

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

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-21032**

**In the Matter of the Registration  
Statement of**

**ELECTROPREMIUM,**

**Respondent.**

**DIVISION OF ENFORCEMENT’S BRIEF IN OPPOSITION TO  
RESPONDENT’S PETITION FOR REVIEW FROM INITIAL DECISION<sup>1</sup>**

The Division of Enforcement (“Division”) respectfully submits this memorandum in opposition to Respondent ELECTROPREMIUM’s Petition for Review of the December 6, 2022 Initial Decision. During a hearing before ALJ Carol Fox Foelak in this stop order proceeding, at which Respondent failed to appear, the Division established that Respondent’s August 18, 2022 registration statement on Form S-1 (“Registration Statement”) omitted to state required material facts, including by failing to attach audited financial statements, and made materially false statements or omitted additional material facts necessary to make statements concerning Respondent’s purported product lines, contracts with customers, and assets not misleading. As a result, the Commission should deny the Petition, make the same factual findings as the Initial Decision, and maintain the stop order suspending the effectiveness of the Registration Statement.

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<sup>1</sup> Documents referenced here are attached to the accompanying Declaration of Joshua D. Tannen, executed March 20, 2023 (“Tannen Decl.”).

## STATEMENT OF FACTS

The Commission first instituted this proceeding on September 6, 2022 pursuant to Section 8(d) of the Securities Act of 1933 (“Securities Act”) to determine whether a stop order should issue as to the Registration Statement, which, absent Commission action, would have gone effective at 5:30 PM EDT on September 6, 2022. (Tannen Decl., Ex. A (OIP).) The Division alleged that the Registration Statement lacked audited financial statements and other essential information required by Regulation S-K and Form S-1 and that it contained false and/or misleading statements of material fact or omitted material facts necessary to make statements not misleading. (*Id.* at 1-2.) The Division specifically alleged that:

- The Registration Statement stated that Respondent had three product lines – (1) the installation of solar cells, (2) the manufacturing and design of wireless computer modems, and (3) the manufacturing and design of battery chargers for hybrid vehicles – but, in reality, Respondent had no products, no proprietary technology, no specialized expertise, and no design or manufacturing equipment;
- The Registration Statement stated, with respect to Respondent’s battery-charger product line in particular, that Respondent had a contract “in process with DEFENSE SUPPLY CENTER COLUMBUS,” but this statement was false; and
- The Registration Statement stated that Respondent had \$600,500,000 in assets, apparently based on Respondent’s valuation of its unsold securities (including the securities subject to the Registration Statement itself), but Respondent had never sold any securities and had no business, income, intellectual property, employees, investors, or financing, rendering the statement about assets without support.

(*Id.* at 2.) At no point in this proceeding, including neither in its Petition for Review nor in its brief in support, has Respondent contested any of these allegations.

A hearing occurred via Webex before ALJ Foelak on September 21, 2022, at which Respondent did not appear. (Tannen Decl., Ex. B (Transcript of Sept. 21, 2022 Hearing).) The Division presented four exhibits. (Tannen Decl., Exs. C (Registration Statement), D (image showing history of Respondent’s EDGAR filings), E (Aug. 26, 2022 letter from Division of

Corporation Finance to Respondent identifying serious deficiencies in Registration Statement), F (Sept. 19, 2022 letter from Respondent requesting acceleration of effectiveness of Registration Statement despite institution of stop order proceeding and imminently scheduled hearing).)

The Division also presented the testimony of two witnesses. The first witness was Mary Beth Breslin, a supervising attorney in the Division of Corporation Finance’s Disclosure Review Program who had reviewed the Registration Statement and interfaced with Respondent via its CEO and sole employee Mr. Khurram Afzal. (Tannen Decl., Ex. B at 10-29.) Ms. Breslin testified that:

- “A Form S-1 registration statement is an offering document that a company would use to . . . provide investors with information about the company and [its] securities to make offers of sales in a public offering under Section 5 of the 1933 Act” (*id.* at 12:14-18), and, similarly, the purpose of a Form S-1 is “to make offers and sales of the company’s securities to the public” (*id.* at 13:11-12);
- “[A]ny public offering of securities . . . would need to be registered on a registration statement” (*id.* at 13:6-8); and
- The Division of Corporation Finance reviews Forms S-1 before issuance for, among other reasons, “the purpose of making sure investors have . . . material and complete information to make an informed investment decision about purchasing the company’s securities” (*id.* at 13:18-22).

