

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86720 / August 21, 2019

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4064

ADMINISTRATIVE PROCEEDING
File No. 3-19368

In the Matter of

MICHAEL FILKOSKI, CPA,
and
SCOTT MAGNUSON, CPA,

Respondents.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 4C AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND RULE 102(e) OF THE
COMMISSION'S RULES OF PRACTICE,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Michael Filkoski and Scott Magnuson (collectively “Respondents.”), pursuant to Sections 4C¹ and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rules 102(e)(1)(ii) and (iii) of the Commission’s Rules of Practice.²

¹ Section 4C provides, in pertinent part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found ... (1) not to possess the requisite qualifications to represent others; (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of any provision of the federal securities laws or the rules and regulations issued thereunder.

² Rule 102(e)(1)(ii) provides, in pertinent part, that:

The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found ... to have engaged in unethical or improper professional conduct.

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

II

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”), 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 them, and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Exchange Act Sections 4C and 21C and Rule 102(e) of the Commission’s Rules of Practice, Making Findings and Imposing Remedial Sanctions and a Cease-And-Desist Order (“Order”), as set forth below.

III

On the basis of this Order and Respondents’ Offers, the Commission finds³ that:

A. SUMMARY

1. Michael Filkoski and Scott Magnuson, two senior audit partners employed by GHP Horwath P.C. (“GHP”), an independent audit firm, engaged in improper professional conduct, within the meaning of Exchange Act Section 4C and Rule 102(e) of the Commission’s Rules of Practice, during audits of Agria Corporation (“Agria”). In performing the audits of Agria’s 2012 and 2013 annual financial statements, Filkoski and Magnuson deviated from standards of the Public Company Accounting Oversight Board (“PCAOB”) and ignored red flags indicating that Agria’s financial statements and public filings contained material misstatements. Filkoski served as the engagement partner on the 2012 and 2013 audits, and Magnuson served as the engagement quality review partner.

2. Filkoski and Magnuson also willfully aided and abetted and caused GHP to violate Rule 2-02(b) of Regulation S-X. In connection with the 2012 and 2013 audits, GHP issued audit reports in which it represented that GHP had conducted the audits in accordance with the standards of the PCAOB, and further represented that, based on its opinion, Agria’s financial statements presented fairly, in all material respects, the company’s financial condition and results of its operations in accordance with Generally Accepted Accounting Principles (“GAAP”). Filkoski and Magnuson each approved the issuance of GHP’s audit reports that contained unqualified opinions when they knew or should have known that GHP’s representations were false because GHP’s audits were not performed in accordance with PCAOB standards.

The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found ... to have willfully violated, or willfully aided and abetted the violation of any provision of the federal securities laws or the rules and regulations thereunder.

³ 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.

B. RESPONDENTS

3. **Michael Filkoski, CPA**, age 59, of Denver, Colorado, is a Certified Public Accountant who, during the relevant period, was licensed to practice in Colorado, California and Indiana. Filkoski served as the engagement partner for GHP's audits of Agria's financial statements for fiscal years 2010 through 2013.

4. **Scott Magnuson, CPA**, age 56, of Denver, Colorado, is a Certified Public Accountant who, during the relevant period, was licensed to practice in Colorado, Nevada, California, New York, Tennessee, Florida and Indiana. Magnuson served as the engagement quality review partner for GHP's audits of Agria's financial statements for fiscal years 2010 through 2013.

C. RELATED ENTITIES

5. **GHP** was a public accounting firm head-quartered in Denver, Colorado. GHP was formed in November 1990 and operated until January 1, 2017, when GHP's personnel and operations were acquired by another public accounting firm. GHP was registered with the PCAOB through August 29, 2017 and was dissolved as a standalone entity on April 25, 2018.

6. **Agria** is a Cayman Islands company engaged in the agricultural business, with operations in the People's Republic of China, New Zealand, and Australia. Agria's corporate headquarters during the relevant period was in Hong Kong. Agria is a foreign private issuer whose ordinary shares were registered with the Commission pursuant to Exchange Act Section 12(b). Agria's American Depository Shares ("ADSs"), each representing two ordinary shares, traded on the New York Stock Exchange under the symbol "GRO." The NYSE suspended trading in Agria ADSs on November 3, 2016 and the ADSs were delisted on January 2, 2017.

7. **Taiyuan Primalights III Modernized Agricultural Development Co., Ltd. ("P3A")** was a limited liability company established in China with three primary product lines: corn seed, sheep breeding, and seedlings. Prior to its divestiture in July 2010, P3A served as Agria's primary operating entity in China, and P3A's financial results were recorded in Agria's consolidated financial statements.

