

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933  
Release No. 9166 / December 20, 2010

SECURITIES EXCHANGE ACT OF 1934  
Release No. 63579 / December 20, 2010

ACCOUNTING AND AUDITING ENFORCEMENT  
Release No. 3221 / December 20, 2010

ADMINISTRATIVE PROCEEDING  
File No. 3-14167

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In the Matter of	:	<b>ORDER INSTITUTING PUBLIC</b>
	:	<b>ADMINISTRATIVE AND CEASE-AND-</b>
MOORE STEPHENS WURTH	:	<b>DESIST PROCEEDINGS PURSUANT</b>
FRAZER & TORBET LLP	:	<b>TO SECTION 8A OF THE</b>
	:	<b>SECURITIES ACT OF 1933 AND</b>
and	:	<b>SECTION 4C OF THE SECURITIES</b>
	:	<b>EXCHANGE ACT OF 1934 AND RULE</b>
K. DEAN YAMAGATA, CPA,	:	<b>102(e) OF THE COMMISSION'S</b>
	:	<b>RULES OF PRACTICE, MAKING</b>
Respondents.	:	<b>FINDINGS, AND IMPOSING</b>
	:	<b>REMEDIAL SANCTIONS AND A</b>
	:	<b>CEASE-AND-DESIST ORDER</b>

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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 pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 4C<sup>1</sup> of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) of

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<sup>1</sup> Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others. . . ; (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

the Commission's Rules of Practice<sup>2</sup> against Moore Stephens Wurth Frazer & Torbet LLP and Kerry Dean Yamagata (collectively, "Respondents").

## II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") 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 themselves and over the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 4C 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 Respondents' Offers, the Commission finds<sup>3</sup> that

### Summary

1. This matter concerns Respondents' improper professional conduct in connection with annual audits and quarterly reviews of the financial statements of China Energy Savings Technology, Inc. ("China Energy") in 2004 and 2005, and Respondents' violation of the document retention requirements of Regulation S-X. China Energy materially overstated its Earnings Per Share ("EPS") in its fiscal year ("FY") 2004 annual report. China Energy also materially overstated its revenues and net income in its FY 2005 annual report and two quarterly reports. Respondents failed to conduct the relevant audits and reviews in accordance with the standards and rules of the Public Company Accounting Oversight Board ("PCAOB"). Although Respondents determined that the China Energy engagement involved high risks, Respondents did not exercise professional skepticism and due professional care, and Respondents otherwise violated professional standards. Respondents issued unqualified audit opinions, which were included in China Energy's FY 2004 and 2005 annual reports. Respondents also issued interim review reports which contained no reservations, before China Energy filed its quarterly reports in FY 2005.

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<sup>2</sup> Rule 102(e)(1)(ii) provides, in pertinent part, that:

The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in unethical or improper professional conduct.

<sup>3</sup> The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

## **Respondents**

2. Moore Stephens Wurth Frazer & Torbet, LLP (hereinafter “MSWFT”) is a public accounting firm registered with the PCAOB and located in Orange County, California. MSWFT served as China Energy’s auditor for the fiscal years ended September 30, 2004 and September 30, 2005, and also reviewed the quarterly financial statements of China Energy for the periods December 31, 2004 through December 31, 2005.

3. Kerry Dean Yamagata, CPA, age 53, is a partner at MSWFT and was the engagement partner for MSWFT’s China Energy engagements. As such, Yamagata exercised final authority on all significant decisions relating to MSWFT’s China Energy audits and reviews. Yamagata is a Certified Public Accountant, licensed in California, and a resident of Chino Hills, California.

