UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9881 / August 6, 2015

SECURITIES EXCHANGE ACT OF 1934
Release No. 75622 / August 6, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3673 / August 6, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16729

In the Matter of **MILLER ENERGY RESOURCES, INC., PAUL W. BOYD, CPA, DAVID M. HALL, AND CARLTON W. VOGT, III, CPA** **Respondents.**	**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**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Miller Energy Resources, Inc. (f/k/a Miller Petroleum, Inc.) ("Miller Energy"), Paul W. Boyd ("Boyd"), and David M. Hall ("Hall") (collectively, the "Miller Respondents"); and that public administrative proceedings be, and hereby are, instituted against Boyd and Carlton W. Vogt, III ("Vogt"), pursuant to Exchange Act Section 4C and 21C, and Rule 102(e)(1)(ii) as to Vogt and Rule 102(e)(1)(iii) as to Boyd of the Commission's Rules of Practice.[1]

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

II.

After an investigation, the Division of Enforcement alleges:

SUMMARY

1. This case involves financial accounting and reporting fraud, as well as audit failures, related to the valuation of certain oil and gas assets acquired by Miller Energy, an oil and gas company headquartered in Knoxville, Tennessee. Miller Energy purchased these assets, which are located in Alaska, for $2.25 million in cash – along with the assumption of certain liabilities it valued at approximately $2 million – during a competitive bid in a bankruptcy proceeding in December 2009.

2. The Company subsequently reported those assets at an overstated value of $480 million, and recognized a one-time "bargain purchase" gain of $277 million for its fiscal third quarter ended January 2010 and fiscal year ended April 2010.

3. The Alaska acquisition was the single most important event in Miller Energy's nearly forty year history, transforming it from a company long mired in the penny-stock arena to one traded on a national exchange. For the week preceding the acquisition, Miller Energy's stock closed at an average price of $0.66 per share. Since the acquisition, Miller Energy has raised tens of millions of dollars in debt and equity, listed its stock on the New York Stock Exchange (the "NYSE"), had its stock traded at nearly $9 per share, and achieved in 2013 a market capitalization of $393 million.

4. Miller Energy's CFO at the time, Boyd, failed to account for the acquisition in accordance with generally accepted accounting principles ("GAAP"). Accounting Standards Codification ("ASC") 805, *Business Combinations*, required Miller Energy to record the value of its acquired Alaska assets at "fair value." However, contrary to authoritative accounting guidance, Boyd used as fair value a reserve report that was prepared by a petroleum engineer firm using the rules for supplemental oil and gas disclosures. As set forth in GAAP, the numbers used in these

---

> 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.

Rule 102(e)(1)(ii) 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 engaged in unethical or improper professional conduct.

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.

supplemental disclosures do not reflect fair value, and the reserve report used by Boyd expressly disclaimed that the numbers therein represented the engineer firm's opinion of fair value. The reserve report Boyd used also contained expense numbers that were knowingly understated by David M. Hall ("Hall"), the CEO of Miller Energy's Alaska operations. In addition, Boyd double counted $110 million of certain fixed assets that were already included in the reserve report.

5. Miller Energy's financial statements for fiscal 2010, the first annual period in which the Company reported the fair value of the acquired assets, was audited by Sherb & Co. LLP ("Sherb & Co."), a now defunct CPA firm that was suspended by the Commission in 2013 for improper professional conduct unrelated to this matter. The lead engagement partner on the Miller Energy audit, Vogt, failed to comply with the Public Company Accounting Oversight Board (the "PCAOB") rules and standards in auditing Miller Energy's financial statements that included its accounting for its Alaska acquisition. Vogt failed to exercise due professional care and skepticism by not adequately assessing whether the Company's accounting treatment for the acquisition complied with GAAP. Vogt also failed to obtain sufficient competent evidential matter for management's assertions regarding the fair value of the Alaska assets.

RESPONDENTS

6. ***Miller Energy Resources, Inc.*** is a Tennessee corporation with its principal place of business in Knoxville, Tennessee. It operates and develops oil and gas wells in north and south central Alaska. The Company operated oil and gas assets in the Appalachian region of east Tennessee until selling them in November 2014 for $3.3 million in cash. It changed its name from Miller Petroleum to Miller Energy Resources in April 2011. Miller Energy's common stock is currently registered pursuant to Exchange Act Section 12(b) and was listed on the NYSE under the ticker symbol "MILL" until July 2015, when trading in its stock was suspended and the stock was delisted. It previously traded on the NASDAQ Global Market from May 6, 2010 to April 11, 2011, and before then was quoted on the OTC Bulletin Board and traded on the Pink Sheets. As of February 26, 2015, there were 46,664,223 shares of common stock outstanding. For fiscal years 2010 through 2014, Miller Energy reported annual operating losses every year totaling $79.2 million. Between March 2010 and August 2014, Miller Energy issued shares of common and preferred stock for proceeds of tens of millions of dollars.

7. ***Paul W. Boyd***, CPA, resides in Knoxville, Tennessee. From 2008 until 2011, Boyd was the CFO and Treasurer at Miller Energy. He was the director of risk management from 2011 until 2014. He is no longer employed by Miller Energy. He has been a licensed CPA in Tennessee since 1993.