D. FACTS

i. Background

8. GHP was engaged by Agria as its independent auditor in late 2010 to conduct an audit of Agria's fiscal year 2010 consolidated financial statements, which were prepared on the basis of GAAP.

9. As the engagement partner, Filkoski had overall responsibility for the conduct of the audits, including supervision of team members and compliance with PCAOB standards.⁴ As the engagement quality review partner, Magnuson was required to evaluate the significant judgments and conclusions made by the audit team and to evaluate whether, based on the engagement documentation he reviewed, the engagement team responded appropriately to significant risks and whether the documentation supported the audit team's conclusions.

10. The GHP audit team understood that Agria's management expected the 2010 divestiture of P3A to have "significant implications" on the auditor's approach to the audit. The divestiture resulted in Agria discontinuing all of its sheep-breeding operations, leaving it to focus on its seed business in China. The divestiture involved a related-party exchange: Agria transferred its 100% ownership interest in P3A to P3A's president, and in return P3A's president transferred his ownership of 11.5% of Agria's outstanding shares. As part of the transaction, Agria also received land use rights from P3A relating to 13,500 acres of leased agricultural property in China.

a. Agria's Fraudulent Accounting

11. From the time Agria acquired the land use rights, it was clear to Agria's management that there were serious questions as to their valuation. The nine parcels of land, covering 13,500 acres, were located in a remote area of Shanxi Province, far from Agria's primary bases of operations in Beijing and Shenzhen. The land itself was of poor soil quality, in an area with little natural rainfall, serious water shortages, and no infrastructure for irrigation. Although P3A had in the past used the land for sheep-breeding, Agria was no longer engaged in that business. Agria was otherwise unable to use the lands for any revenue generating purposes. Nor was Agria able to develop a business plan for the lands that would generate future cash flows. In addition, legal defects precluded Agria from selling or subleasing the properties. Agria's senior management had been made aware of these defects in a legal opinion by Agria's outside legal counsel in July 2010, prior to the divestiture.

12. The changes in use of the lands and the legal defects constituted impairment indicators that required Agria to perform an impairment analysis to determine whether it would be able to recover the carrying value of the land use rights. For the period 2010 through 2012, Agria's senior financial officers failed to perform the analysis and to impair the carrying value of the land use rights.

13. In early 2013, Agria performed an impairment analysis and wrote off the full \$57.3 million carrying value of the land use rights. The impairment decision was based on facts that were known or readily knowable in 2010: Agria was unable to use the land in an economically viable manner, and the legal defects precluded Agria from realizing any salvage value through resale. Because the facts giving rise to the impairment had existed since 2010, Agria's decision to record the impairment in 2013 rather than in 2010 was improper.

⁴ Auditing standards referenced in this Order relate to PCAOB standards in effect when the audit was performed.

14. Agria's delay in impairing the carrying value of the land use rights and its subsequent failure to restate its 2010-2012 financial statements allowed it to hide the impact of the impairment on its 2010 balance sheet and income statement and on its 2011 and 2012 balance sheets. The prior period misstatements were material to Agria's financial statements.

b. The 2010 Audit

15. As part of their audit planning, the GHP audit team identified the valuation of the land use rights as a significant issue and risk. The team identified "land use rights impairment assessment" as a "significant audit and accounting consideration." Additionally, in considering potential fraud risks, the audit team noted the potential for the overvaluation of the land use rights as a scenario with high likelihood, high significance, and high risk level. In order to address this risk, the audit team recognized the need to "[i]ndependently assess management's valuation" of the asset. Both Filkoski and Magnuson participated in the audit planning and signed off on the planned audit procedures.

16. The auditors were aware that Agria had been unable to use the lands for any economically viable revenue-generating purpose, even one year after the acquisition. In addition, the auditors were aware that Agria was unable to resell or sublet the land use rights because it had been unable either to perfect the legal defects in the land titles or to obtain written consent of the lessors to the lease transfer agreements. These developments constituted significant adverse changes indicating that the carrying value of the land use rights might not be recoverable.

17. The GAAP guidance addressing impairment testing is set forth in Accounting Standards Codification 360-10 ("ASC 360-10"), which provides that a long-lived asset shall be tested for impairment whenever significant adverse changes in circumstances indicate that its carrying value may not be recoverable. (ASC 360-10-35-21). The carrying value of an asset is considered not recoverable if it exceeds the undiscounted cash flows expected to result from the asset's use and eventual disposition. (ASC 360-10-35-17).

