

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84783 / December 11, 2018

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3999 / December 11, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18923

In the Matter of

**EASTGATE BIOTECH
CORPORATION,**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
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 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Eastgate Biotech Corporation (“Eastgate,” “Respondent” or the “Company”).

II.

In anticipation of the institution of these proceedings, Eastgate 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 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 finds¹ that:

Summary

1. These proceedings arise out of the violation of the Regulation S-X requirement that interim financial statements filed as part of a Form 10-Q be reviewed by an independent public accounting firm prior to filing (the "Interim Review Requirement").²

2. On three occasions, Eastgate violated the Interim Review Requirement by filing Forms 10-Q with the Commission that contained financial statements that were not reviewed by an independent public accounting firm.

Respondent

3. Eastgate, a Nevada corporation based in Toronto, Ontario, develops novel formulations of natural compounds and pharmaceutical products. Eastgate has been registered under Section 12(g) of the Exchange Act since November 2007. From March 2014 to December 2014, Eastgate's shares were quoted on OTC Link (formerly "pink sheets") operated by OTC Markets Group Inc. under the symbol ESAQ. Since December 2014, Eastgate's shares have been quoted on OTC Link under the symbol ETBI. Eastgate defines itself as a "smaller reporting company" in its most recent filing.³

Legal Framework and Facts

4. Section 13(a) and Rule 13a-13 thereunder require issuers with securities registered pursuant to Section 12 of the Exchange Act and required to file annual reports pursuant to Section 13(a) to also file quarterly reports on Form 10-Q. Form 10-Q requires issuers to include financial

¹ 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.

² Rule 10-01(d) of Regulation S-X provides in pertinent part: "Prior to filing, interim financial statements included in quarterly reports on Form 10-Q [] must be reviewed by an independent public accountant using professional standards and procedures for conducting such reviews, as established by generally accepted auditing standards, as may be modified or supplemented by the Commission." 17 C.F.R. § 210.10-01(d). Similarly, with respect to smaller reporting companies, Rule 8-03 of Regulation S-X provides in pertinent part: "Interim financial statements may be unaudited; however, before filing, interim financial statements included in quarterly reports on Form 10-Q [] must be reviewed by an independent public accountant using professional standards and procedures for conducting such reviews, as established by generally accepted auditing standards, as may be modified or supplemented by the Commission." 17 C.F.R. § 210.8-03.

³ Under an amendment to the definition effective September 10, 2018, a company qualifies as a "smaller reporting company": (1) if its public float is less than \$250 million or (2) it has less than \$100 million in annual revenue for the previous year and either no public float or a public float of less than \$700 million. Item 10(f)(1) of Regulation S-K.

statement information as required by Rule 10-01 of Regulation S-X, and further indicates smaller reporting companies may provide financial statement information as required by Rule 8-03 of Regulation S-X. *See* Part I, Item 1 of Form 10; *see also* 17 C.F.R. § 210.1-01(a)(2) (indicating Regulation S-X sets forth the form and content for financial statements required as part of, among other things, reports required under Section 13 of the Exchange Act).

5. As required by Regulation S-X, financial statements included in quarterly reports filed on Form 10-Q may be unaudited. 17 C.F.R. § 210.10-01(a)(1); 17 C.F.R. § 210.8-03. Prior to filing, however, an issuer must have an independent registered public accounting firm conduct a review of the required interim financial information presented in financial statements included in the quarterly report. 17 C.F.R. § 210.10-01(d); 17 C.F.R. § 210.8-03. The review must be conducted in accordance with the standards of the Public Company Accounting Oversight Board (“PCAOB”), as may be modified or supplemented by the Commission.⁴ 17 C.F.R. § 210.10-01(d); 17 C.F.R. § 210.8-03.

6. On February 27, 2017, Eastgate filed its quarterly report for the first quarter of 2016, which included interim financial statements for that quarter. The interim financial statements were not reviewed by an independent public accountant as required by the Interim Review Requirement. The Form 10-Q did not disclose that the interim financial statements had not been reviewed in compliance with the Interim Review Requirement. Eastgate filed an amended Form 10-Q/A on March 1, 2018, approximately twelve months after it filed the original Form 10-Q, which included interim financial statements that complied with the Interim Review Requirement.

7. On March 9, 2017, Eastgate filed its quarterly report for the second quarter of 2016, which included the interim financial statements for that quarter. The interim financial statements were not reviewed by an independent public accountant as required by the Interim Review Requirement. The Form 10-Q did not disclose that the interim financial statements had not been reviewed in compliance with the Interim Review Requirement. Eastgate filed an amended Form 10-Q/A on March 1, 2018, approximately twelve months after it filed the original Form 10-Q, which included interim financial statements that complied with the Interim Review Requirement.

8. On March 15, 2017, Eastgate filed its quarterly report for the third quarter of 2016, which included the interim financial statements for that quarter. The interim financial statements were not reviewed by an independent public accountant as required by the Interim Review Requirement. The Form 10-Q did not disclose that the interim financial statements had not been reviewed in compliance with the Interim Review Requirement. Eastgate filed an amended Form 10-Q/A on March 1, 2018, approximately twelve months after it filed the original Form 10-Q, which included interim financial statements that complied with the Interim Review Requirement.

⁴ *See* Commission Guidance Regarding the Public Company Accounting Oversight Board’s Auditing and Related Professional Practice Standard No. 1, Release Nos. 33-8422, 34-49708 (May 14, 2004) (noting that “references in Commission rules and staff guidance and in the federal securities laws to GAAS or to specific standards under GAAS, as they relate to issuers, should be understood to mean the standards of the PCAOB plus any applicable rules of the Commission”).

Violations

9. As a result of the conduct described above, Eastgate violated Section 13(a) of the Exchange Act and Rule 13a-13 thereunder, which require every issuer with securities registered pursuant to Section 12 of the Exchange Act and required to file annual reports to file with the Commission quarterly reports on Form 10-Q which, among other things, comply with the interim financial statement information requirements of Regulation S-X.

10. As a result of the conduct described above, Eastgate violated Rule 8-03 of Regulation S-X, which requires interim financial statements included in quarterly reports on Form 10-Q to be reviewed by an independent public accountant using professional standards and procedures for conducting such reviews, as established by generally accepted auditing standards.

Civil Penalties

11. Respondent has submitted a sworn Statement of Financial Condition dated August 27, 2018 and other evidence and has asserted its inability to pay a civil penalty.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(a) of the Exchange Act and Rule 13a-13 thereunder, and Rule 8-03 of Regulation S-X.

B. Based upon Respondent's sworn representations in its Statement of Financial Condition dated August 27, 2018 and other documents submitted to the Commission, the Commission is not imposing a penalty against Respondent.

C. The Division of Enforcement (“Division”) may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of a penalty should not be ordered; (3) contest the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Brent J. Fields
Secretary