8. ***David M. Hall*** resides in Anchorage, Alaska. Hall has degrees in Industrial and Electrical Engineering from Rochville University. He has served as a director of the Company and as CEO of Miller Energy's Alaska subsidiary since December 2009, and as Miller Energy's Chief Operating Officer since July 2013. He has worked with the acquired Alaska assets since at least the mid-1990s, when Miller Energy's predecessors began compiling the assets. Prior to joining Miller Energy, Hall served from January 2008 to December 2009 as Vice President and General Manager of Alaska Operations for the immediate past owner of the acquired assets. In this capacity, Hall was the most senior employee in Alaska responsible for the day-to-day operations of the oil and gas properties.

9. ***Carlton W. Vogt, III***, CPA, resides in Warwick, New York. From January 2005 to October 2011, Vogt was a partner at Sherb & Co., LLP, an accounting firm based out of New York. He has been a licensed CPA in the state of New York since 1998.

FACTS

Background

10. Miller Energy was founded in 1967 as an oil and gas exploration and production company, and went public via a reverse merger in 1996. Between early 2002 and December 2009, Miller Energy's stock price regularly traded below one dollar per share, falling to a low of $0.04 per share in December 2007. In August 2008, Miller Energy named a new CEO. Soon thereafter, the Company began acquiring additional oil and gas properties.

Miller Energy Acquires and Overvalues the Alaska Assets

11. In the fall of 2009, Miller Energy became aware of certain oil and gas properties in Alaska that were in the process of being "abandoned" as part of the bankruptcy proceedings of a California-based energy company.

12. Unable to service its heavy debt and pay the significant monthly costs required to operate the properties, the bankrupt entity unsuccessfully sought for almost a year to sell its Alaska assets. Beginning in December 2008, months before it filed for bankruptcy, the former owner of the assets, with the help of one of the world's leading financial advisory and asset management firms, marketed the same group of assets that Miller Energy ultimately bought to 40 potential buyers. This process failed to attract any bidders, and the assets were auctioned by the bankruptcy court in July 2009, with the winning bidder agreeing to a total purchase price of $8 million for the assets. A second entity, who bid $7 million, was designated as the back-up purchaser. Neither bidder closed.

13. As a result, the former owner of the assets sought in August 2009, and was granted in September, an order from the bankruptcy court allowing it to abandon title to the assets due to a lack of interest.

14. Due to renewed interest in the assets following their abandonment from Miller Energy, the bankruptcy court permitted the debtor to reacquire the Alaska assets and sell them to Miller Energy in a competitive auction for $2.25 million in cash and the assumption of certain limited liabilities. The transaction closed on December 10, 2009.

15. On March 22, 2010, Miller Energy filed its quarterly report on Form 10-Q for its fiscal third quarter ended January 31, 2010 and reported a value of $480 million for the Alaska acquisition, which amount was comprised of $368 million for oil and gas properties and $110 million for fixed assets. Miller Energy also reported an after-tax $277 million "bargain purchase gain," which boosted net income for the quarter to $272 million – an enormous increase over the $556,097 loss reported for the same period the year before.

16. As detailed below, these inflated balance sheet and income statement numbers were repeated in numerous documents subsequently filed with the Commission.

17. The newly-booked value of the Alaska acquisition, which resulted in a nearly 5,000% increase in Miller Energy's total assets, had a significant impact on Miller Energy's stock price. On December 10, 2009, the date of the transaction, Miller Energy's stock closed at $0.61 per share. By March 31, 2010, Miller Energy's stock closed 982% higher at $6.60 per share. Weeks later, its stock began trading on NASDAQ and, after moving to the NYSE a year later, reached an all-time high price on December 9, 2013 of $8.83 per share.

18. As described in detail below, Miller Energy materially overstated the value of its Alaska assets by more than four hundred million dollars.

Under GAAP, Miller Energy Was Required to Record the Alaska Acquisition at Fair Value

19. ASC 805, *Business Combinations* – formerly Statement of Financial Accounting Standards ("SFAS") 141(R) – became effective in December 2008. Among its principal revisions, ASC 805 requires acquisitions that result in a "bargain purchase," *e.g.*, entities purchased at fire sales prices in non-orderly transactions, to be measured at fair value, with any resulting gain recorded on the income statement.

20. ASC 820, *Fair Value Measurements* (formerly SFAS 157), provides the framework for measuring fair value. "Fair value" is defined in ASC 820 as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date." A reporting entity must determine an appropriate fair value using one or more of the valuation techniques described in accounting literature.

21. ASC 820 outlines three broad approaches to measure fair value: the market approach, income approach, and cost approach. Under the market approach, prices and other relevant information generated by market transactions involving identical or comparable assets or liabilities are used to measure fair value. The income approach utilizes valuation techniques to convert future amounts to a single discounted present value amount. Finally, the cost approach is based on the amount that currently would be required to replace the assets in service, i.e., current replacement cost.

22. ASC 820 emphasizes that fair value is a market-based measurement, not an entity-specific measurement, and should be determined based on the assumptions market participants would use in pricing the asset or liability.

23. ASC 820 emphasizes that when a price for an identical asset or liability is not observable entities should use a "valuation technique that maximizes the use of relevant observable inputs and minimizes the use of unobservable inputs" and entities may not ignore assumptions market participants would use.[2]

[2] ASC 820 defines "unobservable inputs" as "inputs that reflect the reporting entity's own assumptions about the assumptions market participants would use in pricing the asset or liability developed based on the best information available in the circumstances" and "observable inputs" as "inputs that reflect the assumptions market participants would use in pricing the asset or liability developed based on market data obtained from sources independent of the reporting entity."

