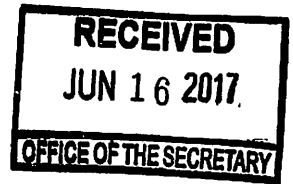


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-17941

In the Matter of

AXESSTEL, INC.

Respondent.

**DIVISION OF ENFORCEMENT'S MOTION FOR
RULING ON THE PLEADINGS AND SUMMARY DISPOSITION
AS TO AXESSTEL, INC. AND BRIEF IN SUPPORT**

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MOTION FOR RULING ON THE PLEADINGS AND SUMMARY DISPOSITION

The Division of Enforcement (“Division”), pursuant to Commission Rules of Practice 154 and 250, respectfully submits this motion for a ruling on the pleadings and summary disposition revoking the registration of each class of securities of Axesstel, Inc. (“Axesstel”) registered pursuant to Section 12 of the Securities and Exchange Act of 1934 (“Exchange Act”). There is no genuine issue concerning any material fact and, pursuant to Exchange Act Section 12(j), the Division, as a matter of law, is entitled to an order revoking the registration of each class of securities of Axesstel registered pursuant to Exchange Act Section 12.

BRIEF IN SUPPORT

I. Statement of Facts

Axesstel is a Nevada corporation located in San Diego with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). (Commission’s Order Instituting Proceedings (“OIP”), ¶ II.1; Axesstel’s Form 8-A filed April 28, 2004, Exhibit (“Ex.”) 1 to the Declaration of Adam B. Gottlieb in Support of the Division’s Motion for Ruling on the Pleadings and Summary Disposition (“Gottlieb Decl.”).)¹ For *over three years*, since the filing of its Form 10-Q for the period ended September 30, 2013, Axesstel has failed to file any periodic reports, including annual or quarterly reports on Forms 10-K and 10-Q. (OIP, ¶ II.A.1; EDGAR printout listing all periodic filings for Axesstel, Gottlieb Decl. Ex. 2.) In its Answer to the OIP, Axesstel “readily concedes that it has not made its periodic filings . . . for several years.” (Axesstel’s Response to May 17, 2017 Order to Show Cause at 1, Gottlieb Decl., Ex. 7.)

¹ The Division asks that pursuant to Rule of Practice 323, the Court take official notice of this and all other information and filings on EDGAR referred to in this brief and/or filed as exhibits with the Gottlieb Decl. In order to reduce the volume of these pleadings, the Division may excerpt larger EDGAR documents, with the full documents being available on EDGAR.

As a result, there is no current and accurate financial information about Axesstel available to investors.

On October 31, 2016, the Commission's Division of Corporation Finance ("Corporation Finance") sent by certified mail to Axesstel a delinquency letter that stated that Axesstel appeared to be delinquent in its periodic filings and warned that it could be subject to revocation, and to a trading suspension pursuant to Exchange Act Section 12(k), without further notice if it did not file its required reports within fifteen days of the date of the letter. (Corporation Finance Delinquency Letter to Axesstel dated October 31, 2016, Gottlieb Decl., Ex. 3.) The delinquency letter was delivered to Axesstel on or before November 7, 2016. (USPS Certified Mail Return Receipt, Gottlieb Decl. Ex. 4.)

On April 24, 2017, the same day that the OIP was issued, the Commission issued a ten-day trading suspension for Axesstel stock (symbol AXST) that was then trading on the OTC Link (previously, "Pink Sheets") operated by OTC Markets Group, Inc. ("OTC Link") pursuant to Exchange Act Section 12(k) because Axesstel had not filed any of its periodic reports since the period ended September 30, 2013. (Order of Suspension of Trading dated April 24, 2017, Gottlieb Decl., Ex. 5.)