18. ASC 360-10-35-21 provides examples of impairment indicators, including:

- a significant adverse change in the extent or manner in which a long-lived asset is being used or in its physical condition;
- a significant adverse change in legal factors or in the business climate that could affect the value of a long-lived asset, indicating an adverse action or assessment by a regulator.

(ASC 360-10-35-21b and c).

19. Given the existence of two significant adverse changes, the controlling GAAP guidance required Agria to estimate the future cash flows "directly associated with and ... expected to arise as a direct result of the use and eventual disposition of the asset" to determine whether they exceeded the carrying amounts of the land use rights, and if not, how much the carrying amounts should be impaired. (ASC 360-10-35-29). GHP's audit manual checklist advised the auditors to determine whether the company had performed such a cash flow analysis.

20. In Agria's case, the auditors knew that the company was unable to develop cash flow estimates. The company's senior financial management told the auditors that, not only were the land use rights not generating cash flows, but Agria was unable to develop cash flow estimates. Further, in late June 2011 Agria's then-CFO confirmed to the audit team that the company had not yet been able to develop a feasible business plan for future economic use of the leased lands.

21. The audit team was also warned that the company would not be able to realize cash flow from selling or subleasing the land use rights to third parties. Having received a copy of the written opinion issued by Agria's outside legal counsel identifying legal defects in both the legal titles obtained by P3A and the lease transfer agreements between P3A and Agria, the audit team sought written confirmation from counsel that Agria could "legally sublease its rights to the leased land to a third party." The audit team was made aware that the legal counsel refused to sign such a confirmation.

22. The GHP audit team, with Filkoski and Magnuson's knowledge and approval, failed to perform audit procedures to determine whether and how Agria had assessed the potential impairment of the land use rights. Instead, Filkoski and Magnuson simply accepted management's representation that the company intended to perform future testing of the leased lands and that management believed the land use rights would be economically viable in the future.

23. GHP and Filkoski issued and Magnuson concurred in the issuance of the audit report that contained an unqualified audit opinion regarding Agria's fiscal year 2010 financial statements, including Agria's representation that "there was no impairment identified as of December 31, 2010."

ii. The Failure to Audit the Impairment of Land Use Rights In the 2012 Audit

24. Following a change in its fiscal year, Agria on December 16, 2011, filed a Form 20-F Transition Report containing financial statements for the six months ended June 30, 2011. On October 10, 2012, Agria filed its 2012 Form 20-F with audited financial statements covering the year ended June 30, 2012 and the six months ended June 30, 2011.

25. The impairment indicators that required an assessment in connection with the 2010 financial statements continued to exist in 2011 and 2012. Agria was still unable to use the land in a commercially viable manner, was still unable to prepare any cash flow estimates based on future use of the lands, and remained unable to realize any salvage value through resale. Nevertheless, Agria failed to assess the land use rights for possible impairment for both its 2011 and 2012 financial statements and continued to record the amortized carrying values for the land use rights in its financial statements for both reporting periods.

26. GHP audit planning work papers identified land use rights as a "Key area of focus." The audit team conveyed a similar message to the audit committee: the audit committee meeting minutes on April 6, 2012 identified "P3A clean up" and "Land use rights" as areas that "GHP would focus on." Both Filkoski and Magnuson participated in the audit planning discussions for this period.

27. The audit planning documents identified the land use rights account as “significant due to account balance, complexity of accounting method and possible misstatement due to impairment and improper amortization.” The team viewed “the exposure to losses” based on “the possibility of impairment issues and valuation issues” as “high.”

28. Notwithstanding its recognition of the need to focus on the land use rights, the audit team engaged in almost no audit procedures to assess the risk of an improper valuation. Instead, the audit team simply recalculated the amortization of the land use rights’ carrying value and made “a management inquiry with regard to the impairment analysis.” The auditors, led by Filkoski, relied on management’s representation that they were still testing how to use the land.

29. As he had done with the 2010 audit, Magnuson prepared a “Report on Audit Engagement Quality Reviewer,” which checked off “Impairment of long-lived assets” as a “selected key audit area[.]”

30. As they had done the prior period, GHP and Filkoski issued and Magnuson approved the issuance of the audit report that contained an unqualified opinion regarding Agria’s financial statements for fiscal year 2012.

iii. Agria Improperly Impaired the Land Use Rights in 2013 Rather than Restating its Financial Statements for 2010 through 2012.

31. On March 13, 2013, Agria filed a Form 6-K reporting its financial results for the six months ended December 31, 2012. The company reported that it had recorded a full impairment of the carrying value of the land use rights (US\$57.3 million). In support of its decision to fully impair the land use rights, the company had prepared an agricultural report purporting to summarize the results of a multi-stage land testing program. Agria also prepared a “white paper” entitled “Proposal of provision of impairment of Land Use Rights” and obtained a valuation report from an independent valuation specialist.

