UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9902 / September 8, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75850 / September 8, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3684 / September 8, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16787

In the Matter of **HYUNJIN LERNER, CPA,** **Respondent.**	**ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933, SECTIONS 4C AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Hyunjin Lerner ("Respondent" or "Lerner") pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), Sections 4C[1] and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.[2]

[1] Section 4C provides, in relevant part, that:

> The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 4C and 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[3] that:

SUMMARY

This proceeding results from Bankrate, Inc., through its chief financial officer, Edward DiMaria, vice president and director of accounting, Matthew Gamsey, and vice president of finance, Hyunjin Lerner, intentionally manipulating its financial results for the second quarter of 2012 in order to meet and/or exceed analyst consensus estimates for key financial metrics. As a result of this manipulation, Bankrate materially overstated its financial results for the second quarter of 2012.

> to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

[2] Rule 102(e)(1)(iii) provides, in pertinent part, that:

> The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found…to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

[3] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

After reviewing Bankrate's preliminary financial results for the second quarter 2012, which fell short of analyst estimates for certain key metrics, DiMaria arbitrarily decided to increase Bankrate's revenue following the end of the quarter in order to meet those metrics. As a result, DiMaria, through Lerner, improperly directed two Bankrate divisions, the Insurance and Credit Cards divisions, to book additional revenue of $300,000 and $500,000, respectively, without any support or analysis.

The Insurance division immediately booked the $300,000 of revenue directed by DiMaria to a dormant customer account, with no intention of justifying the revenue until the company's outside auditor asked for additional information about it five days later. In response to the auditor's inquiry, the Insurance division quickly devised a purported justification for the improperly booked revenue – a justification that changed shortly thereafter. These purported justifications were not, however, provided to Bankrate's auditor. Instead, Lerner sent a misleading, generic explanation to the auditor – an explanation that was reviewed and approved by DiMaria and Gamsey. Further, although the Insurance division's ultimate justification was reviewed and approved by Lerner and others, Lerner knew, or was reckless in not knowing, that the purported justification did not support the recognition of revenue under Generally Accepted Accounting Principles ("GAAP").

The accountants from the Credit Cards division were only willing to record $176,000 of the $500,000 in revenue directed by DiMaria, thereby infuriating DiMaria. Refusing to accept the Credit Cards division's unwillingness to record the full $500,000 of revenue he had directed, DiMaria insisted that the approximate difference be recorded as revenue on the books of Bankrate's mortgage business, Bankrate Core. As a result, Bankrate recorded an additional $305,000 of unsupported revenue to two arbitrary Bankrate Core customers. Bankrate's recording of both the $176,000 and the $305,000 in revenue was contrary to GAAP.

Further manipulating Bankrate's financial results for the second quarter, DiMaria, without any support or analysis, improperly directed a Bankrate Core accountant to reduce the accrual for certain marketing expenses by $400,000, which was known to Lerner. Bankrate, through DiMaria and with Lerner's knowledge, had been allowing this marketing accrual account to accrue as a "cushion" account for more than a year, and then selectively decided to reduce the accrual in the second quarter of 2012 in order to improve the company's financial results. In the second quarter 2012, DiMaria improperly reversed $400,000 of the accrual amount, thereby reducing second quarter expenses, to help Bankrate meet analyst estimates. Finally, as part of its effort to artificially inflate its financial results to meet or exceed analyst estimates for the second quarter 2012, Bankrate, through Lerner and others, intentionally failed to book approximately $99,000 in known accounting expenses that had been incurred in the second quarter.

