

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of :
: THE REGISTRATION STATEMENT OF : INITIAL DECISION
: APOLLO PUBLICATION CORPORATION : December 7, 2005

APPEARANCES: James M. McHale and Vincente L. Martinez for the
Division of Enforcement, Securities and Exchange Commission

XiaoBo Lucy Luo, Chief Executive Officer, for
Apollo Publication Corporation

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision suspends the effectiveness of the registration statement of Apollo Publication Corporation (Apollo). The basis for this “stop order” is that the registration statement lacks required material information, such as financial statements.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission (Commission) initiated this proceeding by an Order Instituting Proceedings (OIP) on September 12, 2005. The OIP incorporates a separate statement of specific allegations titled “Statement of Matters of the Division of Enforcement to be Considered.” The proceeding was authorized pursuant to Section 8(d) of the Securities Act of 1933 (Securities Act).

The undersigned held a one-day hearing on September 26, 2005, in Washington, D.C. Apollo, which had received notice of the hearing through personal service on its Chief Executive Officer (CEO), XiaoBo Lucy Luo (Ms. Luo), on September 13, 2005, did not appear at the

hearing. Two witnesses called by the Division of Enforcement (Division) testified. Thirteen exhibits offered by the Division and six offered by Apollo were admitted into evidence.¹

The findings and conclusions in this Initial Decision are based on the record. Preponderance of the evidence was applied as the standard of proof. See Steadman v. SEC, 450 U.S. 91, 97-104 (1981); Advanced Chem. Corp., 47 S.E.C. 1012, 1019-20 (1984). Pursuant to the Administrative Procedure Act, 5 U.S.C. § 557(c), the following posthearing pleadings were considered: (1) the Division's Proposed Findings of Fact and Conclusions of Law and Post-Hearing Brief, filed on October 6, 2005; (2) Apollo's posthearing pleadings, filed on October 20, 2005; and (3) the Division's Reply, filed on October 24, 2005. All arguments and proposed findings and conclusions that are inconsistent with this Initial Decision were considered and rejected.

B. Allegations and Arguments of the Parties

This proceeding concerns a registration statement filed by Apollo on September 8, 2005. The Division seeks a stop order, alleging that the registration statement is materially deficient because it omits required information, such as current and historical financial information and audited financial statements, and contains material misrepresentations. Apollo maintains that the registration statement is in order and that the Division's allegations are false and misleading. Apollo demands an apology and suggests it may institute legal proceedings against various persons, including the process server who effected personal service of the OIP on Ms. Luo.

II. FINDINGS OF FACT

The Commission's public official records, of which official notice is taken pursuant to 17 C.F.R. § 201.323, disclose that Apollo filed a registration statement under the Securities Act on September 8, 2005.² The registration statement, filed on Form F-1, represents that Apollo is organized under the laws of Ontario, Canada.³ The registration statement identifies Ms. Luo as Apollo's Chair of the Board of Directors and CEO. Ms. Luo is the animating spirit behind Apollo; she has signed all correspondence, and has been the sole contact with Commission staff

¹ Apollo's exhibits were offered and admitted, without objection, subsequent to the hearing. Apollo Publ'n Corp., Admin. Proc. No. 3-12035 (A.L.J. Oct. 26, 2005). Citations to the transcript will be noted as "Tr. ___." The Division's exhibits will be noted as "Div. Ex. ___," and Apollo's as "Resp. Ex. ___."

² The registration statement may be viewed on the Commission's EDGAR database. <http://www.sec.gov/Archives/edgar/data/1337897/000133789705000003/0001337897-05-000003.txt>. It is also in evidence as Div. Ex. 4A.

³ Form F-1, which foreign private issuers file, is similar to Form S-1, which U.S. corporations file. "Form F-1 shall be used for registration under the Securities Act of 1933 ('Securities Act') of securities of all foreign private issuers, as defined in [17 C.F.R. § 230.405]." 17 C.F.R. § 239.31(a). "Foreign private issuer" is defined in 17 C.F.R. § 230.405 as "any foreign issuer other than a foreign government" [with exceptions not relevant here].

and others. Div. Exs. 3, 4, 4C, 5, 7, 9; Resp. Exs. 1, 2, 3, 4, 5, 6. The registration statement lists as officers and directors individuals such as Paul Martin, George W. Bush, and numerous other current and former leaders of Canada, the United States, and other countries.⁴ This list is inherently incredible notwithstanding Ms. Luo's argument that Apollo is free to hire anyone, including political figures. Apollo's business plan is not altogether clear but could be summarized as a visionary plan to undo the result of the biblical story of the Tower of Babel.⁵

