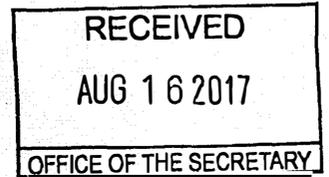


**UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION**



**ADMINISTRATIVE PROCEEDING  
File No. 3-18011**

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**In the Matter of**

**Integrated Freight Corporation,**

**Respondent.**

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**DIVISION OF ENFORCEMENT'S  
REPLY IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION**

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## **REPLY IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION**

On June 29, 2017, the Division of Enforcement (“Division”), pursuant to Commission Rule of Practice 250(a), moved for a ruling on the pleadings against Integrated Freight Corporation (“Integrated Freight”). At a July 11, 2017 initial prehearing conference, this Court, having received Integrated Freight’s June 15, 2017 Answer (“Answer”) admitting nearly all of the allegations set forth in the Order Instituting Proceedings, announced that it would treat the Division’s Motion as one for summary disposition, pursuant to Commission Rule of Practice 250(b), and subsequently entered an order affording the parties additional time to supplement their previous submissions.

Integrated Freight’s admissions in its Answer—repeated in its July 10, 2017 Opposition to Motion for Ruling on the Pleadings (“Opp’n”), and August 1, 2017 Amended Opposition to Motion for Ruling on the Pleadings (“Amended Opp’n”)—provide this Court with all the support it needs to grant the Division’s Motion. Critically, Integrated Freight has admitted that it is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the fiscal year ended March 31, 2015. Because there is “no genuine issue with regard to any material fact” as to Integrated Freight’s repeated filing failures, violations that span more than two years and have still not been addressed, the Division is entitled as a matter of law to an order revoking the registration of each class of securities of Integrated Freight registered with the Commission pursuant to Section 12(j) of the Securities Exchange Act of 1934 (“Exchange Act”).

## ARGUMENT

Exchange Act Section 12(j) authorizes the Commission, “as it deems necessary or appropriate for the protection of investors,” to permanently revoke the registration of a class of securities or to suspend that registration (for a period not exceeding twelve months) if the issuer has failed to comply with any provision of the Exchange Act or its rules and regulations. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered under Section 12 of the Exchange Act to file annual and quarterly reports with the Commission. No showing of scienter is necessary to establish a violation of Section 13(a) or the rules promulgated thereunder.<sup>1</sup>

Integrated Freight admits to not having filed any periodic reports for over two years, *i.e.*, any of its periodic reports after its Form 10-K for the fiscal year ended March 31, 2015. (Answer ¶ 1.1; Opp’n ¶ 2; Amended Opp’n ¶ 2). Integrated Freight has therefore missed seven quarterly filings and two annual filings. Thus, there is no dispute that Integrated Freight violated Exchange Act Section 13(a) and the rules promulgated thereunder, or that its registration is subject to revocation or suspension under Exchange Act Section 12(j).

### **A. An Evidentiary Hearing Is Not Required.**

Integrated Freight’s argument that the Commission’s Rules preclude granting the Division relief without an in-person hearing is contrary to well-settled law. Indeed, Integrated Freight tellingly offers no support whatsoever for its claim that it is entitled to

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<sup>1</sup> *St. George Metals, Inc.*, ID Rel. No. 298, 2005 WL 2397240, at \*3 (Sept. 29, 2005); *accord Gateway Int’l Holdings, Inc.*, Exch. Act Rel. No. 53907, 2006 WL 1506286, at \*5 n.28 (May 31, 2006); *Stansbury Holdings Corp.*, ID Rel. No. 232, 2003 WL 21640201, at \*5 (July 14, 2003); and *WSF Corp.*, ID Rel. No. 204, 2002 WL 917293, at \*6 (May 8, 2002).

an evidentiary hearing because the “Commission’s rules and regulations provide an opportunity for the Respondent to present at a hearing the reasons the relief sought by the Commission should not be granted.” (Amended Opp’n ¶ 3.)

Exchange Act Section 12(j) authorizes the Commission to permanently revoke the registration of a class of securities “on the record after notice and opportunity for hearing” if the issuer has failed to comply with any provision of the Exchange Act or its rules and regulations. However, the “on the record after notice and opportunity for hearing” requirement does not necessitate an in-person hearing.<sup>2</sup> Indeed, just days before Respondent submitted its Amended Opposition, the Commission affirmed a summary disposition order in an extremely similar 12(j) matter in *Advanced Life Sciences Holdings, Inc.*<sup>3</sup> This is in line with a long history of orders granting summary disposition in substantially identical matters.<sup>4</sup>

**B. Integrated Freight’s Serial Violations of Exchange Act Section 13(a) and the Rules Promulgated Thereunder Warrant Revocation.**

In *Gateway International Holdings, Inc.*, the Commission set forth factors to

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<sup>2</sup> *Mitchell M. Maynard and Dorice A. Maynard*, Investment Advisers Act Rel. No. 2875, 2009 WL 1362796, at \*9 (May 15, 2009) (“[n]umerous courts have upheld an administrative agency’s decision to grant summary disposition, without holding an in-person hearing, when no material fact is in dispute”) (collecting cases).

<sup>3</sup> Exch. Act Rel. No. 81253, 2017 WL 3214455, at \*6 (July 28, 2017) (ordering that each class of registered securities of Advanced Life Sciences Holdings be revoked because it was undisputed that Advanced Life Sciences Holdings had failed to timely file twenty-one consecutive periodic reports).

