

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 74401 / March 2, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3641 / March 2, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16413

In the Matter of

ROBERT W. ELLIOT

Respondent.

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

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Robert W. Elliot (“Respondent” or “Elliot”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing 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:

Respondent

1. Respondent, 51 years old, is a resident of Delmar, MD. From August 2012 through January 2014, Respondent was the vice president of finance at Michael's Finer Meats, LLC ("MFM"), a wholly owned subsidiary of The Chefs' Warehouse, Inc. ("Chefs"). Respondent is not, and has never been, a certified public accountant. Respondent is currently employed as a credit manager at a private company in Seaford, Delaware.

Relevant Entities

2. The Chefs' Warehouse, Inc., a Delaware corporation with principal offices in Ridgefield, Connecticut, is a distributor of specialty food products. The company has securities registered under Section 12(b) of the Exchange Act, which trade on the Nasdaq Global Select Market.

3. Michael's Finer Meats, LLC was a private company headquartered in Columbus, Ohio, specializing in the sale of frozen meat and seafood. On or around August 13, 2012, Chefs acquired MFM. MFM is now a wholly-owned subsidiary of Chefs.

Background

4. From May 2008 to August 2012, Elliot was the chief financial officer ("CFO") of MFM. As the CFO, Elliot had primary responsibility for all accounting functions at MFM, including accounting for the company's inventory and cost of goods sold.

5. In August 2012, Chefs acquired MFM, and MFM became a wholly-owned subsidiary of Chefs. Elliot remained with MFM after the acquisition in the role of vice president of finance, and continued to have primary responsibility for MFM's accounting functions, including accounting for the company's inventory and cost of goods sold. As a wholly-owned subsidiary of Chefs, MFM's books, records, and accounts were incorporated and reported in Chefs' consolidated financial statements.

6. Both before and after the acquisition, MFM conducted manual counts of its inventory at the end of every quarter. MFM employees recorded the inventory of products on "count sheets," which were then provided to Elliot. Elliot input the information from those count sheets into a spreadsheet that he maintained and controlled. Both before and after the acquisition, Elliot used the information in this spreadsheet to calculate certain financial results for MFM, including inventory values, cost of goods sold, and profit margins.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

7. At the end of each quarter, after inputting the inventory information from the count sheets into the spreadsheet, Elliot would compare current profit margins to historical margins. If a particular product's profit margin deviated significantly from historical margins, Elliot normally worked with warehouse employees who conducted the inventory counts to determine whether an error had been made. At times, errors were discovered, and Elliot adjusted the inventory information in the spreadsheet. Elliot failed to prepare any documentation supporting these adjustments.

8. At other times, Elliot did not investigate or otherwise was unable to identify inventory count errors that explained why profit margins were lower than historical margins. In these instances, Elliot improperly increased the inventory amounts recorded in the spreadsheet to lower cost of goods sold, and increase profit margins, to a range consistent with historical margins. Elliot knew that these unsupported accounting adjustments were improper.

9. These improper accounting entries resulted in Chefs reporting inaccurate financial statements in its quarterly report filed on Form 10-Q for the third quarter of 2012, its annual report filed on Form 10-K for 2012, its quarterly report filed on Form 10-Q for the first quarter of 2013, its quarterly report filed on Form 10-Q for the second quarter of 2013, and its quarterly report filed on Form 10-Q for the third quarter of 2013.

10. Chefs terminated Elliot in January 2014.

11. On January 27, 2014, Chefs filed a Form 8-K disclosing that unsupported accounting adjustments made by an employee of its MFM subsidiary had resulted in an aggregate overstatement of inventory, and understatement of cost of goods sold, of approximately \$905,000. The company further reported that it did not believe the impact of the improper adjustments was material to the company's consolidated financial statements for any one reporting period, and that it corrected the misstatements by recording a non-cash charge in the fourth quarter of 2013.

Violations

12. As a result of the conduct described above, Elliot violated Section 13(b)(5) of the Exchange Act, which provides that no person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record, or account, and Rule 13b2-1, which provides that no person shall, directly or indirectly, falsify or cause to be falsified, any book, record or account, and caused a violation of Section 13(b)(2)(A) of the Exchange Act, which requires that every issuer of securities registered pursuant to Section 12 of the Exchange Act 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.

IV.

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

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Elliot cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(5) of the Exchange Act, and Rule 13b2-1 thereunder.

B. Respondent shall, within seven days of the entry of this Order, pay a civil money penalty in the amount of \$25,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Payment must be made in one of the following 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 Robert W. Elliot 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 Scott W. Friestad, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5010.

V.

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

By the Commission.

Brent J. Fields
Secretary