SECURITIES AND EXCHANGE COMMISSION
Washington D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No.57864 / May 23, 2008

Admin. Proc. File No. 3-12519

In the Matter of

IMPAX LABORATORIES, INC.
c/o Blank Rome LLP
600 New Hampshire Ave., N.W.
Washington, D.C. 20037

OPINION OF THE COMMISSION

SECTION 12(j) PROCEEDING

Grounds for Remedial Action

Failure to Comply with Periodic Filing Requirements

Company failed to file periodic reports in violation of Section 13(a) of the Securities Exchange Act of 1934 and Exchange Act Rules 13a-1 and 13a-13. Held, it is necessary and appropriate for the protection of investors to revoke the registration of the company's securities.

APPEARANCES:

Michael Joseph, Joseph O. Click, and Joseph N. Cordaro, of Blank Rome LLP, for Impax Laboratories, Inc.

Paul W. Kisslinger, Neil J. Welch, Jr., and David S. Frye, for the Division of Enforcement.

Appeal filed: May 23, 2007
Last brief received: August 6, 2007
Oral argument: May 5, 2008

I.

Impax Laboratories, Inc. ("Impax" or "the Company") appeals from an administrative law judge's decision finding that the Company had violated Section 13(a) of the Securities Exchange Act of 1934 and Exchange Act Rules 13a-1 and 13a-13 thereunder 1/ by failing to file its required quarterly and annual reports for any period after September 30, 2004 and, on that basis, revoking the registration of the Company's common stock. 2/ We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal. 3/

II.

Introduction. Impax, a Delaware corporation, develops, manufactures, and distributes pharmaceutical products. Impax's common stock is registered with the Commission pursuant to

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1/ Exchange Act Section 13(a) requires issuers of securities registered pursuant to Exchange Act Section 12 to file periodic and other reports with the Commission in accordance with rules established by the Commission. 15 U.S.C. § 78m(a). Rule 13a-1, 17 C.F.R. § 240.13a-1, requires issuers to file annual reports with the Commission, and Rule 13a-13, 17 C.F.R. § 240.13a-13, requires issuers to file quarterly reports with the Commission.

2/ The Order Instituting Proceedings against Impax also instituted proceedings against several other parties pursuant to Exchange Act Section 12(j) for failure to file required quarterly and annual reports. Telynx, Inc. and Discovery Zone, Inc. each consented to the entry of our orders revoking the registration of each class of their securities registered pursuant to Exchange Act Section 12. See Order Making Findings and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 as to Telynx, Inc., Securities Exchange Act Rel. No. 55250 (Feb. 7, 2007), 89 SEC Docket 3218; Order Making Findings and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 as to Discovery Zone, Inc., Exchange Act Rel. No. 55690 (May 2, 2007), 90 SEC Docket 1612. The law judge in this proceeding revoked the registration of each class of securities registered pursuant to Exchange Act Section 12 of Cosmetic Center, Inc., Donlar Biosyntrex Corp., Donlar Corp., and Phoenix Waste Services Company, Inc. after finding those parties in default for failure to file an answer and participate in the prehearing conference for which they had notice. See Order Making Findings and Revoking Registrations by Default as to Cosmetic Ctr., Inc., Donlar Biosyntrex Corp., Donlar Corp., and Phoenix Waste Servs. Co., Exchange Act Rel. No. 55278 (Feb. 12, 2007), 89 SEC Docket 3308.

3/ Commission Rule of Practice 451(d), 17 C.F.R. § 201.451(d), permits a member of the Commission who was not present at oral argument to participate in the decision of a proceeding if that member has reviewed the oral argument transcript prior to such participation. Commissioner Casey conducted the required review.

Exchange Act Section 12(g). 4/ Impax admits that it has not filed its quarterly and annual reports for any period after September 30, 2004, as alleged in the Order Instituting Proceedings ("OIP").

Circumstances Surrounding Impax's Reporting Failures. Impax represents that its ability to cure its delinquencies and make current filings depends on circumstances surrounding the identification of an appropriate revenue recognition accounting policy applicable to transactions executed pursuant to the June 27, 2001 profit-sharing agreement between Teva Pharmaceuticals Curacao, N.V. ("Teva") and Impax ("the Agreement"). Teva is the United States subsidiary of Teva Pharmaceuticals Industries, Ltd., a pharmaceutical company headquartered in Israel. The Agreement provides, among other things, for Impax to develop and manufacture certain generic products that Teva would market; Teva to lend Impax $22 million and purchase $15 million of Impax's common stock; Impax to repay the loan with shares of Impax common stock at Impax's option; interest and principal forgiveness to occur under certain circumstances; Impax to repurchase a portion of its shares for nominal consideration when a specified milestone had been achieved; and the parties to share specified regulatory and patent-litigation expenses.

