

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 98499 / September 25, 2023

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4461 / September 25, 2023

ADMINISTRATIVE PROCEEDING
File No. 3-21712

In the Matter of

Michael D. Messina, CPA

Respondent.

**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 D. Messina, CPA (“Respondent” or “Messina”) pursuant to Sections 4C¹ and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice.²

¹ Section 4C provides, in relevant 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 securities laws or the rules and regulations issued thereunder.

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

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this 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 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds³ that:

SUMMARY

1. This matter involves violations of the federal securities laws and improper professional conduct by Respondent Messina in conducting multi-year audits of Ault Alliance, Inc. (“AAI”). AAI retained Marcum LLP (“Marcum”) to audit its financial statements for the fiscal years ended December 31, 2016 through 2020. Messina was the engagement quality review (“EQR”) partner for the aforementioned audits.

2. Messina did not perform an adequate engagement quality review in compliance with the standards of the Public Company Accounting Oversight Board (“PCAOB”) when conducting audits of AAI because he did not: (1) evaluate the significant judgments related to engagement planning and to the engagement team’s assessment of, and audit responses to, significant risks identified by the engagement team; (2) evaluate whether the engagement documentation indicated

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . 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:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . 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 Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

that the engagement team responded appropriately to significant risks and supported the conclusions reached by the engagement team; (3) perform his review with due professional care; and (4) document his review appropriately. These failings led to substantive audit issues going unaddressed in the AAI audits for fiscal years 2017-2020 and inadequate documentation of audit work in every year for which he was AAI's EQR partner, 2016-2020.

3. Messina signed work papers authorizing, or otherwise authorized, the release of audit reports for the fiscal year 2017-2020 AAI audits. Those audit reports stated that the audits had been conducted in accordance with PCAOB standards, when they had not. As a result, Messina caused and, within the meaning of Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice, willfully aided and abetted Marcum's violations of Rule 2-02(b)(1) of Regulation S-X. Messina also engaged in improper professional conduct within the meaning of Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

RESPONDENT

4. **Michael D. Messina**, age 64, resides in Dix Hills, New York. From 2007 to April 2023, he worked at Marcum LLP where he served as an EQR partner from 2012 to 2023, and before that as a Director. He served as the EQR partner for the AAI audits of fiscal years 2016 through 2020. He is currently licensed as a CPA in the state of New York. Messina has no disciplinary history with the New York CPA licensing authority.

OTHER RELEVANT ENTITIES

5. **Marcum LLP**, a New York limited liability partnership headquartered in New York, New York, is a public accounting firm in the United States. As of mid-2022, Marcum had over 370 partners and 2,300 employees, with offices in over 30 cities. Marcum has been registered with the PCAOB since October 2003. Marcum has served as AAI's independent registered public accounting firm since and including AAI's fiscal year 2016. In June 2023, the Commission charged Marcum with systemic quality control failures and violations of audit standards in connection with audit work for hundreds of special purpose acquisition company (SPAC) clients. *See In the Matter of Marcum LLP*, Exch. Act Rel. No. 97773 (June 21, 2023).

6. **Ault Alliance, Inc.** is a Delaware corporation whose principal place of business is in Las Vegas, Nevada. AAI is a diversified holding company that, since 2016, has engaged in operating businesses that include, among others, power products and systems, digital asset mining of Bitcoin, the manufacture and sale of textile technology machinery, and commercial lending. During the relevant period, AAI has been known by several different names: AAI (since January 3, 2023); BitNile Holdings, Inc. (from December 13, 2021 to January 2, 2023); Ault Global Holdings, Inc. (January 19, 2021 to December 12, 2021); DPW Holdings, Inc. (September 19, 2017 to January 18, 2021); and Digital Power Corporation (prior to September 19, 2017). AAI's stock is registered under Section 12(b) of the Exchange Act, and its common stock trades on NYSE American. AAI has a December 31 fiscal year end. In August 2023, the Commission charged AAI with false and misleading disclosures, incorrect accounting, and other violations

during 2017 to 2023. *See In the Matter of Ault Alliance, Inc., et al.*, Exch. Act Rel. No. 98131 (Aug. 15, 2023).