24. When computing their estimate of fair value, Miller Energy and Boyd failed to consider the existence of numerous, readily apparent data points strongly indicating that the assets were worth substantially less than the $480 million value Miller Energy recorded. In failing to do so, Miller Energy and Boyd, materially overstated the value of the newly acquired Alaska assets.

25. As described below, Miller Energy purported to value its Alaska acquisition using the income approach for the oil and gas reserves and the cost approach for certain fixed assets.

The Valuation of the Acquired Oil and Gas Properties Was Based Upon a Reserve Report, Which Does Not Represent Fair Value

26. To record the value of the acquired oil and gas properties, Miller Energy and Boyd requested and improperly used a reserve report prepared by an independent petroleum engineer firm.

27. Reserve reports are commonly used in the oil and gas industry to estimate quantities of oil and gas (the reserves) expected to be recovered from existing properties.[3] Generally, these reports list reserves in categories based on a minimum estimated percentage probability of eventual recovery and production, *i.e.*, proved, probable, and possible. Information in reserve reports that are prepared in accordance with Commission regulations is frequently used, for among other purposes, to satisfy supplemental accounting disclosure requirements concerning estimates of future oil and gas production. However, the numbers used in reserve reports for this purpose are expressly not considered "an estimate of fair market value."[4]

28. Shortly after the acquisition, Boyd asked Hall – a non-accountant with no formal accounting training – to obtain a reserve report for the Alaska properties in order to determine the fair value of the acquired assets to be reported on Miller Energy's Form 10-Q for the quarter ended January 31, 2010.

29. On January 5, 2010, Hall hired a petroleum engineer firm to prepare a reserve report using a pretax present value of net cash flows discounted at 10% ("PV-10"), which, while

[3] Oil and gas reporting companies are subject to two principal authoritative pronouncements governing financial accounting and reporting for oil and gas activities: Rule 4-10 of Regulation S-X (17 C.F.R. 210.4-10), *Financial Accounting and Reporting for Oil and Gas Producing Activities Pursuant to the Federal Securities Laws and the Energy Policy and Conservation Act of 1975* ("Rule 4-10"); and ASC 932-235-50-29 through 33 (formerly SFAS 19, *Financial Accounting and Reporting by Oil and Gas Producing Companies* and SFAS 69, *Disclosures About Oil and Gas Producing Activities*). ASC 932 establishes disclosure requirements for significant oil and gas activities, including disclosure of the "standardized measure," which is the future after-tax net cash flows discounted at 10%. A non-GAAP measure known as "PV-10" is similar to the standardized measure but is typically presented on a pretax basis. The FASB has noted that the standardized measure supplies investors with useful information, however, they also noted their concern "that users of financial statements understand that it is neither fair market value nor the present value of future cash flows. It is a rough surrogate for such measures, a tool to allow for a reasonable comparison of mineral reserves and changes through the use of a standardized method that recognizes qualitative, quantitative, geographic, and temporal characteristics." Paragraph 83 of the Basis for Conclusions of SFAS 69.

[4] *See* Paragraph 77 of the Basis for Conclusion of SFAS 69 ("Although it cannot be considered an estimate of fair market value, the standardized measure of discounted net cash flows should be responsive to some of the key variables that affect fair market value, namely, changes in reserve quantities, selling prices, production costs, and tax rates.").

appropriate with further adjustments for SEC supplemental disclosures, was not indicative of fair value.

30. The petroleum engineer firm did not know Miller Energy intended to use the report for fair value purposes and believed that the purpose of the report was for use as supplemental data in the company's SEC disclosures. Indeed, the two page engagement letter with the engineer firm includes no language about "fair value," "fair market value" or authoritative accounting literature.

31. The reserve report was finalized in February 2010 and reflected PV-10 of $368 million.

32. Upon receiving the reserve report, Boyd, without undertaking any additional analysis, merely recorded as the fair value of the acquired oil and gas properties the sum of the PV-10 estimates for 100% of the proved, probable, and possible reserves, which increased the book value of Miller Energy's oil and gas properties on its balance sheet by $368 million.

33. The reserve report itself clearly stated that the numbers therein were not an estimate of fair market value. Specifically, on page 3 of the report, it states that "*[t]he discounted values shown are for your information and should not be construed as our estimate of fair market value*." Boyd never reviewed or questioned any of the reserve report's assumptions or calculations, nor did he communicate with the engineer firm about the reserve report.

34. The use of the PV-10 numbers as fair value conflicted with contemporaneous representations Miller Energy made to investors. Specifically, in its fiscal 2010 Form 10-K, which was the first annual report that included the inflated values, Miller Energy expressly told investors that "[o]ur PV-10 measure and the standardized measure of discounted future net cash flows do not purport to present the fair value of our natural gas and oil reserves." Despite that disclosure, Miller Energy had actually used its PV-10 measure in that very same report as the fair value of its acquired properties.

35. The $368 million reserve report value did not represent fair value for several reasons.

36. Despite showing years of net profit that market participants would expect to be taxable, the reserve report did not make any adjustments for income taxes.

37. At Miller Energy's request, the reserve report used a 10% discount rate that was inappropriate under GAAP for determining fair value. In a discounted cash flow model, a discount rate is used to account for the uncertainties associated with risk and the time value of money. A discount rate is the required rate of return that an investor would demand – based on the risks associated with the benefit stream under consideration – to induce the investor to make an investment. By failing to consider the discount rate using assumptions market participants would use, Miller Energy materially overstated the value of the acquired oil and gas properties.

