

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16729

In the Matter of

MILLER ENERGY RESOURCES, INC., PAUL W.
BOYD, CPA, DAVID M. HALL, and CARLTON W.
VOGT, III, CPA



**ANSWER OF CARLTON W. VOGT, III
TO ORDER INSTITUTING PROCEEDINGS**

Respondent Carlton W. Vogt, III (“Mr. Vogt” or “Respondent”), by and through his undersigned attorneys, hereby answers the Order Instituting Proceedings dated August 6, 2015 (“OIP”).

Preliminary Statement

The central issue raised by the OIP is Miller Petroleum, Inc.’s (“Miller” or the “Company”) estimated valuation of the Alaska assets it purchased in December 2009 (the “Alaska Assets”), which were included in the April 30, 2010 financial statements reported in Miller’s 2010 10K filed July 28, 2010 (the “2010 10K”). While the Commission accuses Miller of fraud, it notably excludes Mr. Vogt from that accusation, instead alleging only what it characterizes as an “audit failure” and claiming that Mr. Vogt failed to exercise due professional care and skepticism in assessing the Company’s valuation. The Commission is incorrect, as the evidence at the hearing of this matter will demonstrate.

The standard for assessing a possible violation of 102(e), as observed by commentators at time of the Rule's enactment (see, *e.g.*, Dissenting Statement of Commissioner Norman S. Johnson, 17 Fed. Reg. 57172, 57183 (Oct. 26, 1998)), is notoriously vague, referring only to a single instance of "highly unreasonable conduct" or repeated instances of "unreasonable conduct." Notwithstanding the ambiguity of that standard, there can be no question that any determination of reasonableness must take into account *all* of the facts and circumstances bearing on the conduct at issue. Here, the OIP omits at least a half-dozen critical facts, each of which confirms the reasonableness of Mr. Vogt's conduct.

Among other things, the OIP fails to mention that:

- (1) The Public Company Accounting Oversight Board ("PCAOB") reviewed Mr. Vogt's work papers for the Miller audit, and noted no issues with respect to his work.
- (2) The year after Mr. Vogt's 2010 audit, Big Four accounting firm KPMG took over the Miller engagement and approved the very same valuation of the Alaska Assets. To this day KPMG has not issued or sought a restatement as to that valuation.
- (3) The Commission's own Division of Corporate Finance carefully scrutinized the expert report relied upon by Miller for its valuation and yet never took the position now taken by the Enforcement Department. The Division addressed no fewer than six comment letters to the substance and form of the Report, and at no point found it deficient or inappropriate for purposes of assessing fair value.

- (4) Just two years prior to Miller's acquisition of the Alaska Assets, the seller of those Assets had itself acquired substantially the same assets at a comparable price of which (\$400 million) was paid by cash lent by an affiliate of Goldman Sachs.
- (5) Before agreeing to Miller's valuation of the Alaska Assets, Mr. Vogt considered and rejected an alternate appraisal method that would have resulted in a valuation over \$260 million higher.
- (6) The financial statements audited by Mr. Vogt fully disclosed the essential facts concerning Miller's acquisition of the Alaska Assets, including that the Company had acquired them out of bankruptcy, the dramatically small consideration paid for the Assets, the huge day-one bargain purchase gain stated by the Company and the basis for the Company's estimate of value.

When all of these critical facts and circumstances are taken into account, we respectfully submit that Mr. Vogt's conduct was reasonable. Further, the evidence at hearing will demonstrate the extensive steps taken by Mr. Vogt to conduct the audit, including but not limited to his assignment of a junior accountant specifically tasked with the job of scrutinizing and assessing the Report and himself traveling to Alaska to visually inspect the Assets. In sum, Mr. Vogt conducted the audit of Miller's financial statements in good faith, and his audit opinion reflected the exercise of due professional care and sound auditor judgment. Neither the facts nor the law will support the Commission's case.

Mr. Vogt's Responses to the Specific Allegations of the OIP

With respect to the specific allegations made in the OIP, Mr. Vogt responds as follows:

SUMMARY

1. Mr. Vogt admits only that Miller Energy acquired certain oil and gas assets located in Alaska and denies the remaining allegations contained in Paragraph 1.
2. Mr. Vogt admits only that Miller Energy Resources, Inc. (the “Company”) recognized a one-time “bargain purchase” gain of \$277 million for its fiscal third quarter ended January 2010 and fiscal year ended April 2010. Mr. Vogt denies the remaining allegations contained in Paragraph 2.
3. Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 3.
4. The allegations contained in Paragraph 4 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 4.
5. Respondent admits only that Sherb & Co. LLP (“Sherb”) audited the Company’s financial statements for fiscal 2010 and that Sherb is a now defunct CPA firm. Respondent denies the remaining allegations in Paragraph 5.

