

INITIAL DECISION RELEASE NO. 272
ADMINISTRATIVE PROCEEDING
FILE NO. 3-10977

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

In the Matter of :
:
E-SMART TECHNOLOGIES, INC., : INITIAL DECISION ON REMAND
f/k/a PLAINVIEW LABORATORIES, INC. : February 3, 2005
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APPEARANCES: Charles D. Stodghill for the Division of Enforcement, United States Securities and Exchange Commission

Maranda E. Fritz for e-Smart Technologies, Inc., f/k/a Plainview Laboratories, Inc.

BEFORE: Lillian A. McEwen, Administrative Law Judge

SUMMARY

In light of recent filings of delinquent periodic reports, this Initial Decision on Remand denies the Division of Enforcement's (Division) renewed request for revocation of the registration of the common stock of Respondent e-Smart Technologies, Inc., f/k/a Plainview Laboratories, Inc. (e-Smart), and imposes no sanction for e-Smart's violations of the periodic reporting requirements of the Securities Exchange Act of 1934 (Exchange Act).

PROCEDURAL HISTORY

The Securities and Exchange Commission (SEC or Commission) initiated this proceeding on December 16, 2002, pursuant to Section 12(j) of the Exchange Act, with an Order Instituting Proceedings (OIP). On March 4, 2004, after a public hearing, I issued an Initial Decision that found e-Smart in violation of the periodic reporting requirements of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder, and revoked the registration of its common stock. e-Smart Techs., Inc., 82 SEC Docket 1194. Following its review, the Commission remanded the proceeding on October 12, 2004, by an Order Remanding Proceeding (Remand Order) to provide me an opportunity to assess the sanctioning determination in light of certain late filings made by e-Smart. e-Smart Techs., Inc., Exchange Act Release No. 50514.

On December 10, 2004, prior to a hearing on remand, this Office received e-Smart's Motion to Amend the OIP to Add Cease and Desist Proceedings, which the Division opposed. The Commission has decided to rule on that motion. On December 13, 2004, I held a one-day remand hearing in New York, New York, at which e-Smart called two witnesses and the Division called none, but furnished two exhibits that were admitted into evidence. Also at that time, the parties jointly submitted stipulations, and I allowed e-Smart until January 14, 2005, to supplement the record with any additional past-due filings. E-Smart made such filings on December 29, 2004, and on January 10, 2005, and both parties filed posthearing remand briefs on January 19, 2005.¹

ISSUE PRESENTED

E-Smart, while its common stock was registered with the Commission, violated the periodic reporting requirements of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 by failing to file periodic reports between May 30, 2000, and December 16, 2002. The only issue on remand is whether my earlier sanction, the revocation of e-Smart's common stock, remains appropriate.

FINDINGS OF FACT

The findings and conclusions of this Initial Decision on Remand are based on the entire record, including those findings made in the March 4, 2004, Initial Decision and the Remand Order. All such findings by the Commission and the undersigned are incorporated herein.² For any remaining factual findings, I applied preponderance of the evidence as the standard of proof. Steadman v. SEC, 450 U.S. 91, 102 (1981). Any arguments and proposed findings and conclusions made by the parties that are inconsistent with this Initial Decision on Remand were rejected.

Company Background

E-Smart, formerly known as Boppers Holdings, Inc., and Plainview Laboratories, Inc., is a Nevada corporation headquartered in San Jose, California. IVI Smart Technologies, Inc., a Delaware corporation, is e-Smart's parent corporation, owning seventy percent of the outstanding shares of e-Smart's common stock. Mary Grace (Grace) has served as e-Smart's president and chief executive officer (CEO) since 2001 and was company chairman prior to that time.

¹ E-Smart's posthearing remand brief was erroneously dated April 26, 2004. It was received in this Office by fax on January 19, 2005.

² Unless otherwise noted, all factual findings are drawn directly from the Findings of Fact section of the March 4, 2004, Initial Decision, which may be found at e-Smart, 82 SEC Docket at 1195-1197. Where appropriate, I have taken official notice of company filings, pursuant to Rule 323 of the Commission's Rules of Practice, as they are publicly available over the Commission's Electronic Data Gathering, Analysis, and Retrieval System. Such instances are noted as "(Official Notice)." Citations to the Remand Order are noted as "(Remand Order at ___)," to the transcript of the December 13, 2004, remand hearing are noted as "(Tr. ___)," and to the Division's exhibits, introduced at the remand hearing, are noted as "(Div. Ex. ___ at ___)." Citations to the Division's and Respondent's posthearing remand briefs are noted as "(Div. R. Brief at ___)," and "(Resp. R. Brief at ___)."

