

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 77161 / February 17, 2016

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3744 / February 17, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17120

In the Matter of

DONALD J. GLIDEWELL,
CPA

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 that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Donald J. Glidewell (“the Respondent”).

II.

In anticipation of the institution of these proceedings, the Respondent has submitted an Offer of Settlement (the “Offer”), that 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 over the subject matter of these proceedings, which are admitted, 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 the Respondent's Offer, the Commission finds¹ that:

Summary

1. This matter involves misstated revenues at Marrone Bio Innovations, Inc. ("MBI" or "the Company"), a Davis, California-based company that manufactures and sells biological-based pest management and plant health products. The misstatements were the result of MBI's former Chief Operating Officer and Head of Sales directing MBI's sales employees to offer various sales concessions to MBI's distributors in order to meet sales targets and analysts' revenue expectations, while simultaneously concealing those concessions from MBI's finance and accounting personnel. Accordingly, MBI improperly and prematurely recognized more than \$4 million in revenue from March 2013 through June 2014 (the "relevant period"), including \$2 million in revenue that will never be recognized because the distributors returned the product to MBI.

2. As a result, MBI reported materially false financial results in its financial statements filed with the Commission over the period from July 1, 2013 through May 15, 2014. On September 3, 2014, MBI announced that its previously filed financial statements could not be relied upon. On November 10, 2015, MBI filed with the Commission restated financial statements for its 2013 quarterly and annual periods, as well as the quarterly periods ended March 31, 2014 and June 30, 2014.

3. MBI's former Chief Financial Officer, Donald J. Glidewell, received bonuses during the 12-month periods following the filings containing financial results that MBI has restated as a result of misconduct. The Commission does not allege that Glidewell participated in the misconduct giving rise to the restatement. Glidewell has not, however, reimbursed MBI for those bonuses as required under Section 304(a) of the Sarbanes-Oxley Act.

Respondent

4. **Donald J. Glidewell**, age 59, is a resident of Benicia, California. He served as MBI's Chief Financial Officer from April 2011 until his resignation in March 2014. Glidewell is a certified public accountant licensed in California. Before joining MBI, Glidewell served as the CFO at a private company in the Sacramento area from 2000 to 2007 and as a Senior Director of Finance at the U.S. subsidiary of a Japanese-based public company from 2007 to 2011.

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

Other Relevant Entity

5. MBI is a public company incorporated in Delaware and headquartered in Davis, California. At all relevant times, MBI's common stock has been registered under Section 12(b) of the Exchange Act. MBI had its initial public offering ("IPO"), in August 2013, after which its stock traded on the Nasdaq Global Market under the ticker symbol "MBII". On June 6, 2014, MBI undertook both a secondary and a follow-on offering in which it netted \$39.9 million. On November 10, 2015, MBI restated its financial statements for its year ended December 31, 2013, as well as its quarterly results for the periods ended March 31, 2013, June 30, 2013, September 30, 2013, March 31, 2014, and June 30, 2014.

Facts

MBI Conducts an Initial Public Offering and Issues Revenue Guidance

6. On September 12, 2013, MBI held its first quarterly earnings call where it announced that revenues for the first six months of 2013 totaled \$7.2 million and that MBI expected revenues for 2013 to double those of 2012 (which were \$7.1 million). After that, MBI's senior leaders consistently urged MBI's employees to ensure the Company met its goal; the doubling of revenue became a key financial metric for MBI's leadership. Analysts covering MBI cared about the Company's expected sales and sales growth and the doubling of revenue was the only guidance that MBI's management provided to analysts.

7. MBI primarily sold its products to distributors who would then sell the product to growers and other end users. MBI historically recognized revenue on a "sell-in" basis, which meant that it recognized revenue upon sale to a distributor rather than waiting to recognize revenue until products were sold to the ultimate grower or end user. This was appropriate under MBI's revenue recognition policy as long as persuasive evidence of an arrangement existed, delivery and transfer of title had occurred or services had been rendered, the price was fixed and determinable, and collectability was reasonably assured and no contingencies existed. MBI's revenue recognition policy did not allow for recognition of revenue at the time of sale if any contingencies—such as rights of return, or extended payment terms—were offered; rather, revenue could be recognized only once the contingencies expired.

MBI Sales Employees Offer, And Hide From MBI's Accounting Department, Numerous Sales Concessions to Meet Previously-Announced Revenue Targets

8. Towards the end of 2013, MBI's former Chief Operating Officer became concerned that MBI might not meet its goal of doubling its 2012 revenue because its distributors did not have any more capacity to buy MBI's products. To close the gap, MBI's former COO—then Head of Sales—instructed his sales employees to offer inventory protection on deals to ensure they moved as much product as they could by the end of the year. The inventory protection offered took three general forms: (1) rights to return unsold product; (2) credit and re-bill arrangements, which

extended payment dates beyond the originally agreed-upon terms; and (3) allowing payment for products upon sales to the end user, rather than pursuant to stated payment terms with the distributor.

9. In addition to offering inventory protection on certain deals in the first and second quarters of MBI's 2013 fiscal year, the former COO and other MBI sales employees offered significantly more inventory protection towards the end of the year. During the relevant period, MBI's former COO offered, and directed others to offer, inventory protection on at least eleven sales transactions totaling approximately \$4 million.

10. MBI's former COO knew that inventory protection could preclude immediate revenue recognition on deals sold through to distributors and that MBI's accounting department needed to know the terms of all sales transactions to ensure MBI's revenue was accurately recorded and reported. Respondent Glidewell, MBI's chief executive officer, and MBI's controller told the former COO on multiple occasions throughout 2013 and 2014 about the revenue implications of offering inventory protection.

11. Despite knowing that it was important for MBI's accounting department to be aware of all terms and conditions of each sales transaction, MBI's former COO instructed MBI's employees to conceal the inventory protection terms from MBI's accountants. For example, in late 2013, he instructed MBI's former Customer Service Manager to hide a side letter in her office desk, which detailed inventory protection on a large sales transaction transacted late in the fourth quarter of 2013. He also instructed the former Customer Service Manager to physically remove the inventory protection terms from the face of a purchase order on another sales transaction. These actions caused MBI to file financial statements that were not in accordance with GAAP. *See Accounting Standards Codification 605-15-25-1.*

12. Additionally, despite knowing he personally had offered, and authorized his sales employees to offer, inventory protection on several sales transactions in 2013 and 2014, MBI's former COO consistently denied knowing about transactions with inventory protection in several quarterly and annual disclosure committee meetings, the purpose of which was to help MBI's accounting department ensure that MBI appropriately recorded and reported its revenue. MBI's former COO also lied on a sales certification provided to him by MBI's independent auditor in connection with their year-end 2013 audit by certifying in writing that he was not aware of any terms or conditions MBI had agreed to with distributors that were not reflected in written agreements or purchase orders.

13. On March 6, 2014, MBI held its 2013 full-year earnings call. During the call, MBI's former COO attributed the Company's achievement of doubling its 2012 revenue to the successful launch of a new product into row crops in the Midwest and the stellar performance of another product in its first full year of sales.

14. On March 25, 2014, MBI filed its 2013 Form 10-K with the Commission. Revenue, as reported, more than doubled from \$7.1 million in 2012 to \$14.5 million in 2013.

15. MBI's former COO, as well as several of his sales employees, continued to offer inventory protection throughout at least the first quarter of 2014 and continued to hide it from MBI's accounting department. All told, MBI's former COO caused MBI to improperly recognize revenue on at least eleven sales transactions totaling approximately \$4 million. Without offering inventory protection on these sales transactions, MBI would have missed its doubling-of-revenue target for 2013 because many of the Company's distributors would not have purchased its products without assurances that they could return them in the future.

16. MBI's former COO also engaged in other fraudulent conduct to maximize revenue and allow MBI to recognize revenue earlier than allowed under GAAP. During 2013, the former COO instructed employees in MBI's supply chain department to ship the wrong product to a distributor and in early 2014, the former COO directed MBI's former Customer Relations Manager to backdate a shipping document. In an additional attempt to book certain sales transactions, the former COO authorized MBI to pay a distributor's freight costs and storage fees, and then directed the former Customer Relations Manager to mischaracterize these expenses as promotional marketing expenses in the Company's books and records, resulting in MBI filing financial statements that were not in accordance with GAAP. *See Accounting Standards Codification 605-50-45-2.*

Scope and Impact of the Fraud at MBI

17. MBI's revenues were materially overstated in its financial statements filed with the Commission as a result of the hidden inventory protection. Specifically, MBI misstated its financial statements in Forms 10-Q and 10-K for fiscal year 2013 and Forms 10-Q for 2014. MBI also misstated its financial statements in the Company's Forms S-1 filed on July 1, 2013 and May 16, 2014. Finally, MBI incorporated the misstated first quarter 2013 financial statements, as included in the first Form S-1, in its Form S-8 filed on September 6, 2013.

18. These misstatements are material. Without the inventory protection on several sales transactions in 2013, MBI would not have doubled its 2012 revenue and would have missed its revenue target for the year. MBI's distributors returned approximately \$2 million in product after June 30, 2014 pursuant to inventory protection rights and the Company will not recognize this revenue in any future period.

MBI's Restatement

19. On September 3, 2014, MBI announced that its Audit Committee had commenced an independent investigation into whether revenue for a particular transaction had been appropriately recognized. It also announced that it had concluded, after consultation with management, that its previously reported financial statements as of December 31, 2013, included in its annual report on Form 10-K for the year ended December 31, 2013, and the unaudited interim financial statements included in the Company's quarterly reports on Forms 10-Q for the quarters ended March 31, 2014 and June 30, 2014, should no longer be relied upon.

20. On November 10, 2015, MBI filed with the Commission restated financial results, for its quarterly periods ending March 31, 2013, June 30, 2013, September 30, 2013, March 31, 2014, and June 30, 2014, as well as its annual results for the year ended December 31, 2013. For certain distributors, MBI changed its method of recognizing revenue from “sell-in” to “sell-through,” meaning that, for those distributors, it will delay the recognition of revenue until the product is sold through to an end user.

21. In its restated Form 10-K, MBI disclosed that its Audit Committee had determined that, as a result of the failure of certain former employees to share with the Company’s accounting department or external auditor important transaction terms with distributors, including inventory protection agreements that would permit the distributors to return to the Company certain unsold products, the Company inappropriately recognized revenue for certain historical sales transactions prior to satisfying the criteria for revenue recognition required under GAAP. MBI also concluded that mitigating controls were not in place to discourage, prevent or detect management override of internal accounting control by certain sales personnel related to MBI’s process for recognizing revenue, and that its controls were not effectively designed to identify instances when sales personnel made unauthorized commitments with certain distributors, including inventory protection arrangements, that would permit the distributors to return to MBI certain unsold products.

Compensation of CFO Glidewell

22. During the 12-month periods that followed the filing of the periodic reports requiring restatement, Glidewell received bonuses that were tied to MBI’s achievement of certain revenue targets.

23. Glidewell has not reimbursed those amounts to MBI.

Violations

24. Section 304 of the Sarbanes-Oxley Act of 2002 requires the chief executive officer or chief financial officer of any issuer required to prepare an accounting restatement due to material noncompliance with the securities laws as a result of misconduct to reimburse the issuer for: (i) any bonus or incentive-based or equity-based compensation received by that person from the issuer during the 12-month periods following the false filings; and (ii) any profits realized from the sale of securities of the issuer during that 12-month periods. Section 304 does not require that a chief executive officer or chief financial officer engage in misconduct to trigger the reimbursement requirement. Glidewell received bonuses during the 12-month periods following the filings containing financial results that MBI was required to restate. He has not, to date, reimbursed the Company for those amounts. Glidewell has, therefore, violated Sarbanes-Oxley Section 304.

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, pursuant to Section 21C of the Exchange Act, that:

A. Respondent Glidewell cease and desist from committing or causing any violations and any future violations of Section 304 of the Sarbanes-Oxley Act.

B. Respondent Glidewell shall, within 30 days of the entry of this Order, reimburse MBI for a total of \$11,789 pursuant to Section 304(a) of SOX. Respondent shall simultaneously deliver proof of satisfying this reimbursement obligation to Erin E. Schneider, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, California 94104.

By the Commission.

Brent J. Fields
Secretary