RESPONDENTS

6. The allegations contained in Paragraph 6 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 6.
7. The allegations contained in Paragraph 7 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a

response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 7.

8. The allegations contained in Paragraph 8 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 8.

9. Mr. Vogt denies the allegations contained in Paragraph 9.

FACTS

10. The allegations contained in Paragraph 10 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 10.

11. The allegations contained in Paragraph 11 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 11.

12. The allegations contained in Paragraph 12 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 12.

13. The allegations contained in Paragraph 13 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a

response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 13.

14. The allegations contained in Paragraph 14 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 14.

15. Mr. Vogt admits the allegations contained in Paragraph 15.

16. Mr. Vogt admits that the numbers described in Paragraph 16 were repeated in numerous documents the Company subsequently filed with the Commission, but denies that the numbers were inflated.

17. Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 17.

18. Mr. Vogt denies the allegations contained in Paragraph 18.

19. The allegations contained in Paragraph 19 state conclusions based upon on technical financial accounting standards described in ASC 805. To the extent a response is required, Mr. Vogt denies that the allegations contained in Paragraph 19 constitute a complete and accurate description of all relevant accounting standards, except refer to ASC 805 for the contents of the financial accounting standard.

20. The allegations contained in Paragraph 20 state conclusions based upon on technical financial accounting standards described in ASC 820. To the extent a response is required, Mr. Vogt denies that the allegations contained in Paragraph 20 constitute a complete and accurate description of all relevant accounting

standards, except refer to ASC 820 for the contents of the financial accounting standard.

21. The allegations contained in Paragraph 21 state conclusions based upon on technical financial accounting standards described in ASC 820. To the extent a response is required, Mr. Vogt denies that the allegations contained in Paragraph 21 constitute a complete and accurate description of all relevant accounting standards, except refer to ASC 820 for the contents of the financial accounting standard.

22. The allegations contained in Paragraph 22 state conclusions based upon on technical financial accounting standards described in ASC 820. To the extent a response is required, Mr. Vogt denies that the allegations contained in Paragraph 22 constitute a complete and accurate description of all relevant accounting standards, except refer to ASC 820 for the contents of the financial accounting standard.

23. The allegations contained in Paragraph 23 state conclusions based upon on technical financial accounting standards described in ASC 820. To the extent a response is required, Mr. Vogt denies that the allegations contained in Paragraph 23 constitute a complete and accurate description of all relevant accounting standards, except refer to ASC 820 for the contents of the financial accounting standard.

24. The allegations contained in Paragraph 24 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a

response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 24.

25. The allegations contained in Paragraph 25 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 25.

26. The allegations contained in Paragraph 26 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 26.

27. The allegations contained in Paragraph 27 state conclusions based on technical accounting standards, including SFAS 69, and conclusions based on common oil and gas industry practices. To the extent a response is required, Mr. Vogt denies that the allegations contained in Paragraph 27 constitutes a complete and accurate description of all relevant accounting standards or common oil and gas industry practices.

28. The allegations contained in Paragraph 28 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 28.

29. The allegations contained in Paragraph 29 state conclusions based on technical accounting standards and conclusions based on common oil and gas industry practices. To the extent a response is required, Mr. Vogt denies that the allegations

contained in Paragraph 29 constitute a complete and accurate description of all relevant accounting standards or common oil and gas industry practices.

30. The allegations contained in Paragraph 30 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 30.

31. Mr. Vogt admits that a reserve report reflected PV-10 of \$368 million, as noted in Paragraph 31, but denies knowledge or information sufficient to form a belief as to the truth or falsity of when or how the reserve report was finalized.

32. The allegations contained in Paragraph 32 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 32.

33. The allegations contained in Paragraph 33 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies the allegations contained in Paragraph 33.