<sup>4</sup> *See, e.g., Axesstel, Inc.*, ID Rel. No. 1152, 2017 WL 2908015, at \*4 (July 6, 2017) (ordering that each class of registered securities of Axesstel be revoked because it was undisputed that Axesstel had failed to timely file periodic reports for more than three years); *Blink Tech., Inc.*, ID Rel. No. 1134, 2017 WL 1953457, at \*5 (May 11, 2017) (ordering that each class of registered securities of Blink Technologies be revoked because it was undisputed that Blink Technologies had failed to timely file periodic reports for more than two years).

consider in determining an appropriate sanction when an issuer has failed to make required filings.<sup>5</sup> For the reasons set forth in the Division's June 29, 2017 Moving Memorandum, an analysis of the *Gateway* factors confirms that revocation of Integrated Freight's securities is necessary and appropriate for the protection of investors.<sup>6</sup> Rather than dispute the Division's analysis, Integrated Freight argues that the Commission's binding precedent in *Gateway* was wrongly decided. (Amended Opp'n ¶ 10.)

Even now, Integrated Freight can offer no assurances that it will become compliant. Integrated Freight claims that it is "expecting to receive an acceptable letter of engagement from an independent public PCAOB qualified accounting firm for audit of the March 31, 2016 and 2017 financial statements and has a commitment from a [Integrated Freight] stockholder to pay the fees, costs and expenses of such audit (subject to receipt of an acceptable letter of engagement specifying the amount of such fees, costs and expenses). . The completion of such audit will enable Respondent to file the delinquent Section 13 reports . . . ." (Amended Opp'n ¶ 11.)

However, there is no dispute that Integrated Freight currently lacks the resources necessary to bring its filings up to date. (Amended Opp'n ¶ 9.) Indeed, Integrated Freight admits it failed to heed a delinquency letter sent to it by the Division of

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<sup>5</sup> *Gateway Int'l Holdings*, 2006 WL 1506286, at \*4.

<sup>6</sup> The EDGAR database reveals, and Integrated Freight does not dispute, that Integrated Freight has not filed any notifications of late filing on Form 12b-25 as to any of these reports, disclosing its inability to file the reports timely and the reasons for its inability to file. (Amended Opp'n ¶ 2.) See 17 C.F.R. § 240.12b-25(a) (setting forth filing requirement). This failure should also be considered in assessing whether revocation is appropriate. See *Advanced Life Sciences Holdings*, 2017 WL 3214455, at \*3 n.15; see also *Investco, Inc.*, ID Rel. No. 240, 2003 WL 22767599, at \*3 (Nov. 24, 2003) (delinquent issuer's actions were found to be egregious and recurrent where there was no evidence that any extension to make the filings was sought).

Corporation Finance approximately one year ago requesting compliance with its periodic filing obligations. (Answer ¶ 2.)<sup>7</sup> The Commission has made clear that an issuer's business or financial difficulties "do not excuse its failure to file; indeed information about these difficulties would have been significant to both current and potential investors in evaluating whether they wanted to buy, sell or hold [the issuer's] securities."<sup>8</sup>

Rather than dispute its violations of Exchange Act Section 13(a) and the rules promulgated thereunder, Integrated Freight seeks an order directing or allowing the company to voluntarily terminate its reporting obligations by filing a Form 15 pursuant to Exchange Act Rule 12g-4(a)(2). (Answer ¶ 12; Amended Opp'n ¶¶ 3, 5.) However, Integrated Freight is not qualified to deregister under Exchange Act Rule 12g-4(a)(2) because, as Integrated Freight acknowledges, it has more than 500 stockholders of record. (Answer ¶ 9; Amended Opp'n ¶ 6.) In any event, even if Integrated Freight was qualified to deregister, revocation would still be the appropriate remedy here.<sup>9</sup>

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<sup>7</sup> The Commission has held that "a shortage of resources 'suggest[s] the strong likelihood of continuing or future violations.'" *Id.* at \*4 (quoting *Am. 's Sports Voice, Inc.*, Exch. Act Rel. No. 55511, 2007 WL 858747, at \*4 (Mar. 22, 2007)).

<sup>8</sup> *Advanced Life Sciences Holdings*, 2017 WL 3214455, at \*3 (citing *Tara Gold Res. Corp. v. SEC*, 678 F.3d 558, 558 (7th Cir. 2012) (observing that firm's inability to pay an auditor to certain financial statements is "something investors surely would want to know"))).

<sup>9</sup> *Blink Tech.*, 2017 WL 1953457, at \*5 (revoking the registration of Blink Technologies' registered securities even though Blink Technologies filed a valid Form 15 to withdraw its registration after being served with the OIP pursuant to Exchange Act Section 12(j)).

**CONCLUSION**

For the reasons set forth above, the Division respectfully requests that the Court grant the Division's motion for summary disposition and revoke the registration of each class of Integrated Freight's securities registered under Exchange Act Section 12.

Dated: August 15, 2017

Respectfully submitted,



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CERTIFICATE OF SERVICE

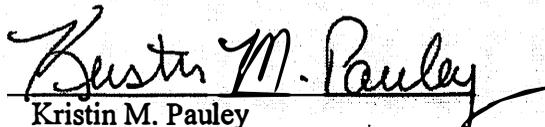
I hereby certify that true copies of the Division of Enforcement's Reply in Support of Motion for Summary Disposition Motion were served on the following on this 15th day of August, 2017, in the manner indicated below:

By UPS and Fax [(202) 772-9324]:

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