E-Smart's business comprises developing and producing "biometric verification security systems" for government entities to be used in combating identity theft and payment fraud. Among its products is the "smart card," a small identification card that stores personal data and confirms the cardholder's identity by a fingerprint sensor embedded in the card. E-Smart's stock is quoted on the Pink Sheets under the symbol "ESMT" and is thinly traded. (Official Notice.) At the time of the December 8, 2003, hearing, e-Smart's equity was financed by private transactions, and no equity had been received through the public issuance of its shares. At that time, e-Smart "ha[d] no source of income" and could only surmise that it was on the verge of securing several lucrative agreements. It has received approximately \$11 million in funding over the last year or so and has recently executed contracts that will generate future revenues. (Tr. 107-108.) E-Smart, however, presently needs an infusion of cash to continue doing business, as the company has no revenue producing contracts or excess capital at this time. (Tr. 104-07.)

Filing History

On May 30, 2000, e-Smart registered its common stock with the Commission pursuant to Section 12(g) of the Exchange Act by filing a Form 10-SB/12G (a registration statement for small business issuers). As previously found: During the timeframe beginning with the date of its registration to December 16, 2002, the issuance date of the OIP (the relevant period), e-Smart failed to file annual reports with the Commission on Form 10-KSB (an annual report for small business issuers) for the fiscal years ending December 31, 2000, 2001, and 2002.³ It also failed to file quarterly reports on Form 10-QSB (a quarterly report for small business issuers) for the quarterly periods ending March 31, 2001, June 30, 2001, September 30, 2001, March 31, 2002, June 30, 2002, and September 30, 2002. On the eve of the December 8, 2003, hearing, e-Smart filed late a quarterly report and an amendment for the period ending June 30, 2003, and just after the hearing, it filed late a quarterly report for the period ending September 30, 2003. (Official Notice.) Both filings are for periods outside the relevant period.

On March 4, 2004, based on e-Smart's admissions of these failed filings at the underlying hearing, I found e-Smart in violation of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder and revoked the registration of its common stock for the protection of investors.⁴ I considered e-Smart's last-minute filings in my sanctioning determination.

After the March 4, 2004, Initial Decision was rendered, e-Smart began filling in the gaps in its reporting history, while keeping current with its ongoing reporting obligations. (Remand Order at 3-4; Official Notice.) It subsequently filed a "consolidated annual report" covering its 2002 and

³ The annual report for the fiscal year 2002 was due by March 31, 2003, a date outside the relevant period. The untimely filed report was included within the scope of the OIP and among e-Smart's violations for its close proximity to the relevant period. See Richmark Capital Corp., 81 SEC Docket 2205, 2217 (Nov. 7, 2003). Neither party objected to its inclusion.

⁴ The Division also alleged that e-Smart violated Rule 12b-20 of the Exchange Act. The March 4, 2004, Initial Decision dismissed this allegation, and the ruling was not appealed to the Commission. e-Smart Techs., Inc., 83 SEC Docket 1235, 1236 n.7 (July 16, 2004) (Commission Order on Motions for Summary Affirmance).

2003 fiscal years on March 30, 2004, which the Commission considered and stated in its Remand Order was not in accordance with its rules. (Remand Order at 2 & n.3.) On September 8, 2004, e-Smart also made a delinquent filing of its missing annual reports covering fiscal years 2001 and 2002, which also took the form of a consolidated report—that is, combining two fiscal years into one form. (Tr. 83; Official Notice.) On December 13, 2004, e-Smart filed an amendment to its Form 10-KSB covering the fiscal year 2003. (Official Notice.)

At the time of the remand hearing, e-Smart remained delinquent on quarterly reports for the first three quarters of the years 2001 and 2002 and on an annual report for the fiscal year ending December 31, 2000. (Div. Ex. 1-2.) E-Smart was granted an additional extension at the remand hearing to make all its past-due filings, so that they could be considered as part of the record in this case. (Tr. 127.) On December 29, 2004, e-Smart made late filings for the relevant quarterly periods ending March 31, 2001, June 30, 2001, September 30, 2001, March 31, 2002, June 30, 2002, and September 30, 2002. (Official Notice.) On January 10, 2005, e-Smart filed its last missing report, an audited annual report for the fiscal year 2000. (Official Notice.) By January 14, 2005, the date the record in this case was closed, e-Smart had filed all its missing reports due for the relevant period and had met its ongoing periodic reporting requirements. (Official Notice; Remand Order at 4; Div. R. Brief at 1-2.) On average, e-Smart’s periodic reports were late by 990 days.

