

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

In the Matter of :
COMVERSE TECHNOLOGY, INC. : INITIAL DECISION
: July 22, 2010
:

APPEARANCES: Suzanne J. Romajas, Pamela H. Kesner, and Kevin Guerrero for
the Division of Enforcement, Securities and Exchange
Commission.

Jonathan D. Polkes, Robert F. Carangelo, and Caitlyn M. Campbell
of Weil, Gotshal & Manges LLP for Converse Technology, Inc.

BEFORE: Robert G. Mahony, Administrative Law Judge.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on March 23, 2010, pursuant to Section 12(j) of the Securities Exchange Act of 1934 (Exchange Act). Converse Technology, Inc. (Converse), filed its Answer to the OIP on April 16, 2010. On April 20, 2010, the Division of Enforcement (Division) filed a Motion for Leave to File Motion for Summary Disposition (Motion to File). During a prehearing conference on April 27, 2010, the Division's Motion to File was granted, and the parties submitted the following materials. On May 17, 2010, the Division filed its Motion for Summary Disposition and Brief in Support (Motion). Respondent filed its Opposition to the Motion on June 17, 2010. To which, the Division filed its Reply on June 30, 2010.¹

¹ References in this Initial Decision to the Division's Motion and its attached Exhibits 1-23, found in the Declaration of Kevin Guerrero (Guerrero Decl.), will be cited as "(Mot. at ____)" and "(Mot. Ex. __.)," respectively, and its Reply as "(Reply at ____)." Respondent's Opposition and Exhibits 1-10, in the Declaration of Robert F. Carangelo, will be cited as "(Opp'n at ____)" and "(Opp'n Ex. __.)," respectively.

B. Standards for Summary Disposition

After a respondent has filed an answer and documents have been made available under 17 C.F.R. § 201.230, the Commission's Rules of Practice provide that a party may make a motion for summary disposition of any or all allegations of the OIP. 17 C.F.R. § 201.250(a). The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted pursuant to 17 C.F.R. § 201.323. Id. A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law. 17 C.F.R. § 201.250(b).

By analogy to Rule 56 of the Federal Rules of Civil Procedure, in assessing the summary disposition record, the facts, as well as the reasonable inferences that may be drawn from them, must be viewed in the light most favorable to the non-moving party. See Felix v. N.Y. City Transit Auth., 324 F.3d 102, 104 (2d Cir. 2003); O'Shea v. Yellow Tech. Svcs., Inc., 185 F.3d 1093, 1096 (10th Cir. 1999); Cooperman v. Individual, Inc., 171 F.3d 43, 46 (1st Cir. 1999). A factual dispute between the parties will not defeat a motion for summary disposition unless it is both genuine and material. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). Once the moving party has carried its burden, "its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). The opposing party must set forth specific facts showing a genuine issue for a hearing and a determination made as to whether there is a genuine issue for resolution at a hearing. See Anderson, 477 U.S. at 249.

The findings and conclusions of this decision are based on the entire record, which includes the OIP, Respondent's Answer, and all motions, orders, and replies. See 17 C.F.R. § 201.350. Official notice is taken of the Commission's public official records concerning Respondent.² See 17 C.F.R. § 201.323. There is no genuine issue with regard to any material fact. Thus, this proceeding may be resolved by summary disposition. See 17 C.F.R. § 201.250. Any other facts in Respondent's pleadings have been taken as true, in light of the Division's burden of proof. See id. All arguments and proposed findings and conclusions that are inconsistent with this decision were considered and rejected.

C. Amicus Motion

On June 16, 2010, P. Schoenfield Asset Management LP (PSAM), a registered investment adviser, submitted a Motion to File an Amicus Brief and Proposed Amicus Brief (Amicus Motion). PSAM represents that it owns 991,733 shares of the common stock of Comverse and has economic exposure to an additional 1,785,600 shares, which it holds on behalf of its clients, including private investment funds and accounts that invest on behalf of private and public pension funds, endowments, foundations, and individuals. (Amicus Mot. at 1.) In its Amicus Motion, PSAM moves for leave to file an amicus brief pursuant to Rule 210(d), 17 C.F.R. § 201.210(d), or, in the alternative, PSAM requests leave to file its amicus brief as a

² These include, but are not limited to, prior Commission actions relating to Comverse and filings made with the Commission by Comverse found in the Commission's EDGAR database.

statement of its views pursuant to Rule 210(e), 17 C.F.R. § 201.210(e). (Id.) In response to the Amicus Motion, the Division filed an Opposition on June 23, 2010, requesting that PSAM's brief not be accepted into the record under either Rule 210(d) or 210(e), and PSAM replied on June 28, 2010.