As a result of these improper accounting entries, entries that the company reversed as part of a broader restatement, Bankrate's second quarter 2012 earnings release and associated Form 8-K, filed on July 31, 2012, reported adjusted earnings before interest, taxes, depreciation, and amortization ("Adjusted EBITDA") of $37.5 million, exceeding analyst consensus estimates by

approximately $300,000, and adjusted earnings per share ("Adjusted EPS") of $0.18, thereby meeting analyst consensus estimates.[4] Further, due to these improper accounting entries, Bankrate materially overstated its second quarter 2012 net income reported in its Form 10-Q filed on August 13, 2012. During the two week period following the issuance of Bankrate's second quarter 2012 earnings release, DiMaria and Lerner each sold Bankrate stock, thereby profiting from a stock price that had been artificially inflated by the company's materially overstated financial results.

RESPONDENT

1. **Hyunjin Lerner**, age 46, is a resident of Stuart, Florida. During the relevant period, Lerner was Bankrate's vice president of finance. Lerner obtained his certified public accountant license in California in 1996, but his license is currently delinquent. Lerner, whose employment was terminated by Bankrate due to the improper accounting practices described herein, sold $30,045 worth of Bankrate stock on August 6, 2012, six days after Bankrate issued its materially false second quarter 2012 earnings release.

OTHER RELEVANT ENTITY

2. **Bankrate, Inc.** is a Delaware corporation based in North Palm Beach, Florida, that owns and operates an Internet-based consumer banking and personal finance network. Bankrate's common stock is registered with the Commission pursuant to Exchange Act Section 12(b) and trades on the New York Stock Exchange (ticker: RATE). Bankrate files periodic reports, including Forms 10-K, 10-Q, and 8-K, with the Commission pursuant to Section 13(a) of the Exchange Act and the related rules thereunder. On June 17, 2011, Bankrate filed an S-8 registration statement for an offering relating to its equity compensation plan. This offering, which was ongoing at the time of the misconduct described herein, incorporated future company filings with the Commission, including the Form 8-K containing the company's materially false second quarter 2012 earnings release and the second quarter 2012 Form 10-Q that materially overstated the company's net income.

FACTS

Bankrate's Business And Structure.

3. Bankrate is engaged in the business of providing consumers with personal finance information across multiple vertical categories including mortgages, deposits, insurance, credit cards, and other categories, such as retirement, automobile loans, and taxes. Bankrate also aggregates rate information from over 4,800 institutions on more than 300 financial products. Its principal platform is its Bankrate.com Internet website.

[4] Bankrate defines Adjusted EBITDA as earnings before interest, taxes, depreciation and amortization, excluding stock based compensation expense and IPO and deal related expenses, and defines Adjusted EPS as earnings per fully diluted share, excluding stock based compensation expense, amortization, IPO and deal related expenses.

4. During the relevant period, Bankrate had three primary divisions: (1) Bankrate Core, the original mortgage information business; (2) Bankrate Insurance, comprised of numerous insurance information companies acquired by Bankrate; and (3) Bankrate Credit Cards, comprised of a number of credit card information companies acquired by Bankrate.

5. Bankrate generates revenue by selling consumer information ("leads") gleaned from users of its websites in the insurance and credit cards vertical categories. Its other sources of revenue include display advertising, performance-based advertising, distribution arrangements, and traditional media avenues, such as syndication of editorial content and subscriptions. Some of its customers pay Bankrate each time that a consumer clicks through a link on Bankrate's website to the customer's website.

Bankrate's Manipulation Of Second Quarter 2012 Revenue And Expenses.

6. On July 6, 2012, after being provided with preliminary second quarter financial results for Bankrate Core and Credit Cards (the Insurance division's financial results had not yet been added to the consolidated numbers), DiMaria, unwilling to accept the company's second quarter 2012 financial results, informed Lerner that Adjusted EBITDA needed to be $37 million for the quarter.

7. On July 7, 2012, the first version of Bankrate's consolidated financial results was circulated to DiMaria, Lerner, and Gamsey, as well as others on the accounting team, reflecting current Adjusted EBITDA for the second quarter of $36,144,000, which DiMaria knew was below analyst consensus estimates.

