

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10282 / January 18, 2017

SECURITIES EXCHANGE ACT OF 1934
Release No. 79817 / January 18, 2017

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3846 / January 18, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17792

In the Matter of
JEFFREY HAMMEL, 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 pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 4C¹ and 21C² of the

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 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:

Securities Exchange Act of 1934 (“Exchange Act”), and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice against Jeffrey Hammel, CPA (“Hammel” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“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, and except as provided in Section IV.G. herein, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act, 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 finds³ that:

SUMMARY

This matter concerns the conduct of Jeffrey Hammel (“Hammel”) in connection with a financial restatement that occurred at Orthofix International, N.V. (“Orthofix”). Hammel served as the Chief Financial Officer (“CFO”) of Orthofix’s largest segment, its Spine Segment (“Spine”). In that role, Hammel was responsible for the accounting and financial functions of Spine, including preparing its operating results (which were included in Orthofix’s public filings with the Commission).

From early 2011 to late 2012, Hammel recorded revenue on several transactions that resulted in the company making material misstatements in its public filings. In particular, improper revenue was recorded on three transactions with one of Orthofix’s largest international distributors, including one transaction in which the company sold a product that could not be resold due to Orthofix’s delay in providing a required associated product and two transactions in which payment for the product was contingent on approval of the product by a regulatory body. This recording of revenue upon shipment of the products for these three transactions was

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

improper because it did not meet the fixed or determinable or collectability criteria for revenue recognition.

As part of his job responsibilities, Hammel annually signed management representation letters on behalf of Spine that were provided to Orthofix's independent auditors. Prior to the fiscal year 2012 audit of the company's financials, Hammel was aware of transactions with extended credit terms and/or oral agreements. Despite his awareness in this regard, Hammel signed a letter to the company's independent auditors in connection with the company's fiscal year 2012 audit representing that he was not aware of any transactions with extended credit terms and/or oral agreements that had not been disclosed to the company's independent auditors.

By engaging in the foregoing conduct, Hammel was a cause of Orthofix's violations of Securities Act Sections 17(a)(2) and 17(a)(3) and the reporting, books and records, and internal controls provisions of the federal securities laws. Hammel also violated Exchange Act Rules 13b2-2(b) and 13b2-1.

RESPONDENT

Jeffrey Hammel, 50, served as the Chief Financial Officer of Orthofix's then-largest segment, its Spine Segment, from July 2010 to approximately February 2013. Hammel resigned from Orthofix in February 2013 prior to the issuance of the FY 2012 financial statements by Orthofix. Hammel is a Certified Public Accountant in the state of Ohio and maintained an active license until the license lapsed in 2008.

FACTS

A. Orthofix's Business and Hammel's Responsibilities

1. Orthofix's business was primarily divided into two Global Business Segments during the relevant period – Spine and Orthopedics. Spine was Orthofix's largest segment and contributed two-thirds of the company's overall revenues.
2. Spine had several operating divisions during the relevant period including Orthofix Spinal Implants ("OSI"), which was responsible for international sales of spinal implants and related instruments.
3. From approximately July 2010 to February 2013, Hammel served as the Chief Financial Officer of the Spine Segment. In that role, Hammel was responsible for the accounting and financial functions of Spine, including preparing its operating results (which were included in Orthofix's public filings with the Commission). Moreover, Hammel annually signed management representation letters and certifications on behalf of Spine that were provided to Orthofix's independent auditors.
4. Hammel reported directly to Spine's President, a salesperson, during the relevant period. The Spine President was in charge of Spine's sales and overall management and had

several sales persons who worked under him, including an individual who served as Spine's Vice President of Global Sales and Development ("Spine Sales VP").

5. While Hammel reported directly to the Spine President during the relevant period, he also had dotted line reporting responsibility to Orthofix's Corporate CFO. The Corporate CFO was responsible for the preparation of Orthofix's public filings, including its consolidated financial results.
6. Spine sold various products including spinal and cervical implants and related instruments. Spine sold the above products through two primary methods: (i) sales of its products to U.S. and international distributors who then sold the products to hospitals and physicians, and (ii) sales of its products directly to hospitals and physicians in the U.S.

