

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75933 / September 16, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3696 / September 16, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16815

In the Matter of

Joseph F. Apuzzo, CPA

Respondent.

ORDER INSTITUTING PUBLIC
ADMINISTRATIVE
PROCEEDINGS PURSUANT TO RULE
102(e) OF THE COMMISSION'S RULES OF
PRACTICE, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Joseph F. Apuzzo (“Respondent” or “Apuzzo”) pursuant to Rule 102(e)(3)(i) of the Commission’s Rules of Practice.¹

¹ Rule 102(e)(3)(i) provides, in pertinent part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

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, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative Proceedings Pursuant to Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that:

1. Apuzzo, age 59, was licensed as a certified public accountant in the State of New York beginning in 1986 until he allowed his license to lapse in 1995. He served as Vice President of Finance of Terex Corporation (“Terex”) from 1995 to 1996, Comptroller of Terex from 1996 to 1998, and Chief Financial Officer of Terex from October 1998 until September 2002, when he became President of Terex Financial Services. He resigned from Terex in August 2005.

2. Terex was, at all relevant times, a Delaware corporation with its principal place of business in Westport, Connecticut. Terex is a diversified global manufacturer of a broad range of equipment primarily for construction, infrastructure and surface to mining industries. At all relevant times, Terex’s common stock was registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 (“Exchange Act”), and trades on the New York Stock Exchange.

3. On December 27, 2007, the Commission filed a complaint against Apuzzo in SEC v. Joseph F. Apuzzo (Civil Action No. 3:07-cv-01910-AWT). On September 8, 2015, the court entered an order permanently enjoining Apuzzo, by consent, from violation of Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5 and 13b2-1 thereunder, and from aiding and abetting violation of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rule 13a-1 thereunder. Apuzzo was also ordered to pay a civil money penalty in the amount of \$100,000.

4. The Commission’s complaint alleged, among other things, that Apuzzo knowingly and substantially aided and abetted former officers of United Rentals, Inc. (“URI”) with URI’s violations of the antifraud, reporting, and books and records provisions of the federal securities laws, by among other things, improperly recognizing revenue from two fraudulent sale-leaseback transactions between URI and Terex. In both transactions, URI sold used equipment to a financing company, General Electric Capital Corporation (“GECC”), and then leased it back for an 8-month period. The complaint alleges that URI also arranged, through Apuzzo, for Terex to remarket the equipment at the end of the lease period and to provide GECC

with a residual value guarantee under which Terex guaranteed that GECC would receive not less than 96 percent of the purchase price that it had paid URI for the used equipment. For one of the transactions, URI and Terex also entered into a “backup” remarketing agreement, signed by Apuzzo, under which URI effectively assumed Terex’s remarketing obligations and guarantees to GECC and agreed to cover, through guaranteed future purchases, any losses to Terex over the amount of a \$5 million advance payments made by URI. As a result of this fraudulent accounting, the complaint alleges that the financial statements and results that URI incorporated into its periodic filings and other materials disseminated to the investing public were materially false and misleading. The Complaint alleges that Apuzzo knowingly provided substantial assistance to URI in perpetrating the fraud by helping to conceal URI’s assumption of the risks and obligations of the transactions from URI’s auditors. The Complaint alleges that Apuzzo also knew that the price of the equipment being paid by GECC to URI was inflated above fair market value and would therefore cause Terex to suffer a loss.

IV.

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

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Apuzzo is suspended from appearing or practicing before the Commission as an accountant.

B. After five years from the date of this order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company’s financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent’s work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board (“Board”) in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms

of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

(c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Brent J. Fields
Secretary