

**UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934
Release No. 57891 / May 30, 2008**

**ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2834 / May 30, 2008**

**ADMINISTRATIVE PROCEEDING
File No. 3-13049**

**In the Matter of

DENNIS L. HYNSON, CPA,

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 Dennis L. Hynson, CPA (“Hynson” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“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, 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 finds that:¹

A. RESPONDENT

1. From April 2002 until September 2003, Hynson, age 45, served as the Vice President of Finance of the U.S. Orthopedics Division of Centerpulse Ltd. ("Centerpulse" or the "Company"), a Swiss medical devices manufacturer. Prior to becoming Vice President of Finance, Hynson had served as the Director of Finance for the U.S. Orthopedics Division for two years. As the Vice President of Finance for the U.S. Orthopedics Division ("Division"), Hynson was responsible for, among other things, maintaining accurate books and records at the Division, and for devising and maintaining an adequate system of internal accounting controls at the Division. Hynson is also a Certified Public Accountant licensed in Texas and was so while he was employed at Centerpulse.

B. SUMMARY

2. This matter arises out of an accounting determination that Hynson made during Centerpulse's fiscal third quarter 2002.² In particular, Hynson did not properly write off costs for certain impaired assets associated with a software system called the "Global Supply Chain" project. Instead, pursuant to instructions from Urs Kamber (Centerpulse's then-Chief Financial Officer) and Stephan Husi (Centerpulse's then-Controller), Hynson allowed the costs to remain on his Division's books and records as an asset, which was then rolled up into the Company's consolidated financial statements. This accounting treatment was not in conformity with Generally Accepted Accounting Principles in the United States ("U.S. GAAP"),³ and it resulted in an 18 percent overstatement of Centerpulse's third quarter 2002 pretax income, as it was reported in the financial statements that the Company included in the Form 6-K it furnished to the Commission on November 12, 2002.

3. By virtue of his conduct, Hynson violated Exchange Act Rule 13b2-1 by falsifying certain books and records. He also caused Centerpulse's violations of Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B) by failing to keep accurate books and records, and by failing to devise and maintain an adequate system of internal accounting controls at the U.S. Orthopedics Division.

¹ The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

² Centerpulse's fiscal year ended on December 31 of each calendar year, and accordingly its fiscal third quarter 2002 ended on September 30, 2002.

³ While Centerpulse disclosed that its financial statements were reported in accordance with International Financial Reporting Standards, Centerpulse's accounting controls, and Hynson's own practice, were to maintain the Division's accounts in accordance with U.S. GAAP.

C. BACKGROUND

4. Originally named Sulzer Medica AG, Centerpulse was a publicly traded corporation headquartered in Switzerland that manufactured a variety of medical devices, including hip and knee implants. From at least January 2001 through October 2003, Centerpulse's American Depository Shares were registered with the Commission pursuant to Exchange Act Section 12(b) and were traded on the New York Stock Exchange under the symbol "CEP." As a foreign private issuer, Centerpulse filed annual reports with the Commission on Form 20-F and furnished other periodic reports to the Commission on Form 6-K. In October 2003, the Company was acquired by and merged with Zimmer Holdings, Inc., a U.S. medical devices company.

5. In 2001, Centerpulse was named as a defendant in over 1,980 products liability and personal injury lawsuits filed in federal and state courts in the United States, as well as courts in other foreign jurisdictions, which alleged various defects in certain hip and knee implants that the Company had recalled (the "recall litigation"). By May 2002, Centerpulse had obtained court approval for a global settlement of the recall litigation. The final settlement agreement established a trust of approximately \$1.1 billion to fund payments to individual plaintiffs and claimants. Centerpulse contributed \$725 million in cash to the trust in 2002, \$635 million of which was funded through a credit facility arranged by a consortium of banks.

6. During Centerpulse's fiscal third quarter 2002, as Centerpulse was attempting to secure the \$635 million credit facility, Kamber and Husi instructed Centerpulse employees to release certain reserves, to not record certain expenses, and to engage in other accounting improprieties in order to improve the Company's reported financial results.⁴ Hynson's involvement related to an incorrect accounting determination not to record certain expenses. Specifically, pursuant to instructions from Kamber and Husi, Hynson improperly accounted for certain impaired assets described in this Order.