B. Revenue Recognition Practices

7. With limited exceptions, Orthofix recognized revenue during the relevant period based on the "sell-in" method, which provides for revenue recognition upon shipment of products to the distributor.
8. ASC 605-10-25-1 provides that revenue may be recognized only when it is both realized or realizable and earned. Consistent with the authoritative literature, Orthofix's financial statements disclosed four criteria as its revenue recognition policy.
9. The four criteria are: (i) persuasive evidence of an arrangement exists; (ii) delivery has occurred or services have been rendered; (iii) the seller's price to the buyer is fixed and determinable; and (iv) collectability is reasonably assured.

C. Hammel Improperly Recorded Revenue on Transactions with Brazilian Distributor

a. Implants without Instruments Transactions

10. OSI had several international distributors during the relevant period, but its largest distributor of product was located in Brazil (hereinafter "the Brazilian Distributor"). In fact, for eight of the nine quarters from Q1 2011 to Q1 2013, the Brazilian Distributor was the Company's second largest customer on a revenue per quarter basis.
11. Entering 2011, Orthofix (and OSI) had a receivable of approximately \$5 million from the Brazilian Distributor from prior sales. The Brazilian Distributor forecasted that it would purchase approximately \$8.5 million of Orthofix implants and instruments in FY 2011.
12. Prior to this time, the Brazilian Distributor agreed to purchase implants along with instrument sets previously used in surgeries from Orthofix. Implants and instruments were interconnected because the implants could not be used in patients without related instrument sets.

13. At this time, however, the Brazilian Distributor could no longer purchase previously used instrument sets because ANVISA (the Brazilian equivalent of the U.S. Food and Drug Administration) imposed new regulations prohibiting the importation of used instrument sets.
14. Orthofix (and OSI) did not have the new instrument sets (105 in total) available to be shipped along with the implants it shipped to the Brazilian Distributor. Rather than waiting until the new instrument sets were available, Orthofix – in FY 2011 – shipped approximately \$5 million in implants to the Brazilian Distributor despite the fact that these implants could not be used in patients without the new instrument sets.
15. Orthofix recognized the approximately \$5 million revenue upon shipment of the above implants. This recognition of revenue was improper as delivery of the interconnected product – the instruments – had not yet occurred. As such, payment timing and terms were contingent upon the instrument sets being made available and therefore, revenue recognition was inconsistent with Orthofix’s accounting policy because it did not meet the fixed or determinable criteria or the collectability criteria.
16. This improper recognition of revenue caused Orthofix’s financial statements to be materially misstated in its Forms 10-Q for the second and third quarters of FY 2011 and its year-end Form 10-K for FY 2011 and corresponding earnings releases.
17. As of the summer of 2012, virtually none of the 105 instrument sets had been shipped to the Brazilian Distributor. Thus, the Brazilian Distributor refused to pay for the implants because those implants that Orthofix had previously shipped to the Brazilian Distributor could not be used without the instrument sets.
18. Hammel became aware subsequent to the shipment of the implants that the corresponding 105 instrument sets had not been delivered, but did not take sufficient steps to evaluate the impact of the continued non-delivery of the instrument sets on the previously recognized revenue.
19. In fact, as of August 2012 all of the corresponding instrument sets had still not been delivered and – at that time – Hammel knew that (i) the Brazilian Distributor had been provided extended payment terms to pay for the implants and (ii) the Brazilian Distributor could not sell the implants because Orthofix was delayed in sending the corresponding instrument sets.

b. Firebird Transaction

20. In late May 2012, the Spine President discussed a product launch plan with the Brazilian Distributor to purchase approximately \$2.5 million of a new Orthofix product called Firebird. This product, however, had not yet been approved by ANVISA and, therefore, could not be shipped into Brazil until such approval was obtained.