In early 2004, Impax began to ship to Teva products that were covered by the Agreement. 5/ Impax included product-related revenue resulting from the Agreement in its unaudited quarterly reports for the first two quarters of 2004 using the revenue recognition accounting policy which had been developed in 2000 by the Company's then-chief financial officer. Although unaudited, the 2004 quarterly reports were reviewed by Impax's independent auditor, Deloitte & Touche LLP ("Deloitte"). 6/ An error in sales calculations provided by Teva was discovered during the third quarter of 2004. As a result, Impax restated its revenue and net income results for the first two quarters of 2004 using its then-current revenue recognition accounting policy.

After the restatements, Deloitte increased its scrutiny of the Company's application of its revenue recognition accounting policy to Agreement transactions. In February 2005, Impax "began discussions" with Deloitte of revenue recognition under the Agreement in connection with the audit of the 2004 financial statements due on March 31, 2005. 7/ In March 2005,

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4/ 15 U.S.C. § 78*l*(g).

5/ For the fiscal years ending December 31, 2001, 2002, and 2003, the only recognized revenue earned pursuant to the Agreement was related to loan forgiveness by Teva. Revenue related to loan forgiveness under the Agreement is not a problematic aspect of Impax's revenue recognition accounting.

6/ Deloitte took over from Impax's previous auditors in October 2003.

7/ Impax and Teva executed two amendments to the Agreement in March 2005 that purportedly resolved certain unrelated accounting issues that had resulted in Impax's

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Deloitte informed Impax that it was unable to "reach a consensus on the appropriate method of revenue recognition for the transactions [arising under the Agreement] in 2004," and therefore was unable to complete its audit of the Company's financial statements for the year ending December 31, 2004. Deloitte advised Impax to obtain guidance from the Commission's Office of the Chief Accountant ("OCA") with respect to an appropriate revenue recognition accounting policy for transactions under the Agreement. 8/ A representative of Deloitte testified that Deloitte believed that OCA's views were necessary "because of the complexity of the [Agreement] . . . and the challenge with respect to finding the appropriate accounting literature, either by direct application or analogy [in relation] to various aspects of the [Agreement]."

On March 16, 2005, Impax filed a Form 12b-25 notification indicating that it anticipated filing its annual report for the year ending December 31, 2004 approximately two weeks late because the Company required more time to

> complete the year-end financial closing, including reviewing necessary information from its strategic partner Teva for certain commercial products sold under its agreement with them . . . , to complete the extensive Sarbanes-Oxley Section 404 internal controls requirements . . . and to investigate and evaluate potential material weaknesses or potential significant deficiencies in connection with the Sarbanes-Oxley Section 404 internal control evaluation. 9/

At about this time, Impax hired a new chief financial officer, Arthur A. Koch, Jr., to replace its retiring chief financial officer. Koch had no prior practical experience with the application of the revenue recognition policy. Koch concluded that the accounting issues arising under the Agreement were "inordinately complex" and required a "highly technical and extremely involved analysis." Accordingly, he began to augment his accounting staff and retained FTI Consulting, Inc. ("FTI") to help resolve the problem of identifying an appropriate

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7/ (...continued)
restatement of financial information. After the amendments, Deloitte increased its scrutiny of accounting issues raised by the Agreement.

8/ OCA typically offers guidance when companies or auditors are uncertain about the application of specific generally accepted accounting principles related to "critical accounting policies." See Guidance for Consulting on Accounting Matters with the Office of the Chief Accountant, http://www.sec.gov/info/accountants/ocasubguidance.htm (Last visited May 23, 2008), at *1. Obtaining OCA's views is not a prerequisite for filing an annual report. Id.

9/ Impax filed seven more Form 12b-25 notifications to address each of the remaining periodic reports covered by the period in the OIP that were not filed. Of the seven filings, Impax filed two of the Form 12b-25 notifications late. Subsequent to the period covered in the OIP, Impax failed to file five Form 12b-25 notifications.

revenue recognition accounting policy under the Agreement. Impax worked mainly with FTI's senior managing director, Ernest Ten Eyck, who had been a certified public accountant since 1971 and an assistant chief accountant with OCA for six years.

Impax and Ten Eyck collaborated during the spring of 2005 and, after receiving feedback from Deloitte, submitted a letter to OCA on May 26, 2005 ("the May 2005 Letter"). OCA's guidelines for submissions requesting OCA's views recommend that submissions include, among other things, the "conclusion of the company's auditor with respect to the accounting . . . issue and whether the submission and the proposed resolution of the issue have been discussed with the auditor's national office . . . and if so, when this discussion occurred." 10/ Impax's submission, however, stated that

> Deloitte has advised us that it believed the [May 2005 Letter] did not clearly present all of the pertinent facts related to our relationship with Teva under the [Agreement] or clearly present the proposed accounting or the basis for such accounting. . . [and] that it has not yet concluded whether it agrees with the proposed accounting described in this letter. . . . Deloitte advised management of Impax that it did not believe the draft letter was in an appropriate condition for submission to the staff of the Commission and accordingly advised us not to send this letter to the staff at this time.

