

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2786 / June 9, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16386

In the Matter of

TRACI J. ANDERSON, CPA,
TIMOTHY W. CARNAHAN, AND
CYIOS CORPORATION

ORDER ON MOTIONS FOR SUMMARY
DISPOSITION

The Securities and Exchange Commission commenced this proceeding on February 13, 2015, with an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP).

Respondents filed a joint Answer on March 9, 2015, to which were attached three exhibits (Answer Exs. 1-3). At a prehearing conference held on March 23, 2015, the Division confirmed that it had made the investigative file available to Respondents. *See* Mar. 23, 2015 Tr. at 5-6. At the same prehearing conference, a briefing schedule was set for motions for summary disposition. *See Traci J. Anderson, CPA, Admin. Proc. Rulings Release No. 2455, 2015 SEC LEXIS 1051 (Mar. 23, 2015).*

On May 1, 2015, the Division of Enforcement (Division) filed a Motion for Summary Disposition (Div. Motion), to which were attached twenty-one exhibits (Div. Exs. 1-21), and Respondents jointly filed a Motion for Summary Disposition (Resp. Motion).¹ The parties timely filed oppositions and replies to these motions, and briefing on them is now complete. In particular, on May 15, 2015, Respondents filed a joint Response to Motion of Summary Disposition (Response), to which were attached six exhibits (Resp. Exs. 1-6), and on June 3, 2015, Respondents filed a joint "Supplemental Reply" (Reply). Also on May 15, 2015, I ordered Respondents to brief any affirmative defenses, including inability to pay. *See Traci J. Anderson,*

¹ Respondents' Motion for Summary Disposition was emailed to my Office on May 1. The Office of the Secretary did not receive a hardcopy filing, as required under the Rules of Practice. My Office has forwarded the electronic submission to the Office of the Secretary, and I deem Respondents' Motion filed as of May 1. As explained in a prior order, any motion, brief, or request for any relief must be filed in hardcopy with the Office of the Secretary. *See Traci J. Anderson, CPA, Admin. Proc. Rulings Release No. 2692, 2015 SEC LEXIS 1956 (May 19, 2015).*

CPA, Admin. Proc. Rulings Release No. 2682, 2015 SEC LEXIS 1923 (May 15, 2015). Briefing on inability to pay is not yet complete, and the briefing schedule on that issue remains in effect.

BACKGROUND

The OIP alleges as follows:

Respondent Timothy W. Carnahan (Carnahan) is the founder and sole officer and director of Respondent CYIOS Corporation (CYIOS). OIP at 2. Respondent Traci J. Anderson, CPA (Anderson), has functioned as the contract CFO of CYIOS since July 2007. *Id.* CYIOS is a defense contractor with common stock registered under Section 12(g) of the Securities Exchange Act of 1934 (Exchange Act), until it terminated its registration by filing a Form 15-12G on May 30, 2014. *Id.*

On August 12, 2010, the Public Company Accounting Oversight Board (PCAOB) issued an order (Order) revoking the registration of Anderson's accounting firm and barring Anderson from being an associated person of a registered public accounting firm. OIP at 3. Anderson thereafter continued to perform accountancy and financial management services for CYIOS. *Id.* Carnahan made the decision to retain Anderson in her role at CYIOS. *Id.*

CYIOS ceased making filings required under Section 13(a) of the Exchange Act after it filed its third quarter 2012 Form 10-Q in November 2012. OIP at 3. Carnahan was responsible for CYIOS not making its required filings. *Id.* at 3-4. Moreover, CYIOS management – that is, Carnahan – failed to assess internal control over financial reporting (ICFR) and failed to document such assessment. *Id.* at 4-5. As a result, CYIOS' Forms 10-K for the 2009, 2010, and 2011 fiscal years, which stated that CYIOS had assessed ICFR, were false. *Id.* In 2010, CYIOS issued common stock in exchange for consulting services and debt conversions. *Id.* at 5.

Respondents generally deny the allegations of the OIP. Answer at 7.

DISCUSSION

A. Summary Disposition Standard

After a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying, a party may make a motion for summary disposition of any or all allegations of the OIP with respect to that respondent. *See* 17 C.F.R. § 201.250(a). A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b). The facts on summary disposition must be viewed in the light most favorable to the non-moving party. *See Jay T. Comeaux*, Exchange Act Release No. 72896, 2014 WL 4160054, at *2 (Aug. 21, 2014). However, once the moving party has carried its burden of establishing that it is entitled to summary disposition on the factual record, the opposing party may not rely on bare allegations or denials, but instead must present specific facts showing a genuine issue of material fact for resolution at a hearing. *See id.* Thus, summary disposition may be appropriate in non-follow-on proceedings, and indeed, even in proceedings

alleging anti-fraud violations. *E.g.*, *S.W. Hatfield, CPA*, Exchange Act Release No. 73763, 2014 WL 6850921, at *9 (Dec. 5, 2014); *Gordon Brent Pierce*, Exchange Act Release No. 71664, 2014 WL 896757, at *7-8 (Mar. 7, 2014), *pet. denied*, --- F.3d ----, 2015 WL 2445073 (D.C. Cir. May 22, 2015); *China-Biotics, Inc.*, Exchange Act Release No. 70800, 2013 WL 5883342, at *16 (Nov. 4, 2013).

In considering the Division's Motion for Summary Disposition, Respondents' joint Answer has been taken as true, except as modified by stipulations or admissions made by each Respondent, by uncontested affidavits, and by facts officially noticed pursuant to Rule 323. *See* 17 C.F.R. § 201.250(a). Conversely, in considering Respondents' Motion for Summary Disposition, the OIP has been taken as true, except as modified by stipulations or admissions made by the Division, by uncontested affidavits, and by facts officially noticed. *See id.* I have construed Respondents' statement in their Answer that they "do not agree with" any allegations in the OIP as a general denial of those allegations, and accordingly no allegations of the OIP have been "deemed admitted." Answer at 7; *see* 17 C.F.R. § 201.220(c); *cf.* Div. Motion at 2 & n.1 (arguing that Respondents admitted most facts alleged in the OIP by failing to deny them).

Anderson and Carnahan made numerous admissions in their investigative testimony. Div. Exs. 1, 2; *Robert L. Burns*, Investment Advisers Act of 1940 Release No. 3260, 2011 WL 3407859, at *1 (Aug. 5, 2011) (investigative testimony considered as part of summary disposition record demonstrating that a respondent improperly received gifts from brokers). Anderson and Carnahan also made admissions in certain exhibits, in the form of, for instance, their own statements, the statements of their agents, or statements that they agreed are true. *See Wheat, First Sec., Inc.*, Exchange Act Release No. 48378, 2003 WL 21990950, at *12 & n.55 (Aug. 20, 2003) (certain admissions and statements by an opposing party may be considered non-hearsay, citing Federal Rule of Evidence 801(d)(2)). Official notice may be taken of public records of discipline by the Financial Industry Regulatory Authority. *See* 17 C.F.R. § 201.323; *Gregory Evan Goldstein*, Exchange Act Release No. 71970, 2014 WL 1494527, at *1 n.1, *3 n.12 (Apr. 17, 2014). By analogy, I have taken official notice of the PCAOB's August 12, 2010, public order imposing an associational bar against Anderson, which is available on the PCAOB's website at http://pcaobus.org/Enforcement/Decisions/Documents/Traci_Jo_Anderson.pdf. Div. Ex. 5. I have also taken official notice of CYIOS' Commission filings and of PCAOB Rules approved by the Commission. *See* Div. Exs. 11-21.

B. Sarbanes-Oxley Section 105(c)(7)(B)

Section 105(c)(4) of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley) authorizes the PCAOB to revoke the registration of a registered public accounting firm and to bar an individual from being an associated person of a registered public accounting firm. 15 U.S.C. § 7215(c)(4)(A), (B). It is unlawful under Sarbanes-Oxley Section 105(c)(7) for a person subject to such an associational bar not only to willfully associate with a registered public accounting firm, but also to willfully associate with "any issuer . . . in an accountancy or a financial management capacity" without the consent of the PCAOB or the Commission. *Id.* § 7215(c)(7)(A), (B). It is also unlawful under Sarbanes-Oxley Section 105(c)(7)(B) for an issuer to permit a person subject to the PCAOB's associational bar to associate with the issuer in an accountancy or financial management capacity, without the consent of the PCAOB or the

Commission, if the issuer “knew, or in the exercise of reasonable care, should have known” of the associational bar. *Id.* § 7215(c)(7)(B).

The evidence that may be considered on summary disposition demonstrates no genuine issue of material fact that: (1) between August 2010, when the Order issued, and June 2014, shortly before CYIOS terminated the registration of its stock, CYIOS was an issuer; (2) Anderson remained associated with CYIOS during that time in an accountancy or financial management capacity, and CYIOS permitted the association; (3) Anderson’s association with CYIOS was willful; and (4) neither the PCAOB nor the Commission consented to the association. *E.g.*, Div. Ex. 1 at 14, 28, 76-78, 96-97; Div. Ex. 2 at 42; Div. Ex. 5 (Order); Div. Ex. 6 (July 25, 2007, engagement letter signed by Anderson and describing her accounting responsibilities for CYIOS). Thus, Anderson violated Sarbanes-Oxley Section 105(c)(7)(B) and, subject to proof of inability to pay, will be ordered to disgorge her ill-gotten gains. *See Jay T. Comeaux*, 2014 WL 4160054, at *3 & n.18, *5 (disgorgement analysis is not subject to the public interest test). There is no genuine issue of material fact that those ill-gotten gains total \$244,835.48. *See* Div. Motion at 6-7; Div. Exs. 8, 10.

Respondents’ arguments regarding Section 105(c)(7)(B) are generally unpersuasive. They contend that the language “under this subsection” in Sarbanes-Oxley Section 105(c)(7)(B) incorporates the PCAOB’s definition of “associated person of a public accounting firm.” Resp. Mot. at 4-6. Therefore, their argument goes, because an “associated person of a public accounting firm” is only one whose work is “in connection with the preparation or issuance of any audit report,” the term “under this subsection” is “meant to say in conjunction with an audit report.” *Id.* at 5 (quoting PCAOB Rule 1001(p)(i) (approved by Exchange Act Release No. 48180 (July 16, 2003))). Similarly, they contend that the bar on associating with an issuer in an accountancy or financial management “capacity” also limits the bar to association “in conjunction to an audit report.” *Id.* Their reading of Section 105(c)(7)(B) is plainly incorrect because it reads the issuer associational bar, as distinct from the registered public accounting firm associational bar, entirely out of the statute. Thus, the undisputed fact that Anderson “performs ‘ZERO’ percent in conjunction with the preparation or furnishing of an audit report” is beside the point. *Id.* at 6.

Respondents further argue that the PCAOB was aware at the time it issued the Order that Anderson was CFO of CYIOS, that the PCAOB did not specifically bar her from associating with CYIOS, and therefore that the PCAOB “gave [its] consent (implicitly) for her to continue to work for CYIOS.” Resp. Mot. at 6 (citing Answer Ex. 3). But the Order did not bar her from association with any particular audit client – it instead barred her from being an associated person of a public accounting firm, regardless of the client. Div. Ex. 5 at 18. The fact that CYIOS was not identified by name in the Order is no more significant than the fact that Anderson’s audit clients were not identified by name (other than the clients whose audit work resulted in the Order in the first place). It is entirely unreasonable to interpret the PCAOB’s silence regarding CYIOS as implicitly endorsing her association with CYIOS.

Nonetheless, genuine issues of material fact exist as to two issues. First, Anderson’s state of mind remains genuinely disputed. Whether Anderson acted in deliberate or reckless disregard of a regulatory requirement determines the availability of second-tier or third-tier civil penalties.

See 15 U.S.C. §§ 77h-1(g)(2), 78u-2(b). Anderson's state of mind is also relevant to evaluating the public interest factors, which bear upon the appropriateness of other remedial sanctions. See *Altman v. SEC*, 666 F.3d 1322, 1329 (D.C. Cir. 2011); *Michael C. Pattison, CPA*, Exchange Act Release No. 67900, 2012 WL 4320146, at *8 (Sept. 20, 2012); *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *22 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010).

Second, the liability of Carnahan and CYIOS – which essentially reduces to the question of Carnahan's state of mind – remains at issue. The state of mind of Carnahan is imputed to CYIOS. See *Montford & Co.*, Investment Advisers Act of 1940 Release No. 3829, 2014 WL 1744130, at *14 (May 2, 2014). Although it is clear that Carnahan (and thus CYIOS) permitted Anderson to remain contract CFO of CYIOS after August 12, 2010, viewing the evidence in the light most favorable to Respondents, it is genuinely disputed whether Carnahan knew or should have known of the Order, and thus whether CYIOS is liable. *E.g.*, Div. Ex. 2 at 80-89. Also, Carnahan is charged with causing CYIOS' violation, which requires proof that: (1) CYIOS committed a primary violation; (2) Carnahan was a cause of that violation; and (3) Carnahan knew or should have known that his act would contribute to CYIOS' violation. See *Robert M. Fuller*, Exchange Act Release No. 48406, 2003 WL 22016309, at *4 (Aug. 25, 2003). Because it is genuinely disputed whether Carnahan knew or should have known of the Order, it is genuinely disputed whether Carnahan knew or should have known that his retention of Anderson would contribute to any violation by CYIOS. Similarly, Carnahan's state of mind is pertinent to any potential sanction.

C. Exchange Act Section 13(a) and Rules 13a-1 and 13a-13

Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder require issuers with securities registered under Exchange Act Section 12 to file annual and quarterly reports with the Commission. 15 U.S.C. § 78m(a); 17 C.F.R. §§ 240.13a-1, .13a-13. Scienter is not required to establish violations of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13. See *SEC v. McNulty*, 137 F.3d 732, 740-41 (2d Cir. 1998); *SEC v. Wills*, 472 F. Supp. 1250, 1268 (D.D.C. 1978). Official notice is taken that: (1) CYIOS had a class of securities registered under Exchange Act Section 12 as of November 21, 2012; (2) CYIOS filed a Form 15-12G on May 30, 2014, which terminated the registration of its stock; and (3) between November 21, 2012, and May 30, 2014, CYIOS filed no required periodic reports. See Div. Ex. 2 at 40-41, 77; Div. Ex. 21; CYIOS Form 15-12G filed May 30, 2014; CYIOS Form S-8 filed November 29, 2007. Accordingly, there is no genuine issue of material fact that CYIOS violated Exchange Act Section 13(a) and Rules 13a-1 and 13a-13. There is also no genuine issue of material fact that Carnahan was responsible for CYIOS' periodic filings, and knew that CYIOS was not filing them. *E.g.*, Div. Ex. 2 at 58, 60. Thus, Carnahan caused CYIOS' violations. Moreover, Carnahan purposefully decided to stop making CYIOS' periodic filings; insofar as his state of mind bears on any remedial sanction against him and CYIOS, there is no genuine issue of material fact that he acted in deliberate disregard of a regulatory requirement. See Answer at 4 (“CYIOS was having financial hardship and was not able to continue paying for auditors and lawyers for the filings”).

D. Exchange Act Rules 13a-14 and 13a-15

Exchange Act Rule 13a-15(c) states that the management of an issuer required to file annual reports pursuant to Exchange Act Section 13(a) must evaluate the effectiveness of the issuer's internal control over financial reporting as of the end of each fiscal year. *See* 17 C.F.R. § 240.13a-15(c). Exchange Act Rule 13a-14(a) states that Forms 10-K and 10-Q must include specified certifications signed by the issuer's principal executive and principal financial officer. *See* 17 C.F.R. § 240.13a-14(a). One such certification is that the report "does not contain any untrue statement of material fact." 17 C.F.R. § 229.601(b)(31)(i). Rule 13a-14(a) is violated if a report contains materially false or misleading information. *See SEC v. Kalvex, Inc.*, 425 F. Supp. 310, 315-16 (S.D.N.Y. 1975); *Russell Ponce*, 54 S.E.C. 804, 812 n.23 (2000), *pet. denied*, 345 F.3d 722 (9th Cir. 2003).

There is no genuine issue of material fact that Carnahan did not "assess[] the effectiveness of [CYIOS' ICFR]" at any relevant time. *See* Div. Ex. 21 at 16 of 26; *see also* Div. Ex. 2 at 63-64, 72, 75. Respondents assert that "Carnahan and CYIOS did in fact assess ICFR," and that a CYIOS product, the "CYIPRO program based operating system," was "built with ICFR in mind." Resp. Mot. at 7; *see also* Response at 5-6; Reply at 2 ("CYIPRO is a control framework and within this framework holds the controls and procedures over the financial reporting."). The documents Respondents cite do not support this contention. *See* Resp. Exs. 3, 4. Indeed, other than a vague claim that CYIPRO allows "accurate quantification of the costs on each project and process," Respondents' evidence appears to have nothing to do with ICFR. Resp. Ex. 3 at 2.

CYIOS' Forms 10-K for fiscal years 2009, 2010, and 2011, and its Forms 10-Q filed between first quarter 2010 and third quarter 2012, all stated that CYIOS management had assessed the effectiveness of its ICFR. *E.g.*, Div. Ex. 13 at 23 of 34; Div. Ex. 21 at 16 of 26. All such statements failed to comply with both Rule 13a-14 and Rule 13a-15. Because Carnahan signed and was responsible for the contents of CYIOS' periodic filings, he violated both Rule 13a-14 and Rule 13a-15. *See* Div. Ex. 2 at 58, 60. Moreover, the contrast between Carnahan's complete failure to assess ICFR and the statements to which he attested in CYIOS' periodic filings was extreme, so much so that his statements were knowingly false. There is thus no genuine issue of material fact that Carnahan acted in deliberate disregard of a regulatory requirement.

E. Section 17(a)

The OIP alleges that CYIOS violated Section 17(a) of the Securities Act of 1933 (Securities Act), and Carnahan caused CYIOS' violations, by filing periodic reports that falsely stated that CYIOS had assessed ICFR and that falsely certified the accuracy of the reports. *See* OIP at 5. Securities Act Section 17(a)(2) proscribes obtaining money or property by means of an untrue statement of material fact. 15 U.S.C. § 77q(a)(2); *John P. Flannery*, Securities Act Release No. 9689, 2014 WL 7145625, at *11 (Dec. 15, 2014). Section 17(a)(3) proscribes transactions, practices, and courses of business that operate or would operate as a fraud, and proscribes misrepresentations only if they constitute fraudulent transactions, practices, or courses of business. *John P. Flannery*, 2014 WL 7145625, at *18. Thus, a single act of making a

material misstatement, by itself, would not violate Section 17(a)(3), but repeatedly making material misstatements could constitute a fraudulent practice or course of business. *Id.* Section 17(a) also requires that the violative conduct be material, in the offer or sale of securities, and in interstate commerce. *See SEC v. Smart*, 678 F.3d 850, 856-57 (10th Cir. 2012).

There is no genuine dispute that Carnahan repeatedly and knowingly made misstatements in CYIOS' periodic filings, that the filings were transmitted to the Commission electronically using the internet, and that the misstatements appeared in periodic Commission filings. *E.g.*, Div. Ex. 2 at 58, 60 (describing "EDGARiz[ing]"). This is sufficient to demonstrate that Carnahan caused CYIOS to knowingly make repeated untrue statements in interstate commerce.

However, it is an open question whether the misstatements were "in the offer or sale of securities" and material. Where the fraud alleged involves misstatements in public Commission filings "on which an investor would presumably rely, the 'in [the offer or sale]' requirement is generally met by proof of the means of dissemination and the materiality of the misrepresentation or omission." *SEC v. Wolfson*, 539 F.3d 1249, 1262 (10th Cir. 2008) (quoting *SEC v. Rana Research, Inc.*, 8 F.3d 1358, 1362 (9th Cir. 1993), and citing *Semerenko v. Cendant Corp.*, 223 F.3d 165, 176 (3d Cir. 2000); *SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1171 (D.C. Cir. 1978); *SEC v. Texas Gulf Sulphur Co.*, 401 F.2d 833, 861-62 (2d Cir. 1968) (en banc)); *cf. United States v. Naftalin*, 441 U.S. 768, 773 n.4 (1979) (noting that the Supreme Court has used Section 17(a)'s phrase "in" the offer or sale interchangeably with Exchange Act Section 10(b)'s phrase "in connection with"). Materiality is satisfied if there is a substantial likelihood that an accurate disclosure would have been viewed by a reasonable investor as having "significantly altered the total mix of information made available." *Matrixx Initiatives, Inc. v. Siracusano*, 131 S. Ct. 1309, 1318 (2011) (internal quotation marks omitted).

Because Carnahan "personally certified the false statements in this case, they can be seen as 'impugn[ing] the integrity of management,' which in itself would be material to investors." *In re Monster Worldwide, Inc. Sec. Litig.*, 251 F.R.D. 132, 139 (S.D.N.Y. 2008) (alteration in original); *see United States v. Hatfield*, 724 F. Supp. 2d 321, 328 (E.D.N.Y. 2010) ("It is well-settled that information impugning management's integrity is material to shareholders.") However, the materiality of even a complete lack of ICFR at CYIOS is unclear, as is the precise nature of any relevant "offer or sale" of CYIOS shares. The Division offers no evidence that any CYIOS share was ever sold on any exchange. The only evidence to which the Division points to support the "in the offer or sale" element is CYIOS' 2010 Form 10-K, which lists fifteen instances in 2009 and 2010 in which CYIOS issued stock for various purposes, including for "consulting services." Div. Ex. 12 at 22 of 32. Based on this sparse record, the Division is not entitled to summary disposition as a matter of law on the Section 17(a) claims.

The proper amount of disgorgement is also an open question. The Division asks that CYIOS be ordered to disgorge \$37,500 based on the value of consulting services the company received in exchange for CYIOS stock. Disgorgement is not limited to direct pecuniary benefits or profits tied to investor harm; it may also include "illicit benefits . . . that are indirect or intangible." *SEC v. Contorinis*, 743 F.3d 296, 306 (2d Cir. 2014); *see SEC v. Wyly*, 56 F. Supp. 3d 394, 403, 424-25, 429-31 (S.D.N.Y. 2014) (ordered disgorgement for unpaid taxes related to the defendants' failure to disclose beneficial ownership of stock in offshore trusts and

entities, and rejected proposition that “the only amounts than can be disgorged are those linked directly to a particular misstatement in a particular filing”); *SEC v. World-Wide Coin Invs., Ltd.*, 567 F. Supp. 724, 761 (N.D. Ga. 1983) (ordered disgorgement of shares of stock that the defendant received in exchange for overvalued medallions). Although the type of disgorgement sought here is not out of the question, the Division has not referenced any authority where disgorgement was ordered in similar or analogous circumstances. Further, the Division has failed to meet its initial burden of establishing a causal connection between the securities violations and any alleged unlawful gain. *See SEC v. Wyly*, 56 F. Supp. 3d 260, 268 (S.D.N.Y. 2014); *Jay T. Comeaux*, 2014 WL 4160054, at *3. As to Securities Act Section 17(a)(2) in particular, it is not clear that CYIOS obtained “money or property,” as opposed to consulting services, by means of its untrue statements. As such, even if there is no dispute that CYIOS received consulting services worth \$37,500 in exchange for its stock offering, the Division is not entitled to summary disposition as a matter of law on its disgorgement request.

F. Summary

In sum, there are no genuine issues of material fact as to the following allegations:

1. Anderson violated Sarbanes-Oxley Section 105(c)(7)(B) and received ill-gotten gains totaling \$244,835.48;
2. CYIOS violated, and Carnahan caused CYIOS’ violations of, Exchange Act Section 13(a) and Rules 13a-1 and 13a-13, and CYIOS and Carnahan acted in deliberate disregard of a regulatory requirement;
3. Carnahan violated Exchange Act Rules 13a-14 and 13a-15, and acted in deliberate disregard of a regulatory requirement; and
4. CYIOS made, and Carnahan caused CYIOS to make, repeated untrue statements in interstate commerce.

These facts are deemed established, by analogy to Federal Rule of Civil Procedure 56(g). At the hearing, the parties need not present evidence to prove these facts.

However, there are genuine issues of material fact as to the following allegations:

1. Anderson’s state of mind;
2. Whether Carnahan knew or should have known of the Order, and therefore whether CYIOS violated, and Carnahan caused CYIOS’ violation of, Sarbanes-Oxley Section 105(c)(7)(B);
3. Whether CYIOS’ untrue statements in periodic Commission filings were material and in the offer or sale of securities, and whether CYIOS obtained money or property by means of such untrue statements; and
4. The proper measure of disgorgement for any Securities Act Section 17(a) violation.

ORDER

It is therefore ORDERED that the Division's Motion for Summary Disposition is GRANTED IN PART as outlined above and Respondents' Motion for Summary Disposition is DENIED.

It is further ORDERED that the parties shall confer regarding a hearing date in August 2015, and a prehearing schedule, and shall file a joint report on their conference no later than Wednesday, June 17, 2015.

Cameron Elliot
Administrative Law Judge