38. The valuation also overstated cash flows from certain categories of reserve estimates (*e.g.*, "probable" and "possible" reserves) by failing to apply any risk weight to such reserves and the resulting cash flows. Given the high degree of uncertainty associated with cash

flows from these reserve estimate categories, they are required to be risk weighted in order to reflect an appropriate valuation.

39. The reserve report did not include amounts for certain asset retirement obligations, *i.e.*, the legal obligations associated with the retirement of tangible long-lived assets.

40. Finally, the $237 million of projected operating and capital expenses in the reserve report, which were provided by Miller Energy and Hall, were intentionally understated, resulting in an overstated valuation.

41. In fact, one petroleum engineer firm contacted but not used by Miller Energy thought that the expected level of expenses made a significant portion of the acquisition unprofitable. Initially, Hall contacted the petroleum engineer firm who had previously provided the past two owners of the properties with reserve reports, and thus had unfettered access to past operating data, and requested a quote for "updating" a prior reserve report. That firm told Hall that it would not assign any value to one of the largest fields acquired, the Redoubt Shoal field, because it was uneconomical – *i.e.*, expected future expenses exceeded expected future cash flows – and explained that it would not put its "name on a report that implies value exists where it likely does not."[5]

42. Boyd was aware that Miller Energy chose the new firm because the prior firm would not assign any value to the Redoubt Shoal field. The Redoubt Shoal field – which represented $291 million of the $368 million in fair value recorded by Miller Energy – showed positive future cash flows in the reserve report primarily because Hall gave the new engineer firm understated and unsubstantiated expense numbers. Boyd had previously been advised by Vogt that the lack of any controls over Hall's expense estimates was a "concerning void."

43. Miller Energy and Hall provided expense projections that, in many cases, were significantly lower than past actual experience. For example, internal documents maintained by Hall indicate that the cost to drill a new well in the Redoubt field was roughly $13 million. However, Hall told the engineer firm to use a cost of $4.6 million per well in its reserve report. And instead of using recent expense data Hall gave the engineer firm nearly three year old operating expense data, which he revised down on the pretext that Miller Energy could run a leaner operation than former operators of the properties. By way of example, Hall told the engineer firm that the offshore Redoubt field would cost $399,000 per month to operate when it actually cost the seller more than $600,000 per month and when internal estimates show that Miller Energy and Hall expected the field to cost more than $800,000 per month once fully operational. Additionally, in some years, the report included zero expenses for operating the facilities in Redoubt and another field.

---

[5] Unique among the oil and gas properties purchased by Miller Energy, Redoubt Shoal is an offshore field in Cook Inlet, Alaska, which requires the use of an offshore platform that sits in seventy feet of water, is accessible only by boat or helicopter, and drills to depths in excess of 12,000 feet. Offshore drilling presents risks and costs not associated with onshore operations.

44. Overall, the reserve report implied operating expenses of $4 per barrel of oil equivalent ("boe") for all categories of reserves. That level of operating expenses was unreasonable in light its predecessor's actual operating expenses of $32.50/boe in 2008 and $55.42/boe in the first half of 2009 before the wells were shut-in.

45. By understating the expense numbers, the Miller Respondents overvalued the oil and gas properties by tens of millions of dollars.

The Fair Value of the Acquired Fixed Assets Was Double-Counted and Overstated

46. In addition to the $368 million value recorded for the oil and gas properties, Miller Energy also erroneously recorded a separate value of $110 million for acquired fixed assets, such as facilities and pipelines ancillary to the oil and gas reserves.

47. In a February 8, 2010 email, Boyd informed Hall that he needed an amount to use as fair value for the fixed assets obtained as part of the Alaska acquisition. He noted that, ideally, the value should be what a willing buyer would pay for the assets, but "[i]n the absence of that, replacement values or something similar would probably work." Two days later, Boyd was sent an "asset replacement cost study" purportedly provided by an independent insurance broker, which appeared to list the replacement cost for the assets as $110 million. The "study" was dated September 5, 2008, but "revised" on February 9, 2010.

48. Without any additional analysis, Boyd recorded the amount in the revised insurance study on Miller Energy's balance sheet.

49. The recording of assets at a value of $110 million was improper for several reasons.

50. Miller Energy's use of the values in the insurance study resulted in counting the value of the fixed assets twice, thereby overstating the value of such assets. The reserve report Miller Energy relied on to value the acquired oil and gas properties used a discounted cash flow model. Valuation specialists use such models to estimate the value of an enterprise's "operating assets" – *i.e.*, the assets employed to generate future cash flows – by converting future benefit streams into a net present value. In Miller Energy's case, the fixed assets in the insurance study were the very same operating assets that were expected to generate the future cash flows in the reserve report. Accordingly, they should not have been separately valued.

51. Prior to the acquisition, all of the production from the offshore Redoubt Shoal field ran through the Osprey platform, which had no processing facilities or power generating capability of its own. Power was sent from generators housed within the Kustatan Production Facility to the platform via a subsea line, which was connected to an underground power grid that ran throughout all of the acquired properties. Moreover, production from the offshore platform was sent onshore for processing through pipes to the Kustatan Production Facility. Absent the platform, there would have been no way to obtain oil and gas from Redoubt Shoal without incurring upfront capital expenditures to replace the platform and its related infrastructure. Similarly, without the other production facilities, the platform would have lacked power and somewhere to process its oil and gas.