32. Agria based its decision to take a full impairment on two factors that were known to exist at the time the company acquired the rights to the land: (i) The leased lands had no expected future economic viability, primarily due to the poor soil quality, the lack of rainfall and irrigation infrastructure, and the cost of fertilizer; and (ii) as determined by an independent valuation specialist, the legal defects that Agria’s counsel had identified in 2010 “severely affected” the land values and prevented the company from reselling the land use rights.

33. Agria’s fiscal year 2013 financial statements incorporated the impairment of the land use rights in both its balance sheet and income statement.

34. Under GAAP a company is required to restate its prior year financial statements to correct prior period material errors resulting from, among other things, oversight or misuse of facts that existed at the time the financial statements were prepared. ASC 250-10.

35. As confirmed by the company’s internal documentation, Agria’s decision to write off the full carrying value of the land use rights was based on facts known or readily knowable at

the time of the P3A divestiture. The prior period errors were material to Agria's financial statements in those earlier periods. Agria nevertheless failed to restate its prior financial statements.

iv. The Audit Team's Limited Procedures Failed to Address Red Flags of Prior Period Impairment

36. In December 2012, when Filkoski first learned of management's intention to impair the carrying value of the land use rights, he raised with management a concern that the SEC might review the impairment's timing. Filkoski advised Agria's CFO to "fully document" the basis for the impairment decision. Filkoski also cautioned that "[c]onsultations with specialists and outside appraisals are often items that third parties (such as the SEC) may inquire about after the fact."

37. On December 28, 2012, in a telephone conference with Agria's management, Filkoski repeated his warning that the SEC might examine the timing of the impairment. He urged management to consider alternative uses for the leased lands in order to determine the recoverable amount and noted that the impairment loss amount should be determined by valuation.

38. Between January and March, 2013, the audit team conducted limited procedures related to the company's decision to impair the carrying values of the land use rights in the six month period ending December 31, 2012, including review of both the white paper and the 2013 valuation report.

39. The audit team, however, failed to address red flags in the company's documentation indicating that the impairment indicators had existed in prior periods. Specifically, the white paper revealed that the land use rights had no economic viability due to soil and weather conditions that predated the company's testing; and both the white paper and valuation report recorded that the land use rights had no salvage value because the legal defects identified in July 2010 prevented the company from selling to third parties.

40. Instead of advising management to address the red flags indicating that knowledge of the impairment was known or knowable in prior periods, Filkoski provided Agria's management with comments on drafts of the white paper and suggested edits to a draft of Agria's press release announcing the impairment that changed the reported basis for the impairment decision, removed or downplayed references to factors that had existed in earlier periods, and emphasized instead the completion of testing in late 2012.

41. GHP advised the audit committee in January 2013 that it was "in agreement with [the] audit committee's recommendation" to take the impairment in 2013. In March 2013, GHP advised the committee that it "concurred with the conclusion of impairment provision for the P3A land use right."

v. The Failure to Audit the Timing of the Land Use Rights Impairment in the 2013 Audit

42. Filkoski and the GHP audit team recognized that the company could not appropriately impair the land use rights in 2013 unless the impairment had been based on new information, rather than on information known to management in prior periods. The audit team identified this risk in its audit planning but failed to perform audit procedures to address the risk or to evaluate the evidence it obtained.

43. In its audit planning and communications with the audit committee, the audit team identified the impairment of the carrying value of the land use rights as a “significant audit and accounting consideration.” Filkoski and Magnuson had previously reviewed the company’s white paper and the 2013 valuation report and both participated in the audit planning sessions.

44. A risk report prepared by the audit team in May/June 2013 identified the possibility that the impairment could have been identified in prior periods. This was reported as a “significant risk” with a resulting “high” risk of material misstatement. The risk report advised the audit team to “obtain evidence surrounding timeline of events which led to the decision to impair the assets and review for any indications that the information was available or known in prior periods.” Filkoski signed off on the risk report.

45. The audit team performed essentially no audit procedures regarding the timing of Agria’s total write-off of the carrying value of the land use rights. The team did not prepare a timeline of events and did not analyze the events to determine whether the basis for the impairment had been available to management or known to exist in earlier periods. Instead, the audit team merely “updated” the status of its earlier limited procedures, inquiring whether Agria’s management had changed its intended use of the land and whether the land was “still abandoned without any use, sublease or subsequent sale.”