21. The Brazilian Distributor agreed to place the order on the following conditions: (i) one year to pay for the implants from the date of anticipated ANVISA approval; (ii) 210 days to pay on all subsequent product orders; and (iii) all corresponding instrument sets needed to be available once ANVISA approved the implants. No one knew when ANVISA would grant approval.
22. At this time, Spine had an unwritten policy that modifications to the terms in existing distributor agreements be approved by Hammel. The Spine Sales VP and Spine President agreed to the Firebird order terms without approval from Hammel.
23. Hammel learned of this transaction a few weeks after the product had been shipped to the warehouse but before the company filed its third quarter FY 2012 financial results. In particular – on July 24, 2012 – the Spine Sales VP forwarded Hammel an email describing the transaction along with a series of emails containing prior discussions between him and the Brazilian Distributor’s President.
24. Hammel replied to the Spine Sales VP – “[Spine Sales VP], can you please address how we ended up with a full year to pay for the June order. I have a hard time managing that with a lot of pressure to reduce our ballooning [Days Sales Outstanding].” The Spine Sales VP replied, “we accepted this due to the need for that size of an order.”
25. Despite the contingent nature of the sale and Hammel’s own concerns about how this transaction would impact the company’s Days Sales Outstanding, Hammel recognized over \$2 million in revenue from this transaction immediately upon shipping the implants to the Brazilian Distributor’s warehouse located in the United States.
26. The recognition of revenue here was improper because the Brazilian Distributor’s obligation to pay, and the payment terms themselves, were contingent upon ANVISA approval and, therefore, revenue recognition was inconsistent with Orthofix’s accounting policy because it did not meet the fixed or determinable criteria or the collectability criteria.

c. Fall 2012 Implants Transaction

27. Beginning in September 2012, the Spine Sales VP solicited the Brazilian Distributor to purchase approximately \$1.5 million of Orthofix implants that had not yet been approved by ANVISA. Thus – as with the summer 2012 sales transaction with the Brazilian Distributor – this product could not be shipped into Brazil until that approval occurred.
28. The Brazilian Distributor indicated that it would agree to the purchase but only under the following two conditions: (i) the ability to renegotiate the payment terms if ANVISA approval did not occur by the end of 2012 (just three months away) and (ii) one year to pay for the product.
29. The Spine Sales VP forwarded an email to Hammel concerning the transaction terms for his approval. Hammel approved the transaction and recognized the revenue from this

transaction immediately upon shipping the implants to the Brazilian Distributor's warehouse located in the United States.

30. This revenue recognition was improper because the Brazilian Distributor's obligation to pay, and the payment terms themselves, were contingent upon ANVISA approval and, therefore, revenue recognition was inconsistent with Orthofix's accounting policy because it did not meet the fixed or determinable criteria or the collectability criteria.

- d. Hammel Did Not Reassess Revenue Recognition After Meeting with Brazilian Distributor

31. In December 2012, Hammel learned from an email sent to him by the Spine Sales VP that the Brazilian Distributor's President had in June 2012 informed the then-Spine President and Spine Sales VP that it would not pay \$4 million of its amounts payable by the end of December 2012. Rather, the Brazilian Distributor's President informed the then Spine President and Spine Sales VP that it would only pay \$1.6 million of its amounts payable by December 2012 and the remainder by February 2013.

32. On December 1, 2012, Hammel forwarded the email to the New Spine President (who had previously served as the company's Corporate CFO) and wrote:

[The Brazilian Distributor's President] says below they made a payment agreement with [the Spine President] . . . I have no idea what may have been promised. I do know that I fought pricing and terms concessions, but those were ultimately given at some point despite my denials. This was commonplace. I was told that I was the decision maker on pricing and terms and then secretly overridden. [The Spine Sales VP] did it all of the time – don't know how much [the Spine President] was involved.

33. On December 7, 2012, the Brazilian Distributor's President travelled to the U.S. to meet with Hammel and the Spine Sales VP. At that meeting, the Brazilian Distributor's President provided a Power Point presentation with a detailed chronology of events on several sales transactions involving the Brazilian Distributor, including the implant-without-instruments transactions, the June and September 2012 transactions, and the payment plan related issues.

34. After this December 7 meeting, Hammel did not reassess the revenue that the company had previously recognized and disclosed in its financial statements with the Brazilian Distributor. Moreover, Hammel did not forward or provide the Power Point presentation to Orthofix's then Corporate CFO.