52. The reserve report Miller Energy used for the valuation recognized the interconnectedness of the properties, as it expressly listed the facilities and the offshore platform as assets used to generate the future cash flows.

53. In short, because the fixed assets were integral to the operations of the acquired properties, their values were captured in the reserve report's cash flows. Consequently, by separately valuing the same operating assets, Miller Energy overstated the value of the Alaska assets by as much as $110 million.

54. The insurance study also did not reflect fair value because the version of the insurance study used by Boyd purported to show "asset replacement cost." Absent further adjustments, replacement cost new does not qualify as fair value under GAAP.

55. Miller Energy, at the direction of Boyd and Hall, also refashioned a preexisting insurance study to make it appear that its own value of $110 million derived from a third party. The numbers in the fixed asset study were given to the insurance broker, and its predecessor, by its clients (*i.e.*, Miller Energy and the previous owners of the fixed assets) as far back as 2007 and were used as starting points for other types of estimates, such as estimates for possible losses resulting from fire or natural disasters. The two employees at the insurance broker who were most familiar with the original "Loss Estimates Study," including the engineer who authored it, confirmed that no one at the broker ever tested or in any way double-checked the values given to them.

56. Boyd and Hall knew or knowingly disregarded the fact that the insurance study did not reflect fair value or any analysis by the insurance broker.

57. On February 8, 2010, Hall directed Alaska personnel to contact the insurance broker and another oil and gas consulting company to ask them for a report reflecting fair value or replacement cost. The insurance broker responded on February 9, and told Miller Energy in an email copied to Hall that it could not provide a report showing replacement costs.

58. Miller Energy also contacted a separate consulting firm and sent it the insurance broker's original 2008 insurance report. Late on February 8, the consulting firm informed Miller Energy that the insurance study it sent was a "good reference" but the report did not state "value or replacement cost." The firm offered to conduct its own analysis, but advised that the estimate would take "approximately 2-3 weeks to complete" and "cost around $15,000-$18,000."

59. Upon hearing the news that a new report might take two to three weeks, Alaska personnel, including Hall, called Boyd. According to one participant on this call, Boyd said he could not wait weeks for a new report. He "needed it quickly and he needed to base it on something . . . a professional had to sign off on it, not us, some third party. . . ." During the call, Boyd and Hall decided to rely on numbers in the insurance report as replacement costs, despite Hall having been told by the broker that it could not provide Miller Energy with replacement costs.

60. With the aim of making the report appear as though it reflected replacement costs, Hall provided a subordinate with edits to the 2008 insurance report that significantly altered its appearance, including changing its name from "Loss Estimates Study" to "Asset replacement cost

study." The revised report, which Miller Energy gave to Sherb & Co., omitted the insurance broker's methodology and analysis. As a result, the only numbers reflected in the revised report were the ones provided to the broker by Miller Energy and its predecessors.

61. As a result of the foregoing, Miller Energy overvalued the Alaska assets by more than $400 million.

62. As a result of the fraudulent valuation, Miller Energy filed with the Commission financial reports that materially misstated the value of its assets, as follows: Forms 10-Q for the third quarter of fiscal year 2010 and all three quarters of fiscal years 2011 through 2015; Forms 10-K for fiscal years ended 2010 through 2014; the Form S-1 filed on August 8, 2010; the Forms S-3 filed on September 6, 2012 and October 5, 2012; and prospectuses filed between August 25, 2010 through August 21, 2014 pursuant to Rule 424. The fraudulent valuation also resulted in Miller Energy filing with the Commission financial reports that materially misstated its net income, as follows: Forms 10-Q for the third quarter of fiscal year 2010, all three quarters of fiscal 2011, and the first two quarter of 2012; Forms 10-K for fiscal years ended 2010 through 2012; the Form S-1 filed on August 8, 2010; the Forms S-3 filed on September 6, 2012 and October 5, 2012; and prospectus supplements filed between August 25, 2010 through August 21, 2014 pursuant to Rule 424. In addition, the fraudulent valuation rendered no fewer than 15 Forms 8-K filed between March 2010 through at least December 2014 materially false and misleading.

Vogt's Fiscal Year 2010 Audit of Miller Energy

63. In August 2008, Miller Energy hired Sherb & Co. to become the company's independent public accountant. Vogt led an audit team that audited Miller Energy's financial statements for fiscal years ended 2009 and 2010.

64. As the partner in charge of the fiscal year 2010 Miller Energy audit, Vogt failed to perform the 2010 Miller Energy audit in accordance with PCAOB Auditing Standards. These deficiencies included, among other items, failing properly to audit the fair value measurements, use the work of a specialist, plan, staff and supervise the audit, obtain sufficient competent audit evidence, exercise due care and professional skepticism, and perform required audit testing.

65. Vogt's failures related to the auditing of the Alaska asset acquisition. Despite the materiality of the transaction on Miller Energy's financial statements, Vogt failed to adequately test the valuation of the assets and the related calculation of the gain on acquisition. Instead, he inappropriately relied on the aforementioned reserve report and the so-called asset replacement cost study to justify Miller Energy's $480 million valuation of the Alaska assets.