The Commission's comments to Rule 210(e) in its adoption of the Rules of Practice indicate that it envisioned a means for participation by security holders when it noted that, "[f]rom time to time persons, particularly individual security holders or members of the public, who do not otherwise wish to participate in a proceeding on any extended basis will seek to make written statements of their views in a letter or by appearing at a hearing." Rules of Practice, Exchange Act Release No. 35833, 60 Fed. Reg. 32,738, 32,759 (June 23, 1995) (emphasis added). PSAM would appear to be exactly the kind of party that the Commission envisaged utilizing Rule 210(e). Despite the Division's contention that it is "not aware of any [Section 12(j) proceeding] in which a non-party was allowed to submit a statement of its views," the infrequent use of Rule 210(e) is hardly a legitimate reason to disallow any use of the rule. As such, the filings of PSAM on June 16 and June 28, 2010, are admitted into the record as a statement of PSAM's views and, pursuant to Rule 210(e), will be considered "only to the extent that the statements therein made are otherwise supported by the record."

D. Allegations and Positions of the Parties

The OIP alleges and Comverse concedes that it is delinquent in its periodic filings with the Commission, and, as such, that it has failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13. (OIP at 1-2; Answer at 2-3.) However, Comverse states that it has made substantial progress to become current in its reporting obligations and that it has submitted and will continue to submit unaudited financial information and material disclosures in Forms 8-K. (Answer at 2; Opp'n at 2-3, 13-14.)

The Division has requested revocation of the registration of Comverse's registered securities. (Mot. at 1, 9-10, 19; Reply at 1, 3, 22.) Whereas, Comverse contends that no sanction is necessary for its delinquency. (Answer at 4, 13; Opp'n at 2-3, 21-22, 32-35.)

II. FINDINGS OF FACT

A. Respondent

Comverse, Central Index Key No. 0000803014, is a New York corporation based in New York, New York. (Answer at 1.) Comverse's common stock is registered with the Commission pursuant to Exchange Act Section 12(g) and is quoted on the "Pink Sheets" operated by Pink OTC Markets Inc. under the symbol "CMVT.PK." (Id.) Comverse has four subsidiary companies, the securities of two of which are also registered with the Commission: Verint Systems, Inc. (Verint), and Ulticom, Inc. (Ulticom). (Answer at 3-4; Opp'n at 3, 14.)

As a Section 12 registrant, Comverse is required to file annual reports on Form 10-K³ and quarterly reports on Form 10-Q⁴ pursuant to Exchange Act Section 13(a), 15 U.S.C. § 78m(a), and Rules 13a-1 and 13a-13, 17 C.F.R. §§ 240.13a-1, -13. (Answer at 1.) Comverse last filed a Form 10-K on April 20, 2005, for the period ending January 31, 2005, and its last Form 10-Q was filed on December 12, 2005, for the period ending October 31, 2005. (Answer at 2.)

Comverse reports that it has a market capitalization of approximately \$1.6 billion with 204 million shares outstanding as of June 14, 2010. (Opp'n at 5, Ex. 6 at ¶ 6.)⁵ Institutional investors hold at least 75% of Comverse's outstanding shares. (Opp'n Ex. 6 at ¶¶ 13, 62.) Comverse's shares used to trade on The NASDAQ Stock Market (NASDAQ), but Comverse's trading was suspended and it was subsequently delisted in February and May 2007, respectively, after Comverse failed to meet NASDAQ's listing requirement for current financial reporting.⁶ (Opp'n at 5, Ex. 2; Comverse Tech., Inc., Current Report (Form 8-K), at 2 (May 29, 2007).) Since its delisting, research analysts have continued to cover and issue reports on Comverse, with analysts from as many as sixteen firms issuing reports since February 2007. (Opp'n Ex. 6 at ¶ 20 & n.18.) Larger Wall Street firms such as Barclays Capital, Deutsche Bank, JP Morgan,

³ 17 C.F.R. § 249.310.

⁴ 17 C.F.R. § 249.308a.