Koch testified that, notwithstanding these reservations expressed by Deloitte, Impax submitted the May 2005 Letter on the advice of the Company's counsel and FTI and because Koch was frustrated by delays in obtaining feedback from Deloitte's national office. Koch thought OCA's consideration of "a very narrow issue," i.e., revenue recognition regarding product sales, would "shorten the auditor's analysis."

OCA assigned Pamela Schlosser, then a member of OCA staff who had experience working on requests for OCA guidance, to respond to Impax's letter. At the hearing, she testified that she considered Impax to be a "smaller company" with limited resources and that "[e]ven for a very large company with a very large team of management, it would take some time to work through . . . the various technical literature and consider all the [complex accounting] aspects" under the Agreement. Schlosser stated that she found the May 2005 Letter to be "alarming" because she had never seen a submission where the independent auditor not only offered no conclusion about the issue under consideration but also objected to the submission itself. Schlosser testified that she also believed that the May 2005 Letter lacked sufficient factual content and accounting analysis, including a conclusion from Deloitte, that precluded OCA from providing specific guidance.

10/ See Guidance for Consulting on Accounting Matters with the Office of the Chief Accountant, supra note 8, at *4.

Despite concerns about the adequacy of the May 2005 Letter, Schlosser testified that OCA recognized that Impax was operating under significant time constraints and held a conference call with the Company and Deloitte on June 10, 2005. During the conference call, OCA identified twelve to thirteen specific factual and analytic issues regarding both revenue recognition and other accounting matters under the Agreement that needed to be addressed before OCA could provide a meaningful assessment. At the conclusion of this ninety-minute discussion, OCA suggested that Impax should make a second submission that addressed the points raised during the call.

On June 27, 2005, Impax filed a Form 8-K 11/ with the Commission that disclosed that Impax's management had identified issues related to the Company's "financial close and reporting process" as one of five material weaknesses in its internal controls over financial reporting as of December 31, 2004. 12/ Impax represented that a "lack of sufficient accounting personnel" was a contributing factor to the weakness in its "financial close and reporting process" and that it was "[i]ncreasing the number and quality of internal general ledger supervisory and accounting personnel trained in accounting and reporting under US GAAP." By the end of 2005, Koch had increased the accounting staff to twenty-five individuals, including four certified public accountants.

Meanwhile, Nasdaq had notified Impax that the Company's continued listing on Nasdaq was at risk because compliance with its reporting obligations to the Commission is a requirement of continued listing on Nasdaq. Between May and July 2005, Impax made three requests to Nasdaq for extensions of time to cure its filing delinquencies, each time promising, but ultimately failing, to file on the requested extension date.

On August 3, 2005, Impax issued a press release ("Press Release") that discussed the potential financial impact of three different possible revenue recognition accounting policies on transactions executed pursuant to the Agreement. The Press Release assured investors that "[w]hatever policy is ultimately adopted . . . will have no effect upon the Company's liquidity or cash position." Koch testified after the issuance of the Press Release that he "began to get a great

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11/ Form 8-K is the "current report" that public companies must file upon the occurrence of an event specified in the items to the Form.

12/ A material weakness, as formerly defined in Public Company Accounting Oversight Board Auditing Standard No. 2, is a control deficiency, or combination of control deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected. Impax identified the problem associated with Teva's product sales calculations under the Agreement as a second material weakness and the amendments to the Agreement as a purported resolution. See supra note 7. Impax identified the other material weaknesses to be related to its "billing controls for non-electronic data interchange orders," "inventory valuation procedures," and "reserve for shelf stock protection."

many calls from investors who could not understand under which circumstances which alternatives might be applicable." 13/ Koch added that "[i]t was clear from those calls that investors were very confused by that disclosure."

On August 5, 2005, Impax issued another press release acknowledging that Nasdaq had determined to delist Impax's stock effective on August 8, 2005. However, at the hearing in February 2007, Impax's website still stated that it was listed on Nasdaq. Although Koch indicated at the hearing that the error was an "oversight" that would be corrected, Impax's website currently states that "Impax Laboratories, Inc. (Nasdaq:IPXL), a Delaware corporation, is headquartered in Hayward, California."

By October 2005, Deloitte still had not reached a conclusion regarding an appropriate revenue recognition accounting policy for Agreement transactions. Koch, however, testified that an OCA reviewer told him during an October 2005 conversation that OCA was prepared to offer guidance because "it was taking so long to develop the position of the auditor." 14/ Accordingly, Impax submitted its second letter to OCA on November 7, 2005, again without a conclusion from Deloitte. Ten Eyck did not think it was likely that OCA would "approve" the November 7, 2005 letter, but thought that OCA "would informally put pressure on Deloitte . . . to get them to respond."

