

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

**SECURITIES ACT OF 1933**  
**Release No. 9644 / September 10, 2014**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 73066 / September 10, 2014**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16095**

**In the Matter of**

**ADVANCED CELL  
TECHNOLOGY, INC.**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
8A OF THE SECURITIES ACT OF 1933  
AND SECTION 21C OF THE SECURITIES  
EXCHANGE ACT OF 1934, MAKING  
FINDINGS, AND IMPOSING A CEASE-  
AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Advanced Cell Technology, Inc. (“Advanced Cell” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. This matter involves false and misleading statements in Advanced Cell's annual reports and proxy statements regarding its former Chairman and CEO's compliance with the reporting provisions of Section 16(a) of the Exchange Act. In its fiscal year 2011 Form 10-K, and in preliminary and definitive proxy statements filed in March 2012 (collectively, "2012 Proxy Statement"), Advanced Cell stated that it was unaware of any untimely filed reports required by Section 16(a) (except as described therein), but failed to disclose that its CEO had untimely filed four of the requisite reports and failed to file another twelve reports. In its fiscal year 2012 Form 10-K, Advanced Cell stated that it was aware of certain untimely Section 16(a) reports filed by certain directors, but again failed to disclose that its CEO had not filed all required Section 16(a) reports. As a result, Advanced Cell violated Section 17(a)(2) of the Securities Act and Sections 13(a) and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, and 14a-9 thereunder as set forth below.

#### Respondent

2. **Advanced Cell Technology, Inc. ("Advanced Cell" or "Respondent")** is a Delaware corporation with its principal place of business in Marlborough, Massachusetts. Advanced Cell's common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act and is quoted on the OTC Bulletin Board under the symbol "ACTC." On June 20, 2011, Advanced Cell filed a registration statement on Form S-8 that incorporated by reference all future annual reports and proxy statements to be filed by Advanced Cell until the filing of a post-effective amendment ending the securities offering. Advanced Cell has not yet filed such a post-effective amendment ending the securities offering.

3. On May 31, 2012, the Commission charged Advanced Cell with violating Sections 5(a) and 5(c) of the Securities Act and Section 13(a) of the Exchange Act and Rule 13a-11 thereunder. On December 30, 2013, the United States District Court for the Middle District of Florida approved a settlement between the Commission and Advanced Cell pursuant to which Advanced Cell was permanently enjoined from future violations of Sections 5(a) and 5(c) of the Securities Act and Section 13(a) of the Exchange Act and Rule 13a-11 thereunder and was ordered to pay \$3,500,000 in disgorgement and \$586,619 in prejudgment interest. Advanced Cell is currently paying those amounts through a payment plan, with the final payment of \$681,104.16 due on April 15, 2015.

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

### **Other Relevant Individual**

4. **Gary H. Rabin**, age 48, resides in Santa Monica, California. Rabin served as a director of Advanced Cell from 2007 until January 2014. Rabin also served as CEO and Chairman of the Board of Advanced Cell from December 2010 until January 2014.

### **Facts**

5. At least since he became Advanced Cell's CEO in December 2010, Gary Rabin failed to timely file the requisite reports pursuant to Section 16(a) of the Exchange Act reflecting his acquisitions and sales of Advanced Cell stock. During 2011, Rabin filed four Forms 4 that were each between ten and 69 days late. Likewise, in 2012, Rabin filed two Forms 4, both six days late.

6. Between February 2011 and January 2013, Rabin also failed to file the requisite Section 16(a) reports regarding the sales of Advanced Cell stock on 27 separate trading days. These sales included, in aggregate, the sale of over 12,000,000 shares of Advanced Cell stock for proceeds of over \$1,500,000. During this period, Rabin sold more than 66% of his holdings in ACT stock in undisclosed transactions. On April 15, 2013, Rabin finally reported those 27 transactions in a catch-up Form 4.

7. Notwithstanding Rabin's Section 16(a) noncompliance, in its fiscal year 2011 Form 10-K filed on March 17, 2012, Advanced Cell stated that "To the Company's knowledge, based solely on its review of the copies of such reports received or written representations from certain Reporting Persons that no other reports were required, the Company believes that during its fiscal year ended December 31, 2011, all Reporting Persons timely complied with all applicable filing requirements, except that Form 3s [sic] were not timely filed for [three new directors] and have since been filed." The statement in the fiscal year 2011 Form 10-K and the 2012 Proxy Statement was false and misleading for at least two reasons: (1) Rabin had filed four untimely Forms 4 during 2011, and (2) Rabin had sold Advanced Cell stock twelve times in 2011 without filing the reports required under Section 16(a). Further, contrary to the implication of the statement, Advanced Cell neither sought nor obtained "written representations from certain Reporting Persons that no other reports were required." Advanced Cell thus did not comply with its disclosure obligations under Item 405 of Regulation S-K, 17 CFR 229.405(a), which required Advanced Cell to disclose all of Rabin's late Forms 4 and Rabin's missing Form 5 (in the absence of a written representation by Rabin that no Form 5 was required). Rabin signed the Form 10-K. Advanced Cell filed the 2012 Proxy Statement containing identical language in March 2012. Rabin also signed the 2012 Proxy Statement.