34. The allegations contained in Paragraph 34 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 34.

35. Mr. Vogt denies the allegations contained in Paragraph 35.

36. Mr. Vogt denies the allegations contained in Paragraph 36.

37. The allegations contained in Paragraph 37 state conclusions based on technical accounting standards and conclusions based on common oil and gas industry practices to which no response is required. To the extent a response is required, Mr. Vogt denies that the allegations contained in Paragraph 37 constitute a complete and accurate description of all relevant accounting standards or common oil and gas industry practices.
38. The allegations contained in Paragraph 38 state conclusions based on technical accounting standards and conclusions based on common oil and gas industry practices to which no response is required. To the extent a response is required, Mr. Vogt denies that the allegations contained in Paragraph 38 constitute a complete and accurate description of all relevant accounting standards or common oil and gas industry practices.
39. The allegations contained in Paragraph 39 state conclusions based on technical accounting standards and conclusions based on common oil and gas industry practices to which no response is required. To the extent a response is required, Mr. Vogt denies that the allegations contained in Paragraph 39 constitute a complete and accurate description of all relevant accounting standards or common oil and gas industry practices.
40. The allegations contained in Paragraph 40 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 40.

41. The allegations contained in Paragraph 41 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 41.
42. The allegations contained in Paragraph 42 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 42. Mr. Vogt admits that he used the words “concerning void” in a previous email to Boyd, but refers to the email itself.
43. The allegations contained in Paragraph 43 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 43.
44. The allegations contained in Paragraphs 44 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 44.
45. The allegations contained in Paragraph 45 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 45.

46. The allegations contained in Paragraph 46 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 46.
47. The allegations contained in Paragraph 47 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 47.
48. The allegations contained in Paragraph 48 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 48.
49. Mr. Vogt denies the allegations contained in Paragraph 49.
50. The allegations contained in Paragraph 50 state conclusions based upon technical accounting standards and conclusions based upon common oil and gas industry practices to which no response is required. To the extent a response is required, Mr. Vogt denies that the allegations contained in Paragraph 50 constitute a complete and accurate description of all relevant accounting standards or common oil and gas industry practices.
51. The allegations contained in Paragraph 51 state conclusions based upon technical accounting standards and conclusions based upon common oil and gas industry practices to which no response is required. To the extent a response is required, Mr. Vogt denies that the allegations contained in Paragraph 51 constitute a

complete and accurate description of all relevant accounting standards or common oil and gas industry practices.

52. The allegations contained in Paragraph 52 state conclusions based upon technical accounting standards and conclusions based upon common oil and gas industry practices to which no response is required. To the extent a response is required, Mr. Vogt denies that the allegations contained in Paragraph 52 constitute a complete and accurate description of all relevant accounting standards or common oil and gas industry practices.

53. The allegations contained in Paragraph 53 state conclusions based upon technical accounting standards and conclusions based upon common oil and gas industry practices to which no response is required. To the extent a response is required, Mr. Vogt denies that the allegations contained in Paragraph 53 constitute a complete and accurate description of all relevant accounting standards or common oil and gas industry practices.

54. The allegations contained in Paragraph 54 state conclusions based upon technical accounting standards and conclusions based upon common oil and gas industry practices to which no response is required. To the extent a response is required, Mr. Vogt denies that the allegations contained in Paragraph 54 constitute a complete and accurate description of all relevant accounting standards or common oil and gas industry practices.

55. The allegations contained in Paragraph 55 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a

response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 55.

56. The allegations contained in Paragraph 56 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 56.

57. The allegations contained in Paragraph 57 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 57.

58. The allegations contained in Paragraph 58 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 58.

59. The allegations contained in Paragraph 59 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 59.

60. The allegations contained in Paragraph 60 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 60.

61. The allegations contained in Paragraph 61 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 61.
62. The allegations contained in Paragraph 62 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 62.
63. Mr. Vogt admits the allegations contained in Paragraph 63.
64. Mr. Vogt denies the allegations contained in Paragraph 64.
65. Mr. Vogt denies the allegations contained in Paragraph 65.
66. Mr. Vogt denies the allegations contained in Paragraph 66.
67. Mr. Vogt denies the allegations contained in Paragraph 67.
68. Mr. Vogt denies the allegations contained in Paragraph 68.
69. Mr. Vogt admits that on behalf of Sherb he issued an audit report for use in Miller Energy's 2010 Form 10-K, but denies the remaining allegations contained in Paragraph 69.
70. The allegations contained in Paragraph 70 state conclusions based upon technical auditing/accounting standards described in AU § 328. To the extent a response is required, Mr. Vogt denies that the allegations contained in Paragraph 70 constitute a complete and accurate description of all relevant auditing/accounting standards, and refers to AU § 328 for the contents of the auditing standard.
71. Mr. Vogt denies the allegations contained in Paragraph 71.

