

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Release No. 87614 / November 25, 2019

Admin. Proc. File No. 3-18811

In the Matter of  
TALON REAL ESTATE HOLDING CORP.

OPINION OF THE COMMISSION

SECTION 12(j) PROCEEDING

Grounds for Remedial Action

**Failure to Comply with Periodic Filing Requirements**

Company failed to file periodic reports in violation of Section 13(a) of the Securities Exchange Act of 1934 and Exchange Act Rules 13a-1 and 13a-13. *Held*, it is in the public interest to revoke the registration of the company's securities.

APPEARANCES:

*Joshua D. Brinen*, Brinen & Associates, LLC, New York, NY, for Talon Real Estate Holding Corp.

*Robert F Schroeder and David S. Frye*, for the Division of Enforcement.

On September 20, 2018, the Commission issued an order instituting proceedings (the “OIP”) against Talon Real Estate Holding Corp. pursuant to Section 12(j) of the Securities Exchange Act of 1934.<sup>1</sup> Talon filed its answer to the OIP on September 28, 2018. On February 15, 2019, we set a briefing schedule for motions for summary disposition.

The Division of Enforcement’s motion for summary disposition requests that we revoke the registration of each class of Talon’s securities pursuant to Exchange Act Section 12(j). The Division asserts that, at the time this proceeding was instituted, the company “had failed to file seven consecutive periodic reports, including two Forms 10-K and five Forms 10-Q.” Although Talon does not dispute the Division’s assertion of delinquent filings, the company opposes summary disposition on the ground that it is in the process of preparing the missing reports and will “ensure regulatory compliance going forward.”

Under Rule of Practice 250(b), a motion for summary disposition may be granted if “there is no genuine issue with regard to any material fact” and the moving party is “entitled to summary disposition as a matter of law.”<sup>2</sup> We find that there is no genuine issue with respect to any material fact and that the Division is entitled to summary disposition as a matter of law. Talon’s undisputed failure to file its required periodic reports, without which the public does not have accurate and current information about the company, means that revocation of the registration of Talon’s securities is necessary and appropriate for the protection of investors.

## I. Background

Talon is a Utah corporation based in Minneapolis, Minnesota. In Talon’s answer to the OIP, it describes itself as a “real estate corporation that principally invests in single and multi-tenant office, industrial, and retail properties within the Midwest and South Central regions of the United States.” Talon’s predecessor, Guide Holdings, Inc., filed a Form 10-SB12G in early 2010 “to voluntarily become a registrant” under Section 12(g) of the Exchange Act.<sup>3</sup> Guide reorganized in June 2013 and changed its name to Talon. Talon has continued to maintain its registration under Section 12(g) since its name change in June 2013.

Exchange Act Section 13(a) requires issuers of registered securities, such as Talon, to file periodic reports with the Commission “for the proper protection of investors and to insure fair dealing” in the companies’ securities.<sup>4</sup> Talon timely filed its annual reports from 2010 through

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<sup>1</sup> *Ceelix, Inc.*, Exchange Act Release No. 84243, 2018 WL 4537212 (Sept. 20, 2018). The OIP also instituted proceedings against three unrelated respondents, and we have issued an opinion revoking the registrations of each class of those respondents’ securities by default. *Ceelix, Inc., et al.*, Exchange Act Release No. 86735, 2019 WL 3995974 (Aug. 22, 2019).

<sup>2</sup> 17 C.F.R. § 201.250(b).

<sup>3</sup> 15 U.S.C. § 78l(g).

<sup>4</sup> 15 U.S.C. § 78m(a).

2015, and its quarterly reports from 2010 through 2016.<sup>5</sup> In its most recent quarterly report before the OIP, filed November 21, 2016, for the period ended September 30, 2016, Talon reported an operating loss of \$5,890,316 for the prior nine months.

On March 31, 2017, Talon filed a Notification of Late Filing on Exchange Act Form 12b-25 for its annual report for the period ended December 31, 2016.<sup>6</sup> In the Form 12b-25, Talon stated that it “could not finalize certain disclosures necessary for the completion of its financial statements and management’s discussion and analysis of financial condition and results of operation . . . in time to allow completion of the [2016 annual report] within the prescribed time period.” Talon stated that it “expect[ed] to be in a position to file the Form 10-K within 15 days after March 31, 2017.” Talon filed similar Forms 12b-25 for its quarterly reports for the periods ended March 31, 2017 and June 30, 2017. These Forms 12b-25 were signed by M.G. Kaminski, Talon’s CEO and chairman of the board both then and now. Talon made no additional filings in 2017.

On November 20, 2017, the accounting firm of Baker, Tilly, Virchow, Krauss, LLP (“Baker, Tilly”) resigned as Talon’s independent registered public accounting firm. In its resignation letter, addressed to Kaminski and another Talon director, Baker, Tilly noted that it had advised Talon’s management and members of the audit committee of: (a) material weaknesses in its internal controls related to its ability to execute a timely and accurate close of its 2016 financial statements; and (b) the company’s failure to follow policies and procedures concerning material contracts, indebtedness, commitments, contingencies, and related party transactions. The next day, Talon filed a Current Report on Form 8-K, which disclosed that “[p]rior to the date of this filing” Baker, Tilly had “advised management” of the internal control and related problems. Talon further disclosed, in the Form 8-K, that it was in the process of selecting new auditors. According to the company’s pleadings, the termination of its relationship with Baker, Tilly contributed to Talon’s delinquencies for approximately twenty-one months because Talon lacked “sufficient funding to pay [Baker, Tilly] to release the prior workpapers.”

On November 30, 2017, staff in the Division of Corporation Finance sent Talon a delinquency letter stating that the company was not in compliance with its reporting obligations since at that time it had failed to file any of its required reports for over a year. The letter stated that Talon’s registration of its securities could be subject to revocation if it did not file all required reports within fifteen days. On December 21, 2017, Talon responded by stating that its board was “outlining what it would take to be in full compliance . . . includ[ing] meeting with a new prospective audit firm,” and promised that the company would provide a “meaningful letter of intention with date certain of being in full compliance to you by mid-January.”

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<sup>5</sup> We take official notice of EDGAR filings pursuant to Rule of Practice 323, 17 C.F.R. § 201.323.

<sup>6</sup> See 17 C.F.R. § 240.12b-25(a) (setting forth filing requirement).

On January 22, 2018, a senior Talon official emailed staff in the Division of Corporation Finance to state that Talon would return to full compliance by August 14, 2018. But that did not happen. Rather, according to Talon, at some point in late 2017 or early 2018, the senior official was diagnosed with a health condition that rendered him unable to fulfill his duties. Talon made no filings (including any additional filings of Forms 12b-25) and had no further contact with Corporation Finance staff until August 16, 2018, when the company's newly-hired counsel informed the staff that he had been "brought on with the new auditor to update the filings given the [senior official's] failing health and capabilities." Nevertheless, after this email, Talon continued to be delinquent. Talon made no further quarterly or annual filings until filing its delinquent Form 10-K for 2016 on April 17, 2019, seven months after the institution of this proceeding in September 2018, and its delinquent Form 10-Q for the period ended March 31, 2017 on June 7, 2019. Talon still has not filed its Form 10-Q for the period ended June 30, 2017, or its quarterly and annual reports for the remainder of 2017, 2018, and 2019.<sup>7</sup>

## II. Analysis

### A. Talon violated Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 and thus its securities are subject to revocation under Exchange Act Section 12(j).

Exchange Act Section 12(j) authorizes us, as "necessary or appropriate for the protection of investors," to revoke the registration of a class of an issuer's securities if we find that the issuer has failed to comply with any provision of the Exchange Act or its rules and regulations.<sup>8</sup> Exchange Act Rules 13a-1 and 13a-13 set forth the requirements for the quarterly and annual reports mandated under Exchange Act Section 13(a).<sup>9</sup> A violation of these provisions does not require scienter.<sup>10</sup> The Division contends that Talon violated Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 by failing to file timely quarterly and annual reports as charged in the OIP.

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<sup>7</sup> A table summarizing Talon's delinquent filings is attached as Exhibit 1. OTC Link, operated by OTC Markets Group Inc., has discontinued the display of Talon Real Estate Holding Corp.'s common stock (symbol "TALR"); OTC's website currently displays a Caveat Emptor/Grey Market warning, illustrated with a skull and crossbones, for TALR common stock. See <https://www.otcmarkets.com/stock/TALR/overview> (last visited November 18, 2019), of which official notice is taken pursuant to Rule of Practice 323, 17 C.F.R. § 201.323.

<sup>8</sup> 15 U.S.C. § 78l(j).

<sup>9</sup> 17 C.F.R. §§ 240.13a-1, 13a-13.

<sup>10</sup> *Citizens Capital Corp.*, Exchange Act Release No. 67313, 2012 WL 2499350, at \*5 & n.25 (June 29, 2012) (citing *Ponce v. SEC*, 345 F.3d 722, 737 n.10 (9th Cir. 2003); accord *SEC v. McNulty*, 137 F.3d 732, 740-41 (2d Cir. 1998)).

In evaluating the Division's motion for summary disposition, we have viewed the facts in the light most favorable to Talon.<sup>11</sup> But Talon, as noted, does not dispute the facts that constitute the alleged violations. Talon admits to not having filed its annual reports on Form 10-K for the fiscal years ended December 31, 2017 and December 31, 2018, and its quarterly reports on Form 10-Q for the quarters ended June 30, 2017 and thereafter. Although it has now filed a Form 10-K for the fiscal year ended December 31, 2016, and a Form 10-Q for the period ended March 31, 2017, it is undisputed that such reports were delinquent by two years at the time of their filing. We therefore find that there is no genuine issue of material fact that Talon violated Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder, and that the registration of the classes of its securities is therefore subject to revocation under Exchange Act Section 12(j).<sup>12</sup>

**B. Revocation under Exchange Act Section 12(j) is warranted.**

In *Gateway International Holdings, Inc.*, we established a multi-factor test to use in determining an appropriate sanction when an issuer has failed to make required filings:

[W]e will consider, among other things, 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.<sup>13</sup>

Although these factors are nonexclusive, and no single factor is dispositive,<sup>14</sup> “[w]e have held that a respondent’s repeated failure to file its periodic reports on time is ‘so serious’ a violation of the Exchange Act that only a ‘strongly compelling showing’ regarding the other *Gateway* factors would justify a sanction less than revocation.”<sup>15</sup>

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<sup>11</sup> See *Jay T. Comeaux*, Advisers Act Release No. 3902, 2014 WL 4160054, at \*2 (Aug. 21, 2014) (“The facts on summary disposition must be viewed in the light most favorable to the non-moving party”) (citing *Robert L. Burns*, Advisers Act Release No. 3260, 2011 WL 3407859, at \*9 (Aug. 5, 2011)).

<sup>12</sup> See *Citizens Capital*, 2012 WL 2499350, at \*8 (stating that “summary disposition is appropriate in proceedings like this one brought pursuant to Exchange Act Section 12(j), where the issuer has not disputed the facts that constitute the violation”).

<sup>13</sup> *Gateway Int’l Holdings, Inc.*, Exchange Act Release No 53907, 2006 WL 1506286, at \*4 & n.27 (May 31, 2006) (citing *Steadman v. SEC*, 603 F.2d 1126, 1139-40 (5th Cir. 1979)).

<sup>14</sup> *China-Biotics, Inc.*, Exchange Act Release No. 70800, 2013 WL 5883342, at \*12 (Nov. 4, 2013).

<sup>15</sup> *Calais Res., Inc.*, Exchange Act Release No. 67312, 2012 WL 2499349, at \*4 (June 29, 2012) (quoting *Nature’s Sunshine Products, Inc.*, Exchange Act Release No. 59268, 2009 WL 137145, at \*7 (Jan. 21, 2009)); *accord Cobalis Corp.*, Exchange Act Release No. 64813, 2011

(continued...)

**1. Talon’s violations are serious, recurrent, and show a high degree of culpability.**

We find, and Talon concedes, that its violations are serious. Such a finding is consistent with extensive Commission precedent that has deemed missed filings of a duration and quantity similar to those at issue here to be serious.<sup>16</sup> We further find—contrary to Talon’s unsupported claim that the violations were “isolated and not recurrent”—that the violations, which at the time of the OIP involved seven missed filings over two years, were recurrent.<sup>17</sup>

Talon’s violations also evidence a high degree of culpability. As discussed above, Talon had failed to file seven reports over two years at the time of the OIP, and we have held that “a long history of ignoring . . . reporting obligations under the Exchange Act evidences a high degree of culpability.”<sup>18</sup> And while Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 do not have a scienter requirement, a violation committed in knowing disregard of regulatory responsibilities is relevant to our determination of an appropriate sanction.<sup>19</sup>

Substantial evidence that Talon engaged in knowing misconduct here, therefore, undermines the company’s claim that it “lacked the scienter required for willful misconduct.”<sup>20</sup> In 2017, Talon’s management, including its current CEO, was informed by Commission staff that it had been, at that time, delinquent in its Exchange Act filings for over a year. Moreover, this communication from the staff was contemporaneous with the resignation of the company’s

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WL 2644158, at \*5 (July 6, 2011); *Am. Stellar Energy, Inc.*, Exchange Act Release No. 64897, 2011 WL 2783483, at \*4 (July 18, 2011).

<sup>16</sup> See, e.g., *Accredited Bus. Consolidators*, Exchange Act Release No. 75840, 2015 WL 5172970, at \*1 (Sept. 4, 2015) (two annual and five quarterly reports over two years); *China-Biotics*, 2013 WL 5883342, at \*10 (failure to “file a single periodic report for more than a year and a half”); *Impax Labs*, Exchange Act Release No. 57864, 2008 WL 2167956, at \*7 (May 23, 2008) (two annual and six quarterly delinquent filings over a period of more than three years); *Gateway*, 2006 WL 1506286, at \*5 (“seven annual and quarterly reports” over the course of eighteen months).

<sup>17</sup> See, e.g., *China-Biotics*, 2013 WL 5883342, at \*10 (finding a year and a half of violations to be recurrent); *Impax*, 2008 WL 2167956, at \*7 (finding two annual and six quarterly delinquent filings to be recurrent).

<sup>18</sup> *Calais Res.*, 2012 WL 2499349, at \*4 & n.26 (internal quotation marks omitted) (citing *Am.’s Sports Voice, Inc.*, Exchange Act Release No. 55511, 2007 WL 858747, at \*3 (Mar. 22, 2007)).

<sup>19</sup> *Gateway*, 2006 WL 1506286, at \*5 & n.28.

<sup>20</sup> We note, however, that Exchange Act Section 12(j) does not include a requirement that the violations have been willful in order to impose sanctions on the violator.

auditors, who identified material weaknesses in Talon’s internal controls. Despite these warnings from both regulators and the outside auditing firm it retained, Talon continued (and continues) to fail to comply with its reporting requirements under the Exchange Act.

**2. Talon’s remedial efforts of filing one delinquent annual report and one delinquent quarterly report and drafting other delinquent reports are insufficient to show that revocation is not appropriate.**

Talon asserts that it is “working systematically to remedy its delinquencies,” and has included with its pleadings early drafts of some, but not all, of the missing reports.<sup>21</sup> Despite these efforts, revocation is warranted. A company’s “efforts to comply” must be considered “under the specific facts and circumstances of each case” and “weighed against” the other factors discussed above.<sup>22</sup> As relevant here, we have held that revocation is necessary and appropriate in the public interest notwithstanding a company’s “concerted efforts to avoid and correct its reporting failures” where the company “cannot credibly identify when it will become current on its reporting obligations.”<sup>23</sup> One factor we consider in making this determination “is whether the issuer is able to adhere to reasonable schedules that the issuer has proposed for the fulfillment of delinquent filing obligations.”<sup>24</sup> Here, Talon has repeatedly missed its own estimates for when it would be able to file its delinquent reports. As a result, Talon remains delinquent on ten required quarterly and annual reports. It is unclear when, if ever, those reports will be filed. In the meantime, current and prospective investors remain deprived of the ability “to make informed investment decisions based on current and reliable information.”<sup>25</sup>

Under these circumstances, a sanction other than revocation would fail to protect the public from an issuer like Talon who “‘fail[s] to file periodic reports when due over an extended period of time’ and ‘make[s] last minute filings’ only after becoming the subject of Exchange

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<sup>21</sup> In its opposition to the Division’s motion for summary disposition, Talon states that it “has committed to the schedule attached to this filing as Exhibit D.” But Exhibit D, an affidavit from a partner at Talon’s new certified public accounting firm, does not contain a schedule at all. It merely lists the same filings that the company lists as “prepared” or “drafted” in other parts of its pleadings. In each instance, the partner states that she has “not approved this document for filing at this time.” The affidavit contains no projected dates for filing those drafts and includes no discussion whatsoever of filings for fiscal years 2018 or 2019.

<sup>22</sup> *Impax*, 2008 WL 2167956, at \*11.

<sup>23</sup> *Id.*

<sup>24</sup> *Calais Res.*, 2012 WL 2499349, at \*7 (quoting *Am. Stellar Energy*, 2011 WL 2783483, at \*5); *see also Gateway*, 2006 WL 1506286, at \*6 & n.34 (noting, in support of revocation, that respondent had repeatedly “insisted that it intends to return to full compliance, yet its efforts repeatedly fall short”).

<sup>25</sup> *Accredited Bus. Consolidators*, 2015 WL 5172970, at \*2 & n.12 (citing *Impax*, 2008 WL 2167956, at \*7).