35. As a result of this and other errors described previously and below, Orthofix materially misstated its financial results in its FY 2012 Form 10-K and corresponding earnings release.

D. Hammel Improperly Recognized Revenue with Italian and Spanish Distributors

36. In addition to the Brazilian Distributor, OSI had relationships with other international distributors including in Italy and Spain.
37. During his tenure as Spine's CFO, Hammel became aware of extended payment terms being granted to OSI's Italian and Spanish distributors as a result of those distributors experiencing financial difficulties. Hammel did not, however, evaluate the impact of these facts on Orthofix's revenue recognition.
38. For example, in early December 2011, the Spine Sales VP emailed the Italian Distributor and solicited it to make a \$400,000 order. The Italian Distributor's President responded that it could make the order if they had extended payment terms of 180 days and the ability "in case of cash difficulties" to extend those payment terms.
39. Hammel was copied on these email exchanges and – despite the specifically identified financial difficulties in Italy – recognized the revenue associated with this order upon shipment. This revenue recognition was improper because payment terms were contingent upon timing of the Italian Distributor's sell-through and payment receipt of the products and, therefore, revenue recognition was inconsistent with Orthofix's accounting policy because it did not meet the fixed or determinable or collectability criteria.
40. Similarly, in early December 2011, the Spine Sales VP solicited the Spanish distributor to make a \$300,000 order. The Spanish Distributor noted the difficult conditions in the Spanish economy at the time. The Spine Sales VP responded that "based on the expected challenges in Europe due to the instability of the financial institutions," he could offer extended payment terms of 180 days for instruments and 150 days for implants.
41. In late December 2011, the Spine Sales VP forwarded the email exchange to Hammel for his approval of the extended payment terms. Hammel provided this approval and recognized the revenue from this transaction upon shipment of the products. This revenue recognition was improper because it did not meet the fixed or determinable or collectability criteria.

E. Hammel Incorrectly Accounted for Certain Spinal Stimulation Product Transactions

42. Beginning in the first quarter of FY 2012, the Spine President began exploring opportunities to generate more revenue in the domestic spine market by selling spine stimulation products directly to wholesale distributors who would then resell them to doctors and hospitals. Prior to this time, Orthofix sold these products directly to doctors and hospitals.
43. At this time, the wholesale market for these products was dominated by an Orthofix competitor. To draw market share away from this competitor, the Spine President and Hammel determined to sell Orthofix spinal stimulation products at deeply discounted

prices-per-unit to the wholesalers, and pay a referral fee to the wholesaler that was termed a “commission.”

44. Hammel accounted for these commissions as expenses rather than as reductions to revenue. This accounting treatment was improper because where the vendor does not receive an identifiable benefit for the commissions, sales discounts such as these are presumed to be a reduction in the seller’s price pursuant to ASC 605-50-45-2. Thus, these commissions should have been treated as further price discounts and as a reduction in revenue.
45. Due to this improper accounting, Orthofix overstated its revenue by approximately \$1.4 million in the third quarter of FY 2012, and a total of approximately \$1.7 million in FY 2012.
46. Moreover, Hammel was aware of two spinal stimulation transactions in which the purchasers were granted rights to exchange the products for cervical stimulation products.
47. Because Orthofix could not and did not reasonably estimate the revenue recognition impact of the amount of future returns, Orthofix was precluded from recognizing revenue upon shipment in the above transactions pursuant to ASC 605-15-25-1(f). As a result, Orthofix overstated its revenue by over \$650,000 in the third quarter of FY 2012.

F. Hammel Made an Inaccurate Representation to Orthofix’s Independent Auditors

48. As of the company’s fiscal year 2012 audit – and as described by the conduct above – Hammel was aware that the company had entered into transactions with extended payment terms and that the company had made certain oral agreements such as the fact that the Brazilian Distributor’s payment for certain products was contingent on ANVISA approval.
49. Nevertheless, Hammel – in connection with an audit of the company’s FY 2012 financial statements – represented through a February 15, 2013 management representation letter⁴ provided directly to the independent auditors that:
 - a. All significant oral agreements were made available to the auditors;
 - b. There were no orders with extended credit terms; and
 - c. All sales terms (express or implied), including all rights of returns were disclosed.
50. Hammel provided the misleading representation at the direction of a company officer or director, namely, the company’s then-Corporate CFO.