66. Vogt did not perform the necessary procedures to enable him to use the findings of the reserve report. *See* AU § 336.12.[6] He and his audit staff performed a limited evaluation of the petroleum engineer firm's work and its qualifications as a specialist (as a petroleum engineer, not as a fair value appraiser). The reserve report, which was included in the audit workpapers, clearly stated that the engineer firm was not engaged to – and did not in fact – perform a fair value

[6] References in this order are to the PCAOB standards in effect at the time of the relevant conduct.

estimate for the Alaska assets. Among other significant flaws, Vogt never obtained an understanding of the objectives and scope of the specialist's work or the appropriateness of using the specialist's work for the purpose of fair valuing the assets. *See* AU § 336.09. Nor did he make the appropriate tests of data provided to the specialist, including operating and capital expenses estimated and provided by Hall. *See* AU § 336.12.

67. The audit of the recorded fixed assets of $110 million was similarly flawed. A member of the audit team obtained the asset replacement cost study and placed a copy of it in the workpapers, but Vogt failed to consider the nature of the fixed assets and whether they would be utilized to generate the cash flow from the oil and gas properties, and, if so, what remainder value would exist. Nor did Vogt or the audit team perform any meaningful work to consider the expertise and experience of those persons determining the fair value measurement, the significant management assumptions used in determining the fair value, and the documentation supporting management's assumptions. *See* AU § 328.12.

68. Vogt knew at the time of the accounting for the acquisition that Miller Energy had insufficient accounting staff and that any accounting was suspect. In a December 22, 2009 email to Miller Energy's senior management, Vogt indicated that he believed the Company's accounting staff was deficient, and that Boyd cut too many corners on the accounting documentation. Furthermore, Vogt stated that Hall's modeling of cash flows and expenses was "concerning" because there was no one taking a detailed look at his estimates. In an email dated March 17, 2011, Vogt also knew that the reserve report used suspect data and was completed on what he described as a "rushed basis," as Miller Energy "had very little time if none for any true due diligence of much depth into what [it] purchased."

69. Vogt, on behalf of Sherb & Co., issued an audit report containing an unqualified opinion for use in Miller Energy's 2010 Form 10-K that stated falsely that the audit had been conducted in accordance with the PCAOB's standards and that Miller Energy's financial statements were presented fairly, in all material respects, in conformity with GAAP. The specific failures are detailed below.

Failures Auditing Fair Value Measurements and Disclosures (AU § 328)

70. AU § 328 requires auditors to obtain sufficient competent audit evidence to provide reasonable assurance that fair value measurements and disclosures are in conformity with GAAP. AU § 328.03. The standard provides that "[t]he auditor should test the data used to develop the fair value measurements and disclosures and evaluate whether the fair value measurements have been properly determined" including "whether the data on which the fair value measurements are based, including the data used in the work of a specialist, is accurate, complete and relevant . . . ." AU § 328.39. In addition, "[t]he auditor should evaluate the sufficiency and competence of the audit evidence obtained from auditing fair value measurements and disclosures as well as the consistency of that evidence with other audit evidence obtained and evaluated during the audit." AU § 328.47. If a valuation model is utilized, the auditor reviews the model and evaluates whether the assumptions used are reasonable. AU § 328.38.

71. Vogt failed to comply with these requirements in connection with the 2010 audit of Miller Energy. While Vogt performed some testing on the data used to create the reserve report, he failed to test key elements such as the discount rate utilized, the risk weighting of the probable and possible reserves, estimated oil prices, and operating and capital expenses. Vogt also never properly considered the relevancy of the reserve report, improperly relying exclusively on the report since the specialist, a petroleum engineer, was not engaged to estimate a fair valuation, as expressly indicated in the report. Nor did he consider the consistency of the evidence in light of the other evidence, such as Miller Energy's actual purchase price of the assets (reported at less than $5 million), and the fact that the assets had previously been abandoned during a bankruptcy proceeding. While Vogt and his staff reviewed some aspects of the specialist's valuation model, they failed to sufficiently review and evaluate the reasonableness of assumptions such as the discount rate, risk weighting of certain reserves, future oil prices, and operating and capital expenses.

72. Vogt also failed to obtain sufficient audit evidence to support the fair value of the fixed assets. Vogt performed limited, if any, testing of the asset replacement cost study purportedly supporting the fixed asset valuation. He did not assess the competency or sufficiency of the asset replacement cost study, or understand who created the study, their qualifications, and the data underlying their valuation. Finally, Vogt failed to consider whether some or all of the fixed assets were being utilized in the estimated values captured in the reserve report.

Failure in Using the Work of a Specialist (AU § 336)

73. AU § 336 provides guidance to auditors when the work of a specialist is used in performing an audit of financial statements prepared in accordance with GAAP. Among other items, the standard requires the auditor to evaluate the specialist to ensure that the specialist possesses the necessary skill or knowledge in the type of work under consideration and the appropriateness of using the specialist's work for the intended purpose. Specifically, AU § 336.08 states that "[t]he auditor should consider the following to evaluate the professional qualifications of the specialist in determining that the specialist possesses the necessary skill or knowledge in the particular field:

a. The professional certification, license, or other recognition of the competence of the specialist in his or her field, as appropriate

b. The reputation and standing of the specialist in the views of peers and others familiar with the specialist's capability or performance

c. The specialist's experience in the type of work under consideration."