8. Three days later, after realizing it had double-counted $286,000 of revenue, the Credit Cards division submitted revised financials for consolidation. The next day, DiMaria was informed that Bankrate's second quarter revenue had decreased by $286,000 due to the correction for the Credit Cards division's double-counting of revenue, further jeopardizing the company's prospects of meeting its metrics. Shortly thereafter, at DiMaria's instruction, Lerner emailed the Insurance and Credit Cards divisions directing them to book additional revenue of $300,000 and $500,000, respectively. Lerner's July 11, 2012 email instructions to both Credit Cards and Insurance, which were copied to DiMaria, did not specify a legitimate justification for the revenue, but rather contained an ambiguous description of what the revenue purportedly related to, and did not identify any specific customers with which it was associated.

9. Within a few minutes of sending these email instructions, Lerner forwarded the emails (and subsequent related emails) to Gamsey. In emails between themselves using strong expletives, Lerner and Gamsey expressed serious concerns about the validity of the revenue the divisions had just been directed to book and commiserated about the improper accounting entries directed by DiMaria. Their emails also stated that DiMaria's improper accounting entries would have to be reversed in the third quarter, thereby creating an even larger revenue shortfall and a need to record additional improper revenue in the third quarter.

Bankrate Insurance Records $300,000 in Baseless Revenue.

10. Without any support or analysis, the Insurance division immediately recorded the $300,000 of additional revenue directed by DiMaria, booking the revenue to a dormant customer account. Although the Insurance division did not have any intention of justifying the $300,000 of additional revenue, on July 16, 2012, five days after the revenue was booked, Bankrate's auditors asked for an explanation for the $300,000 as part of its accounts receivable variance review, thereby prompting Bankrate to quickly create a purported explanation for this revenue.

11. Within twenty-four hours of Bankrate's auditors asking about the $300,000 entry, the Insurance division, with the knowledge and/or involvement of DiMaria, Lerner, Gamsey, and others, prepared a draft chart purportedly supporting the $300,000 in revenue – a chart that was changed shortly thereafter. Tellingly, although this second chart changed the amounts of revenue assigned to certain categories and replaced certain initial explanations for the revenue with new purported explanations for the revenue, the second chart still totaled the $300,000 in revenue that DiMaria and Lerner had directed the Insurance division to book.

12. The purported explanations for the $300,000 in revenue were baseless. For example, in the second purported explanation for the $300,000 in revenue, $179,000 related to estimated June 2012 revenue from a brand new bonus provision with a customer of the Insurance division. However, as DiMaria, Gamsey, and Lerner knew, at the time this revenue was recognized, the Insurance division did not have any actual data from the customer indicating that a June bonus had been earned. In addition, both Gamsey and Lerner knew that the Insurance division was not performing at a level that would have triggered a bonus in the months leading up to June 2012. Indeed, the Insurance division employee who prepared the high-level, conclusory "support" for the bonus revenue advised Lerner at the time that she was not comfortable with the Insurance division recognizing revenue on the basis of this type of analysis in the future. When the actual data on which a potential bonus was based were later reported to the Insurance division, the Insurance division's performance did not qualify for a bonus. In fact, the Insurance division missed the bonus under the two applicable bonus formulas by approximately 50% and 200%, respectively.

13. For these reasons, among others, Bankrate's recognition of the $300,000 in revenue was contrary to GAAP.[5]

[5] The Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 605-10-25-1 provides that revenue may be properly recognized only when it is both a) realized or realizable and b) earned. See also Staff Accounting Bulletin Topic 13, *Revenue Recognition*, as codified in ASC 605-10-S99, which provides that revenue is generally realized or realizable and earned when all of the following criteria are met: 1) persuasive evidence of an arrangement exists; 2) delivery has occurred or services have been rendered; 3) the seller's price to the buyer is fixed or determinable; and 4) collectability is reasonably assured.

