

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73420 / October 23, 2014

Admin. Proc. File No. 3-16100

In the Matter of
ACCREDITED BUSINESS
CONSOLIDATORS CORP.

ORDER DISMISSING NOTICE OF
INTENTION TO PETITION FOR
REVIEW

Accredited Business Consolidators Corp. ("ABCC") has filed a Notice of Intention to Petition for Review (the "Notice").¹ We dismiss the Notice.

ABCC's Notice is directed at an order (the "Temporary Suspension Order") issued on July 31, 2014 pursuant to Section 12(k) of the Securities Exchange Act of 1934,² which suspended trading in ABCC's securities for ten days on the ground that there was a lack of current and accurate information concerning the issuer.³ The Temporary Suspension Order was published in the Federal Register on August 4, 2014 and by its terms expired on August 13.⁴ On the same day that we issued the Temporary Suspension Order, we also instituted administrative proceedings pursuant to Section 12(j) of the Exchange Act to determine whether the registration of ABCC's securities should be suspended or permanently revoked.⁵ ABCC entered an appearance and filed an answer in the Section 12(j) proceeding on August 18. Two weeks later, on September 2, 2014, ABCC filed the instant Notice seeking review of the expired Temporary Suspension Order.

As a threshold matter, ABCC's Notice, which invokes Rule of Practice 430, is procedurally defective in three separate respects and therefore is subject to dismissal. First, Rule 430 applies only to Commission review of actions made "pursuant to delegated authority."⁶ The Temporary Suspension Order was issued "[b]y the Commission" itself,⁷ not pursuant to

¹ 17 C.F.R. § 201.430(b)(1).

² 15 U.S.C. § 78l(k)(1)(A).

³ *Accredited Business Consolidators Corp.*, Securities Exchange Act Release No. 72725, 2014 WL 3749704 (July 31, 2014).

⁴ 79 Fed. Reg. 45228 (Aug. 4, 2014).

⁵ *Accredited Business Consolidators Corp.*, Exchange Act Release No. 72726, 2014 WL 3749701 (July 31, 2014).

⁶ 17 C.F.R. § 201.430(b)(1).

⁷ 79 Fed. Reg. at 45228.

delegated authority, and thus is not reviewable under Rule 430. Second, even if Rule 430 otherwise applied, the Notice would be untimely, since it was not filed within "15 days after publication of the notice of action [*i.e.*, the Temporary Suspension Order] in the Federal Register."⁸ Third, even if Rule 430 applied and the Notice was timely for purposes of that rule, ABCC has not perfected its Notice by filing the actual petition for review, a step that Rule 430(b)(2) requires to take place "[w]ithin five days" of the filing of the notice.⁹

We also note that Commission review of the Temporary Suspension Order is not available at this juncture for another reason. The means for Commission review of a Section 12(k)(1)(A) order set forth in our Rules of Practice is the filing of a petition pursuant to Rule 550(a) "requesting that the [summary] suspension be terminated" while the suspension order is still in effect.¹⁰ Such a petition must "set forth the reasons why the petitioner believes that the suspension of trading should not *continue* and state with particularity the facts upon which the petitioner relies."¹¹ Once a temporary suspension order has expired, which typically happens after ten days, there is no suspension to be "terminated" or discontinued; the door to relief under Rule 550 is shut. ABCC did not file a timely petition to terminate the Temporary Suspension Order under Rule 550.

ABCC complains that the Temporary Suspension Order was "made *ex parte*" and "without any opportunity to be heard" and asserts that these circumstances should excuse its failure to timely seek relief.¹² We disagree. The accelerated timeframe for review mandated by Rule 550 is in harmony with the statutory scheme.¹³ Section 12(k)(1)(A) authorizes the

⁸ 17 C.F.R. § 201.430(b)(1).

⁹ *Id.* § 201.430(b)(2).

¹⁰ *Id.* § 201.550(a). Rule 550 establishes "a special mechanism to allow persons adversely affected by a suspension to petition for relief." *Adopting Release, Rules of Practice*, 60 Fed. Reg. 32738, 32787 (June 23, 1995).

¹¹ 17 C.F.R. § 201.550 (emphasis added).

¹² Although the Notice does not indicate the date upon which ABCC received actual notice of the Temporary Suspension Order, we find that ABCC was aware of the suspension by August 11, 2014, at the latest—two days before the suspension expired. That was the date that ABCC mailed its Answer in the Section 12(j) proceeding, which includes a statement that the Commission had "suspended the trading of [its] shares."

