

INITIAL DECISION RELEASE NO. 294
ADMINISTRATIVE PROCEEDING
FILE NO. 3-11894

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, DC

In the Matter of :
: INITIAL DECISION
GATEWAY INTERNATIONAL : August 18, 2005
HOLDINGS, INC., and :
LAWRENCE A. CONSALVI :

APPEARANCES: Julie K. Lutz, Robert M. Fusfeld for the Division of Enforcement,
Securities and Exchange Commission

C. William Kircher, Jr. for Gateway International Holdings, Inc., and
Lawrence A. Consalvi

BEFORE: Brenda P. Murray, Chief Administrative Law Judge

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on April 12, 2005, pursuant to Sections 12(j) and 21C of the Securities Exchange Act of 1934 (Exchange Act). The OIP alleges that while its securities were registered with the Commission, Gateway International Holdings, Inc. (Gateway), failed to file two annual reports on Forms 10-K for its fiscal years ended September 30, 2003, and September 30, 2004, and five quarterly reports on Forms 10-Q for the quarters ended March 31, 2003, June 30, 2003, December 31, 2003, March 31, 2004, and June 30, 2004. The OIP further alleges that during his tenure as Gateway's president and chief executive officer, Lawrence A. Consalvi (Consalvi) was responsible for ensuring Gateway's compliance with its reporting obligations. Respondents filed a joint Answer on May 9, 2005.

Rule 360 of the Commission's Rules of Practice states that when an Initial Decision is due within 120 days from service of the OIP, the hearing shall be held approximately one month from the OIP. 17 C.F.R. § 201.360. The hearing did not occur until July 20, 2005, because there was a possible settlement and then Respondents represented at the prehearing conference on May 23, 2005, that they would file "[a]ll of the delinquent reports," all the Forms 10-K and 10-Q. (May 23, 2005, Tr. 9.) That did not happen. Acting in an expedited manner, I held a one-day

public hearing in Santa Ana, California. The Division of Enforcement (Division) and Respondents filed initial and reply briefs on August 8, and on August 12, 2005, respectively.¹

On August 9, 2005, Respondents moved to admit a two page document titled: Kabani & Company Audit Services for Public Companies as Reflected in Edgar Filings (4/15/05 through 7/27/05). The motion is granted and the document is received into evidence as Respondents' Exhibit DD.

ISSUES

Whether Gateway failed to comply with Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder and, if so, whether Consalvi caused Gateway's violations. And, if so, what action is appropriate pursuant to Sections 12(j) and 21C of the Exchange Act as to Gateway and Consalvi, respectively.

FINDINGS OF FACT

The findings and conclusions herein are based on the entire record. I applied preponderance of the evidence as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 102 (1981). I have considered and rejected all arguments and proposed findings and conclusions that are inconsistent with this Initial Decision.

Consalvi and Gateway

Consalvi, forty-seven years old, attended college for one year before joining his father in the aerospace and defense industries in 1979. (Tr. 150.) From 1984 to 1991, Consalvi was employed by Yamzen, USA, the largest distributor of Japanese machine tools in the United States. (Div. Ex. 1 at 48.) In 1991, Consalvi founded E.M. Tool Company, Inc., d/b/a Elite Machine Tool Company (Elite Machine), a company principally engaged in the acquisition, refurbishment, distribution, and sale of pre-owned Computer Numerically Controlled (CNC) machine tools to manufacturers. (Tr. 105; Div. Ex. 1 at 6, 48.) Other than this proceeding, Consalvi has never been the subject of any regulatory proceeding.

