

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73209 / September 25, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3585 / September 25, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16164

In the Matter of

JDA SOFTWARE GROUP, INC.,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against JDA Software Group, Inc. (“Respondent”).

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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 21C of the Securities Exchange Act of 1934, 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 finds¹ that:

SUMMARY

During the time period from fiscal year 2008 through the third quarter of fiscal year 2011, JDA Software Group, Inc. ("JDA"), a software solutions company, materially misstated its revenue, net income, and other financial metrics in certain of its annual and quarterly reports filed with the Commission and in certain of its earnings releases. In particular, JDA failed to properly record and report revenue from its software license sales in the correct accounting periods because it did not establish vendor specific objective evidence of fair value ("VSOE") for Managed Services and certain types of consulting arrangements sold in conjunction with its software licenses. In addition, JDA failed to accurately record and report revenues from the sale of software licenses and certain services agreements that were linked to each other. JDA's failures in these areas were caused by inadequate internal controls surrounding revenue recognition. JDA lacked adequate revenue recognition policies and procedures and failed to identify all service-related contracts needed for VSOE testing to determine the fair value of certain services.

Ultimately, in August 2012, JDA restated its financial results for fiscal years 2008 through the third quarter of fiscal year 2011, and in its restatement acknowledged, among other things, material weaknesses in its internal controls over financial reporting. By engaging in the foregoing conduct, JDA violated the reporting, books and records, and internal controls provisions of the federal securities laws, namely Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

RESPONDENT

JDA Software Group, Inc. ("JDA"), a Delaware corporation headquartered in Scottsdale, Arizona, is a leading provider of business software solutions for a broad range of industry groups ranging from foods, manufacturing, retail, government and defense contracting. In December 2012, JDA was acquired by RedPrairie, a privately held software company for approximately \$1.9 billion. Both JDA and RedPrairie are owned by New Mountain Capital, LLC, a private investment company. Prior to its acquisition by RedPrairie, JDA's common stock was registered with the Commission pursuant to Section 12(b) of the Securities Act of 1933 ("Securities Act") and traded on the NASDAQ Global Select Market. Since JDA had stock registered under Section 12 of the Securities Act, it was required to file reports with the Commission pursuant to Sections 13(a) of the Exchange Act.

¹ 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.

BACKGROUND

1. In 1997, the American Institute of Certified Public Accountants (“AICPA”) issued Statement of Position 97-2, Software – Revenue Recognition (“SOP 97-2”), the first industry-specific GAAP guidance on revenue recognition for software and software-related products. Following the issuance of SOP 97-2, the AICPA also released numerous standards and Technical Practice Aids (“TPAs”) clarifying specific aspects of software revenue recognition. In June 2009, existing GAAP pronouncements were codified into the Accounting Standards Codification, effective for interim and annual periods ending after September 15, 2009. SOP 97-2, its related amendments and related TPAs were codified at ASC 985-605 (hereinafter “ASC 985-605”).

2. JDA’s business involved selling computer software licenses and services related to those software licenses to various customers located throughout the world. The primary related services were: (i) Managed (Hosting/Cloud) Services; (ii) Consulting Services; (iii) Post Contract Customer Support (Maintenance); and (iv) Education/Training. Managed Services involved, among other things, JDA hosting the software for customers on JDA’s servers. Consulting Services involves assisting customers in all phases of systems implementation, including program and project management.

3. JDA sold its software licenses and related services in three ways: (i) it bundled the software license and some, if not all, of the related services and sold them as a single contract, known as a “multiple element arrangement” under the accounting literature; (ii) it sold the software license and the related services in separate contracts that were linked; or (iii) it sold the software license and related services in separate contracts that were not linked. These services contracts were typically offered for a set period of time.

4. As a computer software company, JDA’s ability to recognize revenue from the sale of software and related services in a multiple element arrangement was governed broadly by ASC 985-605. In order to recognize the full amount of revenue from the sale of a software license immediately in the quarter in which the sale occurred, JDA had to establish that it had VSOE for each undelivered element of the bundled services. If JDA was unable to establish VSOE for any undelivered element, it had to recognize revenue from the software license ratably over the term of the services agreement.

5. ASC 985-605 limits the information that a company may use to establish the fair value of a particular element. This information is limited to:

- a. The price charged when the same element is sold separately²; or
- b. For an element not yet being sold separately, the price established by management having the relevant authority; it must be probable that the price, once established, will not change before the separate introduction of the element into the market place (“management authority”).

VSOE FOR MANAGED SERVICES

6. JDA offered Managed Services to its customers. In fiscal years 2008 and 2009, JDA did not conduct any VSOE studies using stand-alone transactions to determine whether it had established VSOE for its Managed Services. Rather than using stand-alone transactions, JDA relied solely on management authority to establish VSOE for its Managed Services.

7. To establish VSOE using management authority, a company must demonstrate that the actual prices charged for the services in multiple element arrangements conform to the prices set by management. In fiscal years 2008 and 2009, however, JDA did not have adequate policies and procedures to determine whether the sales prices for Managed Services in its multiple element arrangements complied with the prices that were set by JDA’s management. JDA conducted no testing to make this determination. Thus, as part of its restatement process – and specifically with regard to Managed Services – JDA determined that it had not established VSOE for Managed Services in fiscal years 2008 and 2009 because it did not sell its Managed Services offerings at prices that were consistent with prices set by management.

