

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 96960 / February 22, 2023

ACCOUNTING AND AUDITING ENFORCEMENT

Release No. 4377 / February 22, 2023

ADMINISTRATIVE PROCEEDING

File No. 3-21309

In the Matter of

**AFRICAN GOLD
ACQUISITION CORP.,**

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 African Gold Acquisition Corp. (“African Gold” or “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

1. African Gold is a publicly traded special purpose acquisition company ("SPAC"). Since the closing of its initial public offering ("IPO") of securities on March 2, 2021 until late 2022, African Gold failed properly to devise and maintain a sufficient system of internal accounting controls and also failed to maintain internal control over financial reporting ("ICFR") and disclosure controls and procedures ("DCP") as required. African Gold's failure to implement sufficient internal controls enabled its former chief financial officer ("CFO") to misappropriate nearly all of the money in African Gold's operating bank account and to otherwise effectively use African Gold's operating bank account as his own personal account for over one year.² As a result, African Gold materially misstated the financial information in several required financial filings with the Commission. African Gold's former CFO did not have access to African Gold's trust account and did not misappropriate any funds from the trust account.

2. According to disclosures in its public filings, African Gold's activities are limited to searching for a business combination target and its only liquid asset is the money held in its operating bank account, which is designated to fund that search. The money that African Gold raised in its IPO is secured in a trust account. As such, one of African Gold's most significant risks of material misstatement in its financial statements was the risk of fraud relating to African Gold's operating bank account and cash disbursements.

3. Notwithstanding this risk, African Gold failed to devise and maintain internal accounting controls sufficient to provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles ("GAAP"). For example, African Gold failed to implement basic segregation of duties or monitoring controls with respect to its operating bank account, cash disbursements and financial reporting more generally. Rather, African Gold gave its former CFO

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.

² On January 3, 2023, the Commission charged Cooper J. Morgenthau, African Gold's former CFO, with violating several provisions of the federal securities laws related to misappropriating money from African Gold's operating bank account and for lying to African Gold's accountants and auditor, circumventing and/or knowingly failing to implement internal accounting controls, falsifying African Gold's books and records, and filing false certifications with the Commission. *See Securities and Exchange Commission v. Cooper J. Morgenthau*, 23-cv-00022-NRB (S.D.N.Y. 2023). On January 6, 2023, the Court entered a consent judgment, which enjoined Morgenthau from violating the relevant securities laws and rules and granted other relief sought by the Commission. Relatedly, on January 3, 2023, Morgenthau pleaded guilty to one count of wire fraud, in violation of 18 U.S.C. § 1343, based on the same conduct alleged in the Commission's complaint. *See United States v. Cooper J. Morgenthau*, 23-cr-002 (S.D.N.Y. 2023).

control over nearly all aspects of its financial reporting process with little to no oversight by or involvement of other African Gold personnel.

4. African Gold's failure to have sufficient internal accounting controls resulted in African Gold's failure to timely prevent and detect the misappropriation of its only liquid asset—the money held in its operating bank account, which it needed to fund its search for a business combination target. This resulted in African Gold filing material misstatements in its Form 10-K filed with the Commission for the fiscal year ended December 31, 2021 and Forms 10-Q for the periods ended June 30, 2021, September 30, 2021 and March 31, 2022 (the "Financial Filings"). African Gold has since disclosed that the Financial Filings must be restated and should not be relied upon, but has not yet filed any restatements.

5. As a result of the conduct described in this Order, African Gold violated Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 13a-1, 13a-13, 13a-15(a)-(b), and 12b-20 thereunder.

Respondent

6. **African Gold Acquisition Corp.** is a publicly traded special purpose acquisition company incorporated in the Cayman Islands with its principal place of business in New York, New York. African Gold's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act. African Gold is listed on the New York Stock Exchange under the symbols AGAC.U, AGAC and AGAC.W.

Facts

7. On March 2, 2021, African Gold closed its IPO. As of March 31, 2021, African Gold had approximately \$1.5 million in its operating bank account to fund its search for a business combination target. According to disclosures in African Gold's public filings, the money held in African Gold's operating bank account is its only liquid asset and is designated to fund its search for a business combination target.

8. African Gold failed to establish internal accounting controls sufficient to provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP.

9. For example, African Gold failed to establish sufficient segregation of duties and monitoring controls over its operating bank account and did not require African Gold personnel other than its former CFO to periodically monitor bank account activity, reconcile the bank account activity, or have responsibility for the record keeping of its assets, including in connection with African Gold's quarterly reviews or annual audit. Because African Gold failed to establish sufficient internal accounting controls, African Gold's former CFO was able to make unauthorized withdrawals to himself and to otherwise use African Gold's operating bank account as if it were his own personal account for over one year without detection. African Gold's insufficient internal controls also enabled its former CFO to alter African Gold's bank account statements in order to conceal his unauthorized transactions and to fabricate the balance held in African Gold's operating bank account, among other transactional details.