⁵ Opp'n Ex. 6 is an Expert Declaration of Simon Z. Wu, Ph.D. (June 16, 2010). The Division objects to some of the conclusions reached by Dr. Wu and requests that his opinions either not be admitted or be rejected. (Reply at 14-16.) Pursuant to Rule 250(a)'s requirement that "facts of the pleadings of the party against whom [a summary disposition] motion is made shall be taken as true," facts discussed by Dr. Wu and relied upon by Respondent will be considered true; however, the conclusions of law drawn from those facts will be accepted only in as much as it is determined that those conclusions comport with established legal precedent. See Gregory M. Dearlove, Exchange Act Rel. No. 57244 (Jan. 31, 2008) ("The Commission may consider expert testimony, but it is not bound by such testimony even where it is available."), aff'd, 573 F.3d 801 (D.C. Cir. July 24, 2009).

⁶ Comverse announced in a Current Report filed with the Commission on April 17, 2006, that it expected to be delisted after failing to comply with NASDAQ Marketplace Rule 4310(c)(14), requiring the timely submission of all required filings with the Commission. (Mot. Ex. 3 at 1). Comverse presented a plan to regain compliance before an NASDAQ hearing panel, which allowed Comverse to stay listed subject to the requirement that it file its two delinquent reports—its January 31, 2006, Annual Report and its April 30, 2006, Quarterly Report—by August 18 and September 1, 2006, respectively. Comverse Tech., Inc., Current Report (Form 8-K), at 2 (June 29, 2006). Nearing the August deadline, Comverse had to request an extension, which the NASDAQ panel granted until September 25, 2006. Comverse Tech., Inc., Current Report (Form 8-K), at 2 (Aug. 18, 2006). However, less than a month later, Comverse had to request an additional 60-day extension and notified NASDAQ of an additional delinquent report—its July 31, 2006, Quarterly Report; at which point, NASDAQ stayed its decision establishing the September 25 deadline and instituted a review. Comverse Tech., Inc., Current Reports (Forms 8-K) (Sept. 5 and 18, 2006). After Comverse failed to file another report—its October 31, 2006, Quarterly Report—NASDAQ announced on January 30, 2007, that Comverse's common stock would be delisted effective February 1, 2007. Comverse Tech., Inc., Current Reports (Forms 8-K) (Dec. 15, 2006, and Jan. 31, 2007).

RBC Capital Markets, and Oppenheimer & Co. are among those firms covering Comverse. (Opp'n at 5-6, Ex. 6 at ¶ 21.)

B. Prior Actions Against Respondent and Subsidiaries

Like Comverse, Verint and Ulticom have traded on NASDAQ and were delisted after failing to keep their financial reports current. (Answer at 3; Opp'n at 5, 14, Ex. 2; Comverse Tech., Inc., Current Report (Form 8-K), at 2 (July 6, 2010).) Verint and Ulticom have since become current in their periodic filing requirements and have relisted on NASDAQ, in July 2010 and November 2009, respectively. (Id.) Comverse, Verint, and Ulticom have all been enjoined from violations of the antifraud and reporting provisions of the federal securities laws. See SEC v. Comverse Tech., Inc., No. 2:09-cv-02588-DRH-AKT (E.D.N.Y. June 25, 2009);⁷ SEC v. Ulticom, Inc., No. 2:09-cv-02589-JS-ARL (E.D.N.Y. July 22, 2009); SEC v. Verint Sys., Inc., No. 2:10-cv-00930-LDW-WDW (E.D.N.Y. Mar. 9, 2010).

Comverse credits Ulticom's ability to become up-to-date in its periodic filings (Answer at 3; Opp'n at 14) but fails to note that Ulticom was under court order to do so by November 9, 2010, see Ulticom, Final Judgment at 2. Prior to its relisting, Verint was the subject of Commission administrative proceedings pursuant to Exchange Act Section 12(j) for its failure to file timely periodic reports since December 2005. Verint Sys., Inc., Exchange Act Release No. 61635 (Mar. 3, 2010). That proceeding has been stayed pending Commission approval of Verint's Offer of Settlement, which was contingent upon Verint making certain filings to be current in its reporting obligations. Verint Sys., Order Staying Proceeding (A.L.J. June 1, 2010) (unpublished).