The following chart tracks e-Smart’s filing history over the relevant period. (Official Notice.) It includes the type of report filed, the period covered, the approximate due date, the actual date on which e-Smart made the filing, and the number of days the filing was delinquent (if applicable):

| <u>Report</u> | <u>For Period Ending</u> | <u>Appx. Due Date</u> | <u>Filing Date</u> | <u>Days Late</u> |
|----------------------|---------------------------------|------------------------------|----------------------------------|-------------------------|
| 10 SB-12 G | Registration | N/A | May 5, 2000 | N/A |
| 10 QSB | June 30, 2000 | Aug. 15, 2000 | Aug. 11, 2000 | timely filed |
| 10 QSB | Sept. 30, 2000 | Nov. 15, 2000 | Oct. 5, 2000 | timely filed |
| 10 QSB-A | Sept. 30, 2000 | N/A | Oct. 10, 2000 | N/A |
| 10 KSB | Dec. 31, 2000 | Mar. 31, 2001 | Jan. 10, 2005 | 1,381 |
| 10 QSB | Mar. 31, 2001 | May 15, 2001 | Dec. 29, 2004 | 1,324 |
| 10 QSB | June 30, 2001 | Aug. 15, 2001 | Dec. 29, 2004 | 1,232 |
| 10 QSB | Sept. 30, 2001 | Nov. 15, 2001 | Dec. 29, 2004 | 1,140 |
| 10 KSB | Dec. 31, 2001 | Mar. 31, 2002 | Sept. 8, 2004* | 892 |
| 10 QSB | Mar. 31, 2002 | May 15, 2002 | Dec. 29, 2004 | 959 |
| 10 QSB | June 30, 2002 | Aug. 15, 2002 | Dec. 29, 2004 | 867 |
| 10 QSB | Sept. 30, 2002 | Nov. 15, 2002 | Dec. 29, 2004 | 775 |
| 10 KSB | Dec. 31, 2002 | Mar. 31, 2003 | Mar. 3, 2004*, Sept. 8, 2004* | 338 |

* These reports were filed as consolidated reports covering more than one year: the March 3, 2004, filing covered fiscal years 2002 and 2003, and the September 8, 2004, filing covered fiscal years 2001 and 2002.

Compliance Efforts

At the December 8, 2003, hearing, e-Smart conceded that it had not filed periodic reports for the relevant period, but claimed that it was engaged in substantial good faith efforts to update and remedy its filings. Grace, as e-Smart's CEO, acknowledged that she was fully aware of the importance of the reporting requirements. (December 8, 2003, hearing transcript at 118-121.) The company's failure to file periodic reports was due primarily to minimal financial resources, loss of key persons overseeing the company's financial reporting, and most notably, distractions relating to criminal proceedings brought against both Grace and another in federal court beginning in December 2001. Anthony Russo (Russo), a Certified Public Accountant for e-Smart, and his auditing firm were hired in about November 2003 to oversee and help prepare e-Smart's periodic reports for filing with the Commission. (Tr. 65-67; 78-80.) Russo testified at the December 8, 2003, hearing that "someone with experience could have done [the past-due] 10-Qs and 10-Ks with little effort" and also attributed the company's noncompliance to "economics." Russo also made assurances that the company would file an audited annual report for the fiscal year 2003 by the end of March 2004.

At the December 13, 2004, remand hearing, Russo again summarized e-Smart's compliance efforts to date and explained why e-Smart chose to file consolidated annual reports combining two fiscal years, or what Russo called a "two-year comparable report." (Tr. 67-84.) Russo acknowledged that the company was still missing certain periodic reports from the relevant period explaining that, in attempting to best allocate e-Smart's resources and supplying investors with current financial information, he determined it more important to file ongoing reports than those from periods of e-Smart's financial history when transactions were not taking place. (Tr. 90-93.) As for the filing of consolidated reports, Russo stated, "[I]t's a format broadly accepted in larger companies, and I felt it was expeditious, it was more meaningful to have comparative financial statements, and it indeed has everything that two separate reports would have. . . . There's nothing substantial omitted." (Tr. 73-74.) Russo admitted, however, that he never had the consolidated format approved by, nor did he otherwise discuss the format with, a representative of the SEC's Division of Corporation Finance. (R. Tr. 81.) Russo also acknowledged that even though a company that is registered pursuant to Section 12 of the Exchange Act has no papers, records, or transactions, the company still has the obligation to file periodic reports. (Tr. 114.)