10. African Gold also failed to establish sufficient segregation of duties and monitoring controls over its cash disbursements. As with its operating bank account, African Gold delegated all responsibility and control over its cash disbursements to its former CFO, with little to no established monitoring controls. For example, only payments over \$50,000 required the approval of someone other than its former CFO—a largely ineffective requirement given the nature of African Gold’s limited activities and expenses, as well as the lack of restrictions on the aggregate amounts that its former CFO was able to transfer without any oversight. Indeed, with the exception of expenses paid in March 2021 in connection with its IPO, African Gold had no expenses over \$50,000. As a result, African Gold’s former CFO was able to make unauthorized withdrawals to himself totaling approximately \$1.2 million and, with respect to various vendors who were providing services to African Gold, selectively determine which vendors to pay to avoid detection.

11. In addition, African Gold failed to maintain ICFR and DCP, and further failed to evaluate DCP, as required for registrants like itself. *See* Exchange Act Rules 13a-15(a), (b), (e) and (f). African Gold had limited activities, and its only liquid asset was the money held in its operating bank account. Accordingly, African Gold’s most significant risk of material misstatement stemmed from potential fraud by management. Yet, African Gold had insufficient internal controls to timely prevent and detect fraud related to its operating bank account and cash disbursements in order to provide reasonable assurance that its financial reporting and related disclosures were accurate.

12. For example, African Gold had insufficient internal controls relating to the oversight and governance of financial reporting and related disclosures, or clearly specified financial reporting objectives and responsibilities. Instead, African Gold delegated all aspects of its financial reporting processes to its former CFO—with no established monitoring controls or involvement by other African Gold personnel. This enabled its former CFO to provide African Gold’s accountants and external auditor with false information, which formed the basis of African Gold’s financial filings and books and records. In addition, African Gold’s management failed to evaluate the effectiveness of African Gold’s DCP, including with respect to the amount and sufficiency of its cash on-hand and the accuracy of its related disclosures.

13. African Gold’s Forms 10-Q for the quarters ended June 30, 2021, September 30, 2021 and March 31, 2022 materially misstated the amount and sufficiency of cash available to fund African Gold’s ongoing search for a business combination target. In addition, while African Gold’s Form 10-K for the fiscal year ended December 31, 2021 accurately reflected the amount of cash available to fund its ongoing search for a business combination target as of December 31, 2021, the disclosures were materially misleading in light of the fact that its operating bank account held negative balances from December 1 until December 31, 2021, when its former CFO temporarily deposited \$549,146 into the account. African Gold’s CFO subsequently withdrew the entire amount deposited on December 31, 2021 in a series of transactions beginning the following business day, leaving African Gold with no money to fund its search for a business combination target. In addition, African Gold’s Form 10-K for the fiscal year ended December 31, 2021 failed to disclose the amount of losses due to its former CFO’s fraud, the impact of which was material to its financial statements.

Summary of African Gold Quarterly Reported Cash vs. Actual Cash in Bank Account

	Q2 FY 2021	Q3 FY 2021	YE 2021	Q1 FY 2022
Reported Cash	\$1,251,503	\$932,771	\$544,103	\$432,819
Actual Cash	\$101,303	\$104,371	\$544,103	\$(1,761)
Overstatement	\$1,150,200	\$828,400	\$ -	\$434,580
<i>Overstatement as % of Actual Cash (Absolute Value)</i>	<i>1135.4%</i>	<i>793.7%</i>	<i>0.0%</i>	<i>24671.2%</i>

14. African Gold has disclosed that the Financial Filings must be restated and should not be relied upon, but has not yet filed any restated financials. African Gold has also failed to file its Forms 10-Q for the quarters ended June 30, 2022 and September 30, 2022.

15. African Gold did not discover the misappropriation of its assets through any form of self-policing or as the result of its internal controls. African Gold only suspected issues with its operating bank account when certain critical vendors refused to provide services because their invoices remained unpaid, at which point African Gold personnel sought to confirm its former CFO's representations regarding the balance held in African Gold's operating bank account and transaction activity. However, no African Gold personnel other than its former CFO had active access to the operating bank account, and the other personnel were unable to access the account to assess the possibility of fraud.

Violations

16. As a result of the conduct described above, African Gold violated Section 13(a) of the Exchange Act and Rules 13a-1, 13a-13 and 12b-20 thereunder, which require Exchange Act reporting companies to file with the Commission complete and accurate annual and quarterly reports and that such reports contain further material information as may be necessary to make the required statements not misleading.

17. In addition, as a result of the conduct described above, African Gold violated Section 13(b)(2)(A) of the Exchange Act, which requires Exchange Act 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.

18. In addition, as a result of the conduct described above, African Gold violated Section 13(b)(2)(B) of the Exchange Act, which, among other things, requires Exchange Act reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, or any other criteria applicable to such statements.

19. In addition, as a result of the conduct described above, African Gold violated Exchange Act Rule 13a-15(a) which requires Exchange Act reporting companies to maintain ICFR

and DCP, as well as Exchange Act Rule 13a-15(b) which requires Exchange Act reporting companies to evaluate the effectiveness of DCP.

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 Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 13a-1, 13a-13, 13a-15(a)-(b) and 12b-20 thereunder.

B. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$103,591 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 John Dugan, Division of Enforcement, Securities and Exchange Commission, 33 Arch Street, 24th Floor, Boston, MA 02110.

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.

Vanessa A. Countryman
Secretary