14. In addition, Bankrate did not share either of the purported explanations for the $300,000 in revenue with its auditor, despite the auditor specifically asking for information about the $300,000. Rather, at approximately the same time the initial chart attempting to explain the $300,000 entry was being circulated internally, Lerner sent a misleading, generic explanation that had been reviewed and approved by DiMaria and Gamsey to the auditor, implicitly affirming that the revenue was associated with the single customer account to which it was booked. Moreover, Bankrate did not forward either chart to its auditor, nor did Bankrate update its misleading, generic explanation for the $300,000 in revenue.

Credit Cards Does not Fully Comply with the Directive to Book Baseless Revenue, Causing Bankrate to Immediately and Arbitrarily Record Revenue to A Different Business Unit.

15. Unlike Insurance, the Credit Cards accountants initially refused to book the $500,000 of unsupported revenue directed by DiMaria. Unwilling to accept, and angered by, the Credit Cards accountants' reaction to his improper directive, DiMaria told other Bankrate personnel that he was "going to rip [the Credit Cards CEO's] f[***]ing head off" and fire the Credit Cards accountants if they "f[***] up the accounting."

16. Credit Cards personnel eventually recorded an additional $176,000 in revenue to the second quarter 2012, revenue that was contrary to Bankrate's revenue recognition policy. On July 12, 2012, upon learning that Credit Cards had only booked $176,000 of the $500,000 in additional revenue he had directed, DiMaria informed Lerner that the difference should be booked to Bankrate Core. Thirty-five minutes later, Lerner instructed the Bankrate Core accounting personnel to book $305,000 in additional revenue. Conveniently using two of the Core customers on a revenue spreadsheet that had legitimate revenue listed as $234,000 and $71,000, Bankrate Core simply doubled the revenue attributable to these customers without any basis to arrive at the $305,000 of additional revenue, a fact that soon became known to DiMaria, Lerner, and Gamsey.

17. By adding this improper revenue directly to the revenue spreadsheet rather than through a manual journal entry, Bankrate avoided the questions that its auditors typically directed toward post-quarter manual journal entries. This manner of booking the $305,000 also circumvented Bankrate's accounting controls, as the revenue spreadsheet had already been approved for entry into the general ledger and did not require additional approvals.

18. For these reasons, among others, the recognition of both the $176,000 in revenue booked with the Credit Cards division and the $305,000 in revenue booked with Bankrate Core was contrary to GAAP.

Bankrate Makes Additional Baseless Reductions In Marketing Expense Accrual.

19. On July 13, 2012, the day after Bankrate improperly recorded $305,000 of additional revenue on Bankrate Core's books, a revised version of Bankrate's consolidated financial results for the second quarter 2012 was circulated to DiMaria, Lerner, and Gamsey that reflected Adjusted EBITDA of $36,656,000.

20. Shortly after the circulation of the revised financial results, results that continued to fall short of the $37 million in Adjusted EBITDA dictated by DiMaria one week earlier, DiMaria directed a Core accountant to reduce a marketing accrual account for Search Engine Marketing (known as "SEM") by $400,000. Reducing the SEM accrual (a balance sheet account) led to a corresponding reduction in the SEM expense (an income statement account), thereby artificially increasing Bankrate's quarterly earnings.

21. DiMaria's email instruction to the Core accountant did not reference or contain any support for the accounting entry. Similarly, the manual journal entry executing DiMaria's instruction to reduce the SEM marketing accrual by $400,000 did not have any support beyond DiMaria's email instruction.

22. Upon learning of this $400,000 reduction in the SEM accrual, Gamsey questioned Lerner as to whether there was any basis for DiMaria's reduction in the SEM accrual, or whether DiMaria directed this entry instead of additional unsupported revenue entries.

23. In fact, Bankrate, through DiMaria and Lerner, had been using the SEM accrual account as one of its "cushion" or "cookie jar reserve" accounts (i.e., an account known to have excess accruals that could be selectively used to boost the financial results of particular quarters) since at least early 2011. It was inappropriate for Bankrate to use the SEM account as a "cushion" account, and to reduce the SEM accrual without a proper basis, in order to meet the Adjusted EBITDA number being dictated by DiMaria.