72. Mr. Vogt denies the allegations contained in Paragraph 72.
73. The allegations contained in Paragraph 73 state conclusions based upon technical auditing/accounting standards described in AU § 336. To the extent a response is required, Mr. Vogt denies that the allegations contained in Paragraphs 73 constitute a complete and accurate description of all relevant auditing/accounting standards, and refers to AU § 336 for the contents of the auditing standard.
74. The allegations contained in Paragraph 74 state conclusions based upon technical auditing/accounting standards described in AU § 336. To the extent a response is required, Mr. Vogt denies that the allegations contained in Paragraph 74 constitute a complete and accurate description of all relevant auditing/accounting standards, and refers to AU § 336 for the contents of the auditing standard.
75. Mr. Vogt denies the allegations contained in Paragraph 75.
76. Mr. Vogt denies the allegations contained in Paragraph 76.
77. Mr. Vogt denies the allegations contained in Paragraph 77.
78. Mr. Vogt denies the allegations contained in Paragraph 78.
79. The allegations contained in Paragraph 79 state conclusions based upon technical auditing/accounting standards described in AU § 230. To the extent a response is required, Mr. Vogt denies that the allegations contained in Paragraph 79 constitute a complete and accurate description of all relevant auditing/accounting standards, and refers to AU § 230 for the contents of the auditing standard.
80. Mr. Vogt denies the allegations contained in Paragraph 80.
81. The allegations contained in Paragraph 81 state conclusions based upon technical auditing/accounting standards described in AU § 311. To the extent a response is

required, Mr. Vogt denies that the allegations contained in Paragraph 81 constitute a complete and accurate description of all relevant auditing/accounting standards, and refers to AU § 311 for the contents of the auditing standard.

82. Mr. Vogt denies the allegations contained in Paragraph 82.

83. Mr. Vogt denies the allegations contained in Paragraph 83.

84. The allegations contained in Paragraph 84 state conclusions based upon technical auditing/accounting standards described in AU § 312. To the extent a response is required, Mr. Vogt denies that the allegations contained in Paragraph 84 constitute a complete and accurate description of all relevant auditing/accounting standards, and refers to AU § 312 for the contents of the auditing standard.

85. Mr. Vogt denies the allegations contained in Paragraph 85.

86. The allegations contained in Paragraph 86 state conclusions based upon technical auditing/accounting standards described in AU § 326. To the extent a response is required, Mr. Vogt denies that the allegations contained in Paragraph 86 constitute a complete and accurate description of all relevant auditing/accounting standards, and refers to AU § 326 for the contents of the auditing standard. Mr. Vogt denies the remaining allegations contained in Paragraph 86.

87. The allegations contained in Paragraph 87 state conclusions based upon technical auditing/accounting standards described in AU § 508. To the extent a response is required, Mr. Vogt denies that the allegations contained in Paragraph 87 constitute a complete and accurate description of all relevant auditing/accounting standards, and refers to AU § 508 for the contents of the auditing standard. Mr. Vogt denies the remaining allegations contained in Paragraph 87.

VIOLATIONS

88. The allegations contained in Paragraph 88 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 88.
89. The allegations contained in Paragraph 89 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 89.
90. The allegations contained in Paragraph 90 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 90.
91. The allegations contained in Paragraph 91 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 91.
92. The allegations contained in Paragraph 92 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 92.
93. The allegations contained in Paragraph 93 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a

response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 93.

94. The allegations contained in Paragraph 94 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 94.

95. The allegations contained in Paragraph 95 are not directed to Mr. Vogt, and, therefore, Mr. Vogt is not required to answer such allegations. To the extent that a response is required, Mr. Vogt denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 95.