⁴

Hammel signed the management representation letter after he resigned from the company.

G. Orthofix's Restatement

51. Orthofix materially misstated several of its annual and quarterly filings and corresponding earnings releases, failed to make and keep books and records which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of the assets of the issuer, and failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that transactions are recorded as necessary to permit the preparation of financial statements in conformity with generally accepted accounting principles.
52. Accordingly – in late March 2014 – Orthofix restated its financial statements for the first quarter of fiscal year 2013, all quarterly and annual periods in fiscal years 2012 and 2011, and the annual period for fiscal year 2010 as a result of misconduct. Orthofix also acknowledged certain material weaknesses in its internal controls over financial reporting.

VIOLATIONS

53. Securities Act Section 17(a)(2) prohibits any person from obtaining money or property in the offer or sale of securities by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.
54. Securities Act Section 17(a)(3) prohibits any person from engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser in the offer or sale of securities.
55. Exchange Act Section 13(a) and Rules 13a-1, 13a-11, and 13a-13 thereunder require issuers to file such periodic and other reports as the Commission may prescribe and in conformity with such rules as the Commission may promulgate. Exchange Act Rules 13a-1, 13a-11, and 13a-13 require the filing of annual, current, and quarterly reports, respectively. Rule 12b-20 of the Exchange Act requires issuers to add such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading.
56. Exchange Act Section 13(b)(2)(A) requires issuers to “make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.” Exchange Act Section 13(b)(2)(B) requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit the preparation of financial statements in conformity with generally accepted accounting principles.
57. Exchange Act Rule 13b2-1 prohibits any person from, directly or indirectly, falsifying or causing to be falsified, any book, record, or account subject to Exchange Act Section 13(b)(2)(A).

58. Exchange Act Rule 13b2-2(b) prohibits any officer or director of an issuer or any other person acting under the direction thereof from directly or indirectly taking any action to mislead an accountant engaged in the performance of an audit if that person knew or should have known that such action, if successful, could result in rendering the issuer's financial statements materially misleading.
59. As a result of the conduct described above, Hammel was a cause of Orthofix's violations of Securities Act Sections 17(a)(2) and 17(a)(3) and Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder. Hammel also willfully⁵ violated Exchange Act Rules 13b2-1 and 13b2-2(b).

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent'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, effectively immediately, that:

- A. Hammel shall cease and desist from committing or causing any violations and any future violations of Securities Act Section 17(a)(2) and 17(a)(3) and Exchange Act Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and Rules 12b-20, 13a-1, 13a-11, 13a-13, 13b2-1, and 13b2-2(b) thereunder.
- B. Hammel is denied the privilege of appearing or practicing before the Commission as an accountant.
- C. After two 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/her practice before the Commission will be reviewed either by the independent audit committee of the public company

⁵ 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)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

for which he/she works or in some other acceptable manner, as long as he/she 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/she 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/she 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/her 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/her state CPA license is current and he/she 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. Within 30 days of the entry of this Order, Hammel shall pay a civil money penalty in the amount of \$20,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following three ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request⁶;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofin.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 Jeffrey Hammel 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 Antonia Chion, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5720.

- F. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties referenced in paragraph IV.E above. This Fair Fund may be added to or combined with the fair fund established in *In the Matter of Orthofix International, N.V.*, (AP File No. 3-17791; Release No. 10281, January 18, 2017) and/or may be added to or combined with fair funds established for the civil penalties paid by other Respondents for conduct arising in relation to the violative conduct at issue in this proceeding or the Orthofix proceeding, in order for the combined fair funds to be distributed to harmed investors affected by the same violative conduct. 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, it shall not argue that it is entitled to, nor shall it 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 it 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

⁶ The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to option (2) or (3) above.

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.

- G. 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