24. Given these circumstances, Lerner knew, or was reckless in not knowing, that the $400,000 SEM adjustment was improper.

25. Following the booking of this $400,000 reduction in the SEM accrual, a revised version of Bankrate's second quarter 2012 financial results was circulated to DiMaria, Lerner, and Gamsey, reflecting Adjusted EBITDA of $37,056,000.

Bankrate Fails to Book Additional Second Quarter Expenses.

26. The baseless accounting entries detailed above were not the only steps in Bankrate's scheme to meet analyst estimates. On July 6, 2012 – indeed, within a few hours of being told by DiMaria that second quarter Adjusted EBITDA needed to be $37 million – Lerner instructed Bankrate Core to reverse certain second quarter accounting fees associated with Bankrate's Sarbanes-Oxley compliance provider. This instruction was made without any basis.

27. After realizing that accounting fees incurred in the second quarter had not yet been recorded, Lerner, instead of reversing these fees, decided not to record the proper amount of fees to the second quarter, but to instead record those fees to the third quarter. As a result, Bankrate improperly failed to book at least $99,000 in known accounting fees that were incurred during the second quarter.

Lerner, Together with DiMaria and Gamsey, Made Material Misrepresentations and Omissions to Bankrate's Auditor Concerning the Improper Accounting Entries in the Second Quarter 2012.

28. As set forth in paragraph 14 above, Lerner, after receiving approval from DiMaria and Gamsey, provided Bankrate's auditor with a generic and misleading explanation for the $300,000 in improper revenue booked by the Insurance division, and took no steps to advise the auditor that Bankrate's explanation for this revenue later changed significantly.

29. In addition, Lerner and others again made material misrepresentations and omissions to Bankrate's auditor in the August 13, 2012 management representation letter that he (and others) signed for the second quarter 2012. Although Lerner knew about the improper accounting practices taking place at the company, he falsely represented to the company's auditor that: 1) the company's financial statements had been prepared and were fairly presented in conformity with GAAP; 2) there were no material transactions that had not been properly recorded in the company's accounting records; and 3) he had no knowledge of fraud or suspected fraud affecting the company involving management, employees with significant internal control roles, or others where the fraud could materially affect the company's financial statements.

Bankrate's Reported Financial Results Met And/Or Exceeded Analyst Consensus Estimates.

30. As a result of its improper entries as described above, Bankrate released artificially inflated financial results on July 31, 2012, and just met analyst targets. Analyst consensus estimates for Bankrate's second quarter 2012 financial results were $37.2 million for Adjusted EBITDA and $0.18 for Adjusted EPS. In its July 31, 2012 earnings release, which was incorporated in a Form 8-K filed by Bankrate on the same date, Bankrate reported second quarter 2012 Adjusted EBITDA of $37.5 million and Adjusted EPS of $0.18. The above-described improper entries were therefore material, as they allowed Bankrate to meet and/or exceed analyst consensus estimates for these key financial metrics. Due to the improper entries, Bankrate also materially misstated its reported net income in its second quarter 2012 Form 10-Q, filed on August 13, 2012.

31. The day after Bankrate's announcement of its financial results for the second quarter 2012 on July 31, 2012, Bankrate's stock price rose from $15.95 to $17.57 per share. Lerner sold Bankrate stock during a one-week period following the announcement of Bankrate's second quarter 2012 financial results, a period during which Bankrate's stock price was artificially inflated as a result of Bankrate's scheme to inflate its financial results.

32. At the time Lerner sold Bankrate stock on August 6, 2012, he was in possession of material, nonpublic information concerning Bankrate's reported second quarter financial results (*i.e.*, that Bankrate had overstated its financial results as a result of the improper accounting entries described herein). As a result of these stock sales, Lerner improperly benefited by as much as $30,045.