Act Section 12(j) proceedings.”<sup>26</sup> “Such conduct prolongs ‘indefinitely the period during which public investors [are] without accurate, complete, and timely reports,’ significantly undermines Exchange Act[] reporting requirements, and must be addressed with meaningful sanctions.”<sup>27</sup>

Here, Talon has not provided an adequate explanation for either its delinquencies or its failures to correct them and file all delinquent reports. “It would be contrary to the public interest to allow [Talon] to continue to have its securities registered with the Commission when its conduct creates substantial reason to doubt that it will provide investors with timely, accurate, and material information in the future.”<sup>28</sup>

### **3. Talon’s assurances against future violations are unconvincing.**

Talon attempts to provide assurances against future violations by attributing its delinquencies to the health of a senior official who became disabled in 2018 and who had previously played a central role in the company’s compliance efforts. According to Talon, the disabled official, who “remains as [the] official CFO,” no longer has an active role with the company. Talon represents that it has hired a new part-time CFO who is now responsible for “the preparation and filing of the financial statements and notes.”

The modification of the disabled official’s role is of limited relevance in assessing Talon’s ability and willingness to carry out its future reporting duties. Kaminski appears to bear responsibility for the company’s delinquencies. He was the addressee of Baker, Tilly’s resignation letter, which identified material weaknesses in Talon’s internal controls. He was the chairman of Talon’s board in December 2017 (when Talon stated in its response to the delinquency letter from Corporation Finance staff that the board was “outlining what it would take to be in full compliance”). And he signed Forms 12b-25 asserting that Talon would file its delinquent reports by deadlines that it missed. Yet Kaminski remains CEO and board chairman.<sup>29</sup>

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<sup>26</sup> *Calais Res.*, 2012 WL 2499349, at \*7 (quoting *Nature’s Sunshine*, 2009 WL 137145, at \*8).

<sup>27</sup> *Id.* (quoting *Am. Stellar Energy*, 2011 WL 2783483, at \*7). If, after revocation, Talon is able to meet the applicable requirements, it may file a Form 10 to re-register its securities under Exchange Act Section 12(g). *Id.* at \*7 n.45 (citing 15 U.S.C. § 78l(g)).

<sup>28</sup> *Absolute Potential, Inc.*, Exchange Act Release No. 71866, 2014 WL 1338256, at \*8 (Apr. 4, 2014).

<sup>29</sup> *See Advanced Life Sciences Holdings, Inc.*, Exchange Act Release No. 81253, 2017 WL 3214455, at \*3-4 (July 28, 2017) (finding assurances against future violations not credible where individual who was CEO at the time of the missed filings remained the CEO and had previously made assurances that delinquent filings would be remedied by a deadline but had missed those deadlines).

Nor are we sufficiently reassured that Talon's hiring of a new CFO will prevent future violations. Talon represents that it made that hiring more than six months ago, yet it has failed to correct the delinquencies cited in the OIP or prevent new delinquencies from occurring.

Talon also states that one of its directors engaged in "harassing tactics toward the former auditors and former counsel [that] prevented the original filing of the Form 10-K for fiscal year 2016." To the extent Talon claims that this director was responsible for this reporting failure and that his removal as a director is an assurance against future violations, this fact is also of limited relevance given that Kaminski remains as CEO and board chairman. In any case, this claim does not explain Talon's other reporting failures or its failure to correct them.

Talon, noting that it had a net operating loss of \$11,824,070.00 as of December 31, 2017, also attributes its violations to financial troubles that it asserts have improved. According to Talon's briefing, it is now "able to incur the costs associated with its reporting obligations"; has spent "significant dollars . . . to assure its . . . compliance with the reporting requirements"; and has "established significant reporting controls" and "developed and implemented the internal controls necessary for regulatory compliance."<sup>30</sup> But the record does not include any evidence showing the source of Talon's improved finances, the extent to which its finances have improved, or the likelihood that any improvement will continue in the future. Although Talon states that it has now "obtained sufficient funding to pay the prior auditors to release the prior workpapers and fund the compliance requirements," it offers nothing to substantiate that claim. And the developments Talon identifies—personnel changes and the retention of new counsel and a new auditor, along with a settlement with its former auditor—while positive, are not themselves sufficient on this record to establish the presence of significant reporting controls or the internal controls necessary for regulatory compliance. Indeed, Talon has become delinquent on additional required periodic filings despite these developments.