## **Other Relevant Entity**

4. China Energy Savings Technology, Inc. is a Nevada shell corporation. In 2004 and 2005, China Energy indirectly acquired ownership of Shenzhen Dicken Industrial Development, Ltd. (“Dicken Industrial”), a company located in the People’s Republic of China (“PRC”) that claimed to manufacture and sell energy savings equipment. China Energy was listed on the NASDAQ National Market System between April 2005 and February 2006. In September 2006, the Commission instituted administrative proceedings pursuant to Section 12(j) of the Exchange Act against China Energy. China Energy did not answer the order instituting proceedings and the registration of its securities with the Commission was revoked in December 2006. On December 4, 2006, the Commission filed a civil injunctive action against China Energy, a Chinese national named Chiu Wing Chiu (“Chiu”) and certain other entities and individuals, alleging violations of the antifraud and registration provisions of the federal securities laws. In March 2009, the U.S. District Court for the Eastern District of New York entered a final judgment in that litigation that permanently enjoined China Energy, Chiu, and the other liability defendants from violations of the antifraud and registrations provisions and ordered the payment of various penalties and approximately \$35 million in disgorgement and interest, and certain other ancillary relief. In July 2009, in granting summary judgment to the Commission against the relief defendants in the litigation, the U.S. District Court found that the relief defendants were Chiu’s nominees and that Chiu was an owner of China Energy and had exercised control over China Energy.

## Facts

### **Respondents Encounter Audit Conditions That Should Have Caused Them to Exercise Heightened Skepticism**

5. In 2004, as required by PCAOB standards, MSWFT conducted an initial assessment of the risks associated with the China Energy engagement. AU § 312, *Audit Risk and Materiality in Conducting an Audit*; AU § 316, *Consideration of Fraud in a Financial Statement Audit*. The audit team rated the risks relating to improper revenue recognition, management override of controls and overstated assets as “high.” The team also concluded that revenue recognition was “the key issue” in the engagement.

6. Throughout the engagement, Yamagata and the MSWFT team were aware of significant problems with China Energy’s internal controls. During the FY 2004 audit, MSWFT tested China Energy’s internal controls over sales and over cash receipts and disbursements, and the team concluded that those controls were not operating effectively and could not be relied upon. In its Form 10-K for FY 2005, China Energy’s management reported that it was unable to complete its assessment of internal control over financial reporting, and MSWFT disclaimed an opinion on the effectiveness of such controls.

7. During the engagement, Respondents learned information that contradicted China Energy’s disclosures in its annual reports. China Energy claimed in its filings that Dicken Industrial’s operations were located on a single floor of a building in Shenzhen, PRC. When the audit team arrived at that location to begin their audit field work for FY 2004, however, none of Dicken Industrial’s inventory was at the site. Only inventory belonging to a much smaller research and development subsidiary was on site. Instead, the company claimed that Dicken Industrial’s inventory was actually in three other locations, including two cities hundreds of miles from Shenzhen.

8. MSWFT also encountered difficulties in conducting certain audit procedures and relied on affiliates to complete material aspects of the audit work. The MSWFT audit team was unable to observe inventory or obtain bank or customer confirmations when it arrived in Shenzhen to conduct the FY 2004 audit field work. After the team returned to the U.S., MSWFT hired personnel from an affiliated Beijing firm to observe Dicken Industrial’s inventory and obtain bank confirmations. The same Beijing affiliate performed inventory observation and obtained bank confirmations for the FY 2005 audit.

### **China Energy Misstates EPS in FY 2004.**

9. China Energy materially overstated EPS in its annual report for FY 2004. At the time, China Energy lacked accounting personnel trained in U.S. Generally Accepted Accounting Principles (“GAAP”) and was unable to complete an EPS calculation. At China Energy’s request, MSWFT prepared the initial EPS calculation. In making the calculation, however, a MSWFT accountant used the wrong number of shares (7.8 million shares, instead of 11.3 million), which had the effect of overstating EPS by \$0.15, or approximately 41%. Yamagata reviewed the draft calculation but did not identify the error.

10. China Energy adopted the EPS calculation without change and included the overstated EPS in the company's annual report on Form 10-KSB for FY 2004 filed on January 15, 2005. In June 2005, in response to questions from the Division of Corporation Finance, the error was identified and China Energy filed an amended Form 10-KSB for FY 2004 that restated EPS from \$0.51 to \$0.36.

### **China Energy Recognizes Revenues Improperly In FY 2005.**

11. In FY 2005, China Energy reported total revenues of Rmb 391.5 million. Over 50% of these revenues (Rmb 200.5 million) derived from transactions with four customers, and were booked in the last three quarters of the FY. China Energy prematurely recognized revenue from two of the customers and improperly recognized revenue from the remaining two customers, causing China Energy's financial statements to be materially false and misleading for the quarters ended March 31, 2005 and June 30, 2005, and for the FY ended September 30, 2005. MSWFT questioned China Energy about this revenue recognition during the March 31 quarterly review and during the FY 2005 year-end audit. Yamagata, however, acquiesced in China Energy's improper revenue recognition and accepted the company's explanations, even though those explanations were inconsistent with the company's prior representations and with contracts and other company records.

