

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84998 / January 29, 2019

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4018 / January 29, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-18971

In the Matter of

DIGITAL TURBINE, INC.

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 Digital Turbine, Inc. (“Respondent”).

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 it and 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 Respondent's Offer, the Commission finds¹ that

Summary

This matter involves violations of the federal securities laws in connection with the Respondent's Internal Control over Financial Reporting ("ICFR"). Respondent failed to create and implement effective ICFR for seven consecutive annual reporting periods from fiscal year ended 2011 through fiscal year ended 2017.

Respondent

1. Digital Turbine is a global technology company, based in Austin, Texas. Respondent offers a mobile delivery platform that enhances app advertising, among other technology services. Respondent's securities trade on NASDAQ under the symbol APPS. At all relevant times, Respondent filed periodic reports with the Commission, including Forms 10-K and 10-Q, pursuant to Section 13(a) of the Exchange Act and related rules thereunder. Respondent's fiscal year ends on March 31st of the calendar year.

Background

2. Respondent disclosed material weaknesses in each of its Forms 10-K over a period of seven years, from fiscal year 2011 through fiscal year 2017. Respondent's disclosed material weaknesses, which often repeated year after year, related primarily to its financial close and reporting process and controls over its accounting information technology systems

3. Respondent's material weaknesses resulted from, among other things, deficiencies in the design and operation of controls related to its financial close and reporting process, including, during certain periods of time, weaknesses around the review and performance of reconciliations during the close process; and failures to maintain sufficient qualified personnel or adequate accounting information technology systems resulting in a manual close with insufficient documentation of the procedures employed.

4. Respondent retained a SOX consultant in 2012 but retained a new SOX Consultant in February 2015 to assist with its remediation and testing efforts. After the close of fiscal year 2015, that consultant provided Respondent with a detailed plan of remediation. Respondent began implementing the plan in fiscal year 2016. During fiscal year 2016 and part of fiscal year 2017, the Respondent made some progress towards remediating its material weaknesses. The Commission

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

staff contacted the Respondent in May 2016. In April 2017, the Respondent rehired its SOX consultant to review and test ICFR for fiscal years 2017 and 2018.

5. Respondent continued to disclose the existence of material weaknesses and to engage in limited remediation but it did not fully remediate its material weaknesses until the end of fiscal year 2018 when it disclosed in its Form 10-K for the year ended March 31, 2018 that there were no material weaknesses and that its ICFR was effective.

6. As a result of the conduct described above, Respondent violated Rule 13a-15(a) of the Exchange Act, which require issuers with classes of securities registered pursuant to Section 12 to maintain ICFR.

7. As a result of the conduct described above, Respondent violated Section 13(b)(2)(B) of the Exchange Act, which requires Section 12 registrants to devise and maintain a system of sufficient internal accounting controls.

Digital Turbine's Remedial Efforts

8. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent and cooperation afforded the Commission staff.

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 that:

A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Section 13(b)(2)(B) of the Exchange Act and Rule 13a-15(a) thereunder.

B. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$100,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Respondent 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 Melissa Hodgman, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5553.

C. 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, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it 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 Respondent 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.

By the Commission.

Brent J. Fields
Secretary