Despite the District Court's order that Comverse become current in its periodic filings by February 8, 2010 (Mot. Ex. 19 at 3), Comverse has yet to file a single delinquent annual or quarterly report. Comverse first indicated to shareholders its concern of not being able to meet the court-ordered deadline in December 2009, but it provided no expected date of completion at that time. (Opp'n at 11; Mot. Ex. 14 at 2.)⁸ Less than one week before the deadline, Comverse filed a Current Report on Form 8-K, stating that it "believe[d it would] file a comprehensive 10-K covering fiscal years 2005 through 2008" in late April 2010, though noting that "this timeline [was] subject to the risk of further delay." (Mot. Ex. 15 at Ex. 99.1.)⁹ In March, Comverse amended its estimate, stating that it "currently expect[ed] to file its comprehensive Annual Report on Form 10-K for the fiscal years ended January 31, 2009, 2008, 2007 and 2006 within several months." (Mot. Ex. 16 at 3.)¹⁰ Its latest expectation is that the "comprehensive Annual Report" will be filed in August 2010, with its delinquent Quarterly Reports and delinquent Annual Report for the period ended January 31, 2010, to be filed "as soon as practicable" thereafter. Comverse Tech., Inc., Current Report (Form 8-K), at 2 (July 6, 2010).

⁷ A copy of the District Court for the Eastern District New York's Final Judgment in SEC v. Comverse Tech., Inc., is in evidence at Motion Exhibit 19.

⁸ Mot. Ex. 14 is Comverse Tech., Inc., Current Report (Form 8-K) (Dec. 31, 2009).

⁹ Mot. Ex. 15 is Comverse Tech., Inc., Current Report (Form 8-K) (Feb. 3, 2010).

¹⁰ Mot. Ex. 16 is Comverse Tech., Inc., Current Report (Form 8-K) (Mar. 24, 2010).

C. Respondent's Efforts to Become Current

Comverse explains that its failure to meet its periodic reporting obligations first began in March 2006 when allegations arose of stock-option backdating by the company. (Answer at 7; Opp'n at 6, Ex. 7.)¹¹ In April 2006, the company announced that it would become delinquent in its periodic reporting to the Commission and advised shareholders that its previously-issued financial statements could no longer be relied upon going back to its Annual Report for the period ended January 31, 2001. (Mot. Ex. 3 at 2-3.) A Special Committee of Comverse's Board of Directors conducted an independent inquiry into the stock-option issues, which, in turn, led to another inquiry—into earnings manipulation, during which it was discovered that Comverse was misapplying certain accounting standards¹²—all of these practices impacted the accuracy of Comverse's past financial reports. (Answer at 7-8; Opp'n at 6-8, Ex. 7; Mot. Exs. 7, 9.)¹³ The stock-option backdating issues were reviewed as far back as 1991, the earnings manipulation went back to at least 1996, and the misapplication of SOP 97-2 occurred starting in 2002.¹⁴ (Mot. Ex. 9 at 3, 5; Opp'n Ex. 1 at 5.) While the company had been providing selective, unaudited financial information in its Current Reports during this period of reporting deficiency,¹⁵ because of the accounting issues it continued to discover, reliance on even the limited information provided in these reports had to be retracted. (Mot. Ex. 7 at Ex. 99.1.)

In response to the litany of accounting issues its various investigations uncovered and the subsequent inability to file timely periodic reports these issues caused, Comverse's leadership, accountants, and auditors attest that it has “worked diligently and in good faith to become current.” (Opp'n at 9, Exs. 1 at 13-14, 3 at 5, 4 at 7; Answer at 8-9, 12.)¹⁶ These efforts include

¹¹ Opp'n Ex. 7 is Comverse Tech., Inc., Current Report (Form 8-K) (Mar. 14, 2006).

¹² The accounting standard at issue was American Institute of Certified Public Accountants Statement of Position 97-2 (SOP 97-2), dealing with vendor specific objective evidence of the fair value of some of Comverse's bundled hardware and software products and services and, in turn, the impact on software revenue recognition. (Opp'n at 7; Mot. Ex. 7.)

¹³ Mot. Ex. 7 is Comverse Tech., Inc., Current Report (Form 8-K) (Nov. 5, 2007), and Mot. Ex. 9 is Comverse Tech., Inc., Current Report (Form 8-K) (Jan. 29, 2008).

