

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

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21870**

<p><b>In the Matter of</b></p> <p><b>Western Magnesium Corp.,</b></p> <p><b>Respondent.</b></p>
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**MOTION FOR SUMMARY DISPOSITION**

The Division of Enforcement (“Division”), pursuant to the Securities and Exchange Commission (“Commission”) Rules of Practice 154 and 250, moves for an order revoking the registration of each class of securities of Western Magnesium Corp. (“MLYF”) registered pursuant to Section 12 of the Securities Exchange Act of 1934 (“Exchange Act”).

There is no dispute that a violation has occurred. MLYF’s Answer together with the Commission’s own records show that MLYF had failed to file five periodic reports when the Order Instituting Proceedings (“OIP”) was issued and is now delinquent in filing ten periodic reports. The only remaining issue is the appropriate remedy for MLYF’s violations, a resolution governed by the Commission’s precedent on the factors set forth in *Gateway International Holdings, Inc.*, Exchange Act Rel. No. 53907, 2006 WL 1506286 at \*8 (May 31, 2006). The facts relevant to the *Gateway* factors are likewise not disputed. First, all reporting violations are serious. Second, MLYF’s violations were recurrent, because it failed to file ten consecutive periodic reports. Third, MLYF has a high degree of culpability because it knew of its reporting obligations but failed to comply with them. Fourth, MLYF has not cured its past violations or instituted concrete remedial measures to prevent future violations. Fifth, MLYF has not provided

any assurances that it will comply with the Commission's rules in the future, as evidenced by the fact that, among others, it has not cured its existing delinquencies.

## **BRIEF IN SUPPORT**

### **I. FACTS**

#### **A. Issuer Background.**

Western Magnesium Corp. (CIK #1801762) (Ticker symbol: MLYF) is a Delaware corporation,<sup>1</sup> currently located in Las Vegas, Nevada,<sup>2</sup> with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). MLYF first registered its securities with the Commission on Form 10-A12G on October 12, 2021.<sup>3</sup> Currently, unsolicited quotations for MLYF's common stock are quoted on OTC Link operated by OTC Markets Group, Inc.<sup>4</sup>

#### **B. MLYF'S Delinquencies and Equity Raises.**

Section 13(a) of the Exchange Act and Rule 13a-1 thereunder require that all issuers file an annual report for each fiscal year. Exchange Act Rule 13a-13 requires that domestic issuers file quarterly reports. 15 U.S.C. §78m(a) and 17 C.F.R. §240.13a-1; 17 C.F.R. §240.13a-13. Since MLYF is incorporated in Delaware, it is a domestic issuer and must file quarterly reports.<sup>5</sup>

<sup>1</sup> See Exhibit ("Exh.") 1 (Delaware Secretary of State Corporate Report dated December 12, 2023) to the accompanying Declaration of Gina Joyce in Support of the Division of Enforcement's Motion for Summary Disposition ("Joyce Dec.").

<sup>2</sup> See Answer at II.A.1.

<sup>3</sup> See Exh. 2 to Joyce Dec. (cover page of Form 10-12G filed with the Commission on October 12, 2021). At that time, Respondent was located in Vancouver, British Columbia, Canada. In its October 31, 2021 annual report, filed with the Commission on February 15, 2022 and its Form D filed on March 9, 2023, MLYF provided an address in McLean, Virginia. See also [https://www.sec.gov/edgar/search/#/ciks=0001801762&entityName=Western%2520Magnesium%2520Corp.%2520\(MLYF\)%2520\(CIK%25200001801762\)](https://www.sec.gov/edgar/search/#/ciks=0001801762&entityName=Western%2520Magnesium%2520Corp.%2520(MLYF)%2520(CIK%25200001801762)) and Rule of Practice 323 (Commission may take judicial notice of any matters in the Commission's official public records).

<sup>4</sup> See Exh. 3 to Joyce Dec. (printout of OTC Market Report dated August 26, 2024 concerning MLYF).

<sup>5</sup> See Exhs. 1 and 2 to Joyce Dec. (Delaware Secretary of State Corporate Report dated December 12, 2023) and (cover page of Form 10-12G filed with the Commission on October 12, 2021).