12. China Energy claimed to sell its products under two types of contracts. For ordinary sales, the customer agreed to pay, and China Energy recognized revenue, upon shipment. For "Energy Savings" contracts, China Energy and the customer first signed a preliminary agreement. China Energy then delivered, installed and tested its product. The customer and China Energy then signed a final agreement, in which the customer agreed to pay China Energy on a monthly basis, based on the expected "Energy Savings" from the equipment supplied by China Energy. China Energy disclosed in its annual reports that it recognized revenue for Energy Savings contracts only on execution of the final agreement.

13. During the quarter ended March 31, 2005, China Energy recognized revenue of Rmb 79 million from two customers located in the cities of Chongqing and Hangzhou, which was 85% of China Energy's total revenues for the quarter. China Energy told MSWFT that these transactions were Energy Savings contracts. During the quarterly review, MSWFT questioned China Energy about the transactions and China Energy continued to maintain that these were Energy Savings contracts. When MSWFT sought to obtain documentation, however, China Energy was unable to produce final customer agreements to pay or other documentation indicating that revenue recognition was proper. After MSWFT advised China Energy that it could not recognize the revenue, China Energy claimed, for the first time, that the transactions were ordinary sales and revenue could be recognized upon shipment. China Energy provided to MSWFT copies of shipping documents that it claimed were also sales contracts for these customers. Instead of continuing to insist on seeing copies of the contracts or other underlying documentation showing that the revenue was properly booked, Yamagata asked the company to add a statement to its management representation letter that the transactions were regular sales contracts. MSWFT then gave China Energy an interim review report that contained no reservations. On May 23, 2005, China Energy filed a Form 10-QSB for the quarter ended March 31, 2005, which included revenues of Rmb 79 million, as ordinary sales.

14. During the FY 2005 audit, MSWFT obtained the testing records and the agreements to pay for these customers, showing that both transactions were in fact Energy Savings contracts, and therefore that it was premature and improper for China Energy to have recognized the revenue on those transactions in the quarter ended March 31. Based on the dates on the documents MSWFT obtained, the Chongqing revenues should not have been recognized until the quarter ended June 30, and the Hangzhou revenues should not have been recognized until the September 30 fiscal year end.

15. During the quarter ended June 30, 2005, China Energy recognized new Energy Savings revenues of Rmb 69 million. This was 87% of the total revenues recognized by China Energy that quarter and included additional revenues from the Hangzhou customer (Rmb 29.9 million) and revenues from two new Energy Savings contracts for customers located in the cities of Xinjiang (Rmb 23.3 million) and Shanghai (Rmb 15.8 million). During MSWFT's quarterly review, China Energy informed MSWFT that the Chongqing and Hangzhou ordinary sales contracts from the previous quarter now had been converted into Energy Savings contracts. MSWFT asked no questions concerning either the "conversion" or the new Energy Savings revenues recognized during the quarter, and MSWFT provided China Energy with an interim review report for the quarter that contained no reservations. On August 22, 2005, China Energy filed a Form 10-QSB for the quarter ended June 30, 2005; the quarterly financial statements included the Rmb 69 million in Energy Savings revenues. As noted above, the Hangzhou revenues should not have been recognized until year-end. No testing documents or agreements to pay are known to exist for the other two customers, and therefore the Xinjiang and Shanghai revenues should not have been recognized at all.

16. During the final quarter of FY 2005, China Energy recognized an additional Rmb 52.5 million in Energy Savings revenues from the Xinjiang and Shanghai customers. This amount was 41% of the total revenues recognized by China Energy that quarter.

17. During the FY 2005 audit, MSWFT identified the Xinjiang and Shanghai revenue as a problem and advised China Energy that it needed to provide sufficient written documents and explanation to support revenue recognition. China Energy responded that, as of November 21, 2005 (over seven weeks after the end of the FY), installation of the equipment was "most[ly] completed," which indicated that the company had not completed the steps necessary to recognize the revenue under its disclosed policy (i.e., completion of installation and testing and execution of final agreements to pay by the customers). According to MSWFT's email records, during the audit MSWFT received a 17-page fax from China Energy containing further explanation of China Energy's reasons for recognizing revenue from the Xinjiang and Shanghai transactions. MSWFT did not retain the fax in its workpapers or other files. Email records indicate that MSWFT continued to have significant concerns regarding the Xinjiang and Shanghai transactions after reviewing the fax. China Energy never provided documentation that the equipment purportedly delivered to Xinjiang and Shanghai had been tested or that these customers had entered into a final agreement to pay. Without evidence of such agreement, it was improper for China Energy to recognize any revenues from the Xinjiang and Shanghai customers. Nevertheless, Yamagata allowed China Energy to recognize total revenues of Rmb 91.6 million for FY 2005 from these two customers. On December 20, 2005, China Energy filed a Form 10-K for FY 2005, which contained China Energy's audited financial statements for FY 2005. These financial statements included the Energy Savings revenues as described above.

Also included in the Form 10-K was MSWFT's audit report, which was unqualified, except for the disclaimer as to internal controls.

### **Legal Standards and Analysis**

18. Section 4C of the Exchange Act and Rule 102(e)(1)(ii) provide that the Commission may temporarily or permanently deny an accountant the privilege of appearing or practicing before it if it finds, after notice and opportunity for hearing, that the accountant engaged in improper professional conduct. Under Section 4C(b) of the Exchange Act and Rule 102(e)(1)(iv), improper professional conduct includes negligent conduct in the form of repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.

19. The applicable professional standards of care for accountants practicing before the Commission include, but are not limited to, Article 2 under Regulation S-X (17 C.F.R. § 210.2-01 et. seq.) and the standards and rules of the PCAOB. The standards of care may overlap, and one failure may constitute or contribute to another.

20. Certain conditions require auditors to exercise heightened skepticism, AU § 316.46; *In re Gregory M. Dearlove, CPA, Exch. Act Rel. No. 57244*, p. 8 (Jan. 31, 2008). This was true in this case after Respondents: (i) concluded that the risks of the China Energy engagement were high as to significant accounts; (ii) concluded that China Energy's internal controls were not operating effectively and could not be relied upon; (iii) became aware of facts concerning inventory and operations which, although not materially inconsistent with financial statement assertions, contradicted China Energy's public disclosures; and (iv) encountered difficulties in conducting important audit procedures. Nevertheless, Respondents Yamagata and MSWFT violated applicable professional standards by failing to: (i) obtain sufficient competent evidential matter regarding Energy Savings revenues through inspection, observation, inquiries, and confirmations to afford a reasonable basis for MSWFT's opinion regarding the FY 2005 financial statements of China Energy, as required by AU § 326.01, *Evidential Matter*; (ii) exercise professional skepticism and due professional care regarding Energy Savings revenues in the performance of the audit of China Energy for FY 2005, as required by AU § 230.01, *Due Professional Care in the Performance of Work*, and AU § 230.07; (iii) document significant findings or issues, actions taken to address them (including additional evidence obtained), and the basis for the conclusions reached in the FY 2005 audit, as required by PCAOB Auditing Standard No. 3, *Audit Documentation*, paragraph 12; (iv) properly supervise assistants, including assistants engaged from outside the firm, in the FY 2004 audit of China Energy, as required by AU § 311.01, *Planning and Supervision*; and (v) ensure the independence of MSWFT in connection with the audit of EPS in FY 2004, as required by Regulation S-X and AU §§ 150.02, paragraph 2, *Generally Accepted Auditing Standards*, 220 *Auditor Independence*.

21. Respondents Yamagata and MSWFT further violated applicable professional standards in reviewing the financial statements of China Energy for the quarters ended March 31, 2005 and June 30, 2005. Respondents Yamagata and MSWFT became aware of information concerning significant sales transactions that gave them cause to believe that the information in

the interim financial statements may not have been in conformity with GAAP in all material respects, AU § 722.22, *Interim Financial Information*; nevertheless Respondents failed to perform additional interim review procedures, such as reading the sales contracts or discussing the transactions with senior marketing personnel, AU § 722.22. Respondents also failed to consider the reasonableness and consistency of management's response to inquiries concerning the significant sales transactions, AU § 722.17.

22. Rule 2-06 under Regulation S-X provides that for a period of seven years after an accountant concludes an audit or review of an issuer's financial statements, the accountant shall retain records relevant to the audit or review, including workpapers and other documents that form the basis of the audit or review, and memoranda, correspondence, communications, other documents and records (including electronic records), which:

- A. Are created, sent or received in connection with the audit or review, and
- B. Contain conclusions, opinions, analyses, or financial data related to the auditor or review.

The rule requires that such documents shall be retained whether they support the auditor's final conclusions regarding the audit or review, or contain information or data, relating to a significant matter, that is inconsistent with the auditor's final conclusions regarding that matter or the audit or review. Nevertheless, Respondents failed to retain correspondence received from China Energy which contained conclusions and opinions relating to significant revenue recognition issues.

23. Rule 2-01(c)(4)(i) under Regulation S-X provides that an accountant is not independent if, at any point during the audit and professional engagement period, the accountant provides non-audit services to an audit client, including any bookkeeping or other service related to the accounting records or financial statements of the audit client, unless it is reasonable to conclude that the results of these services will not be subject to audit procedures during an audit of the audit client's financial statements. Rule 2-02(b) under Regulation S-X requires the accountant's report to state whether the audit was made in accordance with generally accepted auditing standards ("GAAS"), which require that the accountant be independent of the client. "[R]eferences in Commission rules and staff guidance and in the federal securities laws to GAAS or to specific standards under GAAS, as they relate to issuers, should be understood to mean the standards of the PCAOB . . ." *SEC Release No. 34-49708*. Respondent MSWFT's independence from China Energy was impaired under Rule 2-01(c)(4)(i) due to the firm's preparation of an EPS calculation that was subject to audit procedures by MSWFT in connection with the audit of China Energy's FY 2004 financial statements. Nevertheless, MSWFT violated Rule 2-02(b) by stating incorrectly in its audit report that the audit was performed in accordance with the standards of the PCAOB. Respondent Yamagata was a cause of such violation.



## **Findings**

24. Based on the foregoing, the Commission finds that Respondents Yamagata and MSWFT engaged in improper professional conduct pursuant to Section 4C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

25. Based on the foregoing, the Commission finds that Respondents Yamagata and MSWFT violated Rule 2-06 under Regulation S-X (17 C.F.R. § 210.2-06).

26. Based on the foregoing, the Commission finds that Respondent MSWFT violated Rule 2-02(b) under Regulation S-X (17 C.F.R. § 210.2-02(b)) and that Respondent Yamagata was a cause of such violation.

## **Undertakings**

### **MSWFT Shall Retain an Independent Consultant**

27. MSWFT has undertaken to retain, within thirty days after the entry of this Order, an independent consultant ("Independent Consultant"), not unacceptable to the Commission staff. The Independent Consultant will review and evaluate the audit and interim review policies and procedures of MSWFT regarding: (i) training in client fraud detection; (ii) auditor independence; (iii) client acceptance and retention; (iv) document retention; (v) use of and supervision of affiliate firms and personnel (taking into consideration PCAOB Staff Audit Practice Alert No. 6, dated July 12, 2010); (vi) third party confirmations; (vii) work paper sign-off and dating; and (viii) audit committee communications. The Independent Consultant's review and evaluation will assess the foregoing areas to determine whether MSWFT's policies and procedures are adequate and sufficient to ensure compliance with Commission regulations and with PCAOB standards and rules. MSWFT will cooperate fully with the Independent Consultant and will provide reasonable access to firm personnel, information, and records as the Independent Consultant may reasonably request for the Independent Consultant's reviews and evaluations. MSWFT will provide to the Commission staff a copy of the engagement letter detailing the scope of the Independent Consultant's responsibilities.

28. Within sixty days of being retained, the Independent Consultant will issue a written report ("Report") to MSWFT: (a) summarizing the Independent Consultant's review and evaluation; and (b) making recommendations, where appropriate, reasonably designed to ensure that audits conducted by MSWFT comply with Commission regulations and with PCAOB standards and rules. The Independent Consultant will provide a copy of the Report to the Commission staff and the PCAOB staff when the Report is issued.

29. MSWFT will adopt, as soon as practicable, all recommendations of the Independent Consultant in the Report. Provided, however, that within thirty days of issuance of the Report, MSWFT may advise the Independent Consultant in writing of any recommendation that it considers to be unnecessary, unduly burdensome, or impractical. MSWFT need not adopt any such recommendation at that time, but instead may propose in writing to the Independent Consultant and the Staff an alternative policy or procedure designed to achieve the same objective or purpose. MSWFT and the Independent Consultant will engage in good-faith negotiations in an effort to reach agreement on any recommendations objected to by MSWFT.

In the event that the Independent Consultant and MSWFT are unable to agree on an alternative proposal within thirty days, MSWFT will abide by the determinations of the Independent Consultant.

30. Within sixty days of issuance of the Report, but not sooner than thirty days after a copy of the Report is provided to the Commission staff, MSWFT will certify to the Staff in writing that it has adopted and has implemented or will implement all recommendations of the Independent Consultant (“Certification of Compliance”). MSWFT will provide a copy of the Certification of Compliance to the PCAOB staff.

31. MSWFT will not accept any new issuer audit clients with operations located in the People's Republic of China, the Hong Kong Special Administrative Region, and Taiwan, between the date of this Order and the issuance of the Certification of Compliance.

32. Six months after issuance of the Certification of Compliance, the Independent Consultant will undertake a follow-up review and evaluation of MSWFT’s compliance with the matters certified. Within thirty days after the completion of the follow-up review and evaluation, the Independent Consultant will issue a supplemental written report to MSWFT certifying the firm’s compliance, describing any matters on which the Independent Consultant is unable to certify compliance, and making recommendations, where appropriate, reasonably designed to ensure that audits of MSWFT comply with Commission regulations and with PCAOB standards and rules. The Independent Consultant will provide a copy of the supplemental report to the Commission staff and to the PCAOB staff.

33. Upon request, and for good cause shown, the Commission staff may extend any of the above procedural dates.

34. MSWFT will require the Independent Consultant to enter into an agreement that provides that, for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with MSWFT, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division of Enforcement, enter into any employment, consultant, attorney-client, auditing or other professional relationship with MSWFT, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

35. MSWFT shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, D.C. 20549-5720B SP2, with a copy to the

Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

#### IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Yamagata's and Respondent MSWFT's Offers.

Accordingly, pursuant to Section 8A of the Securities Act and Section 4C of the Exchange Act and Rule 102(e) of the Commission's Rules of Practice, it is hereby ORDERED that:

A. Respondents Yamagata and MSWFT cease and desist from committing or causing any violations and any future violations of Rules 2-02(b) and 2-06 under Regulation S-X (17 C.F.R. §§ 210.2-02(b) and 210.2-06);

B. Respondent MSWFT is censured;

C. Respondents MSWFT and Yamagata, jointly and severally, shall, within thirty days of the entry of this Order, pay disgorgement of audit fees of \$100,000 and prejudgment interest of \$29,500. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies MSWFT and Yamagata as Respondents in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Antonia Chion, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, D.C. 20549-5720B SP2;

D. Respondent Yamagata is denied the privilege of appearing or practicing before the Commission as an accountant;

E. After two years from the date of this order, Respondent Yamagata 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 Yamagata'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 Yamagata, or the public accounting firm with which he is associated, is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent Yamagata, or the registered public accounting firm with which he is associated, has been inspected by the PCAOB 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 Yamagata has resolved all disciplinary issues with the PCAOB, and has complied with all terms and conditions of any sanctions imposed by the PCAOB (other than reinstatement by the Commission); and

(d) Respondent Yamagata 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 PCAOB, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

F. The Commission will consider an application by Respondent Yamagata 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 Yamagata's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Elizabeth M. Murphy  
Secretary

## Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 4C 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"), on the Respondents and their legal agents.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray  
Chief Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557

Patrick L. Feeney, Esq.  
U.S. Securities and Exchange Commission  
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(Counsel for Kerry Dean Yamagata and Moore Stephens Wurth Frazer and Torbet LLP)