¹⁴ The company also had to review its tax preparation processes going back to 1995, and Verint found tax reporting irregularities during its preparations to become current that impacted Comverse's financial reports. (Opp'n Ex. 1 at 12, 14-15.)

¹⁵ See, e.g., Comverse's Current Reports providing information under Item 2.02 (Results of Operations and Financial Condition) filed March 14, June 1, September 7, and December 6, 2005; March 14, June 12, September 18, and December 15, 2006; March 28, June 12, and September 10, 2007; October 21, 2008; March 16, and September 16, 2009; and February 3, and June 24, 2010.

¹⁶ Opp'n Ex. 1 is a Declaration of Stephen M. Swad, Comverse's Chief Financial Officer since May 2009. The Declaration submitted with Respondent's Opposition as Exhibit 1 did not contain any attachments, despite references to attached materials. On June 28, 2010, Respondent filed another Declaration of Stephen M. Swad (Swad Decl.) that is identical to the original but has two attached exhibits. Exhibit A is a detailed account of the “remedial measures [taken to] help ensure Comverse will be able to continue to file its periodic reports on a timely and accurate basis,” which was also attached to its Answer as Exhibit A. (Opp'n Ex. 1 at 10.) Exhibit B is a

the removal of executives and accountants that contributed to past problems, the hiring of new Board members and personnel to correct the issues, the engagement of large national accounting and auditing firms, and revisions to its internal policies. (Answer at 9, Ex. A; Opp'n at 9-11, Exs. 1, 3-4.) Comverse has spent over \$400 million for more than 1.3 million hours in external resources on its efforts to remediate its accounting issues and become current in its periodic filing obligations. (Answer at 9; Opp'n Ex. 1 at 13.) The Division accepts Comverse's representations regarding its efforts and good faith to become current in its periodic filing obligations. (Mot. at 13; Reply at 2, 9.)

Comverse notes that several "unforeseen events" have caused additional delays, which prevented it from meeting the court-ordered February 8, 2010, deadline to become current in its reporting to the Commission. (Answer at 10-11; Opp'n at 11-13.) These delays include: 1) the impact of Verint tax reporting issues on Comverse's reporting, 2) difficulty obtaining documents that are old or kept by Comverse's foreign subsidiaries, 3) the need to adjust current information based on subsequent changes, resulting from the reviews of its flawed accounting practices, and 4) the complexity of its tax determinations. (Answer at 10-11; Opp'n at 13.) Comverse's auditor notes that accounting for income taxes, which are complex, has presented a significant challenge in the company becoming current and, thus, has been a focus over the last six months. (Opp'n Ex. 3 at 3-4.) In addition to the tax issues, Comverse's outside accountants point to delays from the application of SOP 97-2 and the company's outdated and manual systems and processes. (Opp'n Ex. 4 at 6-7.)

After disclosing to the public that Comverse was at "substantial risk" of not meeting the February deadline, it has been working with its large team of outside consultants and accountants to establish a new timeline for reporting completion. (Opp'n at 11-12, Ex. 1 at 11.) Comverse announced during a meeting with the Division on January 6, 2010, that it believed that it would be able to submit a "Comprehensive" Form 10-K for the four years ended January 31, 2009, on February 8, 2010, with required quarterly reports to follow two to four weeks after. (Opp'n at 11-12, Ex. 1 at 11-12; Swad Decl. Ex. B at 3, 11.) By the end of January 2010, a problem was discovered with Verint's tax accounting that delayed the filing of both Verint's and Comverse's delinquent reports. (Opp'n at 13, Ex. 1 at 12-13.) From here, the expected time for filing the Comprehensive 10-K has moved from February 2010, to April 2010, to "within several months" from March 2010, to now August 2010. See supra II.B., at 5.

III. CONCLUSIONS OF LAW AND SANCTIONS

Exchange Act Section 13(a) requires that "[e]very issuer of a security registered pursuant to [S]ection 12 shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security . . . such annual reports[, certified] by independent public accountants, and such quarterly reports . . ., as the Commission may prescribe." 15 U.S.C.

presentation given by Comverse to the Division at its Washington, D.C., offices on January 6, 2010, detailing the status of Comverse's efforts and challenges to becoming current. (Opp'n Ex. 1 at 11-12; Guerrero Decl. at 2.)