Ms. Breslin testified further about her concerns in connection with the absence of required information and possible material misstatements in the Registration Statement. Among other things, she testified that she had observed that the Registration Statement was unusually short, and “missing a significant amount of information about the company and about the securities,” including “most importantly probably, the audited financial statements.” (*Id.* at 16:15-22.) Moreover, the Registration Statement “had some conflicting information in it, such as information about what the company was offering in terms of the securities trying to be sold, but then it also included some statements, repeated a few times, that the company was not looking

for investors, which is contradictory to the purpose of the form, which is, you know, to register an offering of securities to the public.” (*Id.* at 17:25-18:7.)<sup>2</sup> Ms. Breslin and a colleague had suggested to Mr. Afzal that “withdrawal of the S-1 would be appropriate” given “the language that was included in the S-1 that stated that [Respondent] was not looking for investors,” but Mr. Afzal would not agree to withdraw the Registration Statement. (*Id.* at 21:16-19, 22:12-14.) Finally, Ms. Breslin explained that, because, despite multiple requests from the Division of Corporation Finance to do so, Respondent had not filed a “delaying amendment” – which gives the Division of Corporation Finance “time to review the filing [and] to make sure that . . . investors have sufficient information to make an informed investment decision” – the Registration Statement would have “become effective automatically by operation of law 20 days after the filing date,” permitting Respondent to issue securities. (*Id.* at 19:8-21, 21:3-22:19.)

The Division’s second witness was Ricky Tong, a Division data analyst who had participated on a telephone call between Division staff and Mr. Afzal during which Mr. Afzal answered questions about the Registration Statement and Respondent’s business. (*Id.* at 29-34.) Mr. Tong testified that, on that telephone call, Mr. Afzal stated that Respondent did not have any products, proprietary technology, designs, schematics, copyrights, specific expertise in the products mentioned in the Registration Statement, manufacturing equipment or capabilities,

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<sup>2</sup> Although the Registration Statement stated that Respondent was “not looking for investors” (Tannen Decl., Ex. C at 3, 5, 6), it also: (1) identified an amount of shares to be registered and the price at which the shares would be offered (*id.* at 1); and stated that: (2) “[d]ealers are required to deliver the prospectus to every investor” (*id.* at 3); (3) “[i]f any investor buys the line of product mentioned above for the wireless computer modem, provided the investor buys all 600,000,000 shares at one dollar each, I khurram Afzal will give him a copy of the 600,000,000 security papers” (*id.* at 4); (4) “[u]se of proceeds is to raise capital, job growth, other expenses, miscellaneous expenses and all other expenses” (*id.* at 5); (5) “[i]nterest is to progress the line of products mentioned above” (*id.* at 5); and (6) “if any investor . . . has any questions, they can contact khurram afzal” (*id.* at 6).

income, or contracts with customers. (*Id.* at 32:8-17, 21-23, 33:2-9.) Respondent was, at that time, supporting himself as an Uber driver and intended to hire employees to build the products described in the Registration Statement. (*Id.* at 32:14-17, 33:3-4.) Mr. Afzal had further explained that the statement in the Registration Statement that Respondent had \$600,500,000 in assets depended solely on the valuation of unsold securities, that Respondent had no other assets, and that Respondent had sold no securities. (*Id.* at 33:13-18.) Finally, Mr. Afzal declined another invitation from the Division to file a delaying amendment or withdraw the Registration Statement. (*Id.* at 33:24-34:3.)

After the close of the hearing, Mr. Afzal called Division staff and claimed that, even though he had received the email invitation, he had not attended the hearing because, among other reasons, he apparently believed it had been scheduled for 10:00 a.m. PDT rather than EDT. (Tannen Decl., Ex. J (Initial Decision) at 2.) ALJ Foelak then issued an order setting a post-hearing briefing schedule and permitting Respondent to file a post-hearing Answer.<sup>3</sup> (Tannen Decl., Ex. G (Sept. 21, 2022 Order).) Respondent filed an Answer, which, although it did not directly address the allegations in the OIP, made the same claim now offered in the Petition for Review that Respondent “is not looking for investors.” (Tannen Decl., Ex. H (Answer) at 1.) Respondent added that it had filed the Registration Statement “to acquisition the securities by the IRS under the Title 31 usca section 10a.” (*Id.*)

On the evening of October 12, 2022, the day the Division filed its post-hearing brief, Respondent filed an application to withdraw the Registration Statement, which the Commission denied on October 26, 2022 “in view of the pendency of the 8(d) stop order proceedings.” (Tannen Decl., Ex. I (Commission Release).) Respondent did not oppose the Division’s post-

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<sup>3</sup> Respondent had failed to file a pre-hearing Answer. (*Id.* at 1.)

hearing brief.

The ALJ issued the Initial Decision and stop order suspending the effectiveness of the Registration Statement on December 6, 2022. (Tannen Decl., Ex. J at 1, 5.) The ALJ found that “[t]he claim that the company is not looking for investors is inherently incredible when made in a registration statement since the purpose of the company’s registration statement is to enable it to sell securities to the public.” (*Id.* at 3.) The ALJ also found that “the claim that the company has assets of over \$600 million” but yet had “zero income” and, as the Registration Statement separately stated, had “fail[ed] to pay a yearly minimum tax of \$800” was also “inherently incredible,” adding that “[t]hese claims are so facially untrue as to be intentional misrepresentations” and that “[t]he facts found based on the unrebutted evidence of Ricky Tong . . . reinforce this finding.” (*Id.*) The ALJ concluded that the Registration Statement contained material omissions based on its lack of, among other things, audited financials (*id.* at 5), and included other material misstatements, including the statements about Respondent’s assets (*id.* at 6). Finally, the ALJ explained that “[e]ven assuming that Mr. Afzal truly believed all the questionable and false statements in the registration statement,” including that Respondent was not looking for investors, “that is not a defense” to the stop order proceeding, emphasizing that “the registrant’s good faith or lack of scienter does not influence whether a stop order should issue.” (*Id.* at 6 (citing *Kiwago Gold Mines Ltd.*, Securities Rel. No. 3278, 27 S.E.C. 934, 943 (Mar. 29, 1948), and *U.S. Molybdenum Corp.*, Securities Rel. No. 2743, 10 S.E.C. 796, 804 (Dec. 19, 1941)).)

### **ARGUMENT**

In its Petition for Review, Respondent makes a single argument – that Respondent did

“not want any investors to invest with Electropremium.”<sup>4</sup> (Tannen Decl., Ex. K.) It does not contest that the Registration Statement was missing required material information such as audited financial statements, nor does it contest the OIP’s other allegations of material misstatements and omissions in the Registration Statement about Respondent’s products, contracts, and assets. Because Respondent’s single argument does nothing to undermine the appropriateness of the issuance of the stop order on the grounds alleged in the OIP and confirmed by the ID, the Commission should reject this appeal, affirm the factual findings and conclusions of law in the ID, and maintain the stop order suspending the effectiveness of the Registration Statement.

Section 8(d) of the Securities Act permits the Commission—after due notice and the opportunity for a hearing—to issue a stop order suspending the effectiveness of a registration statement “[i]f it appears to the Commission at any time that the registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading.” 15 U.S.C. § 77h(d). A material fact is one to which “there is a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase the security registered.” 17 C.F.R. § 230.405.

The uncontroverted testimony of Ms. Breslin established the omission of material information in the Registration Statement, including audited financial statements. (Tannen

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<sup>4</sup> In its January 19, 2023 brief in support of its petition, Respondent does not repeat this argument, instead, in a single paragraph submission, accusing the Commission of “destroying the public resources” and stating that “[t]he s-1 was meant to generate public resources including american jobs under the American Jobs Act.” Respondent’s argument should thus be deemed waived. *See* 17 C.F.R. § 201.411(d) (limiting, subject to Commission discretion, Commission’s appellate review to “the issues specified in an opening brief that complies with § 201.450(b)”).

Decl., Ex. B at 16:15-22.) *See, e.g., In the Matter of the Registration Statement of Apollo Publ'n Corp.*, Initial Decision Rel. No. 302, 2005 WL 3403962, at \*4 (Dec. 7, 2005) (“The Commission has long recognized the materiality of an audited balance sheet in compliance with the registration requirements of the Securities Act.”). Mr. Tong’s testimony also established that the Registration Statement contained materially misleading statements asserting that Respondent had products or services to sell and a contract with a customer, when in fact Respondent had no products or contracts. (Tannen Decl., Ex. B at 29-34.) *See, e.g., SEC v. StratoComm Corp.*, 2 F. Supp. 3d 240, 256 (N.D.N.Y. 2014) (misstatements material when they relate to “whether [a] company has a product to sell and a viable business model”). The Registration Statement also omits to state that Respondent may never have operational products or contracts with customers. Furthermore, the statement that Respondent has more than \$600 million in assets is also a material misstatement or omission. *See SEC v. Chester Holdings, Ltd.*, 41 F. Supp. 3d 505, 522 (D.N.J. 1999) (“[a] reasonable investor would unquestionably find it important that [a] company’s] assets . . . were significantly overstated”). Assertion of such a high value for its unissued securities without any explanation, quantitative analysis, or cautionary language about the source of the figure or the risk that such value would not be realized is likely to mislead. *See, e.g., SEC v. Efuel EFN Corp.*, Case No. 19-cv-00482, 2021 WL 7541513, \*1 (M.D. Fla. Nov. 12, 2021) (finding that officers of a company that claimed a \$500 million valuation on a gold mine without substantiation were liable for fraud)

The language in the Registration Statement that Respondent is not looking for investors does nothing to cure the other material omissions and misstatements. If Respondent is arguing that this language renders these omissions and misstatements immaterial—that is, that investors would not attach importance to the omitted or misstated information about Respondent and its



purported business—this argument fails for two primary reasons. First, the Registration Statement is at best ambiguous and self-contradictory on this point. (*See supra*, at 3-4 & n.2; Tannen Decl., Ex. B at 17:25-18:7 (Ms. Breslin testifying that the Registration Statement contained “conflicting language” about whether Respondent was trying to sell securities).) As a result, a reasonable investor was unlikely to have understood with any clarity that Respondent was attempting to convey that it was not looking to raise money from investors.

Even if the Registration Statement had clearly stated that Respondent was not looking for investors, however, a reasonable investor could and, indeed, would likely disregard the statement as it was “made in a registration statement,” the self-evident purpose of which “is to enable [the company] to sell securities to the public.” (Tannen Decl., Ex. J at 3; Ex. B at 13:11-12 (Ms. Breslin testifying that the purpose of a Form S-1 is to “make offers and sales of the company’s securities to the public”).) *See also* U.S. Sec. & Exch. Comm’n, *Registration Under the Securities Act of 1933*, <https://www.investor.gov/introduction-investing/investing-basics/glossary/registration-under-securities-act-1933> (stating that registration of securities accomplishes goals of providing investors information “concerning securities being offered for public sale” and prohibiting fraud “in the sale of securities”). Respondent’s purported good faith or genuine belief that it was not looking for investors does not influence whether a stop order should issue where a registration statement contains a material misstatement or omission. *See In the Matter of the Registration Statement of Life Sci. Holdings Inc.*, Initial Decision Rel. No. 1412, 2022 WL 488514, at \*5 (Feb. 11, 2022); *see also Franchard Corp.*, Securities Rel. No. 4710, 42 S.E.C. 163, 1964 WL 67454, at \*7 (July 31, 1964) (“Since public investors are primarily concerned with the accuracy of the registration statement . . . our responsibility . . . is directed to the adequacy of the document rather than to the good faith or diligence of those who

prepared it.”).

**CONCLUSION**

The Commission should reject Respondent’s appeal, make the same findings of fact and conclusions of law as the Initial Decision, and maintain the stop order suspending the effectiveness of the Registration Statement.

Respectfully submitted,

Dated: March 20, 2023  
New York, NY

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**CERTIFICATE OF SERVICE**

I, Joshua D. Tannen, hereby certify that, on March 20, 2023, I filed the foregoing Division of Enforcement's Brief in Opposition to Respondent's Petition for Review from Initial Decision (and accompanying Tannen Declaration) with the Office of the Secretary of the Commission via eFAP; caused a copy of the same documents to be sent by email to Respondent's CEO Khurram Afzal at [REDACTED] and by UPS delivery to Respondent at [REDACTED]; and caused a copy of the same documents to be sent by email to the Honorable Carol Fox Foelak, Administrative Law Judge, at alj@sec.gov.

*/s/ Joshua D. Tannen*  
Joshua D. Tannen

*Counsel to the Division of  
Enforcement*