Gateway, previously Gourmet Gifts, Inc. (Gourmet Gifts), is a Nevada corporation based in Anaheim, California, whose common stock has been registered with the Commission pursuant to Section 12(g) of the Exchange Act since July 9, 1999. (Div. Ex. 1 at 5; Answer at 1.) In December 2001, Gourmet Gifts, an inactive public shell, entered into a reverse merger transaction with Elite Machine. Following that transaction, Gourmet Gifts changed its name to

¹ Four witnesses testified at the hearing and forty-one exhibits were admitted into evidence. Citations to Respondents' Answer are noted as "(Answer ___)." Citations to the transcript of the prehearings are noted as "(Date, Tr. ___)." Citations to the transcript of the hearing are noted as "(Tr. ___)." Citations to the Division's and Respondents' exhibits are noted as "(Div. Ex. ___)," and "(Resp. Ex. ___)," respectively. Citations to the Division's and Respondents' Initial Post-Hearing Briefs will be noted as "(Div. Post-Hearing Br. ___)," "(Resp. Post-Hearing Br. ___)," respectively.

Gateway. (Div. Ex. 1 at 5.) Gateway's common stock was quoted on the OTC Bulletin Board of the National Association of Securities Dealers, Inc., until June 14, 2003. (Div. Ex. 1 at 28.) Since June 15, 2003, Gateway has been quoted on the Pink Sheets under the symbol "GWYI." (Div. Ex. 1 at 5.)

As president and chief executive officer of Gateway since 2001, Consalvi was responsible for ensuring Gateway's compliance with its reporting obligations to the Commission. (Div. Ex. 1 at 48; Answer at 2.) Gateway's Form 10-KSB for the fiscal year ended September 30, 2002, contained the following "going concern" qualification:

As discussed in Note 1, the Company has negative working capital of \$1,055,824 and an accumulated deficit of \$1,900,013 at September 30, 2002, losses from operations through September 30, 2002, and a lack of profitable operational history. These factors, among others, raise substantial doubt about the Company's ability to continue as a going concern.

(Div. Ex. 4 at 26.)

In June 2003, Gateway ended its auditing relationship with Squar, Milner, Reehl & Williamson, the public accounting firm that audited its 2002 Form 10-KSB and reviewed its Form 10-QSB for the first quarter of 2003.² (Tr. 10-12; Div. Ex. 1 at 46.) Gateway did not engage another auditor until December 2004, when it signed an audit engagement letter with Kabani & Company to conduct the audits necessary to file its delinquent reports. (Tr. 158-59; Div. Ex. 3 at 46.) Kabani & Company began the audit in February 2005 and completed it in June 2005. (Tr. 159-60.)

As of September 30, 2004, Gateway had approximately seventy-four stockholders of record, not including shares held in street names. (Tr. 178; Div. Ex. 1 at 29.) In December 2004, Consalvi and Joseph Gledhill (Gledhill) owned 24 million of the 32 million shares outstanding.³ (Tr. 178.) In 2004, Gateway paid Consalvi a salary of \$192,000, Gledhill a salary of \$136,608, and Consalvi's brother, Timothy Consalvi, a salary of \$168,000. (Tr. 83-84; Div. Ex. 3 at 51.) Officers and directors of the company own approximately 69 percent of the company's outstanding stock. (Tr. 84.)

Gateway presently has seventy-seven employees and operates through eight wholly owned subsidiaries, six of which were acquired after September 30, 2004, primarily for Gateway stock. (Tr. 82, 177; Div. Ex. 1 at 13.) The eight subsidiaries are: Elite Machine, Eran

² Gateway's fiscal year ends on September 30. (Tr. 25.) Gateway claims that it dismissed the auditors. (Div. Ex. 1 at 46.) However, the engagement partner at the firm testified that the firm decided to terminate its relationship with Gateway because it could not get information on two acquisitions and Gateway owed the firm between \$50,000 and \$100,000. (Tr. 12, 18-19.)

³ Gateway reported that there were 40,307,254 shares of common stock issued and outstanding as of May 31, 2005. (Div. Ex. 1 at 1.)