§ 78m(a). The Commission has prescribed Rules 13a-1 and 13a-13 requiring the filing of an annual report for each fiscal year and a quarterly report for each of the first three quarters of each fiscal year, respectively. 17 C.F.R. §§ 240.13a-1, -13.

Relevant to these proceedings, Section 12(j) of the Exchange Act authorizes the Commission to suspend for a period not exceeding twelve months or to revoke the registration of a security, as it deems necessary or appropriate for the protection of investors, if the Commission finds that the issuer of such security has failed to comply with any provision of the Exchange Act or the rules thereunder. 15 U.S.C. § 78l(j). Comverse admits that it has not filed many required annual and quarterly reports and that it has failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder. (Answer at 2-3.) Therefore, the remaining question is what sanction is necessary or appropriate given Comverse's failure to comply with the Exchange Act.

In a proceeding such as this, the assessment of what sanctions are appropriate and will ensure that investors are adequately protected is determined by “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.” Gateway Int'l Holdings, Inc., Exchange Act Release No. 53907, 88 SEC Docket 430, 438-39 (May 31, 2006). In making this determination, the following factors are considered: “the seriousness of the issuer's violations, the isolated or recurrent nature of the violations, the degree of culpability involved, the extent of the issuer's efforts to remedy its past violations and ensure future compliance, and the credibility of its assurances, if any, against further violations.”¹⁷ Id. at 439.

A. Respondent's Violations are Serious and Recurrent

While Comverse seems to concede that its violations are serious and recurrent, noting half-heartedly that it “may not be able to support the first two factors – the seriousness and recurrent nature of its violations” (Opp'n at 28), it attempts to disregard and dilute these important factors by preceding this acknowledgement with the assertion that its delinquencies, somehow, have not harmed investors (Answer at 11-12; Opp'n at 2, 21-25). Comverse contends that harm to investors is lessened by the “important financial information [it] has provided, both through its own Current Reports on Form 8-K and the current audited financial statements filed by its majority-owned publicly traded subsidiaries.” (Opp'n at 2, 21-23; Answer at 12.) However, the value of the extremely limited, unaudited, and highly-selective information that the company has provided in its Current Reports is diminished by the fact that it has had to retract the reliability of that information. (Mot. Ex. 7 at Ex. 99.1.) Interestingly, Comverse argues that

¹⁷ This standard has been consistently applied in the Commission's considerations of Exchange Act Section 12(j) proceedings since the Gateway decision. See Nature's Sunshine Prods., Inc., Exchange Act Release No. 59268, 95 SEC Docket 13488, 13495 (Jan. 21, 2009); Impax Labs., Inc., Exchange Act Release No. 57864, 93 SEC Docket 6241, 6250 (May 23, 2008); Phlo Corp., Exchange Act Release No. 55562, 90 SEC Docket 1089, 1115 (Mar. 30, 2007); Am.'s Sports Voice, Inc., Exchange Act Release No. 55511, 90 SEC Docket 879, 883-84 (Mar. 22, 2007); Eagletech Commc'ns, Inc., Exchange Act Release No. 54095, 88 SEC Docket 1225, 1229-30 (July 5, 2006).

its disclosures that its previously issued Current Reports can no longer be relied upon is yet more evidence that investors are not harmed by its reporting failures because it provides “detailed cautionary language and clearly warns potential future investors.” (Answer at 11; Opp’n at 2, 22, 25.)

Furthermore, Comverse touts that it has “timely filed almost ninety Current Reports.” (Opp’n at 22; Answer at 12.) However, Comverse fails to consider the fact that it is required to file such reports, just as it is required to file annual and quarterly reports. That Comverse has not also violated Exchange Act Rule 13a-11 does not mitigate its other violations.¹⁸ Nor does this lessen the harm to investors caused by Comverse’s failure to provide timely, audited periodic reports as it is required to do. Comverse also cites the reporting done by the equity analysts which cover its stock, though at least conceding that these “sources of information cannot replace required period reports.” (Opp’n at 23.) The Commission has made clear the importance of the information required under Exchange Act Section 13(a) and that this information cannot be replaced by other reports that provide “merely sufficient information.” Gateway, 88 SEC Docket at 442 (citing SC&T Int’l, Inc., 54 S.E.C. 320, 326 (1999)).