7. **Avalanche International Corp. (“Avalanche”)**, a holding company, is a Nevada corporation with its principal place of business in Las Vegas, Nevada, which AAI has disclosed as a “related party” in its audited financial statements since 2017. AAI invested over \$17 million in Avalanche from 2016 to 2021. In June 2022, AAI acquired over 90% of Avalanche’s stock and began consolidating its financial results. Avalanche’s common stock was publicly traded until September 2021.

FACTS

Background

8. Marcum was first engaged to perform an audit for AAI for the fiscal year ending in December 2016. Marcum is still engaged as AAI’s auditor. Messina was the EQR partner for the AAI audits for fiscal years 2016-2020. The audit reports each stated that Marcum had conducted its audits in accordance with PCAOB standards.

9. Messina allowed significant issues in the AAI audits to go unaddressed. Messina knew that significant and/or fraud risks had been identified in the areas of goodwill and intangible assets in the fiscal years 2017-2018, crypto mining equipment in fiscal 2018, and related party transactions and investments in fiscal years 2017-2020, Messina did not evaluate whether the engagement team responded adequately to the identified risks and documented support for the conclusions reached as required by PCAOB Auditing Standard 1220, *Engagement Quality Review* (“AS 1220”).

10. In the audits of AAI’s fiscal years 2017-2020, Marcum’s AAI work papers lack documentary evidence that Messina evaluated all of the engagement team’s significant judgments or reviewed the team’s related documentation, or that Messina held discussions with the engagement partner or other engagement team members to evaluate their judgments or conclusions in the significant areas of the audit.

Goodwill and Intangibles

11. During audit planning for the 2017 AAI audit, the engagement team identified goodwill and other intangibles as accounts susceptible to material misstatement due to fraud, specifically related to valuation and impairment. Goodwill and intangible assets comprised 21% of AAI’s total assets in 2017. Messina did not sign off on any of the audit work papers for this area.

12. For the AAI audit in 2018 when goodwill valuation was identified as a significant risk area by the engagement team, Messina did not sign off on any work papers in the relevant intangibles section. In 2018, goodwill and intangible assets accounted for 26% of AAI’s total assets.

13. For 2018, the engagement team described the risks of material misstatement associated with goodwill and intangibles as “significant estimates and inputs associated with the valuation.” The engagement team wrote that it “obtained third party valuation reports and utilized Marcum Valuation team to perform analysis on the company’s conclusions” to address this valuation risk. There is, however, no evidence of this in the audit work papers. AAI’s 2018 Form 10-K listed four subsidiaries with a total goodwill value of approximately \$8.7 million. The only goodwill valuation provided in the 2018 AAI work papers was for a company whose goodwill was valued at \$265,000 (3% of the total reported goodwill number). Moreover, three of the work papers from the intangibles section had no reviewer sign-off (at any level of the audit team) until after the audit report was issued to AAI.

14. Because Messina did not review the goodwill and intangible assets work papers, he was unable to identify whether the engagement team obtained sufficient appropriate audit evidence to conclude that the valuations presented by AAI were reasonable. Messina did not review this area, because he thought goodwill and intangibles did not have complex accounting and the engagement team only identified it as significant because the total amount was a large portion of AAI’s assets.

Crypto Miner Property, Plant & Equipment

15. In 2018, the existence and valuation of crypto miner property and equipment were identified as a significant risk area for AAI. In 2018, AAI purchased approximately \$9 million of crypto mining equipment. The engagement team identified this as a significant audit area as the value of the miners was material to the balance sheet (15% of total assets), and identified risks that the equipment (1) did not exist due to accounting error or misappropriation, (2) did not belong to the company, (3) was recorded at “incorrect values,” and (4) was impaired and not adjusted to net realizable value. Again, Messina did not sign off on any of the audit work papers for this area. In testimony, Messina said he did not review this area because it was “very easy” and there was “not a lot of judgment involved.”