D. DESCRIPTION OF THE IMPROPER ASSET OVERSTATEMENT

7. Hynson became the Vice President of Finance of Centerpulse's U.S. Orthopedics Division in April 2002. That month, Hynson learned that Centerpulse's European Orthopedics Division had decided to discontinue its involvement in a project to develop and implement a "Global Supply Chain" software system, which was to be used to track inventory at the Company. He also learned that there were approximately \$3.5 million in costs associated with the European portion of the project that remained on the books of the U.S. Orthopedics Division. As a result of the European Division's decision to abandon its involvement in the project, the costs associated with that portion of the project became impaired and were required to be written off under U.S. GAAP.

⁴ The Commission filed a lawsuit against Urs Kamber, Stephan Husi and Richard Jon May (respectively, Centerpulse's former Chief Financial Officer, former Controller, and the former Group Vice President of Finance, Tax Counsel and Treasurer of Centerpulse USA Holding Company), alleging that they engaged in various improper accounting practices at Centerpulse during the third and fourth quarters of 2002. *SEC v. Urs Kamber et al.*, Civil Action No. 1:07-CV-01867 (JDB) (D.D.C.) (Oct. 17, 2007); see also Litigation Release No. 20336 (Oct. 17, 2007).

8. In June 2002, Kamber terminated the previous Vice President of Finance for the U.S. Orthopedics Division who had managed the costs for the Global Supply Chain project. Thereafter, Hynson became responsible for managing the costs and endeavored to obtain the information necessary to account for the Global Supply Chain asset. Hynson examined the costs for both the European and U.S. portions of the project, all of which were being maintained on the U.S. Orthopedics Division's books, and determined that the costs associated with the European portion of the project needed to be written off because the European Division had abandoned the project. Hynson shared his assessment with other Centerpulse financial managers.

9. For example, on July 12, 2002, Hynson sent Husi and another Centerpulse employee an e-mail describing the asset and explaining why an impairment was necessary:

“SOUS⁵ has an asset on our books for the Supply Chain project. Originally, this project involved SOAG as well. However, during Q1 2002, SOAG chose not to participate in the project any longer. SOUS had incurred approximately \$3.5 mil related to the SOAG participation through this time. Now that SOAG will no longer participate, the asset is over stated or impaired by this amount. The centralized services fixed asset accountant has indicated that Urs [Kamber] did not want to write this off. However, per U.S. GAAP we should write the asset down if it is impaired....”

10. On August 28, 2002, one of Hynson's subordinates sent an e-mail asking whether he could “accrue [the costs] as a write off.” As the subordinate explained, “I have kept 3.4 mil as CIP [construction in progress] and have not written off in SOUS book. My concern is that either SOUS or SOAG needs to show 3.4 mil as a write off.”

11. Husi was copied on the same e-mail, and later that day he replied that “[w]e will finalize this before end of Q3. SOUS should not consider any write offs in August.” Husi explained in his reply that “I will have to agree with Urs [Kamber] on how to handle it.”

12. In accordance with Husi's instruction, Hynson kept the costs on his books as an asset. However, Hynson also sent an e-mail to Husi stating that “[s]ince this issue impacts SOUS books, of which I am responsible, I would like to be part of the decision making process.”

⁵ “SOUS” was the acronym that Centerpulse employees used to refer to the U.S. Orthopedics Division. The initials stood for “Sulzer Orthopedics U.S.” and originated when Centerpulse was named Sulzer Medica AG. “SOAG” was the acronym for the European Orthopedics Division, standing for “Sulzer Orthopedics A.G.” After Sulzer Medica changed its name to Centerpulse, Company personnel also used the terms “COUS” and “COAG” to refer to the Orthopedics Divisions in the United States and Europe, respectively.

13. Throughout September 2002, the \$3.4 million in costs remained on the U.S. Orthopedics Division's books. On September 23, 2002, Hynson sent Husi an e-mail revisiting Husi's previous instruction not to write-off the costs, and noted that the costs should not be kept on the U.S. Division's books:

"There seems to be reluctance to proceed with the transfer of the SOAG portion of the Supply Chain asset from SOUS to SOAG. You had emailed me prior to your holiday that we should not do it in August, however, I have not heard the reason why. For the Estimate 2002 portion of the 2003 Budget process, SOUS is showing the asset as being transferred to SOAG. This is the proper thing to do, as the funds were spent in Switzerland on the SOAG portion of the project at the time, the project plan called for the transfer, and the decision to abandon the project was made at SOAG. The costs were simply managed from one location (SOUS) for control purposes. It is clear that this item belongs on SOAG's books and not SOUS! It is impacting SOUS business metrics (operating assets, RONA) which are part of our bonus calculation."