CONCLUSIONS OF LAW: SANCTIONS

Periodic Filing Requirements

Under Section 12(j) of the Exchange Act, the Commission is authorized "as it deems necessary or appropriate for the protection of investors" to revoke the registration of a security or to suspend the registration of a security for a period not exceeding twelve months if it finds that the issuer of such security has failed to comply with any provision of the Exchange Act or the rules and regulations thereunder. Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require issuers of securities, registered pursuant to Section 12 of the Exchange Act, to file annual and quarterly reports with the Commission.

The Commission's periodic reporting requirements help ensure that the investing public receives current, accurate information concerning the operation and financial condition of the company. SEC v. Kalvex, Inc., 425 F. Supp. 310, 315-16 (S.D.N.Y. 1975). Periodic reporting helps provide investors with "available adequate information upon which to base their judgment whether to buy, sell, or hold registrant's securities"; reporting also benefits creditors who are considering transactions with reporting companies, not involving purchase and sale of securities. SEC v. Beisinger Indus. Corp., 421 F. Supp. 691, 694 (D. Mass. 1976), aff'd, 552 F.2d 15 (1st Cir. 1977).

"The reporting requirements of the Exchange Act are the primary tool which Congress has fashioned for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of stock and securities." e-Smart, Exchange Act Release No. 50514 at 5 (citing SEC v. Beisinger Indus. Corp., 552 F.2d 15, 18 (1st Cir. 1977)) (internal quotation marks omitted). As stated in the Commission's Remand Order:

Administrative proceedings under Section 12(j) are one of the remedies the Exchange Act provides 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 financial information upon which to make informed investment decisions. Section 12(j) proceedings play an important role in the Commission's enforcement program because many publicly traded companies that fail to file on a timely basis are "shell companies" and, as such, attractive vehicles for fraudulent stock manipulation schemes. Revocation under Section 12(j) can make such issuers less appealing to persons who would put them to fraudulent use.

Id. at n.14 (internal citations omitted).

Issue on Remand

It remains undisputed that, during the relevant period, e-Smart violated Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 by failing to file annual and quarterly reports, violations which the Commission considers to be serious. (Remand Order at 5, n.16.) Pursuant to the Remand Order, the only issue now is whether revocation of the registration of e-Smart's common stock remains appropriate in light of the company's subsequent filings of all its delinquent reports for the relevant period. (Remand Order at 5-7.) (describing subsequent filing history as "an important factor to be considered in determining whether revocation is 'necessary and appropriate for the protection of investors'") As authorized by the OIP pursuant to Section 12(j) of the Exchange Act, the only sanctions presently available are revocation or suspension of the registration of e-Smart's common stock for the previously found violations. (Remand Order at n.17; OIP at 2.)

The Division's position on the appropriate sanction remains unchanged following the Remand Order. It argues that revocation continues to be the only appropriate sanction for e-Smart's repeated failure to comply with applicable periodic reporting requirements, even in light of the company's "belated efforts" to bring itself into compliance. (Div. R. Brief at 1-2, 8.)

According to the Division, the public interest factors still weigh in favor of revocation, and even though e-Smart “may have now satisfied” its filing obligations, this “should not shield it from sanctions for its past reporting failures.” (Div. R. Brief at 8-9.) The Division also warns that lifting the sanction of revocation would undermine the principal objective of the reporting requirements, that of providing “investors with timely reports that accurately reflect the financial condition and operating results of the issuer.” (Div. R. Brief at 9.) “To hold otherwise,” the Division concludes, “would encourage noncompliance by issuers until they are actually faced with a revocation order and would be contrary to the interests of the investing public.” (Div. R. Brief at 9.)