8. For fiscal year 2010, JDA conducted its first-ever VSOE study for Managed Services using stand-alone transactions. JDA initially identified five stand-alone Managed Services transactions and determined that those transactions demonstrated sufficient clustering to establish VSOE. As part of its 2010 annual audit, JDA’s auditor determined that one of the transactions was not a stand-alone transaction, and JDA concluded that the remaining four were sufficient to establish VSOE.

9. As part of the restatement process, however, JDA determined that one of those four transactions was not a stand-alone transaction because it was “linked” to a software license agreement. JDA determined that the remaining three transactions did not constitute an acceptable population by which VSOE for Managed Services could be established. In particular, JDA noted that “the objective testing populations of stand-alone transactions [the remaining three transactions]

² For ease of reference in the Order, we refer to contracts in which services are sold separately as stand-alone transactions. An analysis of stand-alone transactions for VSOE purposes involves: (i) identifying transactions in which a particular service is sold separately (not in a multiple element arrangement); (ii) identifying the actual prices at which those services were sold; and (iii) determining whether those prices demonstrate sufficient clustering (i.e. prices that are tightly grouped around the average price) to establish VSOE.

were not substantial enough to establish VSOE.” Thus, JDA did not properly record revenue from the sale of certain software licenses in which Managed Services were a bundled or linked service.

VSOE FOR CONSULTING SERVICES

10. During the relevant period, JDA offered Consulting Services to its customers throughout the world, including in Japan, Australia, and Europe. JDA offered its Consulting Services typically through fixed bid contracts or contracts based on a time and material arrangements with set hourly rates.

11. In fixed bid contracts, JDA set a fixed total dollar amount for a particular consulting arrangement, which was based on an estimate of the number of hours that were expected to be spent by the consultants on the project. During the relevant period – and as they had with Managed Services arrangements in fiscal years 2008 and 2009 – JDA did not conduct VSOE testing to determine whether the actual contract rates in fixed bid contracts complied with the consulting rates set by management authority.

12. As part of its restatement process, JDA concluded that from fiscal year 2008 through fiscal year 2010, JDA’s fixed bid contracts lacked consistency in pricing. In particular, for fixed bid contracts in fiscal year 2010, JDA found that it only had a 13% compliance rate, and therefore JDA concluded that VSOE for fixed bid contracts did not exist.

13. With respect to consulting services based upon time and material arrangements, because consulting and currency rates varied depending on the customer’s geographic region, JDA was required to establish VSOE for Consulting Services on a geographic basis. JDA, however, did not conduct any VSOE analysis for certain geographic regions.

14. During its restatement process, JDA conducted an analysis on a geographic basis and determined that for certain regions it did not have a sufficient volume of consulting contracts to establish VSOE in certain foreign currencies. Thus, JDA did not properly record revenue from the sale of certain software licenses in which Consulting Services were a bundled or linked service.

LINKED CONTRACTS

15. With respect to services offered in stand-alone arrangements, ASC 985-605-55-4³ requires computer software companies to analyze whether the services offered to a customer are “linked” to a software license sold to the same customer.

16. Pursuant to ASC 985-605-55-4, a group of contracts or agreements may be so closely related that they are, in effect, parts of a single arrangement. The form of an arrangement is not necessarily the only indicator of the substance of an arrangement. The existence of any of the following factors (which are not all-inclusive) may indicate that a group of contracts should be

³ Prior to the accounting standards codification, TPA 5100.39 provided authoritative guidance for the analysis of linked contracts.

accounted for as a single arrangement: (i) the contracts or agreements are negotiated or executed within a short timeframe of each other; (ii) the different elements are closely interrelated or interdependent in terms of design, technology, or function; (iii) the fee for one or more contracts or agreements is subject to refund, forfeiture, or other concession if another contract is not completed satisfactorily; (iv) one or more elements in one contract or agreement are essential to the functionality of an element in another contract or agreement; (v) payment terms under one contract or agreement coincide with performance criteria of another contract or agreement; and (vi) the negotiations are conducted jointly with two or more parties (for example, from different divisions of the same company) to do what in essence is a single project.

17. Whether contracts are linked has significant implications from a VSOE, and in turn, a revenue recognition perspective. If two contracts are deemed to be linked, they are treated as part of a multiple element arrangement. As noted earlier, software companies are unable to recognize the full amount of the license revenue in the quarter in which the revenue is obtained unless they have VSOE for each service that is linked to the license agreement.

18. Moreover, if a service contract is linked to a license agreement, that service agreement cannot be used as a stand-alone transaction for purposes of establishing VSOE. In fact, as noted above, JDA determined in connection with its restatement that one of the stand-alone transactions relied upon in its VSOE study of Managed Services for fiscal year 2010 was linked, and therefore, could not be included in a population of stand-alone transactions.

