

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 64025 / March 3, 2011

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3249 / March 3, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14283

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In the Matter of	:	ORDER INSTITUTING ADMINISTRATIVE
	:	PROCEEDINGS PURSUANT TO RULE
S. BLAIR ABERNATHY, CPA,	:	102(e) OF THE COMMISSION’S RULES OF
	:	PRACTICE, MAKING FINDINGS, AND
	:	IMPOSING REMEDIAL SANCTIONS
Respondent.	:	
	:	

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against S. Blair Abernathy (“Respondent” or “Abernathy”) pursuant to Rule 102(e)(3)(i) of the Commission’s Rules of Practice.¹

¹ Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

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. Abernathy, age 49, is a resident of La Verne, California. Abernathy was IndyMac Bancorp, Inc.’s (“IndyMac”) CFO from April 25, 2008 to July 2008. Abernathy was IndyMac Bank, F.S.B.’s (“IndyMac Bank”) executive vice president in charge of four Bank groups: Capital Markets (November 2007 to April 25, 2008); Specialty Lending (March 2007 to November 2007); Investment Portfolio (2004 to March 2007); and Secondary Marketing (1994 to 2004). Abernathy was licensed as a CPA in California until 2003.

2. IndyMac was a Delaware corporation with its principal executive offices in Pasadena, California. IndyMac’s common stock was registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 and traded on the New York Stock Exchange until it was delisted on August 18, 2008. On July 31, 2008, IndyMac filed for Chapter 7 bankruptcy.

3. On February 11, 2011, the Commission filed a complaint against Abernathy in SEC v. Abernathy, Civil Action No. CV 11-1308-JFW (SSx), in the United States District Court for the Central District of California. On February 17, 2011, a final judgment was entered against Abernathy, permanently enjoining him from future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§ 77q(a)(2) & (a)(3).

4. The Commission’s complaint alleged, among other things, that in 2007 Abernathy negligently made materially false and misleading statements in the offer and sale of six IndyMac Bank mortgage-backed securities offerings regarding the quality of the residential mortgage loans underlying the offerings. In addition, the Commission’s complaint alleged that Abernathy negligently made false and misleading statements regarding IndyMac’s capital and liquidity position in its common stock prospectus filed on May 2, 2008. The complaint alleged that Abernathy, by his conduct, violated Sections 17(a)(2) and 17(a)(3) of the Securities Act.

IV.

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

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

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

B. After two (2) 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