E-Smart contends that neither revocation nor suspension of the registration of its common stock is appropriate now that it has filed all its delinquent reports—“even those which are entirely historical.” (Resp. R. Brief at 1.) It asserts that no punitive sanction is necessary to protect the investing public because each and every periodic filing is now publicly available. (Resp. R. Brief at 1.) E-Smart further argues that again imposing the sanction of revocation would be unprecedented and unwarranted, and would serve only to damage, and not protect, investors. (Resp. R. Brief at 1, 8.) As an alternative to a sanction ordering revocation or suspension, e-Smart represents that it would accept a cease-and-desist order, if the sanction becomes available. (Resp. R. Brief at 2, 8 n.4.)

Sanction Considerations

When fashioning the appropriate sanction under Section 12(j) of the Exchange Act, the public interest factors identified in Steadman v. SEC are instructive. 603 F.2d 1126, 1140 (5th Cir. 1979), aff’d on other grounds, 450 U.S. 91 (1981); see also WSF Corp., 77 SEC Docket 1831, 1836-37 (May 8, 2002), final, 77 SEC Docket 2336 (May 24, 2002) (applying Steadman factors in a 12(j) proceeding). The relevant factors under Steadman are (1) the egregiousness of the respondent’s actions, (2) the isolated or recurrent nature of the infraction, (3) the degree of scienter involved, (4) the sincerity of the respondent’s assurances against future violations, (5) the respondent’s recognition of the wrongful nature of its conduct, and (6) the likelihood of future violations. 603 F. 2d at 1140.

The severity of the sanction depends on the facts and the circumstances of each case. See Berko v. SEC, 316 F.2d 137, 141-42 (2d Cir. 1963). No one Steadman factor is controlling. WHX Corp., 80 SEC Docket 1318, 1337 (June 4, 2003). In considering the likelihood of future violations, the fact that respondent is presently complying with the securities laws does not preclude sanction. See SEC v. Fehn, 97 F.3d 1276, 1295-96 (9th Cir. 1996) (affirming a permanent injunction).

Application

When it came to filing its periodic reports during the relevant period, e-Smart was far from the model company. Its violations of the reporting requirements of the Exchange Act, for Steadman purposes, were both recurrent and egregious. As one example, among many, it took the company nearly four years to file its audited annual report for the fiscal year 2000. In fact, during the first four years of its existence, e-Smart never filed an audited annual report and,

during the relevant period, filed only two unaudited quarterly reports, the first two due after its registration. E-Smart shirked its responsibility to provide the public with current, accurate information upon which to make informed investment decisions. This failure to file timely periodic reports deprived investors, as well as potential investors, of vital information regarding e-Smart's business operations and financial condition. Although the company knew of its reporting obligations at the time, it blamed noncompliance on lack of capital, loss of key personnel overseeing company reporting, and distractions related to criminal proceedings brought against its CEO and another. Most importantly, while the company was experiencing its most troubled times, the investing public was left unaware of the company's position.

In the March 4, 2004, Initial Decision, I made it clear that, after considering the public interest factors, revocation was the appropriate sanction: the company was in violation, its violations were egregious and recurrent, and the likelihood of future violations appeared great. As for its financial condition, e-Smart appeared to lack the necessary operating revenue and available capital to meet its periodic filing obligations. This, combined with its past violations, made future violations likely. On March 30, 2004, however, the company filed a consolidated annual report covering 2002 and 2003. In making the filing, e-Smart kept its promise made at the December 8, 2003, hearing but did not cure all its filing deficiencies. Thereafter, as it appealed the March 4, 2004, Initial Decision, e-Smart continued filling in the gaps in its reporting history by filing a consolidated annual report for the fiscal years 2001 and 2002, while also keeping current with its ongoing periodic reporting. Following the remand hearing, when the record remained open, e-Smart filed all seven remaining delinquent periodic reports for the relevant period. All told, however, e-Smart's periodic reports for the relevant period were filed an average of 990 days late.

I conclude that, *but for* the institution of this administrative proceeding, it is unlikely e-Smart would have made the filings that it has made. At times during the proceeding, e-Smart appeared ignorant of the Commission's processes and acted as if its difficulties posed an exception to the reporting requirements. Ultimately, this conduct contributed to the delay in filing of what it deems "historical filings," as if an accurate, timely history of an issuer would not be important to interested investors. Because e-Smart is a Section 12 issuer, however, it is obligated to file its periodic reports "within the period specified in the appropriate form." If the company is unable to file such reports, the company may file an SEC Form 15 pursuant to Exchange Act Section 12 and Rule 12g-4, which voluntarily deregisters the stock and suspends the reporting obligations under Section 13(a) of the Exchange Act.⁵ See 17 C.F.R. § 240.12g-4(a). During the relevant period, e-Smart took no such action.

Nonetheless, now on remand, in view of the Steadman public interest factors, the Remand Order, and e-Smart's subsequent filings of past-due periodic reports, I conclude that no remedial sanction is appropriate. As the Commission held in its Remand Order, e-Smart, "while

⁵ After an issuer files a Form 15, termination of the registration of a class of securities takes effect in ninety days, or such shorter period as the Commission may determine. 17 C.F.R. § 240.12g-4(a). Only the issuer's duty to file reports pursuant to Exchange Act Section 13(a) is suspended upon the filing of a Form 15; all other reporting and filing obligations remain in effect. 17 C.F.R. § 240.12g-4(b).

not remedying the delinquencies on which the findings of violation were based, did provide current, audited financial information to the investing public, which . . . fulfilled the purpose behind the periodic reporting requirements.” Subsequent periodic filings (current as well as those past due) have provided additional information to investors, furnishing them with a fuller picture of the company’s condition. (Remand Order 5, 6 & n.16.)

Additionally, the testimony of Grace and Russo shows that e-Smart recognizes the wrongfulness of its past violations. It assures that future violations will not occur. Since the institution of this proceeding, e-Smart hired staff that has undertaken extensive compliance efforts to cure past reporting deficiencies and keep current with ongoing reporting requirements. Further, based on the company’s recent infusion of working capital, signed business contracts, and diligent and expensive efforts to file past-due reports, e-Smart no longer appears to be the type of shell company susceptible to fraudulent use that the SEC’s enforcement program targets in Section 12(j) proceedings. (Remand Order at 5 n. 14.)

In view of the foregoing, despite the egregiousness and recurrent nature of e-Smart’s violations, I find the likelihood of future violations absent and the need for a strong sanction no longer necessary. The Division’s request for revocation of the registration of e-Smart’s common stock must therefore be denied. See 4 Louis Loss & Joel Seligman, Securities Regulation 1891-92 (3d ed., rev. vol. 2000) (describing involuntary revocation of a security’s registration as a draconian remedy and unnecessarily harmful to innocent security holders in view of the availability of other regulatory tools that ensure the filing of adequate reports); 3 Thomas L. Hazen, Treatise on the Law of Securities Regulation § 9.2[1][B] (4th ed 2002). I also conclude that suspension of e-Smart’s registration of its common stock (a remedy not pursued by the Division, but available) is equally inappropriate. The effect of any suspension, as with revocation, would be to harm investors unfairly, rather than to serve any deterrent or remedial function now that the company has filed, albeit untimely, all its delinquent reports. Both remedies, in light of e-Smart’s later compliance efforts, would also deprive investors unnecessarily of a public market for the trading of their securities. See Loss & Seligman at 1897 (citing legislative history for Exchange Act Section 15(c)(4), a parallel provision to Section 12(j) for persons who cause a company’s violations of the reporting requirements).

Having reconsidered the Steadman factors in light of e-Smart’s subsequent filings and recent compliance, I deny the Division’s renewed request for revocation of the registration of e-Smart’s common stock and conclude, under the circumstances, that no sanction should be imposed for e-Smart’s violations.

CERTIFICATION OF RECORD

Pursuant to Rule 351(b) of the Commission’s Rules of Practice, 17 C.F.R. § 201.351(b), I hereby certify that the record includes the items set forth in the record index issued by the Secretary of the Commission on January 14, 2005.

ORDER

Based on the findings and conclusions set forth above, the Division of Enforcement's request for sanctions against Respondent e-Smart Technologies, Inc., f/k/a Plainview Laboratories, Inc., for the violations found in the March 4, 2004, Initial Decision is hereby DENIED.

This Initial Decision on Remand shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision on Remand within twenty-one days after service of the Initial Decision on Remand. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision on Remand, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. 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 the undersigned's order resolving such motion to correct a manifest error of fact. The Initial Decision on Remand 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 the Commission determines on its own initiative to review the Initial Decision on Remand as to a party. If any of these events occur, the Initial Decision on Remand shall not become final as to that party.

Lillian A. McEwen
Administrative Law Judge