Engineering, Inc., All American CNC Sales, Inc. (All American), A-Line Capital Corporation, Gledhill/Lyons, Inc. d/b/a Accurate Technology (Gledhill/Lyons), Spacecraft Machine Products, Inc., ESK, Inc., and Nu-Tech Industrial Sales, Inc. (Tr. 82; Div. Ex. 1 at 5-10.) According to Consalvi, Gateway has become “very healthy financially” as its business has begun to flourish because of homeland security, the military defense buildup, and developments in aerospace. (Tr. 125.) In October 2004, Gateway acquired All American, owned by Timothy Consalvi and his wife, for one million shares of Gateway. (Tr. 194.) In December 2004, Gateway acquired Gledhill/Lyons that was half owned by Gledhill’s son, William Gledhill, for 12 million Gateway shares. (Div. Ex. 1 at 8.) Also as a result of the transaction, William Gledhill receives a salary of \$192,000. (Div. Ex. 1 at 54.) Consalvi and Gledhill provided the shares for the purchase of Gledhill/Lyons. (Tr. 195; Div. Ex. 1 at 54-55.)

Anthony Anish (Anish), a former chartered accountant in England who runs AM Capital, a company that finds funding sources, became associated with Gateway in March 2004. (Tr. 154, 188.) Anish provides finance “packaging” for companies seeking to raise capital. (Tr. 187-88.) In July and August 2004, Anish urged Gateway to get current in its filings with the Commission.⁴ (Tr. 157-58.) Anish has been Gateway’s principal contact with the Commission on the filings. (Tr. 165-79.)

Filings

Gateway failed to timely file annual reports for its fiscal years ended September 30, 2003, and September 30, 2004, and quarterly reports for the quarters ended March 31, 2003, June 30, 2003, December 31, 2003, March 31, 2004, and June 30, 2004. (Answer at 3-4.) Consalvi knew that the Commission’s rules required that companies notify the Commission when they are unable to make a timely filing. (Tr. 36.) Gateway filed only two required Notifications of Inability to Timely File Periodic Reports during this time period, February 14 and June 16, 2003. (Tr. 36; Div. Ex. 7.)

On October 16, 2003, the Commission’s Central Regional Office notified Gateway that it would recommend that the Commission initiate enforcement proceedings against Gateway and Consalvi, due to Gateway’s failure to file periodic reports with the Commission. (Div. Ex. 1 at 28.)

On March 17, 2005, Gateway filed a Form D, Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption. (Div. Ex. 6.) As of July 20, 2005, the offering remained open and Gateway had raised \$775,000 from the sale of unregistered common stock to four accredited investors. (Tr. 37; Div. Exs. 1 at 78, 6.)

The Commission’s rules do not provide for the filing of consolidated annual reports. e-Smart Techs., Inc., 83 SEC Docket 3586, 3587 n.3 (Oct. 12, 2004.) However, on June 16, 2005, Gateway filed a Form 10-KSB purportedly for the fiscal years ended September 30, 2003, and

⁴ Gateway has offered Anish stock and a position on its board. (Tr. 190-91.)

September 30, 2004 (comprehensive filing).⁵ (Div. Ex. 1.) The comprehensive filing contains audited qualified financials for fiscal year 2003 and 2004. Gateway intended the comprehensive filing to cover its two delinquent annual reports and five delinquent quarterly reports.⁶ (Tr. 62-63; Resp. Post-Hearing Br. 9.)

In a June 23, 2005, letter (comment letter), the Commission's Division of Corporation Finance (Corporation Finance) informed Gateway that before it could begin a detailed review of the comprehensive filing, Gateway had to address eight critical deficiencies therein. (Tr. 48-52; Div. Ex. 11.) Gateway filed an additional amended Form 10-KSB on June 29, 2005, that corrected five of the eight deficiencies identified in the comment letter. (Tr. 53-54; Div. Ex. 3.) The record shows that the comprehensive filing is considered filed on the date it is entered into the Commission's Electronic Data Gathering, Analysis, and Retrieval system, despite its major deficiencies. (Tr. 68.)