On May 31, 2017, Axesstel answered the Commission's OIP, admitting its violations. (Gottlieb Decl., Ex. 7.) On June 8, 2017, the Court ordered that any motion for summary disposition be filed by June 16, 2017. (Order, Gottlieb Decl., Ex. 8.) As of June 16, 2017, Axesstel continues to be delinquent in its periodic reports (Gottlieb Decl., Ex. 2.) Further, Axesstel has neither made any commitment to become current in its filings, nor taken any steps to do so. Indeed, Axesstel has acknowledged that it has not filed its required periodic reports, as alleged in the OIP, and has no intention of curing its delinquencies because "[i]t has not had the

financial resources to engage an independent audit firm that would audit its annual financial statements or review interim financial statements and bring its periodic filings current.”

(Gottlieb Decl., Ex. 7.)

II. Argument in Support of Summary Disposition

A. Standards Applicable to the Division’s Summary Disposition Motion

Rule of Practice 250(a) permits any party to move for a ruling on the pleadings no later than 14 days after a respondent’s answer has been filed, “asserting that, even accepting all of the non-movant’s factual allegations as true and drawing all reasonable inferences in the non-movant’s favor, the movant is entitled to a ruling as a matter of law.” Rule of Practice 250(b) provides that any party may make a motion for summary disposition after a respondent’s answer has been filed and documents have been made available to the respondent,² and authorizes a hearing officer to grant such a motion if “there is no genuine issue with regard to any material fact and . . . the movant is entitled to summary disposition as a matter of law.” *See Michael Puorro*, Initial Decision Rel. No. 253, 2004 SEC LEXIS 1348, at *3 (June 28, 2004) citing Rule of Practice 250; *Garcis, U.S.A.*, Securities Exchange Act of 1934 Rel. No. 38495, 1997 SEC LEXIS 838 (April 10, 1997) (granting motion for summary disposition). As one Administrative Law Judge explained:

By analogy to Rule 56 of the Federal Rules of Civil Procedure, 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 may not rest upon the mere allegations or denials of its pleadings. At

² On May 4, 2017, the Division sent a letter notifying Axesstel that “documents related to this matter are available for inspection and copying,” pursuant to SEC Rule of Practice § 201.230, at the SEC’s headquarters in Washington, D.C. (Gottlieb Decl., Ex. 9.)

the summary disposition stage, the hearing officer's function is not to weigh the evidence and determine the truth of the matter, but rather to determine whether there is a genuine issue for resolution at a hearing. See *Anderson*, 477 U.S. at 249.

Edward Becker, Initial Decision Rel. No. 252, 2004 SEC LEXIS 1135, at *5 (June 3, 2004).

This administrative proceeding was instituted under Exchange Act Section 12(j). Section 12(j) empowers the Commission, where it deems it "necessary and appropriate for the protection of investors" to either suspend (for a period not exceeding twelve months) or permanently revoke a security's registration "if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder." It is appropriate to grant summary disposition and revoke an issuer's registration in a Section 12(j) proceeding where, as here, there is no dispute that the registrant has failed to comply with Exchange Act Section 13(a). See *AIC International, Inc.*, Initial Decision Rel. No. 324, 2006 SEC LEXIS 2996 (December 27, 2006); *Bilogic, Inc.*, Initial Decision Rel. No. 322, 2006 SEC LEXIS 2596, at *12 (November 9, 2006); *iBiz Technology Corp.*, Initial Decision Rel. No. 312, 2006 SEC LEXIS 1406, at *11 (June 16, 2006); *St. George Metals, Inc.*, Initial Decision Rel. No. 298, 2005 SEC LEXIS 2465, at *12 (September 29, 2005); *Investco, Inc.*, Initial Decision Rel. No. 240, 2003 SEC LEXIS 2792, at *7 (November 24, 2003); *Nano World Projects Corp.*, Initial Decision Rel. No. 228, 2003 SEC LEXIS 1968, at *3 (May 20, 2003).