In an attempt to further bolster its claims regarding lack of harm to investors, Comverse contends that its shares have been trading in an efficient market and that deregistration will deprive its shareholders of this market. (Opp’n at 23-24, 26-28.)¹⁹ However, the Commission has previously recognized that “in any deregistration current shareholders could be harmed by a diminution in the liquidity and value of their stock by virtue of the deregistration.” Eagletech, 88 SEC Docket at 1230. But, the Commission also found that this harm must be considered against the fact that “both existing and prospective shareholders are harmed by the continuing lack of current, reliable, and audited financial information.” Id. While Comverse may have many institutional shareholders, whom it feels do not need protection, not all of its shareholders are institutional investors. (Opp’n at 24-25.) Regardless, the Commission does not recognize any such distinction when it comes to periodic reporting. See Impax, 93 SEC Docket at 6255-56 & n.32 (citing Gateway, 88 SEC Docket at 443-44).

Comverse’s attempts to contend that “[t]here is no harm to current or future investors” (Answer at 11) demonstrates that it fails to recognize the importance of these reporting

¹⁸ Exchange Act Rule 13a-11 requires certain domestic issuers to file current reports on Form 8-K, 17 C.F.R. § 249.308, upon the occurrence of any one or more of the events specified in the Form 8-K, such as the entry into a material definitive agreement (Item 1.01), a public release disclosing information regarding financial condition (Item 2.02), delisting from a national securities exchange (Item 3.01), or non-reliance on previously-issued financial statements (Item 4.02). See 17 C.F.R. § 240.13a-11.

¹⁹ To the extent that Respondent’s assertions regarding investor harm rely on Opp’n Ex. 5, Declaration of Carlyn R. Taylor, a “telecommunications industry expert,” the opinions expressed in this Declaration are not found relevant (e.g., sections of the Declaration discussing Comverse’s business generally), pursuant 17 C.F.R. § 201.320, or are found to express positions not supported by the record or the stated areas of expertise of the declarant (e.g., sections of the Declaration predicting market reactions). The Division’s argument against the admission of the Declaration (Reply at 16-21) is accepted.

requirements. The Commission has stated time and again that the periodic reporting requirements are the “primary tools which Congress has fashioned for the protection of investors” and that failure to file these reports deprives investors of information needed to make informed decisions. Nature’s Sunshine, 95 SEC Docket at 13496 (citing Gateway, 88 SEC Docket at 441; Eagletech, 88 SEC Docket at 1230); Impax, 93 SEC Docket 6251 (same). It has also found that an argument that no sanction is necessary “minimizes the central importance of the Exchange Act’s reporting requirements” and suggests that the issuer “‘does not [fully] appreciate the significant public policy objectives the requirements are intended to serve’” Nature’s Sunshine, 95 SEC Docket at 13501 (quoting Am.’s Sports Voice, 90 SEC Docket at 885).

Comverse has not filed an annual report since April 20, 2005, for the period ending January 31, 2005, nor a quarterly report since December 12, 2005, for the period ending October 31, 2005. Further, Comverse announced that restatements for reports going back to the year ending January 31, 2001, would be necessary in light of issues uncovered in its investigations. (Ex. 3 at 2.) The Commission has found similar delinquencies by issuers to be both serious and recurrent. See Nature’s Sunshine, 95 SEC Docket at 13495-96 (failing to file reports for a two-year period or make needed restatements going back an additional three years was serious and recurrent); Impax, 93 SEC Docket at 6251 (failing to file eight reports over eighteen months, followed by six reports subsequent to the OIP, was serious and recurrent). Likewise, Comverse’s violations are serious and recurrent.

B. Respondent is Culpable for its Violations

In addition to its failure to recognize the seriousness of its violations, Comverse fails to recognize any culpability for its delinquencies. While the criminal actions involved in the stock-option backdating problems certainly contributed to Comverse’s delinquencies, its most recent delays have been caused by its own poor systems and accounting processes, its misapplication of accounting standards, and the complexity of its tax accounting. See supra II.C., at 7. Comverse tries to depict the causes for its delinquencies as “entirely beyond [its] control.” (Opp’n at 29, 31.) Certainly, its application of accounting standards, its accounting processes, and its understanding of its own “complex” tax issues are all within Comverse’s control. Furthermore, the Commission previously held that “criminal activity does not alter the fact of [an issuer’s] failure to file its quarterly and annual reports.” Eagletech, 88 SEC Docket at 1228.