8. Advanced Cell made similar misstatements in its fiscal year 2012 Form 10-K. On March 7, 2013, Advanced Cell filed its fiscal year 2012 Form 10-K, which stated that during the fiscal year ended December 31, 2012, "Gary Rabin, our Chairman and Chief Executive Officer, filed Forms 4 late with respect to four transactions," but did not disclose that Rabin had not reported trading in Advanced Cell stock on fourteen other trading days in 2012.

9. Advanced Cell's false and misleading statements in its Forms 10-K and 2012 Proxy Statement regarding Rabin's noncompliance with Section 16(a)'s reporting requirements were material. Item 405 of Regulation S-K requires an issuer to disclose the Section 16(a) reporting violations of its insiders in its annual proxy statement and annual report in a clearly marked section. See 17 CFR 229.405(a). There is a substantial likelihood that Rabin's trades would have significant importance to the reasonable Advanced Cell investor given, among other things, his position as CEO, the frequency with which he was selling Advanced Cell stock, and his failures to comply with reporting requirements.

### Violations

10. Section 17(a)(2) of the Securities Act makes it unlawful "in the offer or sale of any securities . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading." No finding of scienter is required to establish a violation of Section 17(a)(2). Aaron v. SEC, 446 U.S. 680, 696-97 (1980). Negligent conduct is sufficient. SEC v. Dain Rauscher, Inc., 254 F.3d 852, 856 (9th Cir. 2001). As a result of the conduct described above, Advanced Cell violated Section 17(a)(2) of the Securities Act.

11. Section 13(a) of the Exchange Act and Rule 13a-1 thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file with the Commission accurate periodic reports, including annual reports on Form 10-K. These reports must be complete and accurate in all material respects. Exchange Act Rule 12b-20 further requires that the required reports must contain any material information necessary to make the required statements made in the reports not misleading. No showing of scienter is necessary to establish a violation of Section 13(a). Ponce v. SEC, 345 F.3d 722, 737 n.10 (9th Cir. 2003). As a result of the conduct described above, Advanced Cell violated Section 13(a) of the Exchange Act and Rules 13a-1 and 12b-20 thereunder.

12. Section 14(a) of the Exchange Act requires registrants that solicit any proxy or consent or authorization in connection with any security registered pursuant to Section 12 of the Exchange Act (other than an exempted security), to comply with such rules as the Commission may promulgate. Rule 14a-9 prohibits, among other things, the use of proxy statements that omit to state any material fact necessary in order to make the statements therein not false or misleading. Like Section 13(a) of the Exchange Act, no showing of scienter is required to establish a violation of Section 14(a) of the Exchange Act and Rule 14a-9 thereunder. See, e.g., Gerstle v. Gamble-Skogmo, Inc., 478 F.2d 1281, 1298-1300 (2d Cir. 1973). As a result of the conduct described above, Advanced Cell violated Section 14(a) of the Exchange Act and Rule 14a-9 thereunder.

## Undertakings

Respondent has undertaken to take the following actions:

13. *Independent Compliance Consultant.* With respect to the retention of an independent compliance consultant, Respondent has agreed to the following undertakings:

a. Advanced Cell shall retain, no later than thirty (30) days of the entry of this Order, the services of an independent compliance consultant (the “Independent Consultant”) that is not unacceptable to the Commission staff. The Independent Consultant’s compensation and expenses shall be borne exclusively by Advanced Cell.

b. Advanced Cell shall require that the Independent Consultant conduct during the fourth quarter of 2014 and the fourth quarter of 2015, comprehensive reviews of Advanced Cell’s policies and procedures designed to detect and prevent misstatements in Commission filings and other public statements regarding Advanced Cell’s Reporting Persons’ Section 16(a) compliance.

c. Advanced Cell shall provide to the Commission staff, within sixty (60) days of entry of this Order, a copy of an engagement letter detailing the Independent Consultant’s responsibilities, which shall include the reviews to be made by the Independent Consultant as described in this Order.

d. Advanced Cell shall require that, within forty-five (45) days from the end of the applicable quarterly period, the Independent Consultant shall submit a written and dated report of its findings to Advanced Cell and to the Commission staff (the “Report”). Advanced Cell shall require that each Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Independent Consultant’s recommendations for changes in or improvements to Advanced Cell’s policies and procedures and/or disclosures, and a procedure for implementing the recommended changes in or improvements to Advanced Cell’s policies and procedures and/or disclosures.

e. Advanced Cell shall adopt all recommendations contained in each Report within sixty (60) days of the applicable Report; provided, however, that within forty-five (45) days after the date of the applicable Report, Advanced Cell shall in writing advise the Independent Consultant and the Commission staff of any recommendations that Advanced Cell considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Advanced Cell considers unduly burdensome, impractical or inappropriate, Advanced Cell need not adopt that recommendation at that time, but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.