19. During the relevant period, JDA's internal controls and testing for linked contracts were deficient. JDA's controls were not adequately designed to identify all of the service contracts that were in the process of being negotiated with customers. Specifically, JDA did not maintain any centralized database to track such contracts. In addition, JDA's controls were not adequately designed to systematically identify – by customer – any services contracts that were signed within a defined period of the software license agreement. Accordingly, JDA was unable to conduct adequate testing for linked contracts in compliance with ASC 985-605-55-4.

20. As JDA determined during its restatement process, any linkage analysis that occurred was rarely documented. Accordingly, even in those instances where it appeared that linkage was purportedly considered, it was very difficult to determine what if any analysis was done or whether the software license was linked to any service due to the lack of documentation.

21. JDA's linkage analysis was largely limited to determining whether an obligation existed to deliver services and whether a carve-out from license revenue was necessary where rates in a related services agreement were below VSOE, and did not consider all of the other factors set forth in ASC 985-605-55-4.

22. Accordingly, JDA did not properly assess contracts for linkage. Consequently, JDA reported a material weakness in its internal controls over financial reporting.

THE RESTATEMENT

23. On August 6, 2012, JDA restated its financial statements for fiscal years 2008, 2009, 2010 and the first three quarters of fiscal year 2011. JDA misstated its revenues, net income and other financial metrics in all reporting periods. In particular, JDA determined in the restatement that revenue was not recognized in the correct reporting periods. Thus, in some reporting periods, JDA's financial results were materially overstated and in others they were materially understated. The chart below summarizes JDA's material misstatements:

| Financial Metric (figures in\$000) | 2008 | 2009 | 2010 | 2011 |
|---|-------------|-------------|-------------|-------------|
| Revenue - Originally Reported | 390,332 | 385,800 | 617,209 | 671,753 |
| Revenue – Restated | 381,516 | 390,968 | 593,742 | 691,243 |
| Revenue - Over/(Under) Statement | 8,816 | (5,168) | 23,467 | (19,490) |
| <i>Percentage Over/(Under) Statement</i> | 2.31% | -1.32% | 3.95% | -2.82% |
| | | | | |
| Gross Profit- Originally Reported | | 240,129 | 363,675 | |
| Gross Profit – Restated | | 245,543 | 338,996 | |
| Gross Profit - Over/(Under) Statement | | (5,414) | 24,679 | |
| <i>Percentage Over/(Under) Statement</i> | N/A | -2.20% | 7.28% | N/A |
| | | | | |
| Net Income/(Loss) - Originally Reported | 3,124 | 17,746 | 17,718 | 71,000 |
| Net Income/(Loss) – Restated | (386) | 18,982 | 2,141 | 82,688 |
| Net Income /(Loss) - Over/(Under) Statement | 3,510 | (1,236) | 15,577 | (11,688) |
| <i>Percentage Over/(Under) Statement</i> | 909.33% | -6.51% | 727.56% | -14.14% |
| | | | | |
| EBITDA - Originally Reported | 97,354 | 96,846 | 160,851 | 179,637 |
| EBITDA – Restated | 88,538 | 102,461 | 135,786 | 201,608 |
| EBITDA - Over/(Under) Statement | 8,816 | (5,615) | 25,065 | (21,971) |
| <i>Percentage Over/(Under) Statement</i> | 9.96% | -5.48% | 18.46% | -10.90% |

24. In the restatement, JDA identified control failures that constituted material weaknesses, and a significant deficiency, in its internal controls over financial reporting – specifically related to multiple element arrangements and VSOE for certain services. Specifically, JDA acknowledged that material weakness existed in its internal controls over the application of revenue recognition criteria required by ASC 985-605.

25. JDA noted that the material weakness related to both the insufficient design and ineffective operation of certain internal controls over the identification of license agreements linked to consulting agreements and Managed Services, as well as testing and documentation of VSOE for Managed Services and Consulting Services products.

VIOLATIONS

26. Under Section 21C of the Exchange Act, the Commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Act and upon any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation.

27. Section 13(a) of the Exchange Act requires 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. In addition to the information expressly required to be included in such reports, 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. “The reporting provisions of the Exchange Act are clear and unequivocal, and they are satisfied only by the filing of complete, accurate, and timely reports.” *SEC v. Savoy Industries*, 587 F.2d 1149, 1165 (D.C. Cir. 1978) (citing *SEC v. IMC Int’l, Inc.*, 384 F. Supp. 889, 893 (N.D. Tex. 1974)). A violation of the reporting provisions is established if a report is shown to contain materially false or misleading information. *SEC v. Kalvex, Inc.*, 425 F. Supp. 310, 316 (S.D.N.Y. 1975).

28. Section 13(b)(2)(A) of the Exchange Act 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.” Section 13(b)(2)(B) of the Exchange Act 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.

29. By engaging in the conduct above, JDA violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, and Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

30. In determining to accept Respondent’s Offer, the Commission considered remedial acts undertaken by JDA, including its enhancement of internal controls, retention of additional accounting personnel, and JDA’s cooperation with the staff’s investigation.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Section 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

B. Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$750,000 to the United States Treasury. 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 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 JDA Software 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 20549-5030.

By the Commission.

Brent J. Fields
Secretary