The registration statement contains no financial statements or any financial information at all. Its only references to finances are to say that it "has a solid plan for 5 year working capitals and funds . . . by IPO" and "keeps sufficient unrestricted cash on hand to fund our working capital and planned expenditures. Also, our existing cash should be adequate to fund operation management expenditures for several years if we are able to at least maintain a break-even or positive cash flow from business practice." Div. Ex. 4A at 2, 15. The registration statement lists Canadian Imperial Bank of Commerce (CIBC) and two affiliates, CIBC World Markets and CIBC Investor Edge as joint book-running managers; CIBC World Markets as transfer agent and underwriter; and The Goldman Sachs Group, Inc. (Goldman Sachs), and other firms as additional underwriters and market makers. Div. Ex. 4A at inside of front cover page. Neither CIBC World Markets, a U.S. registered broker-dealer, or other CIBC affiliates have an underwriter or other business relationship with Apollo except for a bank account at a CIBC bank in Windsor, Ontario.⁶ Tr. 23-26. Ms. Luo delivered a package of Apollo documents to her Senior Business Advisor at the Windsor CIBC bank on August 5, 2005. Div. Ex. 7 at 4; Resp. Ex. 1 at 1, Resp. Ex. 3 at 1, Resp. Ex. 6. There is no evidence in the record as to what happened to the package of documents.

Upon reviewing Apollo's filing on September 8, 2005, a staff member of the Commission's Division of Corporation Finance spoke with Ms. Luo by telephone and asked her to withdraw the registration statement in light of deficiencies such as the lack of audited financial statements and of signatures of principal executive, financial, and accounting officers and directors. He also questioned Apollo's identification of world leaders as officers and directors and, based on a communication from Achilles Perry, executive director and assistant general counsel of CIBC World Markets Corp., of that firm as joint book-running manager, underwriter, and transfer agent. Tr. 10-17; Div. Ex. 4 at 1-3. Ms. Luo responded with a fax that included

⁴ Canadian public figures listed also include Jean Chrétien and John Manley, while those from the United States also include Jimmy Carter, James Baker, and Alan Greenspan. Those from other countries include Fidel Castro, Tony Blair, Jacques Chirac, Vladimir Putin, Pervez Musharraf, John Howard, and others.

⁵ As recounted in Genesis 11: 1-9.

⁶ No finding will be made concerning Apollo's representation of the relationship with Goldman Sachs. The Division presented evidence, in the form of the declaration of Vice President Amy Liu that Goldman Sachs has no connection with Apollo, which Ms. Luo disputes. Div. Ex. 6; Resp. Ex. 2. However, the OIP did not specifically charge Apollo with misrepresenting its relationship with Goldman Sachs.

documents indicating consent by seven persons to appointments as officers and directors with various signatures, including purported signatures of “George W. Bush,” “George H. Bush,” and “Joseph Lieberman.” Div. Ex. 4C. There is no signature for a comptroller, authorized representative in the United States, or Chief Financial Officer (CFO) (identified in the registration statement as Paul Martin). Div. Exs. 4A, 4C.

Apollo charges that all filings and exhibits in this case (except for those emanating from Ms. Luo) are forgeries. For example, Apollo charges the process server who served the OIP on Ms. Luo with perjury, stating that his affidavit of service incorrectly describes her age and appearance and disputing his statement that he obtained her address from public records. Apollo does not, however, dispute the fact that she received the OIP from him. Apollo charges several Commission staff members with forgery and perjury and argues that the charging documents – the OIP and Statement of Matters to be Considered at the hearing – are forgeries. Nonetheless, Ms. Luo presented arguments directed at the substance of these documents.

III. CONCLUSIONS OF LAW

The record shows that Apollo omitted to state material facts that were required to be included in its registration statement. A material fact within the meaning of Securities Act Section 8(d) is one to which “there is a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase a security.” 17 C.F.R. § 230.405.