Under these circumstances, any improvement in Talon's finances is insufficient to provide assurances against future violations. Talon's "protracted delinquencies, unpersuasive explanation for those delinquencies, and the absence of concrete remedial changes to ensure compliance demonstrate that [Talon] is likely to violate the reporting requirements in the future regardless of the viability of its funding resources."<sup>31</sup>

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<sup>30</sup> See generally, e.g., *China-Biotics*, 2013 WL 5883342, at \*6 & n.40 (citing Exchange Act Rule 13a-15(e), 17 C.F.R. § 240.13a-15(e), for the definition of "disclosure controls and procedures" and Exchange Act Rule 13a-15(f), 17 C.F.R. § 240.13a-15(f), for the definition of "internal control over financial reporting").

<sup>31</sup> See *Absolute Potential*, 2014 WL 1338256, at \*5 (finding that "assurances of future compliance [were] not credible" even assuming that newfound funding of company's operations would continue and that company "had sufficient funds to meet its periodic filing obligations" given company's "protracted delinquencies, unpersuasive explanation for those delinquencies, and the absence of concrete remedial changes to ensure future compliance").

Talon further asserts that the company's management, along with its new accountants and other outside professionals, "have all agreed that the company can and will maintain its quarterly filing once caught up." But the company's financial troubles, extensive record of failing to meet self-imposed deadlines, and continuity of senior management make us doubt the reliability of its assurances. In any case, we find that the company's vague assurances and belated and insufficient remedial steps fall short of the "strongly compelling showing" necessary to justify a sanction less than revocation in light of its serious and recurrent violations.<sup>32</sup>

### C. Talon's arguments against revocation are unpersuasive.

We find no merit in Talon's argument that we should not revoke its registration because doing so may have "a punitive effect" on the company's shareholders "by further depriving the shareholders of an opportunity to bring [Talon] back into compliance."<sup>33</sup> The "extent of any harm that may result to existing shareholders [from revocation] cannot be the determining factor in our analysis"; rather, "[i]n evaluating what is necessary or appropriate to protect investors, 'regard must be had not only for existing stockholders of the issuer, but also for potential investors.'"<sup>34</sup> Here, both current and prospective investors lack "timely reports that accurately reflect the company's current financial situation."<sup>35</sup> "Revocation is a prospective remedy and is imposed based on our concern about protecting future investors in the company."<sup>36</sup>

Talon also lists a number of affirmative defenses in its answer, but Talon has not developed these defenses in its briefing opposing the Division's motion for summary disposition and we find them to be unsupported and unpersuasive. First, Talon asserts that "the Commission lacks authority to conduct the proceedings herein." To the contrary, Exchange Act Section 12(j) explicitly authorizes the Commission to bring this proceeding.

<sup>32</sup> See *id.* at \*5 n.35 (finding unpersuasive and insufficient company's "vague representations" that it would take "all necessary steps to ensure ongoing compliance" and that it had established "regular and reliable relationships with new accountants and auditors").

<sup>33</sup> We have previously noted that, under certain circumstances, registrants such as Talon, which are unable or unwilling to continue to comply with reporting requirements, have the option of deregistering their stock under the Exchange Act, by filing a Form 15. See *Gateway*, 2006 WL 1506286, at \*2 & n.10 (setting forth the requirements for deregistration of an issuer's securities). In its November 30, 2017 delinquency letter, the Division of Corporation Finance requested that Talon "please consider whether [it] is eligible to terminate its registration under the [Exchange Act]," and explained the process for filing a Form 15. Talon's filings indicate that it had fewer than 300 stockholders of record, and thus may have been eligible for deregistration. But there is no evidence that the company ever sought deregistration as a means of dealing with its filing problems.

<sup>34</sup> *Id.* at \*7 (quoting *Great Grass Oils Ltd.*, 37 S.E.C. 683, 698 (1957)).

<sup>35</sup> *Id.* at \*6.

<sup>36</sup> *Citizens Capital*, 2012 WL 2499350, at \*8 & n.50.

Second, Talon contends that the allegations in the OIP “fail to state a claim upon which the Commission can render sanctions.” We interpret this as a request for a ruling on the pleadings under Commission Rule of Practice 250(a).<sup>37</sup> Under that rule, we would have to find that, “even accepting all of the [Division’s] allegations as true and drawing all reasonable inferences in the [Division’s] favor, [Talon] is entitled to a ruling as a matter of law.”<sup>38</sup> For all of the reasons set forth above, Talon has not met this standard.

Third, Talon claims that the allegations against it are “barred by laches.” But the defense of laches—which bars, in equity, claims that are not timely pursued<sup>39</sup>—is not available against federal agencies acting to protect the public interest.<sup>40</sup> And, in any event, this proceeding was instituted just one month after Talon’s most recent charged violation.

