

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 her and the subject matter of these proceedings, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Kayser, age 51, is and has been a certified public accountant licensed to practice in the State of Ohio. She served as Chief Financial Officer and Executive Vice President of Excelligence Learning Corporation from September 2004 until September 2005.

2. Excelligence Learning Corporation was, at all relevant times, a California corporation with its principal place of business in Monterey, California. Excelligence was engaged in the business of distributing children's educational products. At all relevant times, Excelligence's common stock was registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act"), and traded on the NASDAQ National Market.

3. On September 14, 2006, the Commission filed a complaint against Kayser in SEC v. Diane Kayser (Civil Action No. C 06 5635 HRL). On September 22, 2006, the court entered an order permanently enjoining Kayser, by consent, from future violations of Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13a-14, 13b2-1 and 13b2-2 thereunder, and aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder. Kayser was also ordered to pay a \$35,000 civil money penalty.

4. The Commission's complaint alleged, among other things, that Kayser fraudulently manipulated Excelligence's books and records which resulted in Excelligence filing materially false and misleading financial statements in the company's annual report on Form 10-K for the fiscal year ended December 31, 2004, and in the company's quarterly report on Form 10-Q for the first quarter of fiscal year 2005. The Complaint alleged that Respondent engaged in a number of improper accounting practices that materially increased Excelligence's annual and quarterly operating income in a departure from generally accepted accounting principles. These practices included, among other things, making unsupported journal entries and removing unpaid inventory invoices from payment processing. In addition, the complaint alleged that Kayser made material misrepresentations and failed to disclose information to Excelligence's independent auditors.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Kayser's Offer.

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

A. Kayser is suspended from appearing or practicing before the Commission as an accountant.

B. After five years from the date of this order, Respondent may request that the Commission consider her reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in her practice before the Commission will be reviewed either by the independent audit committee of the public company for which she works or in some other acceptable manner, as long as she practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, or the public accounting firm with which she is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which she is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

(c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent acknowledges her responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that her state CPA license is current and she has resolved all other disciplinary issues with the applicable state boards of

accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Nancy M. Morris
Secretary