GRUSF's apparent failure to maintain a valid address with the Commission as required by Commission rules. Harris Decl. at Ex. 3. Despite its own knowledge of the reporting requirements and the warning from Corporation Finance, GRUSF continued to knowingly disregard its regulatory responsibilities until after these proceedings were brought.

2. GRUSF's remedial measures are too late and it has not provided evidence of concrete measures to ensure future compliance.

(a) GRUSF's remedial measures are too late.

Although GRUSF has now filed its outstanding reports, the Commission has repeatedly held that revocation is required to protect investors where an issuer's lengthy delinquencies are only cured after institution of a revocation proceeding. *See LegacyXChange, Inc.*, 2022 WL 17345980, at *4 (filing "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). Otherwise, there would be little incentive for issuers to timely file reports, harming all investors. As the Commission has explained:

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., Exchange Act Rel. No. 59268, 2009 WL 137145 at *8 (Jan. 7, 2009).

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.

Absolute Potential, Inc., 2014 SEC LEXIS 1193, at * 27.

See also Talon Real Est. Holding Corp., Exchange Act Rel. No. 87614, WL 6324601 at *5 (Nov. 25, 2019) (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.*, Exchange Act Rel. No. 75840, 2015 WL 5172970 at n.18 (Sept. 4, 2015) (“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 SEC LEXIS 3451, at * 26 (filings made pending revocation proceeding do not “obviate the public interest in revocation”); *Calais Res. Inc.*, Release 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.”); *American Stellar Energy, Inc.*, Exchange Act Rel. No. 64897, 2011 WL 2783483 at *7 (Dec. 15, 2010) (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 SEC LEXIS 2313 at * 23 (declining to sanction

an issuer who cures extended delinquencies during a revocation proceeding “would undermine the reporting requirements”).

(b) GRUSF has not made a compelling showing on future compliance.

To make a compelling showing on future compliance, GRUSF must demonstrate that it implemented concrete and effective measures to ameliorate the cause of its filing failures. *Phlo Corp.*, Release No. 55562, 2007 WL 966943, at *16 (Mar. 30, 2007). GRUSF claims that its auditor’s poor performance caused the delinquencies, but GRUSF has not identified any measures it instituted to ensure auditor issues do not delay future reports.

3. GRUSF’s assurances against future violations are not credible.

The likelihood that GRUSF will commit future violations can be inferred from its past violations, including the very violation that led to the enforcement action. *See KPMG Peat Marwick LLP*, Exchange Act Rel. No. 44050, 2001 SEC LEXIS 422, at *21-22 (March 8, 2001) (risk of future violation “need not be very great to warrant issuing a cease-and-desist order and that in the ordinary case and absent evidence to the contrary, a finding of past violation raises a sufficient risk of future violation”). As with the other *Gateway* factors, GRUSF has not made a compelling showing that it is unlikely to commit future violations.

C. GRUSF’s claim that revocation will adversely affect investors is contrary to the facts and Commission precedent.

GRUSF’s Answer argues that suspension or revocation would adversely affect shareholders. Answer at 3. But the public interest is concerned with more than just current shareholders; it is also concerned with prospective 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 SEC LEXIS 2024, at * 18. *See also Accredited Bus.*

Consolidators, 2015 WL 5172970, at *2 (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.”). GRUSF’s filing failures left prospective investors without current and accurate financial information at a time where the company was undergoing significant changes.

Investor protection also takes into account “the broader systemic harm” that follows from registrants who fail to comply with reporting requirements. *Absolute Potential, Inc.*, 2014 SEC LEXIS 1193, at *7. By imposing a sanction significant enough to deter other issuers from engaging in similar conduct, the Commission protects current and prospective investors of all public filers. And “[d]eterrence is effective only if a lengthy delinquency, in the absence of strongly compelling circumstances regarding the other *Gateway* factors, results in revocation.” *Advanced Life Sciences Holdings, Inc.*, 2017 WL 3214455 at *6. Allowing GRUSF 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.

IV. CONCLUSION

GRUSF repeatedly failed to honor its commitments to the Commission and to its investors at a time where GRUSF was involved in various and significant changes in its business. GRUSF has yet to show that it can meet its obligations as an Exchange Act Section 12 registrant. The protection of investors through an actively-enforced reporting program mandates revocation. For the reasons set forth above, the Division requests that this Motion for Summary Disposition be granted and that the Commission revoke the registrations of each class of GRUSF’s Exchange Act Section 12 registered securities.

Dated: September 6, 2023

Respectfully submitted,

/s/ Samantha Williams
Samantha Williams (202) 551-4061
Sandhya C Harris (202) 551-4882
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-6011

COUNSEL FOR
DIVISION OF ENFORCEMENT


CERTIFICATE OF SERVICE

I hereby certify that I caused true copies of the Division of Enforcement's Motion for Summary Disposition as to GROWN ROGUE INTERNATIONAL INC., Brief in Support, and Declaration of Sandhya C. Harris in Support thereof and accompanying Exhibits, to be served on the following on this 5st day of September, 2023, in the manner indicated below:

By Email Service

GROWN ROGUE INTERNATIONAL INC.
c/o Toby M. Galloway, Shareholder
Winstead PC
300 Throckmorton, Suite 1700
Fort Worth, Texas 76102
817.420.8262
tgalloway@winstead.com

Counsel for Respondent


Sandhya C. Harris