A. Securities Act Requirements

Securities Act Section 7(a) and Schedule A (25), (26) require a registration statement to contain an audited balance sheet and income statement. Securities Act Sections 7(a) and 19(a) authorize the Commission to adopt regulations to carry out these requirements. In the instant case, Apollo was required to furnish this information on Form F-1 (17 C.F.R. § 239.31), authorized under the Securities Act. Form F-1 is cross-referenced to and requires information required on Form 20-F (17 C.F.R. § 249.220f), authorized under the Securities Exchange Act of 1934. Non-financial information furnished must comply with Regulation S-K (17 C.F.R. Part 229). Financial information must comply with Regulation S-X (17 C.F.R. Part 210).

Securities Act Section 6(a) provides that at least one copy of the registration statement “shall be signed by each issuer, its principal executive officer or officers, its principal financial officer, its comptroller or principal accounting officer, and the majority of its board of directors, and [for a foreign issuer] by its duly authorized representative in the United States.” Regulation S-T provides, in relevant part, for electronically filed EDGAR filings, like those at issue, “Required signatures . . . must be in typed form rather than manual format. . . . When used in connection with an electronic filing, the term ‘signature’ means an electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letters or series of letters or characters comprising a name, executed, adopted or authorized as a signature.” 17 C.F.R. § 232-302(a). “Each signatory to an electronic filing . . . shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing. Such document shall be executed before or at the time the electronic filing is made and shall be retained by the filer for a period of five years.

Upon request, an electronic filer shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.” 17 C.F.R. § 232.302(b).

B. Apollo’s Material Omissions and Misrepresentations

Apollo’s filing lacks an audited balance sheet and income statement, as required by Items 8, 17, and 18 of Form 20-F, as well as selected historical financial data as required by Item 3 of Form 20-F. These omissions are omissions of material fact. The Commission has long recognized the materiality of an audited balance sheet in compliance with the registration requirements of the Securities Act. See Queensboro Gold Mines, Ltd., 2 S.E.C. 860, 862-63 (1937). Apollo challenges the Commission’s authority to require registrants to furnish financial statements, claiming that only the Internal Revenue Service in the United States or Revenue Canada in Canada can ask for financial information. This argument is erroneous. Congress has required the Commission to require registration statements to include financial statements and has authorized the Commission to adopt rules to implement this responsibility. Securities Act Sections 7(a), 19(a), Schedule A (25), (26).

The registration statement has additional shortfalls. Assuming, arguendo, that the signatures Ms. Luo furnished on request are genuine, there is no signature for Apollo’s CFO, comptroller, or authorized representative in the United States, as required by Securities Act Section 6(a).⁷ These omissions are also material. Apollo’s claim that numerous political figures are officers and directors is inherently incredible. Further, Apollo’s relationship with CIBC is overstated. These representations are material misrepresentations.

IV. SANCTION

The Division requests a stop order suspending the effectiveness of Apollo’s registration statement. This sanction will serve the public interest and the protection of investors, pursuant to Section 8(d) of the Securities Act, and accords with Commission precedent.

Section 8(d) of the Securities Act permits the Commission to issue a stop order suspending the effectiveness of a registration statement, if after notice and an opportunity for a hearing, it appears that the registration statement “includes any untrue statement of a material fact or omits to state any material fact required to be stated.” If an untrue material fact is included in a registration statement or a material fact is omitted, the registrant’s good faith or scienter does not influence whether a stop order should issue. Kiwago Gold Mines, Limited, 27 S.E.C. 934, 943 (1948); U.S. Molybdenum Corp., 10 S.E.C. 796, 804 (1941). In themselves, the lack of an audited balance sheet and income statement, as required by Items 8, 17, and 18 of Form 20-F, as well as selected historical financial data as required by Item 3 of Form 20-F necessitate a stop order in the public interest and for the protection of investors. See Military Robot Corp., 48 S.E.C. 473 (1986) (issuing stop order for registration statement that lacked audited financial statement). The additional deficiencies and incredible assertions of the registration statement add to the necessity of a stop order.

⁷ The record contains no proof that the purported signatures of President Bush, former President Bush, and Senator Lieberman are genuine.

V. RECORD CERTIFICATION

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), it is certified that the record includes the items set forth in the record index issued by the Secretary of the Commission on November 4, 2005.

VI. STOP ORDER

Based on the findings and conclusions set forth above:

IT IS ORDERED, pursuant to Section 8(d) of the Securities Act of 1933, 15 U.S.C. § 77h(d), that the EFFECTIVENESS of the REGISTRATION STATEMENT filed by APOLLO PUBLICATION CORPORATION IS SUSPENDED.

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.

Carol Fox Foelak
Administrative Law Judge