However, during a lengthy January 3, 2006 conference call with Impax and Deloitte, OCA noted that eight issues still had not been addressed sufficiently to enable OCA to provide specific guidance. Based on the collective acknowledgment by Impax, Deloitte, and OCA that little progress was being made, OCA suggested that Impax might have more success with a third submission by taking "a clean sheet of paper and beginning from square one."

For the next thirteen months, Impax collaborated with Ten Eyck and received feedback from Deloitte to prepare a third submission to OCA. To that end, Impax developed a series of "white papers" that attempted to address comprehensively all accounting issues related to the Agreement. Impax also revised several drafts of a third letter to OCA based on comments from Deloitte.

Meanwhile, on November 21, 2005, Deloitte had informed Impax that it would not stand for reappointment as the Company's independent auditors for the year ending December 31, 2005 and that it would resign "upon completion of its audit of the 2004 financial statements or

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13/ Koch testified that Impax issued the Press Release on advice from a former Nasdaq general counsel that a determination of whether to delist Impax would hinge on whether the Company had issued any kind of interim financial information during its reporting delinquencies.

14/ The OCA reviewer was not called to testify, and no other witness was asked to confirm this discussion.

upon its determination that it [would] be unable to complete the audit or issue a report on such financial statements." Impax did not engage a new independent auditor until November 9, 2006 when it appointed Grant Thornton LLP ("Grant Thornton") to audit the Company's internal controls and financial statements for the years ending December 31, 2005 and 2006.

On March 29, 2006, twelve months after Impax first became delinquent in filing its required reports, our Division of Corporation Finance notified Impax that it could be subject to the institution of an administrative proceeding to revoke the registration of its common stock if the Company failed to file all required reports under Exchange Act Section 13(a) within fifteen days. On December 29, 2006, the day that we issued the OIP in this proceeding, we issued an order pursuant to Exchange Act Section 12(k) temporarily suspending trading in Impax through January 16, 2007 on the basis that Impax had not filed any periodic reports since the report covering the period ending September 2004. 15/

On February 2, 2007, Impax submitted its third letter to OCA. 16/ In the letter, Impax stated that "[w]hile Deloitte has advised us that they believe our proposed model is acceptable, Deloitte has noted that the financial statement presentation resulting from the application of the model may not result in financial statements that provide transparent financial information to our investors."

Evidence Developed During and Subsequent to the Hearing. The hearing in this matter was held while Impax's third request to OCA was pending. Impax called an expert, Simon Wu. Wu opined that, notwithstanding the absence since November 2004 of the Company's financial statements, Impax's stock had been trading in an efficient market, i.e., one in which the market price reflects all publicly available information, including financial statements, and represents an unbiased estimate of the true value of the stock. Wu further concluded that institutional investors, who are typically "more sophisticated and better informed" than average retail investors, held a "significant" portion of Impax's stock and therefore "provided comfort to small retail investors, even in the absence of current financial statements."

Ten Eyck testified that determining an appropriate revenue recognition accounting policy with respect to the Agreement was "as complex as anything [he had] ever worked on in [his] career" because the accounting principles were broad, "extremely complex, and sometimes inconsistent and overlapping."

In its pleadings in this proceeding, as well as Koch's testimony at the hearing, Impax represented that it would file all of its outstanding quarterly and annual reports within eight to twelve weeks of receiving a favorable determination from OCA, contingent upon Impax's own internal preparation, as well as that of its independent auditors with respect to the annual reports,

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15/ Cosmetic Ctr., Exchange Act Rel. No. 55020 (Dec. 29, 2006), 89 SEC Docket 2268.

16/ Grant Thornton did not participate in the preparation of the third letter to OCA.

which require audited financial statements. A representative of Deloitte, however, testified that it was unable to estimate the amount of time needed to complete its audit of the financial statements for the year ending December 31, 2004. Deloitte asserted that, before it could complete its 2004 audit, it would require an understanding of "what has occurred in subsequent years and would rely on the efforts of [Grant Thornton] in connection with that." Deloitte also would need to assess whether any additional auditing procedures beyond the routine procedures would be required to process the audit in light of the application of the new revenue recognition accounting policy.

A representative of Grant Thornton testified that completion of its audit of the financial statements for the years ending December 31, 2005 and 2006 is dependent upon Deloitte first completing its audit of the 2004 financial statements. Additionally, Grant Thornton testified that processing the audit would involve numerous steps, including coordinating with Deloitte to perform a work-paper review of Deloitte's audit of the 2004 financial statements, completing its audit procedures for the audit of the 2005 and 2006 financial statements, obtaining customary documents related to the audit process, such as a management representation letter and letters from outside legal counsel, and receiving clearance to complete the audit following a multi-level internal review within Grant Thornton.

OCA informed the Company on July 24, 2007, during the pendency of this appeal, that "all open questions had been satisfactorily resolved and . . . that [it] would have no objection to the method of accounting proposed in Impax's February 2[, 2007] submission." 17/ According to OCA, a request for guidance is usually processed within two to three weeks, and the amount of time required for Impax's approval was "highly unusual." To date, Impax has not filed any of its outstanding periodic reports.