16. If Messina had reviewed this section of the work papers, he would have learned that the audit work performed by the engagement team was insufficient and did not support the conclusions reached. The only supporting documents reviewed by the engagement team relating to the existence of the miners were certain “invoices,” which were in fact prepayments made for miners that were often not yet sourced. The engagement team never confirmed that the number of miners listed on the invoices were actually delivered to or paid for by AAI. Further, AAI produced to the engagement team a spreadsheet containing a list of all miners in service during 2018. The engagement team did not request any supporting documentation to verify that AAI received the miners listed on the spreadsheet or the date the miners were placed into service. The only work performed by the engagement team on this work paper was to perform a physical observation equivalent to 2% of the total value of the mining equipment. The spreadsheet contained many errors, and many of the dates listed on the spreadsheet regarding when the miners had been placed into service were incorrect and corresponded to a time when AAI did not have a physical space to place that many miners. During his review, Messina also would have discovered that despite the engagement team identifying a risk that the crypto miners could be impaired, there was no

evidence that the audit team performed any procedures as part of the 2018 audit to assess valuation and impairment.

17. In Q3 2019, AAI recorded an impairment for virtually the entire net book value of the mining equipment: a \$4.3 million impairment against a \$4.9 million net book value. The reasons given for impairment in Q3 2019 were even more apparent in December 2018. The impairment in Q3 2019 was attributed to a decline in the price of Bitcoin which would lead to a decline in projected cash flows for the life of the miners. During 2018, when no impairment was recognized, the price of Bitcoin fluctuated but ultimately declined from \$13,657 to \$3,743 by year-end. During the third quarter of 2019, however, the price of Bitcoin ranged from \$8,104 to \$12,572. Overall, the price of Bitcoin was slowly improving in 2019 and Q3 was the best quarter for Bitcoin in all of 2019.

Related Party Transactions

18. For the AAI audits for 2017-2020, the engagement team identified related party transactions as significant and fraud risks, and investments as a significant risk, susceptible to material misstatement. In 2017, 33% of AAI's total assets was comprised of investments in Avalanche's debt, warrants and common stock. In 2018-2020 the investments in Avalanche ranged from 18-22% of AAI's total assets. In 2019, Messina did not sign off on a single work paper related to the Avalanche investments, despite the above-identified risks. For the audits of 2017, 2018 and 2020, Messina did not sign off on significant work papers related to the Avalanche investments before the audit report release date, and in some cases, he did not sign off on those significant work papers at all.

19. In 2018, AAI's investments in the warrants of Avalanche were identified as a high risk, significant audit area. Beginning in September 2017, Avalanche issued warrants to purchase shares of Avalanche common stock, which were equity securities. As of December 31, 2021, Avalanche had issued AAI warrants to purchase 35.6 million shares of Avalanche stock. Financial Accounting Standards Board Accounting Standards Codification ("ASC") Topic 321, *Investments – Equity Securities* ("ASC 321"), which includes the guidance from Accounting Standards Update No. 2016-01, *Recognition and Measurement of Financial Assets and Financial Liabilities*, that became effective for fiscal years beginning after December 15, 2017. ASC 321 requires that changes in fair value of investments in equity securities be presented immediately in net income/loss, which AAI failed to do for its investments in warrants and common stock of Avalanche. Instead, AAI evaluated the warrants as debt securities under ASC 320, *Investments—Debt and Equity Securities*, and recorded changes in fair value in other comprehensive income/loss. This resulted in understatements in net loss of 24.34% in 2018 and 6% in 2019, and an overstatement of 10% in 2020.

20. If Messina appropriately reviewed and evaluated the work papers, he might have noted that the company's accounting for its investment in Avalanche warrants was not in accordance with ASC 321 during the fiscal years 2018 through 2020, and that the engagement partner had concurred with this wrong accounting treatment.