46. Moreover, in advising the audit committee of the auditor’s concurrence with Agria’s full impairment of land use rights, Filkoski and the audit team misrepresented to the audit committee that they had “tested the assumptions utilized on the valuation report.” In fact, no such work had been performed.

47. The audit team did not discuss with management whether the 2013 impairment decision required a restatement of prior year financial statements.

vi. **Filkoski Failed to Audit Agria’s 2012 Financial Statements in Accordance with Professional Standards.**

a. ***Filkoski Failed to Address Appropriately Risks of Material Misstatements.***

48. Filkoski and the audit team identified risks of material misstatement relating to the land use rights but failed to appropriately address those risks.

49. The objective of PCAOB Standard AS No. 13, *The Auditor’s Responses to the Risks of Material Misstatement*, is for the auditor to address the risks of material misstatements through appropriate overall audit responses and audit procedures (AS 13.2). The auditor must

design and implement audit responses that address the risks of material misstatements that are identified and assessed in accordance with Auditing Standard No. 12, *Identifying and Assessing Risks of Material Misstatements*. (AS 13.3)

50. PCAOB Standard AU § 333, *Management Representations*, states that representations from a company's management "are part of the evidential matter the independent auditor obtains, but they are not a substitute for the application of those auditing procedures necessary to afford a reasonable basis for an opinion regarding the financial statements under audit." (AU § 333.02).

51. The audit team identified and assessed risks of material misstatements arising from the land use rights account. The audit team listed the land use rights as a key area of focus and identified it as "significant due to the account balance, complexity of accounting method and possible misstatement due to impairment." However, Filkoski and the audit team did not design and implement audit procedures needed to assess those risks. Instead, the audit team relied on management's representations that the company was still testing how to use the land.

52. Reliance on management's representations is not an appropriate substitute for the required audit procedures. The audit team made no inquiry, performed no procedures on, and had no understanding of the progress of the testing or the company's efforts to develop a feasible business plan. The audit team performed no procedures to analyze the recoverability of the carrying values of the land use rights.

b. Filkoski Failed to Obtain Sufficient Appropriate Audit Evidence or to Evaluate the Evidence Obtained.

53. Filkoski and the audit team failed to obtain sufficient appropriate audit evidence supporting Agria's decision to maintain the carrying value of the land use rights and failed to determine whether the audit evidence obtained supported the opinion expressed in the auditor's report.

54. PCAOB Standard AS No. 15, *Audit Evidence*, requires the auditor to "plan and perform audit procedures to obtain sufficient appropriate audit evidence to provide a reasonable basis for his or her opinion." (AS 15.4). Appropriate audit evidence must be "both relevant and reliable in providing support for the conclusions on which the auditor's opinion is based." Relevance refers to the relationship of the audit evidence to the assertion or objective of the control being tested; and reliability refers to the nature and source of the evidence and the circumstances under which it is obtained. (AS 15.6-15.8).

55. The objective of PCAOB Standard AS No. 14, *Evaluating Audit Results*, is for the auditor to evaluate the results of the audit to determine whether the audit evidence obtained is sufficient and appropriate to support the opinion to be expressed in the auditor's report. (AS 14.2). Factors that are relevant to the conclusion on whether sufficient appropriate audit evidence has been obtained include the results of the audit procedures performed in the audit of the financial statements and the appropriateness (i.e. the relevance and reliability) of the audit evidence obtained. (AS No. 14.34).

56. The audit evidence obtained did not support the opinion that the financial statements were in conformity with GAAP and that the audit was performed in accordance with PCAOB standards. Filkoski and the audit team did not obtain evidence regarding cash flow estimates to support the conclusions that the carrying value of the land use rights was recoverable and that no impairment was warranted. The actions that the audit team did take -- i.e., recalculating the amortization of the carrying value and obtaining management's representation that land testing was ongoing -- were inadequate because they did not address the existence and significance of the impairment indicators that had previously been presented to the audit team and did not assess whether the carrying value was recoverable.

57. Filkoski and the audit team also did not evaluate whether sufficient audit procedures had been performed or whether the audit evidence obtained was sufficient and appropriate to support the opinions in the audit report.

c. Filkoski Failed to Document Sufficient Findings or Issues.

58. Filkoski and the audit team did not properly document the team's significant findings or issues regarding possible misstatement due to the impairment of the land use rights.

59. PCAOB Standard AS No. 3, *Audit Documentation*, requires auditors to document the procedures performed, the evidence obtained, and the conclusions reached with respect to relevant financial statement assertions. (AS 3.6). Audit documentation must contain, among other things, information sufficient to allow an experienced auditor with no connection to the work to understand the procedures performed, evidence obtained, and conclusions reached and to determine who performed the work, the date the work was completed, the person who reviewed the work, and the date of the review. (AS 3.6).