III.

Exchange Act Section 13(a) requires issuers of securities registered under Exchange Act Section 12 to file periodic and other reports with the Commission containing such information as the Commission's rules prescribe. Exchange Act Rules 13a-1 and 13a-13 require such issuers to

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17/ On July 26, 2007, Impax sought to adduce this additional evidence in the form of a declaration signed by Koch. The Division of Enforcement opposed the motion. Commission Rule of Practice 452 permits a party to adduce new evidence on appeal only if the moving party shows "with particularity" both (a) that the evidence is "material" and (b) that there were "reasonable grounds for failure to adduce such evidence previously." 17 C.F.R. § 201.452. OCA's approval of Impax's proposed accounting is relevant to the issue of when or whether Impax might file its 2004 annual report, and evidence of OCA's approval could not have been provided prior to OCA granting it. Under the circumstances, we have determined to grant Impax's motion.

file quarterly and annual reports. 18/ It is undisputed that Impax failed to file the six quarterly and two annual reports for the reporting periods charged in the OIP after September 30, 2004. 19/ Accordingly, we find that Impax failed to comply with Exchange Act Section 13(a) and Exchange Act Rules 13a-1 and 13a-13 thereunder.

IV.

Under Exchange Act Section 12(j), the Commission is authorized, "as it deems necessary or appropriate for the protection of investors," to revoke the registration of a security or suspend for a period not exceeding twelve months if it finds, after notice and an opportunity for hearing, that the issuer of the security has failed to comply with any provision of the Exchange Act or rules thereunder. 20/ Our determination of what sanctions will ensure that investors will be adequately protected "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." 21/ Factors we consider in making this determination include 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 its assurances, if any, against further violations. 22/ No one of these factors is dispositive. 23/ Based on our consideration of these

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18/ 17 C.F.R. §§ 240.13a-1 and 240.13a-13; see also America's Sports Voice, Inc., Exchange Act Rel. No. 55511 (Mar. 22, 2007), 90 SEC Docket 879, 883.

19/ It is unnecessary for us to find that Impax was aware of, or intentionally ignored, its reporting obligations as scienter is not necessary to establish an issuer's liability under Exchange Act Section 13(a) and Exchange Act Rules 13a-1 and 13a-13. See America's Sports Voice, 90 SEC Docket at 883 n.12 (citing Ponce v. SEC, 345 F.3d 722, 737 n.10 (9th Cir. 2003); SEC v. McNulty, 137 F.3d 732, 740-41 (2d Cir. 1998)); Gateway Int'l Holdings, Inc., Exchange Act Rel. No. 53907 (May 31, 2006), 88 SEC Docket 430, 439 n.28 (citations omitted). Nonetheless, there is no evidence, and Impax does not argue, that its failure to file was inadvertent or otherwise without intent.

20/ 15 U.S.C. § 78*l*(j).

21/ America's Sports Voice, 90 SEC Docket at 883-84; Gateway, 88 SEC Docket at 439.

22/ America's Sports Voice, 90 SEC Docket at 884; Gateway, 88 SEC Docket at 438-39.

23/ Cf. Conrad P. Seghers, Investment Advisers Act Rel. No. 2656 (Sept. 26, 2007), 91 SEC Docket 2293, 2298 & n.17 ("[T]he Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive.") (citing Robert W. Armstrong, III, Exchange Act Rel. No. 51920 (June 24, 2005), 85 SEC Docket

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factors, we believe that the protection of investors requires revoking the Section 12(g) registration of the Company's common stock.

Impax attempted, but failed, to comply with its reporting obligations under Exchange Act Section 13. Even if the failure were unintentional, it has deprived the investing public of current and accurate information with respect to Impax's operations and financial condition for a period of more than three years. These are serious violations. As we stated in Eagletech Communications, Inc., 24/

> [f]ailure 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." SEC v. Beisinger Indus. Corp., 552 F.2d 15, 18 (1st Cir. 1977). 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 (citation omitted).

Impax has missed eight required filings, making the violations recurring. Impax concedes that "each failure to file a required report is technically a separate violation" but argues that its violations are isolated to the extent that they resulted solely from "the Company's inability to complete an unfortunately long and cumbersome process of developing a new accounting method for recognition of revenues under a 2001 multi-faceted strategic alliance agreement with another pharmaceutical company." Whether due to one or multiple causes, the fact is that Impax failed to file six quarterly and two annual reports over the course of the eighteen months covered in the OIP. In addition, subsequent to the filings that were due in the period covered by the OIP, Impax failed to file two annual and four quarterly reports. These filing failures are numerous and extend over a lengthy period, and we view them as recurrent, not isolated, in nature. 25/

23/ (...continued)
3011, 3019 (citation omitted)); see also Blinder, Robinson & Co. v. SEC, 837 F.2d 1099, 1111-13 (D.C. Cir. 1988) (referencing the fact that the Commission weighs the factors relevant to a sanction in the public interest).

