

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, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting 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. Byrd, age 49, is and has been a certified public accountant licensed to practice in the State of California, and his license has lapsed. From approximately May 1999 until May 2001, he served as Chief Financial Officer of Brocade Communications Systems, Inc. (“Brocade”), and then became Brocade’s Chief Operating Officer from May 2001 until January 2003.

2. Brocade has been, at all relevant times, a Delaware corporation which develops and sells storage networking products, with its principal place of business in San Jose, California. Since May 1999 when it completed its initial public offering of stock, Brocade had common stock 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 August 17, 2007, the Commission filed a complaint against Byrd in the United States District Court for the Northern District of California. *SEC v. Byrd*, No. C-07-4223-CRB. On February 3, 2010, the Court entered an order enjoining Byrd, by consent, from future violations of Sections 17(a)(2) and (3) of the Securities Act of 1933 (“Securities Act”), Sections 13(b)(5) and 16(a) of the Exchange Act, and Rules 13b2-1, 13b2-2, and 16a-3 thereunder, and from 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, and 13a-13 thereunder. Byrd was also ordered to pay disgorgement of \$225,000 plus prejudgment interest thereon in the amount of \$24,843, for a total amount of \$249,843, and a \$175,000 civil money penalty.

4. The Commission’s complaint alleged, among other things, that Brocade concealed millions of dollars in expenses from investors and overstated its income through a scheme executed by its Chief Executive Officer to backdate employee stock options. The complaint further alleged that at various times during his tenure at Brocade, Byrd was consulted on options grants, and, as a result, should have fully investigated to determine whether Brocade’s financial statements accurately reflected the necessary compensation expenses, as required under generally accepted accounting principles.

IV.

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

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

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

B. After three years 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.

C. 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