21. On April 14, 2023, AAI restated its financial statements to correct for its incorrect warrant accounting by filing an amended Form 10-K for the year ended December 31, 2021, and amended Forms 10-Q for the periods ended March 31, 2022, June 30, 2022, and September 30, 2022.

Messina’s Late or Missing Sign-Offs on Work Papers

22. Messina performed sign-offs in the AAI audit work papers after the audit report release date in every year that he was EQR partner.

AAI Audit Year	Total Messina Sign-offs	% Late Sign-offs
2016	32	41%
2017	17	24%
2018	35	37%
2019	31	26%
2020	55	9%

23. The “routing slip” and “EQR memo” work papers were the only two documents for which Marcum policy required a sign-off prior to the issuance of an audit report. For the 2016 AAI audit, Messina manually signed off on the routing slip and dated it on the report release date, but the metadata on the routing slip indicates that the document was not created until two weeks later. In the same year, Messina used an electronic, time-stamped signature to sign off after the report release date on the EQR memo, and manually entered a date two weeks before the report release date next to the electronic sign-off. For the 2017-2019 AAI audits, Messina used an electronic, time-stamped signature to sign off after the report release date on the EQR memo and the routing slip. Next to the electronic, time-stamped signature, he manually entered an earlier date that was on or before the report release date. For FY 2020, Messina failed to sign off on the EQR memo entirely. At Marcum, routing slips serve as documentation of the EQR’s concurring approval for issuance of the audit report, and the date of such approval. EQR memos serve as confirmation that the EQR appropriately performed his or her review in accordance with AS 1220.⁴

24. Messina also failed to sign off on work papers that were in significant risk areas of the AAI audits. He did not document his work in a way that would enable someone to determine whether he evaluated significant judgments and appropriate documentation. (AS 1220.10, 1220.11.) He also failed to notice or address the AAI engagement partner’s lack of pre-issuance sign-offs and the audit team’s substantive audit issues described above.

25. Messina deliberately chose not to review certain areas of the audits that were deemed significant risks of material misstatement. Based on his judgment and discussions with the engagement partner, he would elect not to look at significant areas in the audit using a “risk-based

⁴ During the relevant period, Marcum had a widespread practice of EQR partners not signing off on routing slips and EQR memos until after report release date. This practice failed to ensure that review procedures were completed and concurring approval obtained prior to issuance of the audit reports. *See In the Matter of Marcum LLP*, Exch. Act Rel. No. 97773 at ¶¶ 57 and 58.

approach.” He did not document why he chose not to review certain areas deemed significant by the engagement team in the work papers. This is a violation of AS 1220, which requires an EQR partner to review the engagement team’s assessment and audit responses to the significant risks identified by the engagement team, including fraud risks, as well as other significant risks identified by the EQR partner.

26. Messina failed to sign off on key documents for which Marcum policy required EQR partner sign off in every audit. In 2017 through 2020, he failed to sign off entirely on key documents including the Summary Memo (FY 2017 and 2018), the Risk Assessment Summary Form (FY 2019), and the auditor’s reports (FY 2017, 2019, and 2020). In 2016 through 2019, Messina signed off on certain key documents in the AAI audits after the report release date, including the Summary of Unadjusted Misstatements (FY 2016-2018), the Summary Memo (FY 2019), and the auditor’s report (FY 2018).

27. These sign-off failures caused Messina to miss inconsistencies in the engagement team’s assessment of, and audit responses to, significant risks identified by the engagement team. For example, in 2019, Messina reviewed neither the Summary Memo nor the Risk Assessment Form prior to report release date. Therefore, he did not notice that the engagement team identified Goodwill and Intangible Asset Impairment as a significant area of the audit in the Summary Memo but not in the Risk Assessment Form. Further, because he did not review the Risk Assessment Form at all, he did not notice that the engagement team changed some assessed risk levels for Goodwill and Intangibles from High to Moderate, and Moderate to Low, without adequately addressing reasons for these changes. Goodwill and Intangibles comprised approximately 26% of total company assets in both 2018 and 2019.