74. Furthermore, AU § 336.09 states "[t]he auditor should obtain an understanding of the nature of the work performed or to be performed by the specialist. This understanding should cover the following:

a. The objectives and scope of the specialist's work

b. The specialist's relationship to the client

c. The methods or assumptions used

d. A comparison of the methods or assumptions used with those used in the preceding period

e. The appropriateness of using the specialist's work for the intended purpose

f. The form and content of the specialist's findings that will enable the auditor to make the evaluation described in paragraph [336].12."[7]

75. Although the Standard allows an auditor to use the work of a specialist as evidential matter in performing substantive tests to evaluate material financial statement assertions (*see* AU § 336.03), Vogt failed in several respects in his use of a specialist regarding the valuation of Miller Energy's Alaska acquisition.

76. Vogt did not properly consider the petroleum engineer's experience in fair valuation of assets, which was nonexistent. *See* AU § 336.08. Vogt also failed to obtain an understanding of the objectives and scope and intended purpose of the petroleum engineer's engagement for Miller Energy, which was to produce a reserve report for reserve disclosure purposes, not a fair valuation of acquired assets. *See* AU § 336.09. Indeed, the single page of the reserve report included in Vogt's workpapers, to support his evaluation of Miller Energy's $368 million valuation, clearly states that the "values shown . . . should not be construed as our estimate of fair market value."

77. Furthermore, Vogt failed to adequately obtain an understanding of the methods and assumptions used by the specialist, or appropriately test data provided to the specialist. *See* AU § 336.12. There is no evidence that Vogt considered the appropriateness of certain key assumptions used by the petroleum engineer, such as the discount rate, estimated price of oil and gas, and the lack of risk weighting of probable and possible reserves. Finally, Vogt, despite alerting Boyd and Miller Energy's then CEO of the lack of sufficient review and inquiry, failed to adequately test the operating and capital expense estimates provided to the specialist by Miller Energy, and took few audit steps, other than inquiry, to assess the reasonableness of the expense estimates.

78. Vogt performed no steps to evaluate the qualifications of the authors of the asset replacement cost study, or understand the methods or assumptions they used or the appropriateness of using the Asset replacement cost study to support the valuation of the fixed assets at $110 million.

Failure to Exercise Due Professional Care in the Performance of Work (AU § 230)

79. PCAOB Standards require auditors to exercise due professional care in the planning and performance of the audit. *See* AU § 230.01. Due professional care requires the auditor to exercise professional skepticism: an attitude that includes a questioning mind and a critical assessment of audit evidence. *See* AU § 230.07. Moreover, gathering and objectively evaluating

---

[7] AU § 336.12 states that an auditor should evaluate the appropriateness and reasonableness of methods and assumptions used, during which the auditor should: "(a) obtain an understanding of the methods and assumptions used by the specialist, (b) make appropriate tests of data provided to the specialist, taking into account the auditor's assessment of control risk, and (c) evaluate whether the specialist's findings support the related assertions in the financial statements."

audit evidence requires the auditor to consider the competency and sufficiency of the evidence. *See* AU § 230.08.

80. Vogt failed to exercise due professional care regarding the audit of the Alaska acquisition valuation during the 2010 Miller Energy audit. Miller Energy had valued the assets purchased for a few million dollars at $480 million and had recorded a corresponding $277 million bargain purchase gain. Given the size of the transaction, Vogt should have focused more closely on the diligence required to gather and objectively evaluate the evidence supporting the fair value of the oil and gas properties acquired to comply with ASC 805 and common industry practice. He failed to adequately consider the competency and sufficiency of the reserve report as evidence of the fair value of the acquired oil and gas properties. Vogt also performed limited procedures and failed to sufficiently evaluate the evidentiary value of the asset replacement cost study, including failing to understand the source of the fixed asset values therein and the competency of the report authors.

Failure to Plan and Supervise (AU § 311)

81. AU § 311 requires an auditor to adequately plan the work and properly supervise assistants. AU § 311.01. In planning the audit, the auditor should consider, among other matters, the entity's business, the entity's accounting policies and procedures, and planned assessed level of control risk. AU § 311.03. A written audit program is required. AU § 311.05. Supervision involves directing the efforts of assistants who are involved in accomplishing the objectives of the audit and determining whether those objectives were accomplished. The extent of supervision appropriate in a given instance depends on many factors, including the complexity of the subject matter and the qualifications of persons performing the work. AU § 311.11.

82. Vogt's work did not meet this standard. Vogt's audit program to test Miller Energy's fair value assessment of the Alaska acquisition was insufficient. The planned procedures largely consisted of verifying the credentials of a specialist. Vogt's audit program failed to set forth procedures necessary to ensure the appropriateness of using the specialist's work for the purpose of a fair valuation. Nor did his audit program provide additional and alternate procedures for the insufficient evidence provided by the work of the specialist. As to the fixed assets, Vogt's program was insufficient in that it merely required agreeing the asset balance to the Asset replacement cost study provided by Miller Energy.

83. Vogt's supervision of his staff was also deficient. Vogt spent little time on-site while the field work was conducted, and he knew the staff auditors had insufficient oil and gas industry experience. It was evident during their respective testimonies that the two staff members assigned by Vogt to the Miller Energy audit, whose experience consisted almost entirely of auditing microcap companies, were ill-prepared to test a transaction purportedly valued in excess of $400 million. The most junior staff member was not a Certified Public Accountant, did not appear to comprehend basic accounting principles, including elementary aspects of fair value accounting, yet was charged with the testing of the oil and gas properties fair valuation.