MLYF admits that it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed its quarterly report on Form 10-Q for the period ended July 31, 2022.<sup>6</sup> At the same time that MYLF has left investors without current reviewed and audited financial information, it has sought to raise money from investors. During the more than two-year period of its delinquency, it has conducted four separate exempt private placement equity raises pursuant to Rule 506(b) of Regulation D.<sup>7</sup>

## 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.” 15 U.S.C. §78l(j). In making its determination, the Commission will consider the five *Gateway* factors, which are: (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*, 2006 WL 1506286 at \*8. Where the issuer’s violations are serious and recurrent, the Commission applies “a strong presumption in favor of revocation” that can

<sup>6</sup> *See* Exh. 4 to Joyce Dec. (Printout of MLYF’s EDGAR History). *See also* Answer at ¶¶II.A.1., B.2. and B.4.

<sup>7</sup> *See* Exh. 4 to Joyce Dec. (Printout of MLYF’s EDGAR History).

only be rebutted by “a strongly compelling showing with respect to the other factors.” *Absolute Potential, Inc. (f/k/a Absolute Waste Services, Inc.)*, Exchange Act Rel. No. 71866, 2014 WL 1338256 at \*6 (April 4, 2014).

### **III. ARGUMENT**

MLYF admits that “it has not filed any periodic reports since it filed a Form 10-Q for the period ended July 31, 2022” and thus has failed to file ten periodic reports required by Exchange Act Section 13(a) and Rule 13a-1 thereunder. Answer at ¶¶II.A.1., B.2. and B.4. Therefore, whether a violation occurred is not disputed. The only remaining issue is the appropriate remedy for MLYF’s violations. Because the facts relevant to the *Gateway* factors are not disputed, no evidentiary hearing is necessary for a remedy determination. Under Commission precedent, the appropriate remedy is revocation.

#### **A. MLYF’s violations of Section 13(a) are serious and recurrent.**

##### **1. MLYF’s violations are serious.**

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 WL 1506286 at \*6 (quoting *SEC v. Beisinger Indus. Corp.*, 552 F.2d 15, 18 (1st Cir. 1977)). Here, investors have lacked current and accurate financial information for over two years while MLYF continues to raise money from investors.<sup>8</sup>

**2. MLYF's violations of Section 13(a) are recurrent.**

MLYF's failure to file ten periodic reports is recurrent, which satisfies the second *Gateway* factor. The Commission has held that delinquencies of similar duration are recurrent. *See e.g., Ironclad Encryption Corp.*, Exchange Act Rel. No. 9426, 2022 WL 488507, \*3 (Feb. 15, 2022) (failure to file for "more than year" was recurrent and continuous); *Triton Emission Sols. Inc.*, Exchange Act Rel. No. 94255, 2022 WL 488504, \*3 (Feb. 15, 2022) (same). Therefore, the second *Gateway* factor supports revocation.

**B. MLYF 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.**

Because MLYF's violations are serious and recurrent, they give rise to the presumption that revocation is required unless MLYF can make a strongly compelling showing in its favor on the remaining *Gateway* factors. Here, MLYF can make no showing concerning the remaining *Gateway* factors.

**1. MLYF has exhibited a high degree of culpability.**

Evidence that a reporting violation was "inadvertent or accidental" establishes a low level of culpability. *See China-Biotics, Inc.*, Exchange Act Rel. 70800, 2013 WL 5883342 at \*10 (Nov. 4, 2013). Evidence that an issuer knew of its reporting obligations but failed to comply with them 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

<sup>8</sup> *See* Exh. 4 to Joyce Dec. (Printout of MLYF's EDGAR History).

continued in its delinquencies “despite multiple warnings and the institution of [revocation] proceedings”). Here, MLYF knew it had a reporting obligation, as evidenced by the fact that it filed several reports before the delinquency giving rise to this proceeding.<sup>9</sup> Its failure to file reports while knowing that reports were required makes MLYF highly culpable. MLYF’s culpability is aggravated by its failure to file a Form 12b-25 notifying the Commission of its inability to timely file several of the delinquent reports.<sup>10</sup> *See also China-Biotics*, 2013 WL 5883342 at \*11 (failure to file Form 12b-5 is an aggravating factor for culpability).

**2. MLYF has not made any efforts to remedy its past violations and ensure future compliance.**

To make a compelling showing of future compliance, MLYF must demonstrate that it has implemented concrete and effective measures to ameliorate the cause of its filing failures. *See Phlo Corp.*, Exchange Act Rel. No. 55562, 2007 WL 966943, \*16 (Mar. 30, 2007). In its Answer, MLYF does not explain the cause of its violations and offers nothing concerning the prevention of future violations. Indeed, the record shows that, during its delinquency, MYLF committed related securities laws violations by failing to maintain a valid address on file with the Commission. *Compare* March 9, 2023 Notice of Exempt Offering of Securities (MYLF’s last filing with the Commission shows an address in McLean, Virginia)<sup>11</sup> *with* Answer at ¶¶II.A.1 (MYLF moved its headquarters to Las Vegas, Nevada). *See also* 17 C.F.R. §232.301 and Section 5.4 of EDGAR Filer Manual (requirements for maintaining a current address with the Commission).

<sup>9</sup> *See* Exh. 4 to Joyce Dec. (Printout of MLYF’s EDGAR History).

<sup>10</sup> *See* Exh. 4 to Joyce Dec. (Printout of MLYF’s EDGAR History).

<sup>11</sup> *See* [https://www.sec.gov/Archives/edgar/data/1801762/000149315223007029/xslFormDX01/primary\\_doc.xml](https://www.sec.gov/Archives/edgar/data/1801762/000149315223007029/xslFormDX01/primary_doc.xml).

In *Investco, Inc.*, Exchange Act Rel. No. 240, 2003 WL22767599 at \*3 (November 24, 2003), the registrant terminated its former CEO, repossessed its corporate records, and hired an auditor, but that was insufficient evidence of concrete measures ensuring future compliance since the efforts resulted in the filing of only one of several delinquent reports. Here, MLYF offers nothing. Thus, MLYF cannot satisfy its burden of proof on the fourth *Gateway* factor, and the undisputed evidence supports revocation.

### **3. MLYF has not provided credible assurances as to future compliance.**

MLYF's likelihood of future violations can be inferred from a single past violation, 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 (Mar. 8, 2001).

An issuer's failure to meet self-imposed deadlines for curing past deficiencies also undermines the credibility of its assurances of future compliance. *Am. Stellar Energy, Inc. (n/k/a Tara Gold)*, Exchange Act Rel. No. 64897, 2011 WL 2783483, at \*4 (July 18, 2011) (assurances of future compliance were not credible where issuer "failed to adhere to the schedules that the company itself set"). MLYF has a history of not meeting self-imposed deadlines. On September 15, 2022 in its Form 12b-25, MLYF told the Commission that it would file its July 31, 2022 quarterly report on "or before the fifteenth calendar day following the prescribed due date," which was September 30, 2022.<sup>12</sup> MLYF didn't file that report for another month – on October 31, 2022. On January 30, 2023, in its Form 12b-25, MLYF told the Commission that it would file its 2022 annual report on "or before the fifteenth calendar day following the prescribed due

<sup>12</sup> See Joyce Dec. at Exh. 5 (MLYF's Form 12b-25 filed on September 15, 2022), and <https://www.sec.gov/Archives/edgar/data/1801762/000149315222025905/formnt10-q.htm>.

date,” which was February 14, 2023.<sup>13</sup> MLYF missed that deadline, and the report remains delinquent. MLYF has not met its burden of proof on the fifth *Gateway* factor, which supports revocation.

**C. Revocation is necessary and appropriate for investor protection.**

The undisputed evidence on all five *Gateway* factors establishes that revocation is necessary and appropriate for the protection of investors. In considering the appropriate remedy, the Commission seeks to protect future investors from trading in securities of an issuer, such as MLYF, that has failed to provide information required for an informed investment decision. “Revocation is a prospective remedy and is imposed based on [the Commission’s] concern about protecting future investors in the company.” *Citizens Capital Corp.*, Exchange Act Rel. No. 67313, 2012 WL 2499350 at \*8 (June 29, 2012). 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 WL 1338256 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. *See Advanced Life Sciences Holdings, Inc.*, Exchange Act Rel. No. 81253, 2017 WL 3214455 at \*6 (July 28, 2017). The protective purposes served by revocation require that remedy here.

<sup>13</sup> See Joyce Dec. at Exh. 6 (MLYF’s Form 12b-25 filed on January 30, 2023), and <https://www.sec.gov/Archives/edgar/data/1801762/000149315223002870/formnt10-k.htm>.



#### IV. Conclusion

For the reasons set forth above, the undisputed facts establish that a sanction of revocation is appropriate and necessary for the protection of investors. Accordingly, the Division requests that the Commission grant the Division's Motion for Summary Disposition and that the Commission revoke the registrations of each class of MLYF's securities registered under Exchange Act Section 12.

Dated: April 2, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true copy of the Division of Enforcement's Motion for Summary Disposition as to Western Magnesium Corp. and Brief in Support to be served on April 2, 2025, in the manner indicated below:

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