Relevant EQR Auditing Standards

28. All audit engagements conducted pursuant to PCAOB standards require an engagement quality review and concurring approval of issuance by the EQR partner. (AS 1220.01.) “The objective of the engagement quality reviewer is to perform an evaluation of the significant judgments made by the engagement team and the related conclusions reached in forming the overall conclusion on the engagement and in preparing the engagement report.” (AS 1220.02.)

29. Under PCAOB audit standards, the responsibilities of an EQR partner include evaluating the significant judgments that relate to engagement planning, evaluating the team’s assessment of and audit responses to significant risks, including fraud risks, and evaluating the related documentation to confirm that it indicates that the team appropriately responded to the significant risks and that it supports the conclusions reached. (AS 1220.09-.11.)

30. An EQR partner can only provide concurring approval of issuance if after performing his review with due professional care, he is not aware of a significant engagement deficiency. The firm cannot grant permission for use of the report until the EQR provides concurring approval for issuance. (AS 1220.12-.13.)

31. PCAOB audit standards compel an EQR partner to document his review and concurring approval of audit work and conclusions before issuance of the audit report. In practice, the universally accepted method for documenting review and approval is signing and dating work papers when the work or review is performed. Messina's failure to perform a proper engagement quality review is also corroborated by his lack of sign-offs.

32. The audit documentation standard, PCAOB Auditing Standard 1215, *Audit Documentation* ("AS 1215"), requires that prior to report release date, all audit procedures have to be completed and sufficient evidence must be obtained. (AS 1215.15.) Through documentation, the engagement team demonstrates that the audit procedures were completed and the evidence was obtained before the auditor's representations were made in its audit report. "Audit documentation must clearly demonstrate that the work was in fact performed." (AS 1215.06.) Audit documentation includes "records of the planning and performance of the work, the procedures performed, evidence obtained, and conclusions reached by the auditor." (AS 1215.02.)

33. Audit documentation must contain sufficient information to enable an experienced auditor, with no previous connection to the audit engagement, "[t]o determine who performed the work and the date such work was completed as well as the person who reviewed the work and the date of such review." (AS 1215.06(b); *see also* AS 1220.19.)

34. Sign-offs on work papers are necessary to demonstrate that the work was performed before the report release date. If the EQR partner does not perform sign-offs until after the report release date or does not perform sign-offs at all, and the work papers do not include persuasive other evidence of review, then there is no proof in the work papers that the work was reviewed and approved before the audit report issued. *See* PCAOB Release No. 2004-006, *Audit Documentation and Amendment to Interim Auditing Standards*, at 3 ("[I]f audit documentation does not exist for a particular procedure or conclusion related to a significant matter, its absence casts doubt as to whether the necessary work was done.").

VIOLATIONS

35. Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice 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)(2) and Rule 102(e)(1)(iv)(B) of the Commission's Rules of Practice define improper professional conduct with respect to persons associated with public accounting firms and persons licensed to practice as accountants, respectively, as (1) a single instance of highly unreasonable conduct, that results in a violation of applicable professional standards in circumstances in which the associated person or accountant knows, or should know, that heightened scrutiny is warranted; or (2) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission. By failing to comply with PCAOB standards in the audits of AAI, as described above, Messina engaged in improper professional conduct as defined in Exchange Act Section 4C(b)(2) and Rule 102(e)(1)(iv)(B) of the Commission's Rules of Practice.

36. Rule 2-02(b)(1) of Regulation S-X requires an accountant's report to state "whether the audit was made in accordance with generally accepted auditing standards" ("GAAS").⁵ "[R]eferences in Commission rules and staff guidance and in the federal securities laws to GAAS or to specific standards under GAAS, as they relate to issuers, should be understood to mean the standards of the PCAOB plus any applicable rules of the Commission." See SEC Release No. 34-49708 (May 14, 2004). An auditor violates Rule 2-02(b)(1) of Regulation S-X if it issues a report stating that it has conducted its audit in accordance with PCAOB standards when it has not. No showing of scienter is necessary to establish a violation of Rule 2-02(b)(1) of Regulation S-X. Marcum stated in the audit reports for AAI's fiscal years 2017 to 2020 that it had conducted the audits in accordance with PCAOB standards when it had not. As a result of the conduct described above, Messina willfully aided and abetted and caused Marcum's violation of Rule 2-02(b)(1) of Regulation S-X.

37. Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice provide, in part, that the Commission may censure a person 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 willfully violated, or willfully aided and abetted the violation of, any provision of the Federal securities laws or the rules and regulations thereunder. As described above, Messina willfully aided and abetted Marcum's violations of the federal securities laws and rules and regulations thereunder within the meaning of Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

FINDINGS

38. Based on the foregoing, Messina engaged in improper professional conduct pursuant to Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

39. Based on the foregoing, Messina willfully aided and abetted and caused Marcum LLP's violations of Rule 2-02(b)(1) of Regulations S-X.

40. Based on the foregoing, Messina willfully aided and abetted violations of the federal securities laws pursuant to Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

⁵ In November 2018, Rule 2-02(b)(1) was amended to require that the accountant's report state "the applicable professional standards under which the audit was conducted," instead of GAAS.

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

A. Respondent Messina shall cease and desist from committing or causing any violations and any future violations of Rule 2-02(b)(1) of Regulation S-X.

B. Respondent Messina is denied the privilege of appearing or practicing before the Commission as an accountant.

C. After two years from the date of the Order, Respondent may request that the Commission consider Respondent's reinstatement by submitting an application to the attention of the Office of the Chief Accountant.

D. In support of any application for reinstatement to appear and practice before the Commission as a preparer or reviewer, or a person responsible for the preparation or review, of financial statements of a public company to be 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 Exchange Act, Respondent shall submit a written statement attesting to an undertaking to have Respondent's work reviewed by the independent audit committee of any public company for which Respondent works or in some other manner acceptable to the Commission, as long as Respondent practices before the Commission in this capacity and will comply with any Commission or other requirements related to the appearance and practice before the Commission as an accountant.

E. In support of any application for reinstatement to appear and practice before the Commission as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Exchange Act, as a preparer or reviewer, or as a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission, Respondent shall submit a statement prepared by the audit committee(s) with which Respondent will be associated, including the following information:

1. A summary of the responsibilities and duties of the specific audit committee(s) with which Respondent will be associated;
2. A description of Respondent's role on the specific audit committee(s) with which Respondent will be associated;
3. A description of any policies, procedures, or controls designed to mitigate any potential risk to the Commission by such service;
4. A description relating to the necessity of Respondent's service on the specific audit committee; and
5. A statement noting whether Respondent will be able to act unilaterally on behalf of the Audit Committee as a whole.

F. In support of any application for reinstatement to appear and practice before the Commission as an independent accountant (auditor) before the Commission, Respondent must be associated with a public accounting firm registered with the PCAOB and Respondent shall submit the following additional information:

1. A statement from the public accounting firm (the "Firm") with which Respondent is associated, stating that the firm is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002;
2. A statement from the Firm with which the Respondent is associated that the Firm has been inspected by the PCAOB and that the PCAOB did not identify any criticisms of or potential defects in the Firm's quality control system that would indicate that Respondent will not receive appropriate supervision; and
3. A statement from Respondent indicating that the PCAOB has taken no disciplinary actions against Respondent since seven (7) years prior to the date of the Order other than for the conduct that was the basis for the Order.

G. In support of any application for reinstatement, Respondent shall provide documentation showing that Respondent is currently licensed as a CPA and that Respondent has resolved all other disciplinary issues with any applicable state boards of accountancy. If Respondent is not currently licensed as a CPA, Respondent shall provide documentation showing that Respondent's licensure is dependent upon reinstatement by the Commission.

