

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 80507 / April 21, 2017

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3866 / April 21, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17938

In the Matter of

MARK MCKINNIES, 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 Mark McKinnies (“Respondent” or “McKinnies”) pursuant to Rule 102(e)(3)(i) of the Commission’s Rules of Practice.¹

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

¹ Rule 102(e)(3)(i) provides, in relevant 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.

proceedings, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting 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. McKinnies, age 65, was a certified public accountant licensed to practice in the State of Colorado until he allowed the license to expire in 2013. He served as Chief Financial Officer and a member of the Board of Directors of Advanced Emissions Solutions, Inc. and its predecessor entity, ADA-ES, Inc. (together, "Advanced Emissions")² from 1996 until 2014.

2. Advanced Emissions was, at all relevant times, a Delaware corporation with its principal place of business in Colorado. Advanced Emissions provides environmental solutions to customers primarily in the power generation industry. At all relevant times, Advanced Emissions' shares were registered pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") and traded on the NASDAQ National Market. The shares were de-listed from the NASDAQ National Market as of March 30, 2015 and were re-listed on the NASDAQ Global Market as of July 7, 2016.

3. On April 19, 2017, a final judgment was entered against McKinnies, permanently enjoining him from future violations of Sections 17(a)(2) and (3) of the Securities Act of 1933 and Rule 13b2-1 under the Exchange Act, in the civil action entitled Securities and Exchange Commission v. Mark McKinnies, Civil Action Number 17-cv-00566-JDB, in the United States District Court for the District of the District of Columbia. McKinnies was also ordered to pay \$126,808 in disgorgement of ill-gotten gains, and \$11,884 in prejudgment interest, and a \$100,000 civil money penalty.

4. The Commission's complaint alleged, among other things, that McKinnies violated the federal securities laws by approving and signing Advanced Emissions' periodic reports, a registration statement and other public filings that included materially misstated financial statements. The complaint alleged that McKinnies reviewed and approved financial statements for Advanced Emissions included in filings with the Commission that violated Generally Accepted Accounting Principles ("GAAP"). The complaint alleged that Advanced Emissions, among other things: (a) failed to record a large loss contingency in connection with an adverse arbitration ruling against the company; (b) prematurely recognized revenues on long-term contracts; (c) failed to properly account for warranty accruals; (d) improperly consolidated a joint venture in Advanced Emissions' balance sheet accounts; and (e) overstated revenues and gross profits from one of its subsidiaries. The complaint also alleged that McKinnies oversaw the inaccurate recording of transactions in the company's books and records.

² In 2013, the company undertook a restructuring pursuant to which Advanced Emissions Solutions, Inc. replaced ADA-ES, Inc. as the public, reporting company and ADA-ES, Inc. became a subsidiary of Advanced Emissions Solutions, Inc.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent McKinnies's Offer.

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

A. Respondent McKinnies 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