24/ Exchange Act Rel. No. 54095 (July 5, 2006), 88 SEC Docket 1225, 1230.

25/ See America's Sports Voice, 90 SEC Docket at 880-84 (finding the failure to file twenty-two reports over the course of more than five years, among other things, serious and recurrent where respondent claimed failure emanated from organizational upheaval);
(continued...)

Impax argues that its violations do not warrant revocation because they are "certainly not as serious as, for example, filing reports that are false and misleading." As noted above, the failure to provide accurate, complete, and timely financial information is serious. 26/ Certainly, the filing of false and misleading reports is a serious matter. Such conduct, however, is addressed by the additional serious sanctions that are available for violation of the antifraud provisions of the federal securities laws. Among the possible violations on which an Exchange Act Section 12(j) proceeding could be based, we view the facts and circumstances of Impax's recurrent failure to file periodic reports as so serious that only a strongly compelling showing with respect to the other factors we consider would justify a lesser sanction than revocation. Impax has not made such a showing here.

With respect to the degree of culpability involved, we note that, although Impax's response to its accounting dilemma was less than desirable, Impax's attempts to contact OCA demonstrate that Impax's failure to comply with its reporting obligations was not the result of a complete disregard to solve the accounting problem. We recognize that Impax made efforts to comply with its reporting obligations. It appears that initially Impax's ability to focus on the complex accounting issues created by the Agreement was impeded by the need to correct errors in Impax's first two quarterly reports for 2004 (caused by Teva's provision of erroneous information) and the replacement of Impax's chief financial officer (who had developed the revenue recognition accounting policy) by Koch, who had no practical experience with the application of the policy. Deloitte did not inform Impax that it was unable to "reach a consensus" regarding application of the revenue recognition accounting policy under the Agreement and could not complete its audit until March 2005, shortly before the Form 10-K was due on March 31, 2005.

25/ (...continued)
Eagletech, 88 SEC Docket at 1226-30 (finding the failure to file multiple reports over the course of more than three years serious and recurrent where respondent claimed failure emanated from financial loss suffered as victim of criminal activity); Gateway, 88 SEC Docket at 439 (finding the failure to file a total of seven annual and quarterly reports over the course of eighteen months, among other things, serious and recurrent where respondent claimed failure emanated from lack of access to the books and records of its subsidiaries). The financial statements included in annual reports on Form 10-K must be prepared in conformity with generally accepted accounting principles and audited by an independent accountant in accordance with the statements of the Public Company Accounting Oversight Board (United States). See Item 8 of Form 10-K (17 C.F.R. § 249.310), Regulation S-X (17 C.F.R. § 210), and Item 302 of Regulation S-K (17 C.F.R. § 229.302); see also America's Sports Voice, 90 SEC Docket at 883 n.11 (citing United States v. Arthur Young & Co., 465 U.S. 805, 810 (1984) (observing that "[c]orporate financial statements are one of the primary sources of information available to guide the decisions of the investing public")).

26/ See supra note 24 and accompanying text.

Impax increased its accounting staff in 2005 and retained FTI to help address the problem of identifying an appropriate revenue recognition accounting policy under the Agreement. Impax and Ten Eyck collaborated for approximately two years to produce numerous drafts of letters to OCA and a series of "white papers" to address the accounting issues related to the Agreement. Impax made formal submissions to OCA in May 2005, November 2005, and February 2007. The February 2007 submission garnered OCA's approval of Impax's proposed method of accounting on July 24, 2007.

Impax's efforts to remedy its past violations and ensure future compliance nonetheless have yet to bring the Company into compliance with its reporting obligations. Moreover, Impax's efforts to provide information to the public have not been effective. For example, the August 2005 Press Release regarding three possible revenue recognition accounting policies was, as Koch conceded, more confusing than helpful to the investing public. Impax does not explain why, after learning in November 2005 that Deloitte would not stand for reappointment for the 2005 fiscal year, an entire year elapsed before Impax retained Grant Thornton in November 2006. Although Impax announced its delisting from Nasdaq in a press release, its website states that "Impax Laboratories, Inc. (Nasdaq:IPXL), a Delaware corporation, is headquartered in Hayward, California," which suggests that, or at the very least is confusing about whether, the Company is Nasdaq-listed. These lapses, in addition to the lack of accurate, complete, and timely financial statements, further detract from an investor's ability to make an informed investment decision.

Moreover, Impax has repeatedly underestimated the amount of time that it will need to become compliant. In its March 2005 Form 12b-25 notification, Impax stated that it would file its 2004 annual report two weeks late. It did not do so. Between May and July 2005, Impax made three requests to Nasdaq for extensions of time to cure its filing delinquencies, each time promising, but ultimately failing, to file on a specific date. At the hearing, Impax represented that it would file all of its outstanding quarterly and annual reports within eight to twelve weeks of receiving a favorable determination from OCA. Pending our consideration of this appeal, Impax moved to revise this estimate three times. On October 19, 2007, the Company stated that it would need a total of sixteen to twenty weeks following OCA's approval to cure its reporting delinquencies. On December 28, 2007, Impax then stated that it would need a total of approximately thirty-one weeks following OCA's approval. On February 8, 2008, Impax stated that it would need a total of approximately forty weeks following OCA's approval. 27/ It is

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27/ Impax moved to adduce this additional evidence pursuant to Commission Rule of Practice 452. See supra note 17 regarding the standards for adducing additional evidence under Commission Rule of Practice 452. Impax's revised estimates are material to the issue of when or whether it might cure its filing delinquencies and were necessary when Impax failed to meet it original and subsequent revised estimates. Pursuant to Commission Rule of Practice 323, 17 C.F.R. § 201.323, we take official notice that Impax revised its February 8, 2008 statement in a Form 8-K that it filed on May 2, 2008, estimating that it would become current in its periodic reports by June 30, 2008. On

(continued...)

unclear why these estimates deviated from that provided during the hearing. It has now been forty-three weeks since OCA provided its determination, yet Impax has not filed any of its outstanding reports, including those that are subsequent to the period covered in the OIP. 28/

In addition to the factors discussed above, we are persuaded that revocation is a more appropriate sanction here than a suspension because Impax's assurances against further violations are not credible. Our primary concern is with the public interest in ensuring that investors are protected by having access to accurate, complete, and timely information, including financial statements, upon which to base their investment decisions. Impax has made repeated unfulfilled promises to file its periodic reports. Although an acceptable revenue recognition accounting policy has been identified, it must now be incorporated into the financial statements for all of the outstanding periodic reports, including one annual report and three quarterly reports for each of 2004, 2005, 2006, and 2007. The record indicates that the process involved with preparing these reports will require significant coordination among Impax, Deloitte, and Grant Thornton, each of whom will have numerous responsibilities. 29/ Impax already has needed substantially more time than anticipated to address its 2004 delinquencies, making us unconvinced that it is realistic to expect that the Company can become current entirely in its reporting obligations in the foreseeable future. 30/

27/ (...continued)
January 25, 2008, Impax also moved to adduce additional evidence regarding the quantitative nature of the hours that Deloitte, Grant Thornton, FTI, and the Company have expended on addressing the revenue recognition accounting policy. We do not find this information to be material to the disposition of this matter and therefore deny Impax's motion.

28/ Neither has Impax filed any of its five Form 12b-25 notifications due since May 2007. Although we are not finding violations based on failures to file subsequent reports, we may consider them, and other matters that fall outside the OIP, in assessing appropriate sanctions. See, e.g., Gateway, 88 SEC Docket at 440 n.30; Robert Bruce Lohmann, 56 S.E.C. 573, 583 n.20 (2003).

29/ We can impose a suspension for no more than one year under Exchange Act Section 12(j), and we cannot conclude on this record that Impax can reliably assure us that it can complete all outstanding filings within that time.

30/ Deloitte stated in the February 2, 2007 letter to OCA that the financial statement presentation resulting from application of the new revenue recognition accounting policy may not result in financial statements that provide transparent financial information to investors. Given both Deloitte's and OCA's concurrence in the appropriateness of the new revenue recognition policy, it is unclear what additional issues or cause for delay may underlie this assertion.

Impax raises several arguments against revocation, none of which is persuasive. Impax argues that its auditors failed to question the propriety of the revenue recognition accounting policy in the audited 2002 and 2003, and the unaudited 2004, financial statements. Whether or not Impax's auditors fulfilled their obligations associated with their audits, it is Impax's obligation under Exchange Act Section 13(a) and Exchange Act Rules 13a-1 and 13a-13 to ensure that its periodic reports are filed in an accurate, complete, and timely manner. 31/

Impax argues that it "bears little resemblance to the typical respondent" in proceedings initiated under Exchange Act Section 12(j) and that, "[w]hile the public and the Company's shareholders have not had access to financial reports and the important information that they impart since November 2004, the failure to file periodic reports has not had a harmful effect on the Company's operations, and the Company's business has grown significantly during this period." Impax asserts that it has "an active and growing generic pharmaceutical business with $46 million in cash and a current market capitalization of approximately $700 million," and that, as of June 2007, it "marketed 68 generic products," has "applications for approximately 20 more products pending before the FDA," and had "55 products under development." In support of these claims, Impax relies on the conclusions of its expert witness, Simon Wu. Wu concluded that, notwithstanding the absence since November 2004 of the Company's financial statements, Impax's stock had been trading in an efficient market, i.e., one in which the market price reflects all publicly available information, including financial statements, and represents an unbiased estimate of the true value of the stock. Wu further concluded that institutional investors, who are typically "more sophisticated and better informed" than average retail investors, held a "significant" portion of Impax's stock and therefore "provided comfort to small retail investors, even in the absence of current financial statements."