VIOLATIONS

33. As a result of the conduct described above, Lerner willfully[6] violated Section 17(a) of the Securities Act, which prohibits fraudulent conduct in the offer or sale of securities, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

34. As a result of the conduct described above, Lerner also willfully violated Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder, which prohibit persons from knowingly circumventing or knowingly failing to implement a system of internal accounting controls, knowingly falsifying any book, record or account, and directly or indirectly falsifying or causing to be falsified any book, record, or account.

35. In addition, as a result of the conduct described above, Lerner willfully violated Rule 13b2-2 of the Exchange Act, which prohibits an officer or director of an issuer from, directly or indirectly: (1) making or causing to be made a materially false or misleading statement to an accountant or (2) omitting to state, or causing another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with, among other things, a required audit, review or examination of the issuer's financial statements or the preparation or filing of any document or report required to be filed with the Commission.

36. Also as a result of the conduct described above, Lerner willfully aided and abetted and caused Bankrate's violation of Section 13(a) of the Exchange Act and Rules 13a-11, 13a-13, and 12b-20 thereunder, which require that every issuer of a security registered pursuant to Section 12 of the Exchange Act file with the Commission, among other things, information, documents, quarterly reports, and current reports as the Commission may require, and mandate that periodic reports contain such further material information as may be necessary to make the required statements not misleading.

37. Because Bankrate improperly recorded its revenue, expenses, and accruals, its books, records, and accounts did not, in reasonable detail, accurately and fairly reflect its transactions and dispositions of assets.

38. In addition, Bankrate failed to implement internal accounting controls relating to its revenue, expense, and accrual accounts which were sufficient to provide reasonable assurances that these accounts were accurately stated in accordance with GAAP.

39. As a result of the conduct described above, Lerner willfully aided and abetted and caused Bankrate's violation of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, which

[6] A willful violation of the securities laws means merely "'that the person charged with the duty knows what he is doing.'" Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)).

require reporting companies to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets, and to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP.

40. Exchange Act Section 4C(a)(3) and Rule 102(e)(1)(iii) of the Commission's Rules of Practice provide, in pertinent part, that "[t]he Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found . . . [t]o have willfully violated, or willfully aided and abetted the violation of, any provision of the Federal securities laws or the rules and regulations thereunder." 17 C.F.R. § 201.102(e)(1)(iii). As a result of the conduct described above, Lerner willfully violated, and willfully aided and abetted the violation of, the aforementioned provisions of the Securities Act and Exchange Act within the meaning of Section 4C(a)(3) and Rule 102(e)(1)(iii).

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Lerner's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 4C and 21C of the Exchange Act, and Rule 102(e)(1)(iii) of the Commission's Rules of Practice it is hereby ORDERED that**:**

A. Respondent Lerner cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Exchange Act, and Rules 10b-5, 12b-20, 13a-11, 13a-13, 13b2-1, and 13b2-2 thereunder.

B. Respondent Lerner is denied the privilege of appearing or practicing before the Commission as an accountant.

C. After 5 years from the date of this Order, Respondent may request that the Commission consider his reinstatement by submitting an application (Attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

(c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

D. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

E. Respondent Lerner is prohibited for a period of 5 years from the date of this Order from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

F. Respondent Lerner shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of $150,000 and disgorgement of $30,045 and prejudgment interest of $2,571 to the Securities and Exchange Commission. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether

the Commission, in its discretion, will seek to distribute funds or, subject to Section 21F(g)(3), transfer them to the general fund of the United States Treasury. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. If timely payment is not made, additional interest shall accrue pursuant to Rule 600 of the Commission's Rules of Practice or 31 U.S.C. §3717, as applicable. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Lerner as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Ian Karpel, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 1961 Stout Street, Denver, CO 80294-1961.

G. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against

Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary