

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 59989 / May 27, 2009

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2979 / May 27, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13491

In the Matter of

Frank P. Sinopoli, CPA,

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 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 and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Frank P. Sinopoli, CPA ("Respondent" or "Sinopoli") pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.¹

¹ Rule 102(e)(1)(ii) 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 engaged in . . . improper professional conduct.

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, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 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 finds² that:

A. SUMMARY

These proceedings concern Frank P. Sinopoli, a partner with Perkins, Dexter, Sinopoli & Hamm, P.C. ("PDSH"), who audited the financial statements of Geo Securities, Inc. ("GSI") for the fiscal year ended July 31, 2005. GSI's financial statements were not prepared in conformity with generally accepted accounting principles ("GAAP") because they failed to include a material liability, a \$949,688 arbitrator's award, for which GSI was jointly and severally liable. Sinopoli engaged in improper professional conduct by failing to conduct PDSH's audit of GSI's financial statements in accordance with generally accepted auditing standards ("GAAS").

B. RESPONDENT AND RELATED ENTITIES

Frank P. Sinopoli, age 56, is a Dallas-based certified public accountant licensed in Texas. In 1980, Sinopoli joined the accounting firm of Perkins, Dexter, Sinopoli & Hamm, P.C., and became an owner in 1984. During the period relevant to this proceeding, Sinopoli supervised the services performed by Perkins, Dexter, Sinopoli & Hamm, P.C. for Geo Securities, Inc. These services included annual audits of the financial statements of Geo Securities, Inc.

Perkins, Dexter, Sinopoli & Hamm, P.C. is a Dallas-based public accounting firm licensed to practice in Texas. PDSH is not registered with the Public Accounting Oversight Board and audits no public companies.

Geo Securities, Inc. has been a broker-dealer registered with the Commission since September 24, 1998 (File No. 8-50862). GSI's sole business has been to the offer and sale of offerings sponsored by its parent, Geo Companies of North America, Inc. ("GCNA"). On

² 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.

January 10, 2006, after the FWRO Examination staff notified GSI of its net capital deficiency, GSI filed a Rule 17a-11 notice disclosing its violation of Rule 15(c)(3) of the Exchange Act and voluntarily terminated its securities business. On March 13, 2006, the NASD suspended GSI's registration for failure to file a financial report.

C. FACTS

1. **GSI Failed to Prepare its Financial Statements in Accordance with GAAP and Failed to Comply with Certain Broker-Dealer Net Capital and Books and Records Requirements**

a. **GSI Found Liable for Damages, Legal Fees and Costs by Arbitrator**

In June 2000, GSI, GCNA, and certain individuals were named as defendants in civil litigation alleging that they fraudulently offered and sold, without registration, joint venture partnership interests (the "Atlanta litigation").³ On January 9, 2004, the court in the Atlanta litigation issued an order enforcing a settlement agreement in which the defendants, including GSI, agreed to pay damages totaling \$217,220 (the "2004 Settlement") and required the parties to submit to binding arbitration to determine the amount of attorney's fees, if any, to be awarded to the plaintiffs. In the subsequent arbitration proceeding, the arbitrator, on April 27, 2005, entered an award in favor of the plaintiffs and against GSI, jointly and severally with the other defendants, in the amount of \$949,688 for legal fees and litigation costs (the "Arbitrator's award"). On July 15, 2005, the Arbitrator's award was entered as a judgment in the United States District Court for the Northern District of Georgia, Atlanta Division.

b. **GSI Failed to Record Liability Arising from Arbitrator's Award**

GSI's financial statements for the fiscal year ended July 31, 2005 were not prepared in conformity with GAAP because they failed to include a material liability for the Arbitrator's award. Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies* ("FAS 5") required GSI to accrue the Arbitrator's award as a liability. Paragraph 8 of FAS 5 requires that an estimated loss from a contingent liability be recorded when it is "probable that ... a liability has been incurred at the date of the financial statements" and the "amount of the loss can be reasonably estimated." Both of these conditions existed with respect to the Arbitrator's award by April 27, 2005, at the very latest. On that date, GSI's liability arising from the Atlanta litigation was probable. Similarly, GSI's loss could be reasonably estimated, as the Arbitrator's award quantified the exact dollar amount of litigation costs owed. Accordingly, GSI should have accrued the entire amount of the Arbitrator's award in its financial statements for periods ended

³ See *T.C. Woodworth, et al. v. Geo Securities, Inc., et al.*, No. 1:00-CV-1495-WBH (N.D. Ga. filed June 14, 2000), which was subsequently consolidated with *Leipman, et al. v. Geo Securities, Inc., et al.*, No. 1:02-CV-369-WBH (N.D. Ga. filed February 8, 2002).

after April 27, 2005, but failed to do so. Instead, GSI merely disclosed the existence and amount of the Arbitrator's award.

c. GSI Failed to Properly Maintain Books and Records and Required Net Capital and Failed to Make Required Notifications

As stated in the NASD Notice to Members No. 00-63, *Arbitration Awards*, an arbitration award, even if appealed, should be treated as an actual liability for the purposes of calculating net capital pursuant to Rule 15c3-1 under the Exchange Act. Contrary to this guidance, however, GSI elected to treat the Arbitrator's award as a contingent, rather than actual, liability for the purposes of computing its net capital. Had GSI properly recorded the Arbitrator's award as an actual liability, combined with its other liabilities, GSI's financial statements would have revealed a net capital deficiency of approximately \$1 million, placing GSI in violation of Rule 15c3-1 under the Exchange Act.

In addition, Section 17(a) of the Exchange Act and Rule 17a-3 thereunder require that every registered broker-dealer make and keep current books and records reflecting, among other things, the firm's liabilities and net capital computations. Rule 17a-5 under the Exchange Act also requires that broker-dealers registered with the Commission, such as GSI, file quarterly Financial and Operational Combined Uniform Single Report ("FOCUS") reports and annual audited financial statements. Implicit in these provisions is the requirement that information contained in required books, records, or filings be accurate. Rule 17a-11(b)(1) requires broker-dealers whose net capital declines below the minimum required pursuant to Rule 15c3-1 to give same-day notice to the Commission of this fact. Rule 17a-11(d) further requires broker-dealers who fail to make or keep current books and records required by Rule 17a-3 to give same-day notice to the Commission of this fact. Based on the conduct described above, GSI violated Section 17(a) of the Exchange Act and Rules 17a-3, 17a-5, and 17a-11 thereunder.

d. GSI Failed to Appropriately Record Expense Sharing Agreement With Its Parent Company

NASD Notice to Members No. 00-63 ("NASD Notice 00-63") states, "[p]ursuant to Exchange Act Rule 17(a)-3(a)(1) and (a)(2), a broker-dealer must make a record reflecting each expense incurred relating to its business and any corresponding liability, regardless of whether the liability is joint or several with any person and regardless of whether a third party has agreed to assume the expense or liability...One proper method is to record the expense in an amount that is determined according to an allocation made by the third party on a reasonable basis." Alternatively, NASD Notice 00-63 indicates a broker-dealer may maintain a separate schedule of allocated expenses and liabilities if such amounts are not recorded as a part of its general ledger. GSI had an expense sharing arrangement with its parent, GCNA. Under this agreement, GCNA agreed to pay rent, utilities, and certain other shared expenses. Neither GCNA nor GSI made any record allocating such expenses between GCNA and GSI. Moreover, GSI made no record of its share of costs related to the Atlanta litigation.

2. Sinopoli Engaged in Improper Professional Conduct

Sinopoli was the engagement partner responsible for planning and conducting PDSH's audit of GSI's financial statements for the years ended July 31, 2000 through 2005. GSI's financial statements for the year ended July 31, 2005, as filed with the Commission, contained an unqualified audit report representing that PDSH had conducted an audit in accordance with GAAS and that GSI's financial statements were presented in conformity with GAAP. Additionally, the 2005 GSI audit report states that PDSH had examined the supplemental information provided in Schedule 1 to the financial statements, *Computation of Net Capital Pursuant to Rule 15c3-1* ("Schedule 1") and that Schedule 1 was "fairly stated in all material respects in relation to the basic financial statements taken as a whole." In fact, Sinopoli did not conduct PDSH's audit of GSI's 2005 financial statements (the "2005 GSI audit") in accordance with GAAS, GSI's financial statements were not presented in conformity with GAAP, and Schedule 1 materially overstated GSI's net capital by approximately \$900,000.

Sinopoli failed to conduct the 2005 GSI audit in accordance with GAAS. Among other things, he failed to exercise professional skepticism and failed to obtain sufficient competent evidential matter to evaluate adequately and report properly the Arbitrator's award in GSI's financial statements. Furthermore, Sinopoli's work papers fail to evaluate GSI's ability to continue as a going concern. Nonetheless, Sinopoli signed, on behalf of PDSH, an audit report dated September 30, 2005 containing an unqualified opinion incorrectly claiming that PDSH's audit of GSI's July 31, 2005 financial statements had been conducted in accordance with GAAS. The opinion also incorrectly claims that GSI's audited financial statements present fairly, in all material respects, the financial position of GSI in conformity with GAAP.

As discussed in more detail below, Sinopoli engaged in improper professional conduct within the meaning of Rule 102(e)(1) by failing, in repeated instances, to comply with GAAS in performing PDSH's audit of GSI's financial statements for the year ended July 31, 2005.

a. Sinopoli Failed to Evaluate Adequately Litigation, Claims and Assessments

Sinopoli knew about the status of the Atlanta litigation and the existence of the Arbitrator's award at the time he planned and conducted the 2005 GSI audit. He also knew that a court order had been issued in 2004 enforcing a settlement agreement requiring the defendants, including GSI, to pay \$217,220 and requiring the parties to submit proposed legal fees and litigation costs to binding arbitration. Additionally, Sinopoli regularly assisted GSI in preparing its quarterly FOCUS reports (including reports due for the periods ended March 31, June 30, and July 31, 2005). Furthermore, Sinopoli learned in early May 2005 that the Arbitrator's award had been entered against GSI and assisted GSI's management at the time it concluded it should disclose, but not record, the Arbitration award as a liability on its balance sheet.

Sinopoli's planning work papers do not identify litigation, claims, and assessments as an area of significant audit risk. In fact, the Atlanta litigation represented a significant area of audit risk

that GSI's financial statements could be misstated. Sinopoli, however, neither identified the attorneys handling the Atlanta litigation nor requested that GSI send an audit inquiry letter to the law firm handling the Atlanta litigation. Instead, Sinopoli relied upon representations by GSI management regarding GSI's liability arising from the Arbitrator's award. By not corresponding with GSI's outside counsel, Sinopoli failed to obtain sufficient evidential matter, as required by GAAS, to corroborate management's representations regarding its ability to appeal the Arbitrator's award and the likelihood that the appeal would be successful, if made.⁴

Sinopoli also did not evaluate objectively whether GSI's disclosure of the Arbitrator's award conformed with GAAP. After the entry of the Arbitrator's award, GSI should have recorded the award as a liability pursuant to paragraph 8 of FAS 5. Sinopoli did not document any justification for not following FAS 5, other than GSI management's representations that it intended to appeal the Arbitrator's award. Sinopoli's reliance on GSI management's representations, however, was not sufficient for several reasons. First, the written representation repeated language from the prior year's representations without reference to the 2004 Settlement or the Arbitrator's award. Second, Sinopoli did not request written representations from either GSI's in-house counsel or GCNA's sole stockholder, who were both more knowledgeable and better situated than GSI's president to provide competent, reliable representations regarding the Atlanta litigation. Furthermore, Sinopoli knew or should have known that GSI's president did not have a basis to state, in management's letter of representation to PDSH, that "the loss, if any, resulting from the suits will be paid by our parent [GCNA], and therefore, will not have a material impact on the Company's financial position, results of operations, or cash flows in future years." Nonetheless, Sinopoli relied upon this representation without further inquiry. As both GCNA and its sole stockholder were also clients of PDSH, Sinopoli could have easily requested written representations.

b. Sinopoli Failed to Evaluate GSI as a Going Concern

Sinopoli also did not recognize that the Arbitration award raised substantial doubt about GSI's ability to continue as a going concern. He, thereby, failed to evaluate GSI's ability to continue as a going concern, failed to obtain additional information about the conditions raising the concerns and failed to evaluate management's plans for dealing with the adverse effects of the conditions raising the concerns, as required by GAAS.⁵ Sinopoli did not determine if GCNA or

⁴ AU§ 337, Inquiry of a Client's Lawyer Concerning Litigation, Claims and Assessments, paragraph .08 states:

A letter of audit inquiry to the client's legal counsel is the auditor's primary means of obtaining corroboration of the information furnished by management concerning litigation, claims, and assessments. Evidential matter obtained from the client's inside general counsel or legal department may provide the auditor with the necessary corroboration. However, evidential matter obtained from inside legal counsel is not a substitute for information outside counsel refuses to furnish.

⁵ AU § 341, *The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern*.

GCNA's sole stockholder (who were both, jointly and severally liable with GSI for the Arbitrator's award) was able or willing to fund GSI's liability. In fact, when GSI reported its net capital violation in January 2006, neither GCNA nor its sole stockholder intervened to cure the deficiency, causing GSI to cease operating its securities business.

c. Sinopoli Failed to Identify that GSI Did Not Make or Maintain Records Allocating Expenses under its Expense Sharing Arrangement

Sinopoli's planning work papers indicate that the AICPA's Audit and Accounting Guide for Brokers and Dealers in Securities (the "Audit Guide") was relevant to the 2005 GSI audit. Chapter 3 of the Audit Guide, *Regulatory Considerations*, in paragraphs 3.55 to 3.57 refers the auditor to NASD Notice 03-63, which addresses a broker-dealer's record keeping requirements when the broker-dealer has an expense sharing agreement, such as the arrangement between GSI and GCNA.⁶ Sinopoli, however, failed to identify that GSI did not make or maintain records showing reasonable allocations of rent, utilities, litigation and other expenses.

d. Sinopoli Failed to Identify GSI's Net Capital Deficiency

Finally, Sinopoli failed to identify GSI's net capital deficiency of approximately \$900,000 as of July 31, 2005. In planning the 2005 GSI audit, Sinopoli properly identified GSI's net capital requirements as a significant audit area. He was also familiar with Rule 15c3-1 of the Exchange Act and referred to this rule during the 2005 GSI audit. Additionally, Sinopoli examined the supplemental information provided in Schedule 1 to GSI's financial statements, *Computation of Net Capital Pursuant to Rule 15c3-1*, as a part of the 2005 GSI audit. Nonetheless, Sinopoli signed PDSH's audit report stating that the computation of net capital requirements was "fairly stated in all material respects in relation to the basic financial statements taken as a whole," when, in fact, it was not. Because Sinopoli failed to identify GSI's improper accounting, Sinopoli failed to identify that GSI's 2005 net capital computation was materially misstated.

3. Violations

a. Sinopoli Caused GSI's Violations of Section 15(c)(3) of the Exchange Act and Rule 15c3-1

Section 15(c)(3) of the Exchange Act prohibits brokers or dealers from inducing the purchase or sale of securities while in contravention of Rule 15c3-1, which requires that every broker or dealer shall at all times have and maintain certain minimum net capital requirements. Rule 15c3-1 requires a broker-dealer to maintain a certain minimum ratio of net capital to

⁶ NASD Notice 03-63 also reiterates the guidance contained in NASD Notice 00-63 that and adverse arbitration awards must be booked as an actual liability at the time of the award regardless if appealed. Sinopoli, however, was unaware of guidance published by the NASD in its Notice to Members No. 00-63 regarding arbitration awards.

aggregate indebtedness so that the broker-dealer's assets will be sufficiently liquid to enable it to meet all of its current obligations.

As a result of its conduct as described above, GSI violated Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder. As a result of his conduct described above, Sinopoli caused, under Section 21C of the Exchange Act, GSI's violations of Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder.

b. Sinopoli Caused GSI's Violations of Section 17(a) of the Exchange Act and Rules 17a-3, 17a-5 and 17a-11 thereunder

Section 17(a) of the Exchange Act and Rule 17a-3 thereunder require that every registered broker-dealer make and keep current books and records reflecting, among other things, the firm's liabilities and net capital computations. Rule 17a-5 requires that a broker-dealer registered with the Commission, such as GSI, file quarterly FOCUS reports with its designated examining authority and annual audited financial statements with the Commission. Implicit in these provisions is the requirement that information contained in required books, records, or filings be accurate. Rule 17a-11(b)(1) requires such broker-dealers whose net capital declines below the minimum required pursuant to Rule 15c3-1 to give notice to the Commission of this fact that day. Rule 17a-11(d) further requires broker-dealers who fail to make or keep current books and records required by Rules 17a-3 to give notice to the Commission of this fact the same day, specifying the books and records which have not been made or which are not current.

As a result of its conduct described above, GSI violated Section 17(a) of the Exchange Act and Rules 17a-3, 17a-5, and 17a-11 thereunder. As a result of his conduct described above, Sinopoli caused, under Section 21C of the Exchange Act, GSI's violations of Section 17(a) of the Exchange Act and Rules 17a-3, 17a-5 and 17a-11 thereunder.

4. Findings

a. Based on the foregoing, the Commission finds that Sinopoli engaged in improper professional conduct pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

b. Based on the foregoing, the Commission finds that Sinopoli caused GSI's violations of Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-1, 17a-3, 17a-5, and 17a-11 promulgated thereunder.

IV.

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

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

A. Sinopoli shall cease and desist from causing any violations and any future violations of Sections 15(c)(3) and 17(a) of the Exchange Act, and Rules 15c3-1, 17a-3, 17a-5, and 17a-11 promulgated thereunder;

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

C. After one year from the date of this order, Respondent may request that the Commission consider his 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 his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he 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 he 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 he 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 his 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.

D. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he 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.

Elizabeth M. Murphy
Secretary