14. Later that day, Hynson and others participated in a conference call concerning the Global Supply Chain project. Afterward, he sent an e-mail to the Chief Executive Officer of the U.S. Orthopedics Division explaining that, according to Kamber, the costs were not being written off to avoid upsetting the impending \$635 million credit facility:

"My group had a conference call today with members from COAG. We (both COUS and COAG) have been requested (indirectly) by Urs [Kamber] to keep the EU Supply Chain asset on COUS books *for the 2002 Estimate only, due to the bankers*. I am not clear why it is an issue with the bankers. I didn't realize they would see the individual BU [business unit] 2002 Estimate. [Emphasis added].

Therefore, we need to change the numbers and the corresponding narrative...."

15. That message was amplified the next day. On September 24, 2002, a senior Centerpulse accounting employee in Europe sent an e-mail to Hynson, Husi and others, communicating Husi's instructions that the Global Supply Chain project costs should remain on the U.S. Orthopedics Division's books as an asset:

"With regards to our conference call from this afternoon I have had an additional discussion with Stephan Husi later. He told me to communicate to you the following:

- it is not the intention of Cooperate [sic] to show this potential write off in the actual Estimate 2002
- transactions in connection with this case should be kept at a minimum.
- therefore the asset stays in the SOUS books for the moment (September Closing as well as Estimate 2002 – see also original message below). No write off is being booked against this asset.

- this does not mean that SOAG is not taking over the position as well as the corresponding write off by the end of the year.
- Stephan Husi and Mr Kamber will decide in October 2002 per when the assets is [sic] going to be taken over and written off by SOAG.
- SOAG is mentioning and explaining the story behind this in its estimate-narratives (SOUS can do so as well)”

16. In compliance with instructions from Kamber, Husi and others, Hynson did not write off any of the \$3.4 million in costs related to the Global Supply Chain project throughout 2002. Hynson’s failure to write off these costs was improper because the asset was impaired.

17. As a result of the improper accounting treatment described above, Centerpulse falsely reported in an interim report for the third quarter of 2002 that it had earned approximately \$21.9 million in pretax income for the third quarter of 2002 instead of at most approximately \$18.5 million, an overstatement of at least 18 percent. That interim report was subsequently furnished to the Commission on November 12, 2002 in a Form 6-K.

E. LEGAL DISCUSSION

18. Exchange Act Section 13(b)(2)(A) requires issuers with securities registered under Exchange Act Section 12 to make and keep books, records and accounts that accurately and fairly reflect the transactions and dispositions of their assets. Exchange Act Section 13(b)(2)(B) requires such registrants to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP or any other criteria applicable to such statements, and to maintain the accountability of assets. Exchange Act Rule 13b2-1 prohibits any person from directly or indirectly falsifying or causing the falsification of any book, record, or account subject to Exchange Act Section 13(b)(2)(A). No showing of scienter is necessary to establish violations of these provisions. See, e.g., SEC v. McNulty, 137 F.3d 732, 740-41 (2d Cir.), cert. denied sub nom., Shanklin v. SEC, 525 U.S. 931 (1998).

19. Hynson violated Exchange Act Rule 13b2-1 and caused Centerpulse to violate Exchange Act Section 13(b)(2)(A) when he determined not to have the U.S. Orthopedics Division write off \$3.4 million in costs for the discontinued – and therefore impaired – European portion of the Global Supply Chain project. As a result, Centerpulse’s third quarter 2002 books and records were false because they continued to reflect the costs as an asset. Hynson’s determination not to have the U.S. Division write off these costs also constituted a failure to devise and maintain an adequate system of internal accounting controls at the U.S. Orthopedics Division which in turn caused Centerpulse to violate Exchange Act Section 13(b)(2)(B).

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:

Pursuant to Section 21C of the Exchange Act, Respondent Hynson cease and desist from committing or causing any violations and any future violations of Exchange Act Rule 13b2-1 and from causing any violations and any future violations of Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B).

By the Commission.

Florence E. Harmon
Acting Secretary