60. Filkoski and the audit team did not document the procedures they performed, if any, to address the issue of possible misstatement due to potential impairment, or the significant findings and conclusions regarding this issue that were reached by the audit team.

d. Filkoski Failed to Exercise Due Professional Care.

61. Filkoski did not exercise due professional care in conducting the audit of Agria's financial statements.

62. PCAOB Standard AU § 230, *Due Professional Care in the Performance of Work*, requires auditors to exercise due professional care throughout the audit, including by "exercise of professional skepticism." Under this standard, "[p]rofessional skepticism is an attitude that includes a questioning mind and a critical assessment of audit evidence," (AU § 230.07) and one that requires auditors to "consider the competency and sufficiency of the evidence." (AU § 230.08)

63. For the reasons outlined above, Filkoski failed to meet the standards of AU § 230.

vii. **Filkoski Failed to Audit Agria's 2013 Financial Statements in Accordance with Professional Standards.**

a. ***Filkoski Failed to Design and Implement Appropriate Audit Responses to Address the Risk of Material Misstatement.***

64. Filkoski and the audit team failed to design and implement audit responses that address the risk of material misstatement related to the fiscal year 2013 impairment of the land use rights. Even though the audit team's risk report identified a high risk of a material misstatement associated with the timing of the impairment and identified a proposed audit response, the audit team prepared no timeline and performed no audit procedures to assess indications of impairment in prior periods. As a result, Filkoski violated the PCAOB standards in AS 13.

b. ***Filkoski Failed to Obtain Sufficient Appropriate Audit Evidence or to Evaluate the Evidence Obtained.***

65. In its 2013 audit, the audit team performed essentially no audit procedures regarding the timing of the company's total impairment of the carrying value of the land use rights. The audit team merely updated the status of their earlier limited review, verifying only whether Agria had changed its intentions with regard to future use of the leased lands. Filkoski and the audit team thereby failed to obtain sufficient appropriate audit evidence supporting the timing of the impairment, in violation of the professional audit standards reflected in AS 15.

66. Contrary to the requirements of AS 14, Filkoski and the audit team also failed to evaluate whether the evidence that was obtained regarding the company's decision to abandon the land use rights constituted sufficient appropriate audit evidence to support the decision to impair in 2013, rather than earlier. Filkoski and the audit team made no assessment of whether Agria had information available to it in earlier periods indicating that the land use rights should have been impaired then.

c. ***Filkoski Ignored Multiple Red Flags of Prior Impairment and Failed to Exercise Due Professional Care.***

67. Agria's white paper and the valuation report both contained multiple red flags that the carrying value of the land use rights was impaired in prior periods, but Filkoski and the audit team ignored those warnings. The white paper concluded that the poor test results were due to conditions that existed from the time Agria had acquired the land use rights. The valuation report concluded that the land use rights had no salvage value because of legal defects that had been identified in 2010.

68. Despite the risks identified in the May/June 2013 risk report and the red flags of prior impairment, Filkoski failed to exercise due professional care, including professional skepticism in gathering and evaluating audit evidence in accordance with the standards of AU 230.

d. Filkoski Failed to Document Sufficient Findings or Issues.

69. As described above, Filkoski and the audit team did not properly document their significant findings or issues regarding the appropriateness of the timing of the impairment. No audit work papers reflected deliberation by the audit team of the issues considered, the evidence obtained, and the conclusions reached. Filkoski thereby failed to conduct the audit in conformity with the standards of AS 3.

e. Filkoski Failed to Consider Whether a Restatement of Agria's 2010 and 2012 Financial Information was Required.

70. The white paper and the valuation report provided Filkoski and the audit team with information existing at the time of the 2010 and 2012 audit reports that the land use rights were potentially worthless. They made clear that the land had no economic viability due to pre-existing topographical conditions at the time Agria acquired the rights. Similarly, the valuation report provided reliable information that the rights had no salvage value due to the legal defects in existence at the time of the 2010 audit. Further, the white paper and the agricultural report provided additional information that by the time of the 2012 audit the first two stages of testing had confirmed that the land had no economic viability.

71. Despite this information, Filkoski and the audit team failed to consider whether a restatement was required of the prior financial statements. No audit work papers reflected the audit team's consideration of the issue.

viii. Magnuson Failed to Conduct Adequate Engagement Quality Reviews Regarding GHP's Audit of Agria's 2012 and 2013 Financial Statements.