H. In support of any application for reinstatement, Respondent shall also submit a signed affidavit truthfully stating, under penalty of perjury:

1. That Respondent has complied with the Commission suspension Order, and with any related orders and undertakings, or any related Commission proceedings, including any orders requiring payment of disgorgement or penalties;
2. That Respondent undertakes to notify the Commission immediately in writing if any information submitted in support of the application for reinstatement becomes materially false or misleading or otherwise changes in any material way while the application is pending;
3. That Respondent, since the entry of the Order, has not been convicted of a felony or a misdemeanor involving moral turpitude that would constitute a basis for a forthwith suspension from appearing or practicing before the Commission pursuant to Rule 102(e)(2);
4. That Respondent, since the entry of the Order:

- (a) has not been charged with a felony or a misdemeanor involving moral turpitude as set forth in Rule 102(e)(2) of the Commission's Rules of Practice, except for any charge concerning the conduct that was the basis for the Order;
- (b) has not been found by the Commission or a court of the United States to have committed a violation of the federal securities laws, and has not been enjoined from violating the federal securities laws, except for any finding or injunction concerning the conduct that was the basis for the Order;
- (c) has not been charged by the Commission or the United States with a violation of the federal securities laws, except for any charge concerning the conduct that was the basis for the Order;
- (d) has not been found by a court of the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, or any bar thereof to have committed an offense (civil or criminal) involving moral turpitude, except for any finding concerning the conduct that was the basis for the Order; and
- (e) has not been charged by the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, civilly or criminally, with having committed an act of moral turpitude, except for any charge concerning the conduct that was the basis for the Order.

- 5. That Respondent's conduct is not at issue in any pending investigation of the Commission's Division of Enforcement, the PCAOB's Division of Enforcement and Investigations, any criminal law enforcement investigation, or any pending proceeding of a State Board of Accountancy, except to the extent that such conduct concerns that which was the basis for the Order.
- 6. That Respondent has complied with any and all orders, undertakings, or other remedial, disciplinary, or punitive sanctions resulting from any action taken by any State Board of Accountancy, or other regulatory body.

I. Respondent shall also provide a detailed description of:

- 1. Respondent's professional history since the imposition of the Order, including:
 - (a) all job titles, responsibilities and role at any employer;

- (b) the identification and description of any work performed for entities regulated by the Commission, and the persons to whom Respondent reported for such work; and
2. Respondent's plans for any future appearance or practice before the Commission.

J. The Commission may conduct its own investigation to determine if the foregoing attestations are accurate.

K. If Respondent provides the documentation and attestations required in this Order and the Commission (1) discovers no contrary information therein, and (2) determines that Respondent truthfully and accurately attested to each of the items required in Respondent's affidavit, and the Commission discovers no information, including under Paragraph J, indicating that Respondent has violated a federal securities law, rule or regulation or rule of professional conduct applicable to Respondent since entry of the Order (other than by conduct underlying Respondent's original Rule 102(e) suspension), then, unless the Commission determines that reinstatement would not be in the public interest, the Commission shall reinstate the respondent for cause shown.

L. If Respondent is not able to provide the documentation and truthful and accurate attestations required in this Order or if the Commission has discovered contrary information, including under Paragraph J, the burden shall be on the Respondent to provide an explanation as to the facts and circumstances pertaining to the matter setting forth why Respondent believes cause for reinstatement nonetheless exists and reinstatement would not be contrary to the public interest. The Commission may then, in its discretion, reinstate the Respondent for cause shown.

M. If the Commission declines to reinstate Respondent pursuant to Paragraphs K and L, it may, at Respondent's request, hold a hearing to determine whether cause has been shown to permit Respondent to resume appearing and practicing before the Commission as an accountant.

N. Respondent Messina shall pay a civil money penalty in the amount of \$30,000 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). Payment shall be made in the following installments: (1) \$10,000 shall be due and payable within 14 days of the entry of this Order; (2) \$10,000 shall be due and payable within 180 days of the entry of this order; and (3) the remainder within 365 days after the entry of this order. Payments shall be applied first to post order interest, which accrues pursuant to 31 U.S.C. 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission.

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 Messina 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, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

O. 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, he shall not argue that he is entitled to, nor shall he 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 he 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