As discussed above, Congress mandated a different test than that proposed by Wu, i.e., the prompt provision to investors of current, periodic, audited financial statements. The publicly available information to which Wu refers is, without dispute, incomplete. Impax's financial statements, including audited financial statements containing an opinion of its independent auditors that such financial statements present fairly, in all material respects, the financial position of Impax and are in conformity with generally accepted accounting principles, have been unavailable to all investors, including sophisticated ones, since the period ending September 30, 2004. Impax concedes that certain of the publicly available information, such as the August 2005 Press Release, is confusing. The absence of financial statements, particularly in the case of an apparently expanding company with demonstrated growth objectives, deprives all investors of

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31/ 15 U.S.C. § 78m(a); 17 C.F.R. §§ 240.13a-1, 13a-13. See also Item 15 of Form 10-K (17 C.F.R. § 249.310) and Item 601 of Regulation S-K (17 C.F.R. § 229.601) (requiring a company's principal executive officer and principal financial officer to certify to the accuracy of financial statements).

the required timely information, thereby hampering their ability to make informed investment decisions. 32/

Impax argues that suspension or revocation is draconian and "is in reality a sanction imposed upon Impax's shareholders . . . who bear no responsibility for the violations, as it would eliminate all liquidity and diminish the value of their shares." We disagree. In Gateway, we stated: "Exchange Act Section 12(j) authorizes revocation as a means of protecting investors. In evaluating what is necessary or appropriate to protect investors, 'regard must be had not only for existing stockholders of the issuer, but also for potential investors.'" 33/ Both existing and prospective Impax investors are harmed by the continuing lack of current, reliable, and audited financial information because they cannot make an informed investment decision. For example, current investors do not have an adequate basis to evaluate the Company's profitability for themselves or determine accurately whether to sell stock. Impax has failed to meet each of its previously identified deadlines and has offered no credible assurances that it will provide the delinquent information on any specific date. 34/ Impax may re-register its securities under the Exchange Act once it is able to comply with the registration requirements.

Impax claims that imposition of a sanction would demonstrate that Exchange Act Section 12(j) is a strict liability statute because the Company "has done everything it possibly could to resolve its accounting issues," yet "the Commission will accept no explanation or excuse." We have considered Impax's efforts to comply in detail. As we have stated, our determination of whether to impose a sanction rests on a careful consideration of each of the factors enumerated above, taking into account all of a respondent's arguments, and results only when these factors are weighed against each other under the specific facts and circumstances of each case.

After Impax committed its first reporting violation in March 2005, the Division of Corporation Finance monitored Impax's reporting status for twelve months prior to taking any action. In March 2006, when it was evident that Impax had not addressed its reporting delinquencies, the Division notified the Company that it could be subject to the institution of an administrative proceeding to revoke the registration of its stock if the Company failed to file all required reports under Exchange Act Section 13(a) within fifteen days. In December 2006, long after the fifteen days had elapsed without Impax having addressed its outstanding reports, we issued a ten-day suspension of trading and the OIP. We initiated this proceeding under Exchange

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32/ Cf. Gateway, 88 SEC Docket at 443-44 & n.45.

33/ Id. at 443 (citing Great Grass Oils Ltd., 37 S.E.C. 683, 698 (1957), aff'd, 256 F.2d 893 (D.C. Cir. 1958)).

34/ Thus, suspension of registration for a period not exceeding twelve months in the hope that Impax would return to compliance within that period would very likely result in the necessity for another proceeding under Exchange Act Section 12(j) at the end of that period.

Act Section 12(j) only after Impax had failed to rectify its reporting delinquencies for twenty-one months after committing its first reporting violation.

The record demonstrates that Impax cannot credibly identify when it will become current on its reporting obligations despite its concerted efforts to avoid and correct its reporting failures. In the meantime, investors cannot make an informed investment decision about Impax because they do not have access to accurate, complete, and timely reports that comply with the requirements of the Exchange Act and rules and regulations promulgated thereunder.

An appropriate order will issue. 35/

By the Commission (Chairman COX and Commissioners ATKINS and CASEY).

Nancy M. Morris
Secretary

35/ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 57864 / May 23, 2008

Admin. Proc. File No. 3-12519

In the Matter of

IMPAX LABORATORIES, INC.
c/o Blank Rome LLP
600 New Hampshire Ave., N.W.
Washington, D.C. 20037

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day, it is

ORDERED that the registration of all classes of the registered securities of Impax Laboratories, Inc. under Section 12(g) of the Securities Exchange Act of 1934, be, and it hereby is, revoked pursuant to Exchange Act Section 12(j).

By the Commission.

Nancy M. Morris
Secretary