72. PCAOB Standard AS No. 7, *Engagement Quality Review*, sets the requirements for an engagement quality review and concurring approval of issuance for each audit engagement. The role of the engagement quality reviewer is to evaluate the significant judgments made by the engagement team and the related conclusions reached in forming an overall conclusion on the engagement, and in preparing the engagement report, in order to determine whether to provide concurring approval of issuance. (AS 7.2)

73. The engagement quality reviewer should also evaluate the significant judgments that relate to audit planning and the engagement team's assessment of, and audit responses to, significant risks identified by the engagement team, including fraud risks. (AS 7.10) The engagement quality reviewer should evaluate whether the engagement documentation reviewed supports the engagement team's conclusions. (AS 7.11.)

74. Further, the engagement quality reviewer may provide concurring approval of issuance only if, after performing with due professional care the review required by this standard, he or she is not aware of a significant engagement deficiency. (AS 7.12). Under PCAOB Standard AU § 230 due professional care requires that an auditor exercise professional skepticism, which is an attitude that includes a questioning mind and a critical assessment of the audit evidence. (AU § 230.07).

a. *Magnuson’s Engagement Quality Review Failures Regarding the 2012 Audit*

75. Magnuson was part of the audit team’s audit planning discussions for the fiscal year 2012 audit. He was aware that the audit team had identified land use rights as a key area of focus and gave consideration to the continued existence and valuation of the land use rights. Magnuson was aware of red flags regarding the overvaluation of land use rights and non-recoverability of the carrying values and the existence of legal defects affecting the company’s ability to sell the land use rights. While Magnuson was aware that the audit team had significant discussions with management, he was not aware of specific discussions. Magnuson did not know what work had been done regarding valuation of the land use rights, and he was not aware of any documentation regarding the company’s testing of the lands or the company’s development of a business plan for their use.

76. Magnuson violated the standards of AS 7 when he provided his concurring approval of issuance of the audit report that contained an unqualified 2012 opinion despite the audit team’s failure to obtain sufficient appropriate audit evidence assessing the potential impairment and overvaluation of the land use rights. Magnuson failed to identify significant engagement deficiencies and failed to make adequate inquiries. Magnuson thereby violated the standards AU § 230 by failing to exercise due professional care, including exercising a sufficient level of professional skepticism in the performance of his work.

b. *Magnuson’s Engagement Quality Review Failures Regarding the 2013 Audit*

77. Prior to the commencement of the full year audit, Magnuson received and reviewed Agria’s white paper and the 2013 valuation report. Magnuson was therefore aware that Agria’s decision to fully impair the carrying value of the land use rights in fiscal year 2013 was based almost entirely on facts that the company and the auditors knew existed in 2010.

78. In planning for the full year audit, the audit team and Magnuson recognized that the decision to write off the entirety of the carrying value in 2013 was a “significant accounting and auditing issue.” Magnuson had participated in the audit planning discussions with the audit team.

79. Notwithstanding his knowledge of red flags of prior impairment, Magnuson did not question the audit team’s failure to perform audit procedures to assess the timing of the impairment. Magnuson knew, for example, that the legal defects identified in the 2013 valuation report had first been identified no later than 2010. Yet Agria’s audit work papers revealed no evidence that management or the audit team had assessed the significance of these facts on the timing of the impairment.

80. Magnuson provided his concurring approval of issuance of the 2013 audit report that contained an unqualified audit opinion despite the failure of the audit team to obtain sufficient appropriate audit evidence assessing the timing of the impairment of the land use rights. As with the 2012 audit, Magnuson failed to identify significant engagement deficiencies. Further, he failed

to evaluate whether the audit team's documentation supported the conclusion regarding the timing of the impairment. Magnuson thereby failed to exercise due professional care in the performance of his work.

ix. GHP's Inaccurate Audit Reports

81. Despite multiple departures from PCAOB standards, as described above, GHP, through Filkoski, issued audit reports that contained unqualified opinions on Agria's financial statements. As the engagement quality review partner on the audits, Magnuson provided concurring approval of the issuance of the 2012 and 2013 audit reports, without which GHP would not have been able to grant permission to Agria to use GHP's audit reports for its Forms 20-F.

82. Filkoski and Magnuson knew that the GHP audit reports would be filed with the Commission as part of Agria's Forms 20-F. Those reports contained GHP's opinion that Agria's financial statements presented fairly, in all material respects, the company's financial position and results of operations in accordance with GAAP, and GHP's representation that its audits were conducted in accordance with PCAOB standards.

83. Filkoski and Magnuson knew or were reckless in not knowing that GHP's audit reports inaccurately stated that they had been made in accordance with PCAOB standards.