f. As to any recommendation with respect to Advanced Cell’s policies and procedures on which Advanced Cell and the Independent Consultant do not agree, Advanced Cell and the Independent Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the applicable Report. Within fifteen

(15) days after the conclusion of the discussion and evaluation by Advanced Cell and the Independent Consultant, Advanced Cell shall require that the Independent Consultant inform Advanced Cell and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Advanced Cell considers to be unduly burdensome, impractical, or inappropriate. Advanced Cell shall abide by the determinations of the Independent Consultant and, within sixty (60) days after final agreement between Advanced Cell and the Independent Consultant or final determination by the Independent Consultant, whichever occurs first, Advanced Cell shall adopt and implement all of the recommendations that the Independent Consultant deems appropriate.

g. Within ninety (90) days of Advanced Cell's adoption of all of the recommendations in a Report that the Independent Consultant deems appropriate, as determined pursuant to the procedures set forth herein, Advanced Cell shall certify in writing to the Independent Consultant and the Commission staff that Advanced Cell has adopted and implemented all of the Independent Consultant's recommendations in the applicable Report. Unless otherwise directed by the Commission staff, all Reports, certifications, and other documents required to be provided to the Commission staff shall be sent to C. Dabney O'Riordan, Assistant Regional Director, Los Angeles Regional Office, Securities and Exchange Commission, 5670 Wilshire Blvd., Suite 1100, Los Angeles, California, 90036, or such other address as the Commission staff may provide.

h. Advanced Cell shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of their files, books, records, and personnel as are reasonably requested by the Independent Consultant for review.

i. To ensure the independence of the Independent Consultant, Advanced Cell: (1) shall not have the authority to terminate the Independent Consultant or substitute another independent compliance consultant for the initial Independent Consultant, without the prior written approval of the Commission staff; and (2) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

j. Advanced Cell shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Advanced Cell, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which the Independent Consultant is affiliated or of which the Independent Consultant is a member, and any person engaged to assist the Independent Consultant in the performance of the Independent Consultant's duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant,

attorney-client, auditing or other professional relationship with Advanced Cell, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two (2) years after the engagement.

14. *Reporting Person Training.* Advanced Cell shall require each of its Section 16(a) Reporting Persons to complete at least two hours of training regarding the reporting requirements of Section 16(a) during the calendar years ending December 31, 2014, December 31, 2015, and December 31, 2016. Advanced Cell shall require each of its Section 16(a) Reporting Persons to certify in writing that he or she has completed the aforementioned training no later than thirty days following the end of the applicable calendar year. Within forty-five days following the end of the applicable calendar year, Advanced Cell shall report to the Commission staff whether all of its Section 16(a) Reporting Persons completed the required training, and if not, why not.

15. *Cooperation.* Advanced Cell undertakes to cooperate fully with the Enforcement Division and with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, Advanced Cell shall:

- (a) Produce, without service of a notice or subpoena, any and all non-privileged documents and other information requested by the Commission staff, subject to any restrictions under the law of any foreign jurisdiction;
- (b) Use its best efforts to cause its officers, employees, and directors to be interviewed by the Commission staff at such time as the staff reasonably may direct;
- (c) Use its best efforts to cause its officers, employees, and directors to appear and testify without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission staff; and
- (d) In connection with any testimony of Respondent's officers, employees, and directors to be conducted at deposition, hearing, or trial pursuant to a notice or subpoena, Respondent agrees that any such notice or subpoena for Respondent's officers', employees', and directors' appearance and testimony may be served by regular or electronic mail on: John P. Stigi, Sheppard Mullin Richter & Hampton LLP, 1901 Avenue of the Stars, Suite 1600, Los Angeles, CA 90067; jstigi@sheppardmullin.com.

16. *Deadlines.* For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

17. *Certification of Compliance.* Advanced Cell shall certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits

sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Advanced Cell agrees to provide such evidence. The certification and supporting material shall be submitted to C. Dabney O’Riordan, Assistant Regional Director, Los Angeles Regional Office, Securities and Exchange Commission, 5670 Wilshire Blvd., Suite 1100, Los Angeles, California, 90036, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

18. In determining whether to accept the Offer, the Commission has considered these undertakings.

#### IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Advanced Cell’s Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondent Advanced Cell cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Pursuant to Section 21C of the Exchange Act, Respondent Advanced Cell cease and desist from committing or causing any violations and any future violations of Sections 13(a) and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, and 14a-9 thereunder.

C. Respondent shall comply with the undertakings enumerated in Sections 13, 14, and 17 above.

D. Respondent shall pay civil penalties of \$375,000 to the United States Treasury. Payment shall be made in full no later than July 15, 2015. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 or pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(3) Respondent may pay by certified check, bank cashier’s check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:



Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Advanced Cell Technology, Inc. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to C. Dabney O'Riordan, Assistant Regional Director, Los Angeles Regional Office, Securities and Exchange Commission, 5670 Wilshire Blvd., Suite 1100, Los Angeles, California, 90036.

By the Commission.

Jill M. Peterson  
Assistant Secretary