¹³ It accords also with due process. *E.g.*, *Catanzaro v. Weiden*, 188 F.3d 56, 61-62 (2d Cir. 1999) (explaining that the "necessity of quick action" can justify summary administrative action); *Talamantes-Penalver v. INS*, 51 F.3d 133, 135 (8th Cir. 1995) (rejecting claim that ten-day deadline for filing administrative appeal was violative of due process); *Spiegel v. Ryan*, 946 F.2d 1435, 1442 (9th Cir. 1991) (Rymer, J., joined by Hall, J., concurring) (holding that a "ten-day window" for seeking review of temporary order did not "deprive [the] respondent . . . of due process").

Commission "*summarily* to suspend trading in any security" if the Commission is of the opinion that the "public interest and the protection of investors so require."¹⁴ Congress thus conferred upon the Commission the authority to impose time-limited trading restrictions "without any notice, opportunity to be heard, or findings based upon a record."¹⁵ In imposing a trading suspension, the Commission aims to "alert the investing public that there is insufficient public information about the issuer upon which an informed investment judgment can be made or that the market for the securities may be reacting to manipulative forces or deceptive practices."¹⁶ In short, there are sound reasons that the Commission does not provide advance notice to a company that it is considering a trading suspension.¹⁷

Consistent with these policies and purposes, Rule 550 provides for a narrow, focused review of the Commission's "determin[ation] whether or not a 10-day suspension" is warranted following announcement of the suspension.¹⁸ After the suspension's expiration, the issuer's opportunity under Rule 550 to present arguments why "suspension of trading should not continue" lapses, and review of the temporary suspension order itself is no longer available.¹⁹ Furthermore, trading suspensions under Section 12(k)(1)(A) are statutorily limited in duration to a single, ten-day period based on any single set of circumstances.²⁰ For these reasons, although

¹⁴ 15 U.S.C. § 78l(k)(1) (emphasis added).

¹⁵ *SEC v. Sloan*, 436 U.S. 103, 112 (1978); *see also Sloan v. SEC*, 547 F.2d 152, 158 (2d Cir. 1976). The specific "factors cited by the Commission in its order as the basis for the [temporary] trading suspension . . . do not constitute an adjudication of fact or law with respect to those matters." *Proposed Rule: Initiation or Resumption of Quotations Without Specified Information*, 54 Fed. Reg. 39194, 39198 (Sept. 25, 1989).

¹⁶ *Adopting Release: Rules of Practice*, 60 Fed. Reg. at 32787.

¹⁷ *E.g.*, Securities and Exchange Commission, Office of Investor Education and Advocacy, *Investor Bulletin: Trading Suspensions* (May 2012), available at <http://www.sec.gov/investor/alerts/tradingsuspensions.pdf> (last visited October 23, 2014) ("The SEC cannot announce that it's working on a suspension. We conduct this work confidentially to maintain the effectiveness of any related investigation we may be conducting. Confidentiality also protects a company and its shareholders if the SEC ultimately decides not to issue a trading suspension.").

¹⁸ *Adopting Release, Rules of Practice*, 60 Fed. Reg. at 32787.

¹⁹ 17 C.F.R. § 201.550(a). Because the issue has not been presented to us, we do not address whether or how relief might be sought with respect to any of the potentially continuing collateral consequences of an already expired temporary suspension order.

²⁰ 15 U.S.C. § 78l(k)(1)(A); *see also Sloan*, 436 U.S. at 111. To suspend for up to twelve months or revoke a security's registration, the Commission must institute a separate proceeding under Section 12(j) and provide an opportunity for an on-the-record hearing, which is occurring here. 15 U.S.C. § 78l(j); *see supra* note 5.

we retain jurisdiction over the Temporary Suspension Order in the same fashion that we retain jurisdiction over any other Commission determination,²¹ we have determined not to review it.

Accordingly, it is ORDERED that ABCC's Notice of Intention to Petition for Review of the Temporary Suspension Order is DISMISSED.

By the Commission.

Brent Fields
Secretary

²¹ No statutory provision explicitly gives the Commission authority to reconsider temporary suspension orders, but an agency's power to revisit prior determinations is inherent in its jurisdiction over a controversy. *E.g.*, *West v. Standard Oil Co.*, 278 U.S. 200, 210 (1929) ("[S]o long as the Department retains jurisdiction of the [matter], administrative orders concerning it are subject to revision."); *Tokyo Kikai Seisakusho, Ltd. v. United States*, 529 F.3d 1352, 1360 (Fed. Cir. 2008) ("The power to reconsider is inherent in the power to decide."). Judicial review of Commission orders under Section 12 is governed by Section 25(a) of the Exchange Act; as such, jurisdiction vests in the Court of Appeals upon the filing of a petition for review with the court. *See* 15 U.S.C. §§ 78l(k)(5), 78y(a)(3).