

SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 34-100185 / May 20, 2024

ORDER UNDER SECTION 36 OF THE SECURITIES EXCHANGE ACT OF 1934
GRANTING EXEMPTIONS FROM SPECIFIED PROVISIONS OF THE EXCHANGE
ACT AND CERTAIN RULES THEREUNDER

On May 3, 2024, the Commission entered an order (“May 3 Order”) instituting settled administrative and cease-and-desist proceedings¹ against BF Borgers CPA PC and its sole audit partner Benjamin F. Borgers, CPA (individually and together, “BF Borgers”), finding that, among other things, BF Borgers:

- deliberately and systematically failed to conduct audits and quarterly reviews in accordance with applicable Public Company Accounting Oversight Board (“PCAOB”) standards;
- fraudulently issued audit reports that falsely represented that audits had been performed in accordance with PCAOB standards; and
- caused audit clients to violate certain provisions of the Exchange Act and rules thereunder, including Exchange Act Sections 13(a) and 15(d).

The May 3 Order denies BF Borgers the privilege of appearing or practicing before the Commission as an accountant. As a result, BF Borgers may not participate in, or perform the audit or review of, financial information included in Commission filings; issue audit

¹ Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, 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, File No. 3- 21926 (May 3, 2024). A copy of the May 3 Order is available on the Commission’s website at <https://www.sec.gov/files/litigation/admin/2024/33-11283.pdf>.

reports included in Commission filings; provide consents with respect to audit reports; or otherwise appear or practice before the Commission.²

Registrants that have engaged BF Borgers in the past few years to conduct an audit or review of financial information that will be required to be included in filings with the Commission due on or after the date of the May 3 Order will need to engage a new, qualified, independent, PCAOB-registered public accountant, if not already done, to audit or review the financial information included in their Commission filings. As a result, given the proximity in time between the May 3 Order and the filing deadline for the Form 10-Q for the quarterly period ended March 31, 2024, many registrants have indicated they will not be able to file upcoming required quarterly or transition reports on Form 10-Q in a timely manner. While Exchange Act Rule 12b-25³ provides a limited extension of the deadline for filing certain Exchange Act reports, a significant number of registrants have been affected by the May 3 Order, there is a finite number of qualified replacement accountants, and the new accountants, once selected, need sufficient time to perform the required review of the financial information in the registrants' quarterly or transition reports and may need to perform a re-review of comparable interim financial information or statements. In light of these circumstances, the extension for filing periodic reports available under Exchange Act Rule 12b-25 may not provide sufficient time for new auditors to complete the work necessary to allow the affected registrants to file upcoming

² See Rule 102(f) of the Commission's Rules of Practice.

³ Under Exchange Act Rule 12b-25, a registrant that is unable to timely file all or any required portion of an annual or transition report on Form 10-K, 20-F or 11-K; a quarterly or transition report on Form 10-Q; a distribution report on Form 10-D or a semi-annual, annual or transition report on Form N-CSR or Form N-CEN must file a Form 12b-25 to notify the Commission, no later than one business day after the due date for such report, of its inability to file the report timely and the reasons therefor in reasonable detail.

quarterly or transition reports that fully comply with the disclosure obligations under the federal securities laws.⁴ For these reasons, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to provide an additional period of time for filing such reports for those registrants that previously engaged BF Borgers to conduct a review of financial information that will be required to be included in filings with the Commission on or after May 3, 2024 and that have filed a timely Form 12b-25 notifying the Commission of their inability to file the subject report on a timely basis.

Accordingly, with respect to any registrant (as defined in Exchange Act Rule 12b-2) subject to the reporting requirements of Exchange Act Section 13(a) or 15(d) that, on or after May 3, 2024, and on or prior to May 16, 2024, due to circumstances related to the May 3 Order, notified the Commission pursuant to Rule 12b-25 of its inability to timely file all or any required portion of a quarterly or transition report on Form 10-Q, IT IS ORDERED, pursuant to Section 36 of the Exchange Act, for the purposes of Rule 12b-25(b), the subject quarterly report or transition report on Form 10-Q, or portion thereof, will be deemed to be filed on the prescribed due date for such report if it is filed no later than the thirtieth calendar day, instead of the fifth calendar day, following the prescribed due date.

We remind registrants who are the subject of this Order to continue to evaluate their obligations to provide timely, accurate and complete disclosures in accordance with the federal securities laws. Any registrant that has questions related to applicable filing

⁴ Because BF Borgers can no longer practice or appear before the Commission, to the extent that Rule 12b-25(c) would require a statement signed by BF Borgers to be attached as an exhibit to Form 12b-25, registrants are not required to attach such an exhibit and may instead indicate that their prior auditor is not currently permitted to appear or practice before the Commission.

deadlines or the audit requirements in their Commission filings should contact the Division of Corporation Finance at (202) 551-3500 or at https://www.sec.gov/forms/corp_fin_interpretive.

By the Commission.

J. Matthew DeLesDernier
Deputy Secretary