Because of the three remaining critical deficiencies, Corporation Finance is unable to perform a detailed review of Gateway's comprehensive filing.⁷ Gateway has applied to the Office of the Chief Accountant in Corporation Finance (Chief Accountant), for waivers of these deficiencies. The Chief Accountant denied two of the waiver requests. (Div. Ex. 16) The additional waiver request was rejected and Gateway was afforded the opportunity to submit additional information to allow for reconsideration. (Div. Ex. 15) The accounting branch chief in Corporation Finance, who has spent considerable amount of time on these matters, had never seen a company so deficient in its filings.⁸ (Tr. 77.)

I take official notice of the fact that after the July 20, 2005, hearing Gateway filed Forms 10-QSB for the quarters ended March 31, 2003, June 30, 2003, December 31, 2004, March 31, 2005, and June 30, 2005. 17 C.F.R. § 201.323.

⁵ Gateway filed an amended Form 10-KSB on June 21, 2005. (Div. Ex. 2.)

⁶ The consolidated filing shows Gateway with negative net income of \$54,216, assets of \$329,327, and total liabilities of \$2,251,047 in fiscal 2003, and net income of \$434,047, assets of \$3,809,024, and total liabilities of \$5,296,697 in fiscal 2004. (Div. Ex. 1 at 66-67.)

⁷ The outstanding critical deficiencies are: (1) The audit report in the consolidated filing was "qualified for a scope limitation which states that income from operations and loss on disposal of certain subsidiaries were not audited," and, thus, is inconsistent with Rule 2-02(b) of Regulation S-X of the Exchange Act (Tr. 48-49; Div. Ex. 11.); (2) Gateway did not file a Form 10-KSB for the fiscal year ended 2003, or the five quarterly reports (Tr. 55; Div. Ex. 11.); (3) After acquiring Eran Engineering, Inc., Gateway did not file the financial statements as it stated it would in a Form 8-K filed August 8, 2003, and as required by Item 310(d) of Regulation S-B. (Tr. 53-55; Div. Ex. 11.)

⁸ Angela J. Crane (Crane), a certified public accountant in the state of Maryland since 1995, earned a bachelor of arts degree in finance from Catholic University in 1991 and a masters in accounting from American University in 1995. She has been with Corporation Finance for five years. (Tr. 44-45.)

PARTIES' ARGUMENTS

Gateway contends that investors now have access to current audited financial information from its comprehensive filing on June 16, and its additional filings of July 28 and August 3, 2005, and these filings satisfy the central purpose of Section 13(a) of the Exchange Act. (Post Hearing Br. at 5.) Gateway acknowledges that its delinquent Forms 10-Q for the quarters ended March 31, 2003, June 30, 2003, December 31, 2003, March 31, 2004, and June 30, 2004 are “[u]nder preparation but not yet filed; a quarterly breakdown of financial items without year-end adjustments was set forth in comprehensive filing on June 16, 2005.” (Resp. Post-Hearing Br. 13-14.)

Gateway claims that Bechler Cams, Inc. (BCI), and Nelson Engineering, Inc. (Nelson), two wholly owned subsidiaries it acquired in late 2002, restricted Gateway’s access to their books and records so that it could not prepare consolidated financial statements. (Div. Ex. 12 at 3.) Gateway argues that this, along with advice from its attorney at the time, prevented it from making the required filings. (Tr. 124-25; Div. Ex. 12 at 4; Resp. Post-Hearing Br. 7-8.) Gateway’s merger with Nelson was rescinded in May of 2003, effective January 1, 2003, and its merger with BCI was rescinded on November 20, 2003, effective January 1, 2003. (Resp. Exs. W, X.) Gateway claims that it spent approximately \$250,000 in litigation with BCI and that it was worn out financially and emotionally from the experience. (Tr. 125-27.)

Gateway argues that it is not in the public’s interest to revoke the registration of its securities, relying on the Commission’s reasoning in e-Smart Techs., Inc. 83 SEC Docket 3586 (October 12, 2004.) (Resp. Post-Hearing Br. at 15-18.) Gateway claims that its delinquency was not as serious as e-Smart’s, that, like e-Smart, it followed the advice of its accountant and made a comprehensive filing, and that it has given priority to filing its most recent Forms 10-QSB. (Resp. Post-Hearing Br. at 16-17.) Gateway argues that the public interest factors set out in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff’d on other grounds, 450 U.S. 91 (1981), weigh against revoking registration of its common stock. It claims that its infractions are isolated and are the direct consequence of its inability to obtain information from BCI, and that “when it made the decision to change advisors and attempted to return to reporting compliance” it selected an accounting firm that represented it could conduct the required audits expeditiously. (Resp. Post-Hearing Br. 20-21.)

According to the Division, Gateway reached an internal decision to “go private,” and its recent change of heart is attributed to preserving a potentially lucrative trading market for management’s benefit. (Div. Post-Hearing Br. at 6-7.) The Division claims that the public interest factors identified in Steadman require revocation and imposition of a cease-and-desist order. The Division faults Gateway for abandoning its reporting obligations for over two-and-a-half years while it engaged in “undisclosed related party transactions which have enriched management and its affiliates.” (Div. Post-Hearing Br. 6.) The Division believes Gateway’s failure to file required periodic reports is egregious, especially in light of the fact that Gateway used a Regulation D exemption to raise funds from investors. The Division characterizes e-Smart Techs., Inc., as a single decision that is limited to the specific facts of that case.

CONCLUSIONS OF LAW AND SANCTIONS

Sections 13(a) and 12(j) of the Exchange Act

Section 13(a) of the Exchange Act and the rules promulgated thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act 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. SEC v. McNulty, 137 F.3d 732, 740-41 (2d Cir. 1998); SEC v. Wills, 472 F.Supp. 1250, 1268 (D.D.C. 1978). The purpose of the periodic reporting provisions is to supply the investing public with current and accurate information about an issuer so that the investing public may make informed decisions. As stated in SEC v. Beisinger Indus. Corp., 552 F.2d 15, 18 (1st Cir. 1977) (quoting legislative history):

The reporting requirements of the [Exchange Act 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. Congress has extended the reporting requirements even to companies which are “relatively unknown and insubstantial.”

I conclude that Gateway violated Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder by failing to timely file two annual reports for the fiscal years ended September 30, 2003, and September 30, 2004, and five quarterly reports for the quarters ended March 31, 2003, June 30, 2003, December 31, 2003, March 31, 2004, and June 30, 2004. The issue then is what action is appropriate pursuant to Section 12(j) of the Exchange Act.

Section 12(j) of the Exchange Act authorizes the Commission, “as it deems necessary or appropriate for the protection of investors,” to revoke the registration of a security or suspend the registration of a security for a period not exceeding twelve months if it finds, after notice and an opportunity for hearing, that the issuer of such security has failed to comply with any provision of the Exchange Act or the rules and regulations thereunder.

I disagree with Respondents’ contention that Gateway’s conduct does not merit strong measures in view of the following public interest considerations set out in Steadman:

[T]he egregiousness of the respondent’s actions; the isolated or recurrent nature of the infraction; the degree of scienter involved; the sincerity of the respondent’s assurances against future violations; the respondent’s recognition of the wrongful nature of his conduct; and the likelihood that the respondent’s occupation will present opportunities to commit future violations.

603 F.2d 1140 (quoting SEC v. Blatt, 583 F.2d at 1334 n.29).

Gateway’s conduct with respect to its periodic filing requirements was egregious, recurrent, and evidenced a high degree of scienter. Gateway, through Consalvi, knew of the

periodic reporting requirements, yet over a two-and-a-half year period it failed to file a total of seven annual and quarterly reports. Gateway ignored a notice given on October 16, 2003, that enforcement proceedings were likely and took no steps to remedy its deficiencies for over a year. Gateway did not decide to comply with the filing requirements until July or August 2004. Gateway did not hire an auditor until December 2004. Gateway did not file a Form 10-KSB for 2004 until June 16, 2005. (Div. Ex. 1.) The June 16, 2005, filing is so deficient that Corporation Finance is unable to perform a detailed review. Two months later, after considerable effort by Corporation Finance, Gateway has yet to remedy all the critical deficiencies in the filing. A detailed review, whenever it may occur, could raise additional comments by Corporation Finance about auditing or accounting issues. (Tr. 60.)

The record also shows that Gateway does not appreciate the wrongfulness of its conduct nor the requirement that it provide the investing public with timely and accurate information. Gateway's main defense for not making the filings in a timely manner is that it could not obtain financial information from BCI and Nelson. Gateway claims that it was "worn out" both "financially and emotionally" or otherwise distracted from the winding down of the merger transactions with Nelson and BCI, which, along with allegedly poor advice from its then attorney, prevented it from filing any of its periodic reports. (Tr. 88; Post-Hearing Br. 8.) However, the litigation and winding down of the BCI merger was resolved in November 2003. There is no evidence that Gateway made any efforts to obtain this information after November 20, 2003, the date on which the BCI rescission agreement was entered.⁹ Moreover, Gateway knew it was required to promptly notify the Commission if it was unable to make a timely filing, yet from February 2003 to June 2005, it only filed two such notices. The evidence is that Gateway purposely ignored its delinquent filings until July or August 2004, when it finally decided to get everything current. This was after Anish became associated with Gateway in March 2004, and saw a tremendous potential in the company, which no doubt included its continued status as a public company whose stock is registered with the Commission. (Tr. 158.)

I also disagree with Respondents that this situation is governed by the Commission's decision in e-Smart. Gateway failed to file periodic reports for two-and-a-half years. The comprehensive report it filed on June 16, 2005, was contrary to Commission rules that do not allow comprehensive filings and, further, contained "critical deficiencies that needed to be addressed before [Corporation Finance] could commence a detailed review of the documents." (Tr. 48.); See e-Smart, 83 SEC Docket at 3587 n.3 (Oct. 12, 2004.) The Commission's decision in e-Smart does not indicate that e-Smart's filing contained any of the critical deficiencies that would have prevented Corporation Finance from conducting its customary detailed review.

Finally, the Commission stated specifically that their decision in e-Smart was "dependent on the particular facts and circumstances involved" and that "other considerations . . . may justify a different result." Id. at 3593 n.18. The circumstances and considerations present in the matter at hand do not justify a result similar to e-Smart. Despite the fact that Corporation Finance has

⁹ The Division and Respondents have stipulated that prior to entering the rescission agreement with BCI, Gateway made good faith efforts expending significant amounts of time and money trying to gain access to BCI's financials. (Tr. 121.)

given Gateway a considerable amount of time and attention, as of the date this Initial Decision was drafted, those deficiencies persist today. If the Commission's rules are going to have any meaning, they have to be enforced with some measure of reasonableness.

Section 12(j) of the Exchange Act provides only two remedies in an administrative proceeding: revocation or suspension. Gateway deliberately and repeatedly disregarded the Commission's reporting requirements, which deprived the investing public of current reliable information. The excuses Gateway offered for its actions are unpersuasive. The Commission has spent considerable time and effort, and this proceeding was delayed, in an effort to assist Gateway in achieving compliance with the reporting requirements. While Gateway has begun filling in the gaps in its reporting history, as of the date this Initial Decision was drafted, it has yet to remedy the defects in its comprehensive filing. The recurrent and egregious nature of its violations persuades me that suspension will not adequately protect investors. Viewing the Steadman factors in their entirety, and with attention to the Commission's views in e-Smart, I conclude that the appropriate sanction for the protection of investors is revocation of the registration of Gateway's securities.

Section 21C of the Exchange Act

The Commission has determined that causing liability under this provision requires finding that: (1) a primary violation occurred; (2) an act or omission by the respondent caused the violation; and (3) the respondent knew, or should have known, that his or her conduct would contribute to the violation. See Robert M. Fuller, 80 SEC Docket 3539, 3545 (Aug. 25, 2003), pet. denied, 2004 U.S. App. LEXIS 12893 (D.C. Cir. Apr. 23, 2004.) Consalvi caused Gateway's violation of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder because he was responsible for ensuring Gateway's compliance with the statute and rules and his actions or inaction resulted in Gateway's violations. (Tr. 32-33, 36; Answer at 2.)

Section 21C of the Exchange Act authorizes the Commission to impose a cease-and-desist order upon any person who "is, was, or would be a cause of [a] violation" of the Exchange Act, or any rule or regulation thereunder, due to an act or omission the person "knew or should have known would contribute to such a violation." The Commission addressed the standard for issuing a cease-and-desist order in KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1183-92 (Jan. 19, 2001). In addition to the Steadman factors discussed above, the evidence should show some risk of future violations; however, absent "evidence to the contrary," a single past violation may be sufficient to show risk of future violations. KPMG 54 S.E.C. at 1185, 1191. Additionally, consideration must be given to how recent the violation is and the "remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings." Id. No one factor is dispositive, and all of these factors are viewed in light of the entire record.

Consalvi's clean regulatory record and his representations that he would have made the filings following Gateway's settlement with BCI in November 2003, but he did not think he could, are unpersuasive and contrary to evidence in the record. (Tr. 122-23, 197.) Based on his salary, Consalvi appears to be a successful businessman who knew Gateway was in violation of a federal statute and regulations. He took no action because he was purportedly tired and

exhausted, emotionally and financially, as the result of disputes with BCI and Nelson. In addition, he claims a lawyer advised him against filing quarterly reports or he would have done so. (Tr. 123.) Consalvi was not too tired, however, to file a Form D on March 17, 2005, which allowed Gateway to raise \$775,000, in a private offering, and he was not too tired to contact Seevo Miller a firm in Denver, Colorado, who put him in contact with Anish for assistance with obtaining financing. (Tr. 156.) In addition to the serious violations and knowing conduct, Consalvi's past actions and his testimony and demeanor at the hearing cause me to conclude that there is a good possibility that he will commit future violations given his position as Gateway's president, chief executive officer, and major shareholder. For two-and-a-half years, Consalvi caused Gateway to fall further and further behind in its reporting obligations. Consalvi certified that he knew the contents of Gateway's comprehensive filing to be true and accurate, but at the hearing he did not know much about its contents. (Tr. 78-82; Div. Exs. 1, 10.) The record evidences that Consalvi took steps to bring Gateways reports up to date, only on Anish's advice, because of the possible revocation of its valuable registration status with the Commission. (Tr. 158.)

For all the reasons stated, I find that Consalvi should be ordered to cease and desist from committing or causing any future violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13.

RECORD CERTIFICATION

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), I hereby certify that the record includes the items set forth in the record index issued by the Secretary of the Commission on July 29, 2005, and Respondents' Exhibit DD.

ORDER

Based on the findings and conclusions set forth above:

IT IS ORDERED THAT, pursuant to Section 12(j) of the Securities Exchange Act of 1934, the registration of each class of securities of Gateway International Holdings, Inc., is hereby REVOKED;

IT IS FURTHER ORDERED THAT, pursuant to 21C of the Securities Exchange Act of 1934, Lawrence A. Consalvi shall hereby CEASE AND DESIST from committing or causing any violations or future violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13.

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

Brenda P. Murray
Chief Administrative Law Judge