B. The Division is Entitled to Summary Disposition Against Axesstel for its Failures to Comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 Thereunder

Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file periodic and other reports with the Commission. Exchange Act Rule 13a-1 requires issuers to submit annual reports, and

Exchange Act Rule 13a-13 requires issuers to submit quarterly reports. No showing of scienter is necessary to establish a violation of Section 13(a) or the rules thereunder. *Telestone Technologies Corp.*, Initial Decision Rel. No. 1078 at 2, 2016 SEC LEXIS 4185, at *4 (November 9, 2016); *accord Gateway*, 2006 SEC LEXIS 1288, at *18, 22 n.28; *Stansbury Holdings Corp.*, Initial Decision Rel. No. 232, 2003 SEC LEXIS 1639, at *15 (July 14, 2003); *WSF Corp.*, Initial Decision Rel. No. 204, 2002 SEC LEXIS 1242, at *14 (May 8, 2002).

Section 13(a) is a cornerstone of the Exchange Act, establishing a system of periodically reporting vital information about issuers of securities. The Commission has stated:

Failure to file periodic reports violates a central provision of the Exchange Act. The purpose of the periodic filing requirements is to supply investors with current and accurate financial information about an issuer so that they may make sound decisions. Those requirements are “the primary tool[s] which Congress has fashioned for the protection of investors from negligent, careless, and deliberate misrepresentations in the sale of stock and securities.” Proceedings initiated under Exchange Act Section 12(j) are an important remedy 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, complete, and timely information upon which to make informed investment decisions.

Gateway International Holdings, Inc., Exchange Act Rel. No. 53907, 2006 SEC LEXIS 1288, at *26 (May 31, 2006) (“*Gateway*”), quoting *SEC v. Beisinger Indus. Corp.*, 552 F.2d 15, 18 (1st Cir. 1977).

Revocation of a Section 12 issuer’s registration on a motion for summary disposition is wholly appropriate where, as here, Axesstel has failed to comply with Section 13(a). See *AIC International, Inc.*, 2006 SEC LEXIS 2996 (summary disposition granted in Section 12(j) action); *Bilogic, Inc.*, 2006 SEC LEXIS 2596, at *12 (same); *Investco, Inc.*, Initial Decision Rel. No. 312, 2003 SEC LEXIS 2792, at *7 (November 24, 2003); *Nano World Projects Corp.*, Initial Decision Rel. No. 228, 2003 SEC LEXIS 1968, at *3 (May 20, 2003) (summary disposition in Exchange Act Section 12(j) action granted where certifications on filings and respondent’s

admission established failure to file annual or quarterly reports).

There is no dispute that Axesstel had failed to file thirteen periodic reports when this proceeding was instituted. Indeed, Axesstel admitted that it had failed to file period reports in its answer to the OIP. (Gottlieb Decl., Ex. 7.) Given the central importance of the reporting requirements imposed by Section 13(a) and the rules thereunder, Administrative Law Judges have found delinquencies of far shorter duration than Axesstel's warrant revocation. *WSF Corp.*, 2002 SEC LEXIS 1242, at *14 (one Form 10-K and three Forms 10-Q); *Freedom Golf Corp.*, Initial Decision Release No. 227, 2003 SEC LEXIS 1178, at *5 (May 15, 2003) (one Form 10-K and one Form 10-Q); *iBIZ Technology Corp.*, Initial Decision Rel. No. 312 at 1 (June 16, 2006) (one Form 10-K and two Forms 10-Q).

C. Revocation is the Appropriate Sanction for Axesstel's Many and Repeated Violations of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 Thereunder

Exchange Act Section 12(j) provides that the Commission may revoke or suspend the Exchange Act Section 12 registration of an issuer's securities where it is "necessary or appropriate for the protection of investors." The Commission's determination about which sanction is appropriate "turns on 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*, 2006 SEC LEXIS 1288, at *19-20. In making this determination, the Commission has said it will consider, among other things: (1) the seriousness of the issuer's violations; (2) the isolated or recurrent nature of the violations; (3) the degree of culpability involved; (4) the extent of the issuer's efforts to remedy its past violations and ensure future compliance; and (5) the credibility of the issuer's assurances, if any, against future violations. *Id.*; see also *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979) (setting forth the public interest factors that informed the Commission's *Gateway* decision). Although no one factor is

controlling, *Stansbury*, 2003 SEC LEXIS 1639, at *14-15 and *WSF Corp.*, 2002 SEC LEXIS 1242, at *5, *18, the Commission has recently reaffirmed that “‘recurrent failure to file periodic reports’ is ‘so serious that only a strongly compelling showing with respect to the other factors we consider would justify a lesser sanction than revocation.’” *Absolute Potential, Inc. (f/k/a Absolute Waste Services, Inc.)*, Exchange Act Rel. No. 71866, 2014 SEC LEXIS 1193, at *24 (April 4, 2014) (quoting *Impax Laboratories, Inc.*, Securities Exchange Act of 1934 Rel. No. 57864, 2008 SEC LEXIS 1197, at *27 (May 23, 2008)).

1. Axesstel’s violations of Section 13(a) are serious and egregious

The record in this proceeding shows that Axesstel’s violations are serious and egregious. At the time this proceeding was instituted, Axesstel had failed to file thirteen consecutive periodic reports, including four Forms 10-K and nine Forms 10-Q, leaving investors without important information about the company for more than three years. (Gottlieb Decl., Ex. 2.)

Given the central importance of the reporting requirements imposed by Section 13(a) and the rules thereunder, Administrative Law Judges have found violations of these provisions of the same and of shorter duration to be egregious, and here, Axesstel’s violations support an order of revocation for each class of its securities. For example, in *Absolute*, during the pendency of the administrative proceeding, the issuer filed all of its delinquent reports and became current in its filings. *Absolute*, 2014 SEC LEXIS 1193, at *21. Notwithstanding this fact, the Commission revoked its registration because, among other things, its “unpersuasive explanations for those delinquencies and the absence of concrete remedial changes to ensure compliance demonstrate that [it] is likely to violate the reporting requirements in the future.” *Id.* In another similar case, Administrative Law Judge Foelak noted that “dismissal or a lesser sanction [than revocation] would reward issuers who fail to file required periodic reports over an extended period and become current only after enforcement proceedings are brought against them, essentially

providing an automatic lengthy postponement of the prescribed filing dates for such issuers to the detriment of the public interest and investors” *Law Enforcement Associates Corp., et al. [as to Sonnen Corp.]*, Initial Decision Rel. No. 487, 2013 SEC LEXIS 1436, at *12-13 (May 15, 2013). *See also Tamir Biotechnology, Inc.*, Initial Decision Rel. No. 488, 2013 SEC LEXIS 1489, at *3-4 (May 22, 2013) (Elliot, ALJ) (issuer’s registration revoked where it was less than two year’s delinquent and brought itself current after institution).

In its answer, Axesstel begs for forgiveness and seeks to avoid revocation by baldly claiming that it is in the final negotiations of a going private transaction with an unnamed Chinese buyer. (Gottlieb Decl., Ex. 7.) Axesstel’s claim does not excuse its conduct. Indeed, it has yet to file *any* of its delinquent reports and has stated that it has no intention or ability to cure any of these delinquencies. (Gottlieb Decl., Ex. 7.) The purported interest of a prospective Chinese buyer does not change this fact. As an ALJ recently noted in an initial decision, “[w]hile the effort to file all outstanding reports may not be sufficient to avoid revocation, it is surely an effort that is necessary in order to avoid that result.” *Advanced Life Sciences Holdings, Inc.*, Initial Decision Rel. No. 1065, 2016, 2016 SEC LEXIS 3852 at *23 n.7 (internal citations omitted) (October 12, 2016) (appeal pending). Having made no such effort to cure and disclaiming any ability to do so, Axesstel cannot avoid revocation.

**2. Axesstel’s Violations of Section 13(a)
have been not just recurrent, but continuous**

Axesstel’s violations have not been unique and singular, but numerous, continuous, and ongoing. For more than three years, Axesstel has failed to file any required periodic reports, keeping the investing public largely in the dark about its finances and operations. Such recurrent and continuous conduct warrants permanent revocation. *See America’s Sports Voice, Inc.*, Exchange Act Rel. No. 55511, 2007 SEC LEXIS 1241 (Mar. 22, 2007).

3. Axesstel's repeated violations suggest a high degree of culpability

In *Gateway*, the Commission stated that, in determining the appropriate sanction in connection with an Exchange Act Section 12(j) proceeding, one of the factors it will consider is “the degree of culpability involved.” 2006 SEC LEXIS 1288, at *19-20. The Commission found that the delinquent issuer in *Gateway* “evidenced a high degree of culpability,” because it “knew of its reporting obligations, yet failed to file” twenty periodic reports and only filed two Forms 12b-25. *Gateway*, 2006 SEC LEXIS 1288, at *21. Here, Axesstel failed to make thirteen periodic filings and further failed to file any Exchange Act Forms 12b-25 to explain the reasons for these failures. (Gottlieb Decl., Ex. 2.) In admitting its failure to file periodic reports, Axesstel has also conceded its awareness with respect to its reporting obligations. Nevertheless, Axesstel neglected these reporting obligations, and additionally failed to update the Commission and investors as to why it was unable to fulfill its obligations. Consequently, Axesstel has shown more than sufficient culpability to support a grant of the Division’s requested sanction of revocation.

4. Axesstel has made no efforts to remedy its past violations and to ensure future compliance

Axesstel’s “efforts” to remedy its past violations have been non-existent. Axesstel has readily admitted that it is making no effort to become current with its reporting obligations. (Gottlieb Decl., Ex. 7.) Rather, Axesstel asserts its efforts are directed at completing a going-private transaction that Axesstel claims would benefit all current shareholders. (Gottlieb Decl., Ex. 7.) However despite these claims about benefitting current shareholders, for more than three years, Axesstel deprived its shareholders of current and accurate financial information when it failed to make its required periodic filings. Indeed, Axesstel is seeking to have its shareholders make an important investment decision—whether to participate in a tender offer—without any

current or accurate financial information. By its own representations, Axesstel has made clear that it does not intend to meet its obligations as an Exchange Act Section 12 registrant.

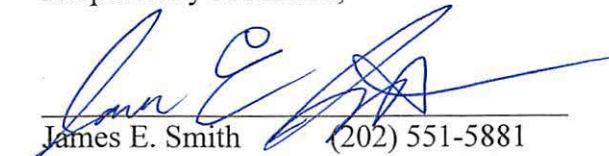
Accordingly, revocation is an appropriate sanction.³

III. Conclusion

For the reasons set forth above, the Division respectfully requests that the Administrative Law Judge grant the Division's Motion for Ruling on the Pleadings and Summary Disposition and revoke the registrations of each class of Axesstel's Exchange Act Section 12 registered securities.

Dated: June 16, 2017

Respectfully submitted,



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³ As to the fifth *Gateway* factor—assurances against future violations—Axesstel has made **no** assurances against future violations, rendering this final portion of the *Gateway* analysis unnecessary for this matter.

CERTIFICATE OF SERVICE

I hereby certify that I caused true copies of the Division of Enforcement's Motion for Ruling on the Pleadings and Summary Disposition as to Axesstel, Inc., Brief in Support, and Declaration of Adam B. Gottlieb in Support thereof and accompanying Exhibits, to be served on the following on this 16th day of June, 2017, in the manner indicated below:

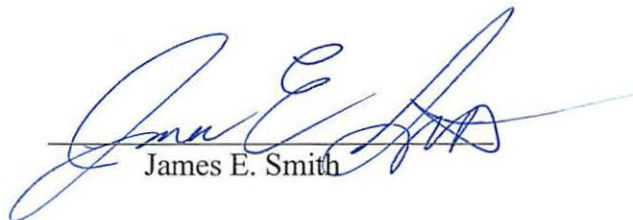
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