

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61925 / April 16, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13862

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In the Matter of	:	
	:	
Apogee Technology, Inc.,	:	ORDER INSTITUTING
	:	ADMINISTRATIVE
	:	PROCEEDINGS AND NOTICE
	:	OF HEARING PURSUANT TO
Respondent.	:	SECTION 12(j) OF THE
	:	SECURITIES EXCHANGE ACT
	:	OF 1934
	:	

I.

The Securities and Exchange Commission (“Commission”) deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 (“Exchange Act”) against Respondent Apogee Technology, Inc. (“Respondent” or “Apogee”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Apogee Technology, Inc. (CIK No. 0000823876) is a Delaware corporation headquartered in Norwood, Massachusetts. Apogee’s common stock was registered under Section 12(g) of the Exchange Act until October 2003, when it then became registered under Section 12(b) of the Exchange Act and listed on the American Stock Exchange. In January 2008, its stock was delisted and deregistered from Section 12(b). It reverted to its Section 12(g) registration and is currently still registered under Section 12(g) of the Exchange Act. Apogee’s securities are currently quoted on the Pink Sheets OTC Markets, Inc., (“Pink Sheets”) under the symbol “ATCS.” Apogee files as a smaller reporting company.

A judgment by consent was entered against Apogee on May 22, 2009, in a civil injunctive action. Among other things, the judgment enjoined Apogee from future

violations of Section 17(a) of the Securities Act of 1933 (“Securities Act”) and Sections 10(b), 13(a) 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1 and 13a-13 thereunder.

B. DELINQUENT PERIODIC FILINGS

2. Respondent is delinquent in its periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1). In particular, Apogee has filed a materially deficient Form 10-K for the 2008 fiscal year and materially deficient Forms 10-Q for the three quarters of 2009 with the Commission since November 14, 2008, and has failed to file a Form 10-K for the 2009 fiscal year.

3. Respondent’s annual report for the year ended December 31, 2008, was originally due by March 31, 2009.

4. Respondent did not file a Form 10-K for the fiscal year ended December 31, 2008, until December 18, 2009.

5. The financial statements contained in the December 18, 2009 filing are unaudited and the filing was materially deficient because Respondent’s outside auditor disclaimed its opinion on those financial statements.

6. On January 15, 2010, Respondent subsequently filed its Forms 10-Q for the quarters ended March 31, June 30, and September 30, 2009. These filings had been due originally on May 15, on August 14, and on November 16, 2009, respectively. However, the financial statements in these filings were based on Apogee’s unaudited 2008 financial statements, rendering these reports materially deficient.

7. Respondent’s Form 10-K for the fiscal year ended December 31, 2009, was not filed by its original due date of March 31, 2010, and has not been filed to date.

8. 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 with the Commission current and accurate information in periodic reports. Specifically, Rule 13a-1 requires issuers to file annual reports (Forms 10-K), and Rule 13a-13 requires issuers to file quarterly reports (Forms 10-Q).

9. Section 13(a)(2) of the Exchange Act requires annual reports to be certified by independent public accountants if required by the rules and regulations of the Commission.

10. Rule 8-02 under Article 8 of Regulation S-X requires smaller reporting companies following the end of their fiscal year to file an audited balance sheet, and statements of income and cash flows.

11. Rule 8-03 under Article 8 of Regulation S-X requires smaller reporting companies to file interim financial statements with a balance sheet as of the end of the issuer’s preceding fiscal year.

12. As a result of its violation of Rules 8-02 and 8-03 of Article 8 of Regulation S-X, Respondent failed to comply with Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondent an opportunity to establish any defenses to such allegations; and

B. Whether it is necessary or appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondent registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondent fails to file the directed Answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondent personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this

or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary

Attachment

APPENDIX 1

CHART OF DELINQUENT FILINGS Apogee Technology, Inc.

<u>Filing</u>	<u>Date Due</u>	<u>Filing Date</u>	<u>Status</u>
Form 10-K; year-ended December 31, 2008	March 31, 2009 (extended to April 15, 2009, by filing Form 12b-25)	December 18, 2009	Filed, but materially deficient.
Form 10-Q; first quarter of 2009	May 15, 2009 (extended to May 20, 2009, by filing Form 12b-25)	January 15, 2010	Filed, but materially deficient.
Form 10-Q; second quarter of 2009	August 14, 2009	January 15, 2010	Filed, but materially deficient.
Form 10-Q; third quarter of 2009	November 16, 2009	January 15, 2010	Filed, but materially deficient.
Form 10-K; year ended December 31, 2009	March 31, 2010 (extended to April 15, 2010, by filing Form 12b-25)	N/A	Not filed.