Failure to Properly Assess Audit Risk and Materiality in Conducting an Audit (AU § 312)

84. AU § 312 states that, when an auditor has concluded that there is a significant risk of material misstatement of the financial statements, the auditor should consider this conclusion in determining the nature, timing, or extent of procedures; assigning staff; or requiring appropriate levels of supervision. Ordinarily, higher risk requires more experienced personnel or more extensive supervision by the auditor with final responsibility for the engagement during both the planning and the conduct of the engagement. Higher risk may cause the auditor to expand the extent of procedures applied, apply procedures closer to or as of year-end, particularly in critical audit areas, or modify the nature of procedures to obtain more persuasive evidence. AU § 312.17

85. Vogt's knowledge of the magnitude of the Alaska acquisition, and his knowledge of the inadequacy of Miller Energy's accounting personnel, including Boyd, should have resulted in increased scrutiny of Miller Energy's valuation of the Alaska assets. Yet Vogt assigned crucial audit procedures to staff who lacked appropriate industry and auditing experience, and did not sufficiently supervise their work.

Failure to Obtain Sufficient Competent Evidential Matter (AU § 326)

86. Under the third standard of field work, sufficient competent evidential matter is to be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit. AU § 326.01. Since he over relied on a reserve report and the asset replacement cost study, and took limited to no additional audit steps to test that audit evidence, Vogt failed to obtain sufficient evidence for the fair value of the Alaska acquisition.

Failure to Issue an Accurate Audit Report (AU § 508)

87. Under AU § 508, an auditor may only express an unqualified opinion on historical financial statements when the auditor has formed such an opinion on the basis of an audit performed in accordance with PCAOB standards. AU § 508.07. Based upon the audit failures discussed above, Vogt should not have issued an audit report containing an unqualified opinion on Miller Energy's fiscal year 2010 financial statements.

VIOLATIONS

88. As a result of the conduct described above, Miller Energy violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities. Boyd willfully aided and abetted and caused, and Hall caused, Miller Energy's violations of Section 17(a) of the Securities Act, Sections 10(b) of the Exchange Act and Rule 10b-5 thereunder.

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

90. As a result of the conduct described above, Miller Energy violated Section 13(a) of the Exchange Act, and Rules 13a-1, 13a-11, and 13a-13 thereunder, which require that every issuer of a security registered pursuant to Exchange Act Section 12 file with the Commission, among other things, annual, current, and quarterly reports as the Commission may require. Boyd willfully aided and abetted and caused, and Hall caused, Miller Energy's violations of Section 13(a) of the Exchange Act, and Rules 13a-1, 13a-11, and 13a-13 thereunder.

91. As a result of the conduct described above, Miller Energy violated Section 13(b)(2)(A) of the Exchange Act, which requires 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. Boyd willfully aided and abetted and caused, and Hall caused, Miller Energy's violations of Section 13(b)(2)(A) of the Exchange Act.

92. As a result of the conduct described above, Miller Energy violated Section 13(b)(2)(B) of the Exchange Act, which requires all reporting companies 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. Boyd willfully aided and abetted and caused, and Hall caused, Miller Energy's violations of Section 13(b)(2)(B) of the Exchange Act.

93. As a result of the conduct described above, Boyd willfully violated, and Hall violated, Section 13(b)(5) of the Exchange Act which prohibits any person from knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record, or account described in Section 13(b)(2) of the Exchange Act.

94. As a result of the conduct described above, Miller Energy violated Rule 12b-20 under the Exchange Act which requires that, in addition to the information expressly required to be included in a statement or report filed with the Commission, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made not misleading. Boyd willfully aided and abetted and caused, and Hall caused, Miller Energy's violations of violated Rule 12b-20 under the Exchange Act.

95. As a result of the conduct described above, Boyd willfully violated Rule 13a-14 of the Exchange Act which requires that an issuer's principal executive and principal financial officers certify each periodic report.

96. As a result of the conduct described above, Vogt engaged in improper professional conduct within the meaning of Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice. Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) provide, in pertinent part, that the Commission may censure or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to any person who is found by the Commission to have engaged in improper professional conduct. Section 4C(b) of the Exchange Act and Rule 102(e)(1)(iv) define improper professional conduct with respect to persons license to practice as accountants as (1) a single instance of highly unreasonable conduct in circumstances for

which heightened scrutiny is warranted; or (2) repeated instances of unreasonable conduct that indicate a lack of competence.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Miller Energy, Boyd, and Hall should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17(a) of the Securities Act, Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13thereunder, whether Boyd and Hall should be ordered to cease and desist from committing violations of and any future violations of Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder, whether Boyd should be ordered to cease and desist from committing violations of and any future violations of Rule 13a-14; whether Miller Energy, Boyd, and Hall should be ordered to pay a civil penalty pursuant to Section 8A(g) of the Securities Act and Section 21B(a) of the Exchange Act, and whether Miller Energy, Boyd, and Hall should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act and Sections 21B(e) and 21C(e) of the Exchange Act;

C. Whether, pursuant to Section 8A(f) of the Securities Act and Section 21C(f) of the Exchange Act, Boyd and/or Hall should be prohibited, conditionally or unconditionally, and permanently or for such period of time as the Commission shall determine, from acting as an officer and 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; and

D. Whether, pursuant to Section 4C of the Exchange Act and Section 102(e) of the Commission's Rules of Practice, Boyd and Vogt should be denied, temporarily or permanently, the privilege of appearing or practicing before the Commission as accountants.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary