UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10472/ March 27, 2018

SECURITIES EXCHANGE ACT OF 1934
Release No. 82950/ March 27, 2018

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3932/ March 27, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18408

In the Matter of **MAXWELL TECHNOLOGIES, INC., VAN M. ANDREWS, DAVID J. SCHRAMM, AND JAMES W. DeWITT, Jr., CPA,** **Respondents.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER ("ORDER")**

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 Maxwell Technologies, Inc. ("Maxwell") and Van Andrews ("Andrews") and pursuant to Section 21C of the Exchange Act against David Schramm ("Schramm") and James DeWitt, CPA ("DeWitt"), (collectively "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") 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 them and the subject matter of

these proceedings, which are admitted, Respondents consent to the entry of this Order, as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds[1] that:

SUMMARY

1. From December 2011 through January 2013, Maxwell, a California-based company that develops, manufactures, and markets energy storage and power delivery products, engaged in an accounting fraud scheme that improperly recognized over $19 million in revenue from future quarters in violation of U.S. Generally Accepted Accounting Principles ("GAAP"). Maxwell, an SEC recidivist, issued materially false and misleading statements about its revenue, revenue growth, and gross margins, and inflated its reported financial results to better meet analysts' expectations. Maxwell did not have sufficient internal accounting controls to identify and properly account for its revenue throughout the relevant period.

2. Maxwell's primary source of revenue growth during the relevant period was expected to come from ultracapacitors, essentially small energy storage and power delivery products used in automotive, heavy transportation, renewable energy, backup power, wireless communications and industrial and consumer electronics applications. Maxwell's ultracapacitor revenue growth was material to analysts and investors and was highlighted in all press releases and earnings calls.

3. Maxwell, through Andrews, a former Senior Vice President of Sales and Maxwell officer, prematurely recorded ultracapacitor revenue as a result of his conduct and the failures of the company's finance and accounting department controls. Maxwell, through Andrews, used several improper tactics to prematurely record revenue, including: customer side deals with contingent payment terms and full right of return; channel stuffing; extending payment terms; falsifying purchase orders ("POs") and third-party confirmations; and by instructing certain distributors to order product they neither wanted nor needed at quarter-end. The fraud created the misperception that Maxwell's ultracapacitor growth was far more successful than reality.

4. Maxwell's finance and accounting department, including then-controller DeWitt, repeatedly overrode and ignored automated controls and missed red flags that should have alerted them to material revenue recognition departures. Although Andrews and his sales department took steps to hide the side deals from Maxwell's senior financial personnel, the

[1] The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

repeated override of automated controls allowed the sales to continue each quarter. Then-Chief Executive Officer ("CEO") Schramm and Maxwell's senior financial personnel knew that the sales took place the last days of each quarter, that certain sales were beyond approved credit limits and contained extended payment terms for up to 180 days, and that certain prior sales receivables were significantly past due. Maxwell ultimately recorded the revenue despite the fact that it should have known the sales terms were not fixed and determinable as required by GAAP for revenue recognition. Schramm also overrode automated credit limit controls to authorize large sales to distributors at quarter-end that he should have known those distributors neither wanted nor needed**.**

5. On or about January 9, 2013, Maxwell initiated an internal investigation after its audit committee received a detailed internal whistleblower letter describing the revenue recognition fraud. As a result of that investigation, on March 7, 2013, Maxwell announced that its previously issued financial statements on Form 10-K for 2011 and all quarterly reports on Forms 10-Q in 2011 and 2012 could not be relied upon. Maxwell also disclosed material weaknesses in its internal control over financial reporting due to "errors" it discovered in the "timing of recognition of revenue from sales to certain distributors." Maxwell's stock price declined 11.09%, closing at $8.10 per share on March 8, 2013. Soon thereafter, on March 18, 2013, Maxwell's external auditor resigned after concluding it could not rely on representations made by senior financial personnel. After the external auditor's resignation, Maxwell's stock price declined an additional 20.57%, closing at $5.91 per share on the news.

6. On August 1, 2013, Maxwell filed a restatement of the 2011 Form 10-K and Forms 10-Q for the first three quarters of 2012 that reduced revenue by 6.4% and 7.5% respectively. The restatement also turned net income gains into net losses for fiscal year-end 2011 and certain quarters in 2012.

7. As a result of the conduct described herein, Maxwell violated the antifraud provisions of Exchange Act Section 10(b) and Rules 10b-5(a) and 10b-5(c) thereunder, and Securities Act Section 17(a), the reporting provisions of Exchange Act Section 13(a) and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, the books and records provisions of Exchange Act Section 13(b)(2)(A), and the internal accounting control provisions of Section 13(b)(2)(B).

8. As a result of the conduct described herein, Andrews violated the antifraud provisions of Securities Exchange Act Section 10(b) and Rules 10b-5(a) and 10b-5(c) thereunder, and Securities Act Section 17(a) and caused Maxwell to violate Securities Act Section 17(a) and Exchange Act Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) and Rules 10b-5(a), 10b-5(c), 12b-20, 13a-1, 13a-11, and 13a-13 thereunder. Andrews also violated Exchange Act Section 13(b)(5) and Exchange Act Rules 13b2-1 and 13b2-2.

9. As a result of the conduct described herein, Schramm and DeWitt caused Maxwell to violate Exchange Act Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

RESPONDENTS

10. **Maxwell Technologies, Inc.** develops, manufactures, and markets energy storage and power delivery products for automotive, heavy transportation, renewable energy, backup power, wireless communications and industrial and consumer electronics applications. During the relevant period, Maxwell focused on three product lines: ultracapacitors, high-voltage capacitors, and radiation-mitigated microelectronic products. Maxwell, which is incorporated in Delaware and headquartered in San Diego, California, had manufacturing facilities in the United States and Switzerland during the relevant period and contract manufacturing relationships in China. Maxwell's shares are registered with the Commission pursuant to Exchange Act Section 12(b) and are listed on the NASDAQ under the symbol "MXWL." Maxwell files periodic reports, including Forms 10-K and 10-Q, with the Commission pursuant to Exchange Act Section 13(a) and related rules thereunder.

11. Maxwell is a recidivist. In January 2011, it paid approximately $14.3 million to settle Exchange Act Section 13(a) and Foreign Corrupt Practices Act-related charges with the SEC and the United States Department of Justice, and agreed to undertakings.

12. **Van M. Andrews**, age 66, resides in Indiana. He joined Maxwell in February 2010 as the Vice President of Ultracapacitor Sales and Marketing until December 30, 2010, when he was promoted to Senior Vice President of Sales & Marketing. Andrews served as a Maxwell officer from July 2012 until his resignation on February 28, 2013.

13. **David J. Schramm**, age 68, resides in California. He served as Maxwell's Chief Executive Officer, President, and Director from July 2007 until December 2013.

14. **James W. DeWitt, Jr.**, age 60, resides in Arizona. He served as Maxwell's Corporate Controller from April 2005 until October 2015. DeWitt, who reported to Maxwell's Chief Financial Officer until approximately February 2014, was responsible for testing, preparing, and reviewing Maxwell's revenue that was recognized and reported in the company's financial statements. DeWitt was licensed as a CPA by the State of Minnesota from 1986 until 1989.

FACTS

Background

15. During Schramm's tenure as CEO, Maxwell employed an aggressive strategy to grow revenue and increase profit margins associated with the company's important ultracapacitor product line. Schramm repeatedly stressed in analyst calls that ultracapacitors were the growth engine that would provide double-digit revenue growth and drive Maxwell toward profitability. Maxwell's ultracapacitor sales largely came from three segments: wind; hybrid bus; and automotive.

16. In February 2010, Schramm hired his close friend Andrews to help Maxwell meet the ultracapacitor revenue growth desired. At the time, Andrews was working as an ice-cream franchisee and had not been employed in corporate sales for nearly three years. Prior to that, Andrews served in various senior roles at several technology corporations. Once hired, Andrews often carpooled with Schramm for three hours each day from their Orange County homes to Maxwell's San Diego offices. They socialized with one another, golfed together as members of the same private country club, and shared holidays with one another.

17. Achieving and sustaining revenue growth was very important to Maxwell's business strategy during the relevant period. Maxwell's senior management understood that ultracapacitor revenue growth added significant value and was material to analysts and investors alike. Wall Street analysts closely followed Maxwell's ultracapacitor revenue growth and assigned value based on a multiple of revenue.

18. Schramm put pressure on his sales department to meet the revenue growth and earnings targets he provided to analysts each quarter. During the relevant period, Schramm required Andrews to provide weekly regional status updates that identified any shortfall between actual and forecasted revenue and required a "detailed contingency plan" on how to recover lost revenue before the end of each quarter.

19. Maxwell's pre-restatement Form 10-K filed for year-end 2011 disclosed that sales revenue is primarily derived from the sale of products directly to customers. The policy is characterized as follows:

> *Assumptions and Approach Used*. Product revenue is recognized when all of the following criteria are met: (1) persuasive evidence of an arrangement exists (upon contract signing or receipt of an authorized purchase order from a customer); (2) title passes to the customer at either shipment from our facilities or receipt at the customer facility, depending on shipping terms; (3) price is deemed fixed or determinable and free of contingencies or significant

uncertainties; and (4) collectability is reasonably assured. Customer purchase orders and/or contracts are generally used to determine the existence of an arrangement. Shipping documents are used to verify product delivery. We assess whether a price is fixed or determinable based upon the payment terms associated with the transaction. We assess the collectability of accounts receivable based primarily upon creditworthiness of the customer as determined by credit checks and analysis, as well as the customer's payment history.

20. During the relevant period, Maxwell, through Andrews, employed several schemes each quarter to inflate Maxwell's ultracapacitor sales to better align reported revenue with analysts' expectations. Such schemes included: altering payment terms, extending altered payment terms to certain distributors, shipping product at the end of quarters that was not needed, and offering full rights of return and profit margin protection to customers for products "purchased." Maxwell recognized revenue associated with each of these schemes in violation of GAAP and Maxwell's own accounting policy.

Maxwell Initiated a Revenue Recognition Scheme to Outperform Analyst Expectations

21. Beginning in 2010, Maxwell sold and shipped certain ultracapacitors to a large European-based direct supplier of automotive parts ("Global Automotive Customer"). These ultracapacitors were manufactured specifically for the Global Automotive Customer's original equipment manufacturer. The Global Automotive Customer's agreement with Maxwell called for it to take Maxwell's ultracapacitors on Delivery Duty Paid ("DDP") or Delivery Duty Unpaid ("DDU") terms. The use of DDP and DDU terms meant that Maxwell recognized revenue when the Global Automotive Customer accepted shipment at its delivery point from Maxwell.

22. From March through September 2011, Maxwell's deliveries to the Global Automotive Customer caused an oversupply of ultracapacitors in the Global Automotive Customer's inventory. In October 2011, the Global Automotive Customer informed Maxwell that it refused to accept delivery of 65,000 Maxwell ultracapacitors. Maxwell took possession of the rejected ultracapacitors into its own European inventory and issued a credit to the Global Automotive Customer of $829,332. In early November 2011, the Global Automotive Customer cancelled all remaining shipments from Maxwell through the end of the year, including 125,000 additional ultracapacitors that already left Maxwell's warehouse. These credits and cancellations left Maxwell facing an approximate $3.7 million revenue shortfall for year-end 2011, which resulted in an 8% revenue gap when measured against the quarterly estimate Maxwell's senior management previously disclosed to analysts.

23. Maxwell's senior management, including Schramm and Andrews, met several times in November and early December 2011 to discuss the Global Automotive Customer's

cancellation of Maxwell's product. They also discussed alternative solutions to mitigate the resulting negative revenue impact on Maxwell's financial statements before year-end 2011. Schramm and the finance and accounting department learned Andrews and his sales team arranged to have a small, family-run distributor in Europe ("German Distributor") take possession of the rejected ultracapacitors in late December 2011 totaling over $3 million in sales. Maxwell instructed the German Distributor to deliver the previously rejected ultracapacitors to the Global Automotive Customer in accordance with a "smoothing plan" previously agreed upon by Maxwell and the Global Automotive Customer over the first two quarters in 2012.

24. On the final days of December 2011, Andrews persuaded the German Distributor to purchase 37,000 additional ultracapacitors totaling $671,180 for eventual delivery to the Global Automotive Customer sometime in 2012. Maxwell, however, did not inform Global Automotive Customer of these additional purchases until well after December 31, 2011. This final year-end transaction, when coupled with Maxwell's earlier arrangement with the German Distributor, enabled Maxwell to cover the entire $3.7 million revenue shortfall caused by the Global Automotive Customer's fourth quarter cancellations of Maxwell's product.

25. The German Distributor purchased the ultracapacitors at a 4% discount from Maxwell's contracted price (for the same item) with the Global Automotive Customer. This arrangement reduced Maxwell's gross margin but ensured the German Distributor would profit when it ultimately delivered the ultracapacitors to the Global Automotive Customer. In addition, the German Distributor made clear to Andrews and his sales staff that it would not pay Maxwell until it first received payment from the Global Automotive Customer. Maxwell, through Andrews and his sales team, agreed with the German Distributor's contingency arrangement demand that "payment from [the German Distributor] to Maxwell will be done after receiving payment from [Automotive Customer]." This contingent term was explicitly written into all four German Distributor POs sent to Maxwell in December 2011 and initially was not hidden from anyone at Maxwell.

26. Maxwell should have known the German Distributor could not pay for the goods until it first received payment from the Global Automotive Customer. Prior to December 2011, the German Distributor's quarterly sales with Maxwell had never been above $300,000 and their credit limit with Maxwell was only $500,000. The $3.7 million in December 2011 customer orders was initially blocked by Maxwell's automated system. Maxwell's finance and accounting department, however, increased the German Distributor's then-existing credit limit from $500,000 to $4 million to allow the sales to proceed.[2] Maxwell's finance and accounting department did not

[2] A credit block was an internal control designed to prevent Maxwell from shipping product to customers that had placed orders over their credit limit. Maxwell's credit limits could be established by a variety of third-party sources, including Dun & Bradstreet ("D&B") reports. Despite raising the German Distributor's credit limit in December 2011, Maxwell's credit file for the German Distributor contained only a 2007 D&B report written in

request any documentation of the German Distributor's credit worthiness nor did it conduct any due diligence before raising the limit.

27. Despite the contingent payment arrangement and the automatic controls designed to minimize the risk of improper revenue recognition, Maxwell improperly recorded $3.7 million in revenue on an Ex Works basis (meaning, at the time the goods left Maxwell's warehouse) for sales to the German Distributor between December 22 and December 31, 2011. Maxwell's explicit contingent payment arrangement with the German Distributor constituted a violation of GAAP as revenue recognition standards include, among other criteria, that revenue may only be recognized when collectability is reasonably assured.

Maxwell Created False Purchase Orders to Conceal the Revenue Recognition Scheme

28. In early January 2012, Maxwell's senior financial personnel knew external auditors were arriving to perform year-end audit work around January 19, 2012. Between January 4 and 10, 2012, DeWitt conducted internal sales cutoff testing and reviewed the German Distributor POs containing the contingent payment term that should have precluded Maxwell from recognizing the revenue for fiscal year-end 2011. DeWitt, Maxwell's then-Chief Financial Officer ("CFO"), and Andrews met on January 10, 2012 to discuss the POs. At this meeting, Andrews denied the existence of a contingent payment arrangement with the German Distributor and indicated he would obtain corrected POs without the contingent term.

29. On or around January 19, 2012, the external auditors selected at least one of the German Distributor POs for audit testing that contained the contingent payment term. On January 20, 2012, DeWitt emailed Andrews with a cc: to the then-CFO that "[n]ot unexpectedly, the auditors have chosen [the German Distributor] PO . . . that was part of their purchases at the end of the year. Therefore, we need to get the updated PO copy sent to us as soon as possible." Andrews then obtained revised POs for all four transactions from the German Distributor that deleted the contingent payment term. Without the finance and accounting department's knowledge, Andrews and one of his direct reports reassured the German Distributor that Maxwell would continue to honor the original terms of their agreement. Andrews and his direct report then secretly faxed a side agreement letter to the German Distributor from a FedEx store near Maxwell's corporate office with the contingent payment terms included. This side agreement was hidden from Maxwell's finance and accounting department and its external auditors throughout the 2011 fiscal year-end audit.

French that noted a credit maximum of 323,340 EUR (approximately $416,000). Maxwell's finance and accounting department did not review that credit file until October 2012.

30. Maxwell's finance and accounting department presented these revised POs to the auditors. Andrews did not inform the finance and accounting department or the external auditors that the revised POs had been falsified. Maxwell's senior financial personnel failed to inform the auditors that the POs were modified, or that two of the POs pertained to sales that had been rejected by the Global Automotive Customer and rerouted to the German Distributor. Maxwell's finance and accounting department should have known that two sales transactions with the German Distributor prior to December 2011 had DDP shipping terms that did not allow for immediate revenue recognition. However, these shipping terms in the German Distributor's revised POs were altered to allow for immediate revenue recognition. Despite the numerous red flags, Maxwell prematurely recognized revenue for the German Distributor's sales at year-end 2011.

31. On February 16, 2012, Maxwell released its 2011 Form 10-K and reported pre-restatement earnings and revenue that outperformed analyst estimates. Powered by its fraudulent revenue recognition scheme, Maxwell reported an artificially inflated fourth-quarter 2011 earnings per share ("EPS") of $0.06, beating analyst estimates of $0.04. Maxwell also reported full-year 2011 EPS of $0.03, beating consensus estimates for full year GAAP EPS of $0.012 and showing a profit for the first time after years of losses. Similarly, Maxwell's fourth-quarter 2011 revenues were materially inflated by approximately $5 million for total revenue of $42 million in order to meet consensus estimates of $42-$43 million. A portion of Schramm's fiscal year 2011 bonus, which he received on February 2012, was tied directly to Maxwell's revenue performance for the year.

32. Immediately after Maxwell released its fraudulent 2011 financial statements, the company announced it had entered into an at-the-market equity offering of up to $30 million (the "Offering"). In February and March 2012, Maxwell issued $10.3 million worth of common stock in connection with the Offering.

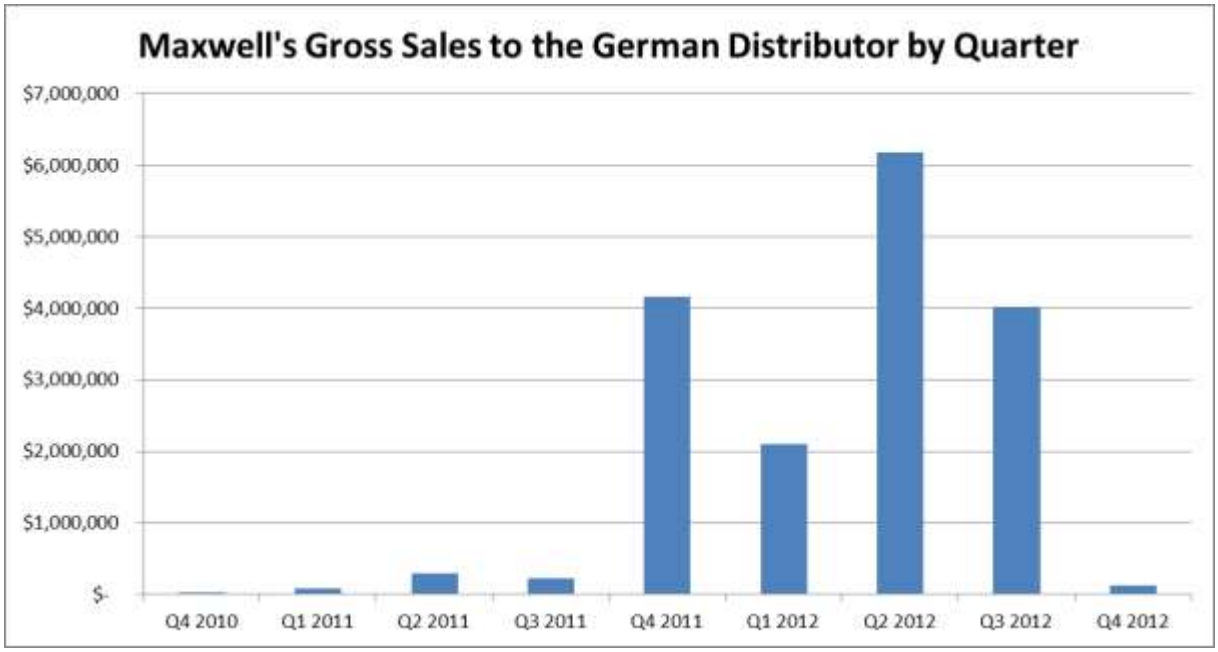
Maxwell Perpetuated Its Revenue Recognition Scheme
During the First Three Quarters of 2012

33. The Maxwell/German Distributor contingent arrangement was originally designed as a one-time event to inflate Maxwell's financial results for quarter-end and year-end 2011. Maxwell subsequently perpetuated the fraud during the first three quarters of 2012 after it became clear that Maxwell could not meet revenue growth expectations for its ultracapacitor product line because of softening demand in the European automotive market and elsewhere. During the first three quarters of 2012, Maxwell improperly turned losses into profits and recognized an additional $10.3 million in premature revenue from quarter-end contingent sales to the German Distributor ultimately meant for the Global Automotive Customer and other Maxwell customers. Maxwell also prematurely recognized an additional $5 million in ultracapacitor revenue obtained from other distributors in arrangements similar to those in place with the German Distributor.

34. At the end of the first quarter of 2012, Andrews and his sales staff asked the German Distributor and other distributors to submit sales orders subject to the contingent arrangements and other side deals they kept hidden from Maxwell's finance and accounting department. As a result, Maxwell's first quarter 2012 Form 10-Q reported results that improperly inflated recorded revenue by $3.4 million (or 8.7%) and allowed the company to show a small profit when it should have shown a net loss for the quarter. Despite Maxwell's fraud, the company still fell short of analyst expectations, which resulted in a material drop in market capitalization after Maxwell released its financial statement results for quarter ended March 31, 2012.

35. At the very end of the second quarter of 2012, Maxwell, through Andrews and his sales team, used the German Distributor to recognize sales to additional Maxwell customers in order to prematurely record revenue of at least $5.5 million. Maxwell's second quarter 2012 sales to the German Distributor once again far exceeded the established credit limit for that distributor. Maxwell's automated financial controls initially stopped these sales orders from going forward. As in December 2011, Maxwell overrode the automated credit blocks placed on the German Distributor and permitted the German Distributor's credit limit to fluctuate up to $8 million without conducting due diligence into the German Distributor's financial health or creditworthiness. Maxwell made these sales to the German Distributor in order to allow Maxwell's revenue growth and gross margin results to better align with analysts' expectations and Maxwell's previously-announced projected targets.

36. Maxwell's increased sales to the German Distributor during the entirety of the scheme (Q4 2011 through Q3 2012) are demonstrated in the following chart:

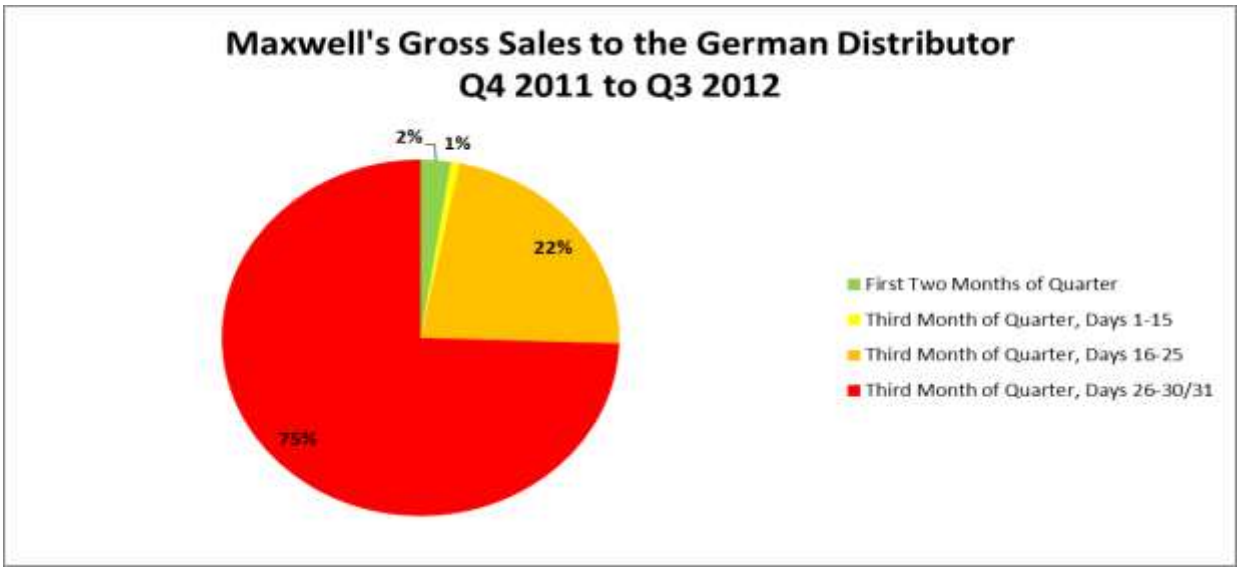


Maxwell Ignored Red Flags
That the Company Was Prematurely Recording Revenue

37. Throughout the first three quarters of 2012, Maxwell witnessed significant growth in the overdue receivable balances to the German Distributor, collection concerns, and multiple extensions of payment terms. During this period, Maxwell's senior financial personnel also did not sufficiently follow up on emails, accounts receivable reports, extended payment terms and other documents and information that strongly suggested the German Distributor could not pay for the orders until it received payment from the Global Automotive Customer. Despite these indicators, Maxwell repeatedly approved more sales to the German Distributor intended for the Global Automotive Customer and others. In order to gauge when the German Distributor would pay Maxwell, DeWitt started tracking the German Distributor delivery dates to the Global Automotive Customer and the dates the Global Automotive Customer would pay the German Distributor for Maxwell product. DeWitt, therefore, should have known that the German Distributor was not making payment without first receiving funds from the Global Automotive Customer, *i.e.*, a continent payment arrangement.

38. Maxwell's senior management and finance and accounting department did not follow up on additional red flags that a contingent payment arrangement existed between Maxwell, the German Distributor and certain other distributors. For example, Maxwell's senior management and finance and accounting department were keenly aware that a disproportionately large majority of ultracapacitor sales were taking place during the last few days of the quarter. While the trend lines associated with Maxwell's quarter-end sales (*i.e.*, linearity) had reached substandard levels, the quarter-end sales associated with the German Distributor had changed dramatically during the revenue recognition scheme and were far worse.

39. During the period immediately before the fraud, Maxwell's sales to the German Distributor before the revenue recognition fraud demonstrated that 66% of these sales were made during the first two months of the quarter. Only 24% of German Distributor sales were made during the final two weeks of the quarter before December 2011. During the revenue recognition scheme, Maxwell made 97% of its sales to the German Distributor during the final two weeks of the quarter, with 75% made within the final five days:



Schramm, Andrews and Maxwell's senior finance and accounting personnel all were aware of Maxwell's quarter-end sales to the German Distributor and their impact on the quarterly revenue growth estimates provided to analysts and investors.

40. In addition, Maxwell's senior management and finance and accounting department closely tracked and monitored days sales outstanding ("DSO") (*i.e.*, the average number of days it takes the company to collect its accounts receivable). During the relevant period, Maxwell's DSO on a company-wide basis trended upward from an average of 70 days at the end of the third quarter in 2011 to 93 days, 108 days and 109 days during the first three quarters of 2012, respectively, and were at historically substandard levels.[3]

41. Maxwell's DSO for its sales to the German Distributor, however, were far worse and nearly doubled (from 61 days to 120 days) between the third and fourth quarters of 2011. During the first quarter of 2012, Maxwell's DSO for its sales to the German Distributor continued to rise from 120 days to 160 days, or over five months on average. During the second quarter of 2012, Maxwell's senior management and finance and accounting personnel became increasingly concerned with the German Distributor's overdue accounts receivable balances, which were extending between four to six months (120-180 days) after their invoice dates, and began to track these balances on a weekly basis. Nevertheless, Maxwell's finance and accounting department overrode credit blocks that enabled Maxwell to ship and record nearly $5.4 million in sales to the German Distributor notwithstanding significant delays in payments and resulting payment term extensions. This same pattern continued during the third quarter of 2012. As a result, senior management knew before Maxwell filed its Form 10-Q for the period ending September 30, 2012

[3] Maxwell's DSO of 70 days in the third quarter of 2011 is consistent with Maxwell's average DSO of 70.5 days for the four years (2008-2011) preceding the revenue recognition fraud.

that German Distributor receivables for sales for the second and third quarters of 2012 would remain unpaid, on average, for almost six months.

42. Beginning in June 2012, and continuing through January 2013, Andrews directed Maxwell sales personnel to offer the German Distributor extra "commission payments" if it would pay their invoices to Maxwell before the German Distributor received payment from the Global Automotive Customer. These "payments" were offset against outstanding receivable amounts and then mischaracterized as marketing and/or exhibitor fees and improperly recorded as legitimate marketing expenses to avoid detection by Maxwell's finance and accounting department and the external auditors.

43. During the third quarter, in late July 2012, Maxwell's finance and accounting department tried to enforce credit blocks because of significantly overdue accounts receivable from the German Distributor and certain other distributors of Maxwell's ultracapacitor products. By mid-September 2012, the credit blocks became unsustainable as it became apparent to senior management that Maxwell's ultracapacitor revenue threatened to perform significantly lower than the 7-10% revenue growth forecast Schramm provided to analysts during the previous quarterly earnings call if the sales to the German Distributor and others remained blocked.

44. During the last week in September 2012, Maxwell's board of directors met with Schramm to discuss the anticipated quarterly financial results and expressed concern with Maxwell's ultracapacitor revenue for the quarter. Schramm then held an executive meeting and told Andrews and his sales team that Maxwell needed $45 million in revenue for the third quarter to meet the mid-range of analyst revenue growth expectations. On the same day as Schramm's executive meeting, Maxwell's senior financial personnel partially overrode a credit block that permitted Maxwell to ship over $1.6 million in sales to the German Distributor. On Friday, September 28, 2012, the last business day of the quarter, Schramm overrode the remaining credit block that permitted Maxwell to ship an additional $2.2 million in product to German Distributor. At the time, Schramm was aware that the German Distributor would not ship any of the $2.2 million in product until 2013. Schramm also performed no due diligence before overriding the credit block, even though he was aware of the German Distributor's extended payment terms, overdue accounts receivable, and payment and credit history. Those transactions, improperly recorded as revenue by Maxwell's finance and accounting department, enabled Maxwell to report that revenue increased 7 ½ % to $43.9 million for the quarter, or the lower end of Maxwell's estimates of 7% -10% revenue growth.

45. After the end of the third quarter, on October 12, 2012, Maxwell's finance and accounting department authorized a credit limit increase from $500,000 to $8.5 million that was not based on, nor supported by, the documented financial condition of the German Distributor. In particular, Maxwell, through DeWitt, obtained an updated D&B report for the German Distributor

in October 2012 in an attempt to bolster the credit files, which at the time consisted of only a 2007 D&B report written in French that noted a credit maximum of 323,340 EUR (approximately $416,000). However, the October 2012 D&B report supported a credit maximum for the German Distributor of only 180,000 EUR, which, if relied upon, would have supported a credit limit *decrease* from the $500,000 credit limit previously established. DeWitt also attempted to obtain audited financial statements from the German Distributor. Instead, the German Distributor provided an unaudited spreadsheet with unproven and incomplete figures that did not support a credit limit increase. In fact, the German Distributor's unaudited spreadsheet demonstrated than Maxwell's approved credit limit of $8.5 million represented more cash (before expenses) that the German Distributor generated in both 2011 and 2012 combined. Rather than seeking additional, reliable quantitative financial data to determine the appropriate credit limit, Maxwell's senior financial personnel opted to rely upon oral representations from Schramm and Andrews that the German Distributor was a good partner that was creditworthy at $8.5 million.

46. On October 17, 2012, Maxwell's senior management met with the audit committee to discuss the company's financial results for the quarter ended September 30, 2012. At the time, Maxwell's outstanding accounts receivable balance with the German Distributor exceeded $8.5 million, with $4 million long overdue and an additional $4 million representing shipments just made on or after September 28, 2012. For all of the shipments made on or after September 28, 2012, Maxwell had almost immediately extended payment terms from 60 days to roughly 180 days into March 2013. The discussion also covered two other distributors exhibiting characteristics similar to the German Distributor. Nevertheless, the discussion at this meeting focused solely on the collectability of the outstanding receivable to the German Distributor, an issue relevant to only one criterion of revenue recognition. Maxwell did not address the possibility that a contingent payment agreement existed, which was an issue relevant to another criterion of revenue recognition. As a result, Maxwell recorded all of the revenue associated with the quarter-end shipments that had initially been blocked. On October 25, 2012, Maxwell filed its Form 10-Q for the period ending September 30, 2012, falsely reporting that Maxwell had achieved the lower end of its revenue growth guidance.

47. Shortly before Maxwell filed its Form 10-Q for the period ending September 30, 2012, Maxwell's external auditors became increasingly concerned about revenue recognition issues associated with the German Distributor. As a result, the external auditors employed additional review procedures by sending a third-party confirmation letter to the German Distributor and asking it to identify any special arrangements that might impact revenue recognition. DeWitt furnished that revised confirmation letter to the external auditors, who then sent it to the German Distributor. On December 12, 2012, at Andrews' direction, Maxwell's sales team arranged to have the German Distributor submit a false confirmation to the external auditor that falsely claimed its transactions with Maxwell were free of all contingencies. In February 2013, Maxwell, through

Andrews, arranged for the German Distributor to complete another false confirmation as part of the year-end 2012 audit.

48. Ultimately, all of the German Distributor revenue Maxwell recorded for the period from December 2011 through September 2012 was determined to be recorded prematurely and restated, although substantially all of the revenue was eventually collected and recognized in subsequent periods. Similar practices were underway with sales involving at least three other distributors, which also required restatement. Maxwell's senior financial personnel and Schramm overrode automated controls related to multiple distributors.

Maxwell's Revenue Recognition Scheme Unravels

49. In early December 2012, Maxwell, through Andrews and his sales team, asked the German Distributor to submit a PO for $1.5 million covering 90,000 parts ultimately meant for the Global Automotive Customer. The German Distributor submitted a PO, but expressed concern to Maxwell's sales personnel that it was "running out of space" and "was not willing to let the snowball become bigger" because of all the Maxwell product the German Distributor had not yet shipped to the Global Automotive Customer. Maxwell ultimately withdrew the request four days before the internal whistleblower informed the chairman of Maxwell's board of directors of concerns regarding a suspected revenue recognition scheme and the contingency relationship between Maxwell and the German Distributor.

50. Thereafter, Maxwell's audit committee conducted an internal investigation and concluded that Andrews and certain other Maxwell sales personnel engaged in side agreements with the German Distributor and certain other distributors that they hid from Maxwell's finance and accounting department. On March 1, 2013, Schramm permitted Andrews to resign but terminated two other sales personnel that reported to Andrews. That next morning, Schramm and Andrews played a round of golf together at their country club. Schramm and Andrews remained friends and continued to regularly play golf together until late August of 2013.

51. After the market close on March 7, 2013, Maxwell filed a Form 8-K with the Commission, in which it made public for the first time that it would be restating its financial results for fiscal year 2011 and the first three quarters of 2012 and that those financials should no longer be relied upon because of errors relating to the premature revenue recognition from sales to certain distributors. The Form 8-K also disclosed material weaknesses in its internal control over financial reporting and a default on the covenants governing its credit agreement. Maxwell's stock price dropped 11.09% to close at $8.10 per share on the news.

52. While the internal investigation found Schramm and senior financial personnel were not aware of the fraud, on March 18, 2013, Maxwell's external auditors resigned after

concluding it could no longer rely on the representation of its management, particularly those made by senior financial personnel. After the market close on March 19, 2013, Maxwell filed a Form 8-K with the Commission announcing the external auditors' resignation and stating the company would be unable to file its financial statements for fiscal year 2012 by the required deadline. Maxwell's stock price dropped 20.57% to $5.91 per share on the news.

53. On August 1, 2013, Maxwell filed a restatement of the 2011 Form 10-K and Forms 10-Q for the first three quarters of 2012 that reduced revenue by 6.4% and 7.5% respectively, and turned modest net income gains into net losses for certain periods. Maxwell's restatement also reported the company had successfully remediated its material weakness in internal control over financial reporting related to its revenue recognition. Maxwell's restatement included the discovery of additional transactions for which Andrews purportedly hid, or otherwise provided false and misleading information to Schramm and Maxwell's finance and accounting department.

VIOLATIONS

54. Securities Act Section 17(a)(1), Exchange Act Section 10(b) and Rules 10b-5(a) and 10b-5(c) thereunder prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities, respectively.

55. Securities Act Section 17(a)(2) prohibits any person from obtaining money or property in the offer or sale of securities by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

56. Securities Act Section 17(a)(3) prohibits any person from engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser in the offer or sale of securities.

57. Exchange Act Section 13(a) and Rules 13a-1, 13a-11 and 13a-13 thereunder require that every issuer of a security registered pursuant to Exchange Act Section 12 file with the Commission, among other things, annual, quarterly and other reports as the Commission may require.

58. Rule 12b-20 under the Exchange Act 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.

59. Exchange Act Section 13(b)(2)(A) 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.

60. Exchange Act Section 13(b)(2)(B) 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.

61. Exchange Act Section 13(b)(5) 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).

62. Rule 13b2-1 under the Exchange Act prohibits any person from directly or indirectly, falsifying or causing to be falsified, any book, record, or account subject to Exchange Act Section 13(b)(2)(A). Rule 13b2-2(a) under the Exchange Act provides that no director or officer of an issuer shall, in connection with financial-statement audits, reviews, or examinations or the preparation or filing of any document or report required to be filed with the Commission, directly or indirectly: (1) make or cause to be made a materially false or misleading statement to an accountant; or (2) omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant.

Findings

63. As a result of the conduct described above, Maxwell violated Securities Act Section 17(a) and Exchange Act Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rules 10b-5(a) and 5(c), 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

64. As a result of the conduct described above, Andrews: (i) violated Securities Act Section 17(a), Exchange Act Sections 10(b) and 13(b)(5) and Rules 10b-5(a) and (c), 13b2-1 and 13b2-2 promulgated thereunder; and (ii) caused Maxwell's violations of Securities Act Section 17(a), Exchange Act Sections 10(b), 13(a), 13(b)(2)(A) and (B) and Rules 10b-5(a) and (c), 12b-20, 13a-1, 13a-11, and 13a-13 promulgated thereunder.

65. As a result of the conduct described above, Schramm and DeWitt caused Maxwell's violations of Exchange Act Sections 13(a), 13(b)(2)(A) and (B) and Rules 12b-20, 13a-1, 13a-11, and 13a-13 promulgated thereunder.

MAXWELL'S REMEDIAL EFFORTS

In determining to accept Maxwell's Offer, the Commission considered remedial acts promptly undertaken by Maxwell and cooperation it afforded the Commission staff.

UNDERTAKINGS

Maxwell shall comply with the following undertakings:

1. Report to the Commission staff during a one-year term, as set forth herein, Maxwell's compliance with Commission regulations and GAAP regarding its revenue recognition, financial reporting, and the status of any remediation, implementation, auditing and testing of its internal accounting controls and compliance measures. During this period, should Maxwell discover credible evidence, not already reported to the Commission staff, that insufficiencies in the design or operation of its internal accounting controls relating to revenue recognition exist, Maxwell shall report such insufficiencies to the Commission staff and state either all such insufficiencies have been remediated or it cannot certify compliance. During this one-year period, Maxwell shall: (1) conduct an initial review and submit an initial report, and (2) conduct and prepare a final follow-up report, as described below:

    a. Maxwell shall submit to the Commission staff a written report within 150 calendar days of the entry of this Order setting forth a complete description of its internal accounting controls, policies, and procedures relating to revenue recognition (the "Initial Report"). The Initial Report should also include Maxwell's remediation efforts to date, including a description of the controls, policies, and procedures in place, and any proposals to make improvements, that are reasonably designed to improve the internal accounting controls, policies and procedures of Maxwell for ensuring compliance with Commission regulations and GAAP, and the parameters of the subsequent reviews.

    b. Maxwell shall undertake a follow-up review, incorporating any comments provided by the Commission staff on the Initial Report, to further test, monitor and assess as necessary whether its internal accounting controls, policies and procedures over revenue recognition are reasonably designed to: (1) provide reasonable assurance of compliance with Commission regulations and GAAP; and (2) detect and prevent insufficiencies in the design or operation of its internal accounting controls, policies, and procedures relating to revenue recognition. Maxwell shall submit to the Commission staff its final follow-up report within

365 calendar days of the entry of this Order (the "Final Report").

c. The Initial and Final Reports shall be transmitted to Tracy Price, FCPA Unit Deputy Chief, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5631. Maxwell may extend the time period for issuance of the Initial Report with prior written approval of the Commission staff. Maxwell may extend the time period for issuance of the Initial and Final Reports with prior written approval of the Commission staff. Maxwell shall provide its external auditors with copies of the Initial and Final Reports and shall provide staff with any written reports or recommendations produced by the external auditors in response to those Reports.

d. The Initial and Final Reports submitted by Maxwell will likely include proprietary, financial, confidential, and competitive business information. Public disclosure of the reports could discourage cooperation, impede pending or potential government investigations and thus undermine the objectives of the reporting requirement. For these reasons, among others, the Initial and Final Reports and the contents thereof are intended to remain and shall remain non-public, except (a) pursuant to court order, (b) as agreed by the parties in writing, (c) to the extent that the Commission staff determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (d) is otherwise required by law.

e. Certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s) provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Maxwell agrees to provide such evidence. The certification and supporting materials shall be submitted to Tracy Price, FCPA Unit Deputy Chief, Division of Enforcement, with a copy to the Office of the Chief Counsel of the Enforcement Division, no later than 30 days from the date of the completion of the undertakings.

f. Within one-year of the entry of this Order, should Maxwell discover credible evidence, not already reported to the Commission staff, that its internal accounting controls in areas unrelated to revenue recognition are insufficient, Maxwell shall provide a detailed report to the Commission staff.

2. Maxwell shall preserve and retain all documentation regarding all certifications and reports for seven (7) years and will make it available to the Commission staff upon request.

3. In determining whether to accept Maxwell's Offer, the Commission has considered these undertakings. Maxwell agrees that if the Division of Enforcement believes that Maxwell has not satisfied these undertakings, it may petition the Commission to reopen the matter to determine whether additional sanctions are appropriate. For good cause shown, the Commission staff may in its sole discretion extend any of the procedural dates relating to the undertakings.