96. Mr. Vogt denies the allegations contained in Paragraph 96.

Mr. Vogt's Affirmative Defenses¹

1. Bringing this matter as an administrative proceeding and not as a civil action before an Article III judge is unconstitutional and violates Mr. Vogt's Due Process rights under the 5th and 14th Amendments of the United States Constitution.
2. The SEC Rules of Practices which govern actions brought by the SEC in administrative proceedings are unconstitutional and violate Mr. Vogt's Due Process rights under the 5th and 14th Amendments of the United States Constitution.
3. The use of an administrative law judge to adjudicate this matter is unconstitutional because any such officer should have been appointed by the President of the United States. The appointment of ALJs by lesser officials violates the appointments clause of Article 2 of the United States Constitution.

¹ By listing a defense as an affirmative defense herein, Respondent in no way concedes it bears the burden of proof (or any other burden) as to a particular defense.

4. The Commission's claim against Mr. Vogt is barred, in whole or in part, by the doctrines of laches, waiver and estoppel.
5. Mr. Vogt had reasonable grounds to believe, and did believe, after diligent investigation, at the time the audit opinion was issued, that it was true and it did not contain misstatements of material fact or omissions of material fact.
6. The Commission's claim against Mr. Vogt is barred, in whole or in part, because Mr. Vogt's conduct and opinions were based on sound auditor judgment and in reasonable reliance on the work, opinions, information, representations, and advice of others, upon which Mr. Vogt was entitled to rely.
7. Mr. Vogt acted at all times in good faith and did not directly or indirectly induce any act alleged to constitute a violation of statute, rule, standard, policy or practice.
8. Any parties relying on the audit opinion or Miller's financial statements had actual or constructive knowledge of all the essential facts concerning Miller's acquisition of the Alaska Assets, and such information had been publicly disclosed or was in the public domain, and, therefore, the Commission's claim against Mr. Vogt fails.
9. The standards the Commission alleges Mr. Vogt violated are unconstitutionally vague and violate Mr. Vogt's Due Process rights under the 5th and 14th Amendments to the United States Constitution.
10. Mr. Vogt hereby adopts and incorporates by reference any and all other defenses asserted, or that may hereafter be asserted, by any other respondent to the extent such defense may be applicable to Mr. Vogt.

WHEREFORE, Mr. Vogt respectfully denies the Commission's substantive allegations against him, opposes the relief sought by the Commission, and requests that the Proceedings

against him be dismissed in their entirety. Mr. Vogt reserves the right to amend and/or supplement this Answer, including affirmative defenses, as appropriate, since he has not yet had an opportunity to review the voluminous discovery produced to by the Commission.

Respectfully submitted,

PARK JENSEN BENNETT, LLP

By: _____


Douglas R. Jensen

Email: djensen@parkjensen.com

Christopher W. Greer

Email: cgreer@parkjensen.com

40 Wall Street
41st Floor
New York, New York 10005
Telephone: (646) 200-6300
Facsimile: (646) 200-6301

Counsel for Carlton W. Vogt, III

Certificate of Service

On September 8, 2015, I served the foregoing Answer by causing to be sent true and correct copies as shown below via U.S. mail addressed to:

Honorable James E. Grimes
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E., Room 2557
Washington, D.C. 20549-2557

Office of the Secretary (Original, plus three copies)
Securities and Exchange Commission
100 F Street, N.E., Room 10900
Mail Stop 1090
Washington, D.C. 20549-2557

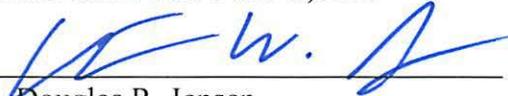
Walter G. Ricciardi, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Co-counsel for Miller Energy Resources

Patrick Hunnius, Esq.
DLA Piper, LLP
2000 Avenue of the Stars
4th Floor, North Tower
Los Angeles, CA 90061
Counsel for David Hall and Paul Boyd
Co-counsel for Miller Energy Resources, Inc.

Robert F. Schroder, Esq., M. Graham Loomis, Esq., Edward G. Sullivan, Esq., William M. Uptegrove, Esq.
Division of Enforcement
Securities and Exchange Commission
950 East Paces Ferry Road, NE, Suite 900
Atlanta, GA 30326-1382

PARK JENSEN BENNETT, LLP

By: _____


Douglas R. Jensen

Email: djensen@parkjensen.com

Christopher W. Greer

Email: cgreer@parkjensen.com

40 Wall Street
41st Floor
New York, New York 10005
Telephone: (646) 200-6300
Facsimile: (646) 200-6301

Counsel for Carlton W. Vogt, III