In considering an issuer’s culpability, the Commission has looked at such factors as the filing of Notifications of Late Filing and previous “underestimat[ions of] the amount of time needed to become compliant.” Nature’s Sunshine, 95 SEC Docket at 13497; see also Gateway 88 SEC Docket at 439. While Comverse’s timely filings of Notifications of Late Filing, as required by Exchange Act Rule 12b-25, weigh in Comverse’s favor, its repeated inability to accurately estimate the time until compliance does not. While Comverse’s actions indicate that it did not completely disregard its accounting problems or filing obligations, cf., Impax 93 SEC Docket at 6252, its culpability can hardly be described as “extremely low,” as Respondent asserts (Opp’n at 29).

C. Efforts to Remedy Past Violations Fail to Ensure Present or Future Compliance

While it is undisputed that Respondent has invested a great deal of time and money into the process of repairing its broken accounting processes and has attempted to become current in its reporting obligations, these efforts have yet to yield a single delinquent annual or quarterly report. It has yet to release restatements of the reports that it had filed but subsequently noted could no longer be relied upon. (Mot. Ex. 3 at 2-3; Comverse Tech., Inc., Current Report (Form 8-K), at 2 (Nov. 17, 2006).) In weighing an issuer's efforts to remedy past violations, the Commission has made clear that the actual filing of past due reports is a factor in that consideration. See Nature's Sunshine, 95 SEC Docket at 13497-98; Impax, 93 SEC Docket at 6253; Phlo, 90 SEC Docket at 1115-16. As of this date, Comverse has not filed any of its delinquent reports.

D. Respondent's Assurances are not Credible

Given the numerous delays faced and revisions to previously-agreed upon dates for filing its delinquent reports provided to the Commission, NASDAQ, and through court order, Comverse's assurances that it will meet its newest timeline or, once current, that it can remain so are not credible. Comverse has not shown any reliable ability to estimate its own problems or the time it will take to fix them. One investigation led to another, which led to another, which led to still more reviews of various poor accounting practices. While Comverse's recently-hired executives appear sincere in their desires to bring Comverse current in its reporting, this is simply not enough to mitigate the harm that occurs to investors from having no information or bad information as to something as critical as a company's financial position.

The Commission has found previously that an issuer's failure to meet previously-identified deadlines for compliance impacts the credibility of its assurances that it can provide delinquent information. See Nature's Sunshine, 95 SEC Docket at 13499; Impax, 93 SEC Docket at 6256. In such cases, the Commission notes that the issuer may "re-register its securities under the Exchange Act once it is able to comply with the registration requirements." Impax, 93 SEC Docket at 6256; see also Nature's Sunshine, 95 SEC Docket at 13502-03.

The Commission has noted before that the need for finality in its proceedings is a consideration in the determination whether to revoke an issuer's securities registration. See Nature's Sunshine, 95 SEC Docket at 13499 & n.36 (citing e-Smart Techs., Inc., 57 S.E.C. 964, 970-71 n.18 (2004)). Furthermore, the Commission has been disinclined to suspend registrations where an issuer has been unable to meet past timelines for compliance for fear that to do so would simply lead to the "necessity for another proceeding under Exchange Act Section 12(j)." Impax, 93 SEC Docket at 6256 n.34; see also Eagletech, 88 SEC Docket at 1230; Gateway, 88 SEC Docket at 441 n.34. Comverse has been court-ordered to cease-and-desist from violations of the periodic reporting requirements and was required to become compliant with its obligations by February 2010. It has failed on both counts. As such, it is necessary and appropriate for the protection of investors that the registration of Comverse's securities be revoked.

IV. ORDER

Based on the findings of fact and conclusions of law set forth above:

IT IS ORDERED THAT, pursuant to Section 12(j) of the Securities Exchange Act of 1934, the registration of each class of registered securities of Comverse Technology, Inc., is hereby REVOKED.

This Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision pursuant to Rule 111 of the Commission's Rules of Practice. If a motion to correct a manifest error of fact is filed by a party, then that party shall have twenty-one days to file a petition for review from the date of my order resolving the motion to correct a manifest error of fact.

The Initial Decision will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact, or unless the Commission determines on its own initiative to review this Initial Decision as to any party. If any of these events occur, the Initial Decision shall not become final as to that party.

Robert G. Mahony
Administrative Law Judge