4. Maxwell (including its officers, directors, and employees, and third-party consultants within Maxwell's control) shall cooperate fully with the Commission with respect to this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party and subject to compliance with applicable law. Maxwell agrees that such cooperation shall include, but is not limited to:

   a. Production of Information: at the Commission's request, upon reasonable notice, and without subpoena, Maxwell (including its officers, directors, and employees, and third-party consultants within Maxwell's control) shall truthfully and completely disclose all information requested by the Commission staff in connection with the Commission's investigation, litigation or other related proceedings, except with respect to information related to clients other than Maxwell, which information shall be produced in response to subpoena or other appropriate legal process;

   b. Production of Documents: at the Commission's request, upon reasonable notice, and without subpoena, Maxwell (including its officers, directors, and employees, and third-party consultants within Maxwell's control) shall provide any document, record or other tangible evidence requested by the Commission staff in connection with the Commission's investigation, litigation or other related proceedings, except with respect to documents related to clients other than Maxwell, which information shall be produced in response to subpoena or other appropriate legal process; and

   c. Production of Cooperative Personnel: at the Commission's request, upon reasonable notice, and without subpoena, Maxwell (including its officers, directors, and employees, and third-party consultants within Maxwell's control) shall secure the attendance and truthful statements, deposition, or testimony of any Maxwell officer, director, or employee or third-party consultant within Maxwell's control,

excluding any person who is a party to any related litigated judicial or administrative proceeding, at any meeting, interview, testimony, deposition, trial, or other legal proceeding.

The foregoing obligations are subject to Maxwell's reservation of rights:

(i) to claim that documents or information requested is subject to attorney-client privilege or attorney-work-product protection; and
(ii) to seek entry of a confidentiality order as to: sensitive business documents or information; sensitive personnel documents or information; or confidential information pertaining to parties other than Maxwell.

d. Service and Personal Jurisdiction Consents: Maxwell further agrees that, with respect to this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, it will: (i) accept service by email, mail or facsimile transmission of notices, requests, or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by the Commission staff ("Commission Service"); (ii) appoint Maxwell's undersigned attorney as agent to receive Commission Service; (iii) with respect to Commission Service, waive the territorial limits upon service contained in Rule 45 for the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Maxwell's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (iv) consent to personal jurisdiction over Maxwell in any United States District Court for purposes of enforcing any Commission Service.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, it is hereby ORDERED, effective immediately, that**:**

A. Maxwell cease and desist from committing or causing any violations and any future violations of Securities Act Section 17(a), Exchange Act Sections 10(b), 13(a), 13(b)(2)(A) and13(b)(2) (B), and Rules 10b-5(a) and (c), 12b-20, 13a-1, 13a-11, and 13a-13 promulgated thereunder.

B. Andrews cease and desist from committing or causing any violations and any future violations of Securities Act Section 17(a), Exchange Act Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5), and Rules 10b-5(a) and (c), 12b-20, 13a-1, 13a-11, 13a-13, 13b2-1, and 13b2-2 promulgated thereunder.

C. Andrews be, and hereby is, prohibited for five (5) years from the date of this Order from acting as an officer or 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.

D. Schramm cease and desist from committing or causing any violations and any future violations of Exchange Act Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and Rules 12b-20, 13a-1, 13a-11, and 13a-13 promulgated thereunder.

E. DeWitt cease and desist from committing or causing any violations and any future violations of Exchange Act Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and Rules 12b-20, 13a-1, 13a-11, and 13a-13 promulgated thereunder.

F. Maxwell shall, within twenty-one (21) days of the entry of this Order, pay a civil money penalty in the amount of $2.8 million to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. Section 3717.

G. Andrews shall, within twenty-one (21) days of the entry of this Order, pay a civil money penalty in the amount of $50,000 to the Securities and Exchange Commission. Payment shall be made in three installments as follows: one installment of $25,000 due within 21 days of the date of the entry of this Order; the second installment of $12,500 due within 180 days of this Order; and the third and final installment of $12,500 within 360 days of the entry of this Order. Payments shall be deemed made on the date they are received by the Commission and shall be applied first to post-judgment interest, which accrues pursuant to 31 U.S.C. Section 3717 on any unpaid amounts due after 21 days of the entry of this Order. Prior to making the final payment set forth herein, Andrews shall contact the staff of the Commission for the amount due for the final payment. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. Section 3717.

H. Schramm shall, within twenty-one (21) days of the entry of this Order, pay disgorgement of $33,878, prejudgment interest of $6,113, and a civil money penalty in the amount of $40,000 to the Securities and Exchange Commission. If timely

payment is not made, additional interest shall accrue pursuant to SEC Rule or Practice 600 and 31 U.S.C. Section 3717.

I. DeWitt shall, within twenty-one (21) days of the entry of this Order, pay a civil money penalty in the amount of $20,000 to the Securities and Exchange Commission. Payment shall be made in three installments as follows: one installment of $10,000 due within 21 days of the date of the entry of this Order; the second installment of $5,000 due within 180 days of this Order; and the third and final installment of $5,000 within 360 days of the entry of this Order. Payments shall be deemed made on the date they are received by the Commission and shall be applied first to post-judgment interest, which accrues pursuant to 31 U.S.C. Section 3717 on any unpaid amounts due after 21 days of the entry of this Order. Prior to making the final payment set forth herein, DeWitt shall contact the staff of the Commission for the amount due for the final payment. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. Section 3717.

J. Payment must be made in one of the following ways:

(1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondents 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) Respondents 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 Maxwell Technologies, Inc., Van Andrews, David Schramm, and James DeWitt 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 Tracy L. Price, Esq., FCPA Unit Deputy Chief, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

K. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, prejudgment interest and civil money penalties referenced in Paragraphs F through I above. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Maxwell, Andrews, Schramm, and DeWitt agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Maxwell's, Andrews', Schramm's, and DeWitt's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Maxwell, Andrews, Schramm, and DeWitt agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Maxwell, Andrews, Schramm, and/or DeWitt by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

L. Respondent Maxwell shall comply with the undertakings enumerated in Section III. above.

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 Respondents Andrews, Schramm, and DeWitt, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents Andrews, Schramm, and DeWitt under the 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 Respondents Andrews, Schramm, and DeWitt 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