Fourth, Talon states that this proceeding is “inconsistent with Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder.” To the contrary, Section 13(a) and Rules 13a-1 and 13a-13 set forth the requirements for public registrants to file periodic reports. Talon admits it has failed to meet those requirements. Exchange Act Section 12(j) authorizes us to revoke the registration of a class of an issuer’s securities if we find that it has failed to comply with any provision of the Exchange Act or its rules and regulations. Accordingly, this proceeding is entirely consistent with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13.

Fifth, Talon claims that the sanction of revocation is punitive “against [Talon] and indispensable parties who have not had an opportunity for appearance herein, and on that basis, it would be unconstitutional for the Commission to take any disciplinary action based thereon.” As noted above, we have repeatedly held that revocation is a prospective remedial sanction and is

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<sup>37</sup> 17 C.F.R. § 201.250(a); *see also Amendments to the Commission’s Rules of Practice*, Exchange Act Release No. 78319, 2016 WL 3853756, at \*22 & n.110 (July 13, 2016) (describing a motion under Rule 250(a) as “analogous to Rules 12(b)(6) and 12(c) of the Federal Rules of Civil Procedure, Fed.R.Civ.P. 12(b)(6) (failure to state a claim upon which relief can be granted); 12(c) (judgment on the pleadings)”).

<sup>38</sup> 17 C.F.R. § 201.250(a).

<sup>39</sup> *See Black’s Law Dictionary* 879 (11th ed. 2019) (defining laches as “the equitable doctrine by which a court denies relief to a claimant who has unreasonably delayed in asserting the claim, when that delay has prejudiced the party against whom relief is sought”); *Robert E. Kauffman*, Exchange Act Release No. 33219, 1993 WL 483323, at \*2 & n.7 (“A successful laches defense requires: 1) a lack of diligence by the party against whom the defense is asserted; and 2) prejudice to the party asserting the defense”) (citing *Hecht v. Harris, Upham & Co.*, 430 F.2d 1202, 1208 (9th Cir. 1970)).

<sup>40</sup> *See Michael T. Studer*, Exchange Act Release No. 50411, 2004 WL 2104496, at \*3 & n.10 (Sept. 20, 2004); *accord United States v. Summerlin*, 310 U.S. 414, 416 (1940); *United States v. Alvarado*, 5 F.3d 1425, 1427 (11th Cir. 1993); *SEC v. Thorn*, No. 2:01-cv-290, 2002 U.S. Dist. LEXIS 21510, at \*7 (S.D.N.Y. Sept. 30, 2002)).

not punitive in nature.<sup>41</sup> In any case, Talon has had the opportunity to participate in this proceeding. It does not identify any other “indispensable parties” or how they have been denied the opportunity to participate. Nor does it identify the constitutional defect in the proceeding.

Finally, Talon claims that “the relief sought in [the OIP] is vague and ambiguous.” To the contrary, the relief sought in the OIP is specific and clear—“[w]hether it is necessary and appropriate for the protection of investors to . . . revoke the registration of each class of [Talon’s] securities registered pursuant to Section 12 of the Exchange Act . . . .” We find that it is.

### III. Conclusion

The “reporting requirements are the primary tools which Congress has fashioned for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of stock and securities.”<sup>42</sup> As a result, an issuer’s failure to file periodic reports violates “a central provision of the Exchange Act, . . . depriv[ing] both existing and prospective holders of its registered stock of the ability to make informed investment decisions based on current and reliable information.”<sup>43</sup> Talon engaged in serious and recurrent violations of these critically important provisions over an extended period and did so with a high degree of culpability. Although it has taken certain actions to return to compliance, it remains delinquent; furthermore, the record establishes substantial reason to doubt its ability to avoid delinquencies in the future. We find, therefore, that Talon has not made the requisite “strongly compelling showing” that would justify a sanction other than revocation. Given our findings and our determination that there is no genuine issue with regard to any material fact, we grant the Division’s motion for

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<sup>41</sup> See *supra* notes 33-36 and accompanying text; see also *China-Biotics*, 2013 WL 5883342, at \*13 (rejecting argument that revocation under Section 12(j) was punitive).

<sup>42</sup> *Am. ’s Sports Voice*, 2007 WL 858747, at \*4 & n.17 (internal quotation marks omitted) (citing *SEC v. Beisinger Indus. Corp.*, 552 F.2d 15, 18 (1st Cir. 1977)).

<sup>43</sup> *Accredited Bus. Consolidators*, 2015 WL 5172970, at \*2; see also *United States v. Arthur Young & Co.*, 465 U.S. 805, 810 (1984) (observing that “[c]orporate financial statements are one of the primary sources of information available to guide the decisions of the investing public”).

summary disposition and revoke the registration of all classes of the registered securities of Talon Real Estate Holding Corp. as necessary and appropriate for the protection of investors.

An appropriate order will issue.<sup>44</sup>

By the Commission (Chairman CLAYTON and Commissioners JACKSON, PEIRCE, ROISMAN, and LEE).

Vanessa A. Countryman  
Secretary

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<sup>44</sup> We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

## EXHIBIT 1

*Talon Real Estate Holding Corp.*  
Admin. Proc. File No. 3-18811

### Summary of Talon's Delinquent Filings at the time of the OIP

No.	Report	Period Ending	Due Date For Filing Report <sup>45</sup>	Delinquency Corrected	
				Date	How Late
01	10-K	12/31/2016	03/31/2017 <sup>46</sup>	04/17/2019	2 years, 0 months
02	10-Q	03//31/2017	05/15/2017 <sup>47</sup>	06/07/2019	2 years, 0 months
03	10-Q	06/30/2017	08/14/2017 <sup>48</sup>	Still delinquent	
04	10-Q	09/30/2017	11/14/2017	Still delinquent	
05	10-K	12/31/2017	03/31/2018	Still delinquent	
06	10-Q	03/31/2018	05/15/2018	Still delinquent	
07	10-Q	06/30/2018	08/14/2018	Still delinquent	

### Summary of Delinquent Filings for Period after OIP

<sup>45</sup> Pursuant to Exchange Act Rule 13a-1 and General Instruction A.2 to Form 10-K, non-accelerated filers such as Talon are required to file annual reports with the Commission no later than ninety calendar days after the end of the period covered by the report. 17 C.F.R. § 240.13a-1 and 17 C.F.R. § 249.310. Pursuant to Exchange Act Rule 13a-13 and General Instruction A.1. to Form 10-Q, non-accelerated filers are required to file quarterly reports with the Commission no later than forty-five calendar days after the end of the period covered by the report. 17 C.F.R. § 240.13a-13 and 17 C.F.R. § 249.308a.

<sup>46</sup> Talon filed a Form 12b-25 for this report stating that it “expect[ed] to be in a position to file the Form 10-K within 15 days after March 31, 2017.” It filed the report on April 17, 2019. Kaminski was listed as the “person to contact” regarding the notification on the Form 12b-25.

<sup>47</sup> Talon filed a Form 12b-25 for this report, signed by Kaminski, stating that it “expect[ed] to be in a position to file the Form 10-Q within 5 days after May 15, 2017.” It filed the report on June 7, 2019.

<sup>48</sup> Talon filed a Form 12b-25 for this report, signed by Kaminski, stating that it “expect[ed] to be in a position to file the Form 10-Q within 5 days after August 14, 2017.” It has not filed the report.

No.	Report	Period Ending	Due Date For Filing Report	Delinquency Corrected	
				Date	How Late
08	10-Q	09/30/2018	11/14/2018	Still delinquent	
09	10-K	12/31/2018	03/31/2019 <sup>49</sup>	Still delinquent	
10	10-Q	03/31/2019	05/15/2019	Still delinquent	
11	10-Q	06/30/2019	08/14/2019	Still delinquent	
12	10-Q	09/30/2019	11/14/2019	Still delinquent	

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<sup>49</sup> Talon filed a Form 12b-25 for this report, signed by Kaminski, checking a box stating that the filing would be made by “the fifteenth calendar day following the prescribed due date,” *i.e.*, 4/15/2019, “due to unanticipated delays in the preparation of its financial reports.” It has not filed the report. Talon also incorrectly checked “Yes” in response to the question: “Have all other periodic reports required under Section 13 or 15(d) of the Securities Exchange Act of 1934 . . . during the preceding 12 months . . . been filed?”

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 87614 / November 25, 2019

Admin. Proc. File No. 3-18811

In the Matter of  
TALON REAL ESTATE HOLDING CORP.

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's order issued this day, it is

ORDERED that the registration of all classes of the registered securities of Talon Real Estate Holding Corp. under Section 12(g) of the Securities Exchange Act of 1934 is hereby revoked pursuant to Exchange Act Section 12(j).

The revocation is effective as of November 26, 2019.

By the Commission.

Vanessa A. Countryman  
Secretary