E. VIOLATIONS

84. As a result of the conduct described above, Filkoski and Magnuson each engaged in improper professional conduct within the meaning of Exchange Act Section 4C(a)(2) and Rule 102(e)(1)(ii) of the Commission's Rules of Practice. Section 4C(a)(2) and Rule 102(e)(1)(ii) provide, in pertinent part, that the Commission may censure or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to any person who is found by the Commission to have engaged in improper professional conduct. Exchange Act Section 4C(b) and Rule 102(e)(1)(iv) define improper professional conduct with respect to persons licensed to practice as accountants as (1) a single instance of highly unreasonable conduct in circumstances for which heightened scrutiny is warranted; or (2) repeated instances of unreasonable conduct that indicate a lack of competence.

85. As a result of the conduct described above, Filkoski and Magnuson each willfully aided and abetted the violation of Rule 2-02(b) of Regulation S-X, which requires an audit report to accurately state whether the audit was made in accordance with generally accepted auditing standards. The phrase "generally accepted auditing standards" refers to the standards issued by the PCAOB. Sec. Act Rel. No. 33-8422. Section 4C(a)(3) and Rule 102(e)(1)(iii) provide that the Commission may censure or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to any person who has willfully violated, or willfully aided and abetted the violation of, any provision of the Federal securities laws or the rules and regulations thereunder.

F. FINDINGS

86. Based on the foregoing, the Commission finds that Respondents Filkoski and Magnuson engaged in improper professional conduct within the meaning of Exchange Act Section 4C(a)(2) and Rules 102(e)(1)(ii) of the Commission's Rules of Practice.

87. Based on the foregoing, the Commission finds that Respondents Filkoski and Magnuson willfully aided and abetted and caused GHP's violations of Rule 2-02(b) of Regulation S-X.

IV

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

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

Michael Filkoski

- A. Respondent Filkoski shall cease and desist from committing or causing any violations or future violations of Rule 2-02(b) of Regulation S-X.
- B. Respondent Filkoski is denied the privilege of appearing or practicing before the Commission as an accountant.
- C. After 3 years from the date of this order, Filkoski 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 (other than as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934). Such an application must satisfy the Commission that Filkoski's work in his practice before the Commission as an accountant 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. 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 as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934. Such an application will be considered on a facts and circumstances basis with respect to such membership, and the applicant's burden of demonstrating

good cause for reinstatement will be particularly high given the role of the audit committee in financial and accounting matters; and/or

3. an independent accountant.

Such an application must satisfy the Commission that:

- (a) Filkoski, 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) Filkoski, 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 Filkoski will not receive appropriate supervision;
- (c) Filkoski 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) Filkoski acknowledges his responsibility, as long as he 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.

D. The Commission will consider an application by Filkoski 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 Filkoski’s character, integrity, professional conduct, or qualifications to appear or practice before the Commission as an accountant. Whether an application demonstrates good cause will be considered on a facts and circumstances basis with due regard for protecting the integrity of the Commission’s processes.

E. Respondent Filkoski shall, within sixty (60) days of the entry of this Order, pay a civil money penalty in the amount of \$20,000 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.

Scott Magnuson

F. Respondent Magnuson shall cease and desist from committing or causing any violations or future violations of Rule 2-02(b) of Regulation S-X.

G. Respondent Magnuson is denied the privilege of appearing or practicing before the Commission as an accountant.

H. After 1 year from the date of this order, Magnuson 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 (other than as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934). Such an application must satisfy the Commission that Magnuson's work in his practice before the Commission as an accountant 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. 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 as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934. Such an application will be considered on a facts and circumstances basis with respect to such membership, and the applicant's burden of demonstrating good cause for reinstatement will be particularly high given the role of the audit committee in financial and accounting matters; and/or
3. an independent accountant.

Such an application must satisfy the Commission that:

- (a) Magnuson, 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) Magnuson, 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 Magnuson will not receive appropriate supervision;

- (c) Magnuson 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) Magnuson acknowledges his responsibility, as long as he 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.
- I. The Commission will consider an application by Magnuson 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 Magnuson's character, integrity, professional conduct, or qualifications to appear or practice before the Commission as an accountant. Whether an application demonstrates good cause will be considered on a facts and circumstances basis with due regard for protecting the integrity of the Commission's processes.
- J. Respondent Magnuson shall, within sixty (60) days of the entry of this Order, pay a civil money penalty in the amount of \$10,000 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.

Money Payments

- K. 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 Filkoski and Magnuson as Respondents 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 Charles E. Cain, Chief, FCPA Unit, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

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, Respondents 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 Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents 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 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.

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 Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this 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 Respondent 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.

Vanessa A. Countryman
Secretary