UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 70448 / September 18, 2013

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3487 / September 18, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15502

In the Matter of

MEDIFAST, INC.

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 AND A CIVIL PENALTY

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 Medifast, Inc. ("Medifast," "the Company," or "Respondent").

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 it 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 and a Civil Penalty ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[1] that:

Summary

1. In March 2010, Medifast restated its financial statements for 2006, 2007, and 2008 ("2010 Restatement"). The 2010 Restatement was required because Medifast had improperly accounted for its income tax provision for the affected years, which resulted in material understatements of its income tax expense and material overstatements of its net income after tax. Medifast's inaccurate financial statements resulted in part from improper accounting that did not comply with generally accepted accounting principles ("GAAP"), and from a deficient system of internal controls that failed to ensure the appropriate recording and reporting of its income tax expense.

2. Soon after its 2010 Restatement, Medifast engaged a new auditing firm. During Medifast's 2010 audit, this firm identified additional material errors related to Medifast's revenue recognition and expense recognition accounting. In April 2011, Medifast restated its financial statements for 2008 and 2009 to correct material misstatements of its revenue and expenses for those years ("2011 Restatement"). These material misstatements also resulted from improper accounting that did not comply with GAAP, and from a deficient system of internal controls that failed to ensure the appropriate recording and reporting of Medifast's revenue and expenses.

3. Medifast's improper accounting practices and internal controls deficiencies resulted in Medifast filing periodic reports with the Commission for the years 2006 through 2009 which materially overstated its income and understated its expenses. As a result, Medifast violated Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder.

Respondent

4. Medifast, Inc. is a Delaware corporation headquartered in Owings Mills, Maryland. Through its operating subsidiaries, Medifast manufactures, distributes, and sells weight loss and other health and diet products and supplements. Medifast's common stock is registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and trades on the New York Stock Exchange.

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[1] 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.

Facts

5. As a public company, Medifast is required to fairly, accurately, and timely report its financial results and condition. To ensure fair and accurate reports, the federal securities laws and the Commission's regulations require public companies such as Medifast to prepare and present their reports and financial statements in conformity with GAAP. Financial statements filed with the Commission that are not prepared in accordance with GAAP are presumed to be misleading or inaccurate.[2] Medifast represented in its Commission filings that its financial statements complied with GAAP in all material respects.

The 2010 Restatement

6. On March 31, 2010, Medifast filed its Form 10-K for the year ended December 31, 2009 and restated its financial statements for the years ended December 31, 2006, 2007, and 2008. This restatement was required to correct material errors in the Company's reported income tax expense that were caused by the Company's failure to account for its income tax provision in conformity with Statement of Financial Accounting Standards 109, *Accounting for Income Taxes* (FAS 109), and GAAP.

The Accounting Standard

7. FAS 109 establishes standards for companies to account for and report the effects of income taxes.[3] Due to differences between tax laws and accounting standards for financial statements, some events are recognized for financial reporting purposes and for tax purposes in different years. This can give rise to temporary differences between the tax bases of assets or liabilities and their reported amounts in financial statements. The differences are temporary because the event will become taxable or deductible when the related asset is recovered or the related liability is settled. These temporary differences, or deferred taxes, are accounted for under FAS 109 using an asset and liability approach. A deferred tax asset exists when temporary differences will result in deductible amounts in future years. A deferred tax liability exists when temporary differences will result in taxable amounts in future years. Under FAS 109, a company must recognize both a current tax liability or asset for the amount of taxes payable or refundable for the current year, and a deferred tax liability or asset for the estimated future tax effects attributable to temporary differences.

[2] Regulation S-X, 17 C.F.R. 210.4-01(a)(1).

[3] Upon the codification of GAAP, which became effective for periods ending after September 15, 2009, FAS 109 became part of Accounting Standards Codification (ASC) 740, *Income Taxes*.

Medifast's Improper Tax Accounting

8. Medifast's income tax accounting for the years 2006 through 2008 did not comply with FAS 109 because, among other things, the Company did not calculate a deferred tax liability to account for certain fixed assets that were being depreciated faster for tax purposes than for financial statement purposes.[4] This failure caused Medifast's net income to be materially overstated by an average of 12.4% over the three affected years:

Period Ending	**12/31/2006**	**12/31/2007**	**12/31/2008**
Net Income as originally reported:	5,156,000	3,837,000	5,435,000
Adjustment to Tax Provision:	(583,000)	(411,000)	(601,000)
Net Income Restated:	4,573,000	3,426,000	4,834,000
Percentage Decrease in Net Income due to Restatement:	12.7%	12.0%	12.4%

9. Moreover, Medifast's reported income tax provision in its Form 10-Ks for the years 2007 and 2008 were not supported by Medifast's internal income tax provision worksheets for those years. These worksheets were used to calculate the Company's current and deferred taxes at year-end for financial statement and GAAP purposes. In 2008, the current income tax provision on Medifast's internal worksheet was calculated as $2,578,107 and a total deferred tax asset was calculated as $1,321,072. In its 2008 Form 10-K, Medifast instead reported a current income tax expense of $1,711,000 and a deferred tax expense of $704,000.

10. In 2007, Medifast's current tax provision was calculated on its internal worksheet as $1,805,708 and a total deferred tax asset was calculated as $1,079,321. In its Form 10-K for 2007, Medifast instead reported a current income tax expense of $1,233,000 and a deferred tax expense of $473,000.

[4] Medifast gave the following explanation in its Form 10-K for 2010, note 17, for the 2010 Restatement: "Due to the Company's growth in past years, major infrastructure investments were made…. For financial statement purposes, these assets are depreciated over the assets [sic] useful life. However, for tax purposes, the depreciation can be accelerated which results in lower taxable income and potential tax refunds which were realized for the years in which accelerated tax depreciation was elected for the Company…. The resulting timing difference should have resulted in a deferred tax liability and additional income tax provision expense in the year's [sic] restated…. The Company is restating for errors identified in its deferred tax accounts pertaining to… differences between the income tax basis and the financial reporting basis of long-lived assets that were not reconciled to the deferred tax balances…."

11. In its 2010 Restatement, Medifast acknowledged that it had a material weakness in its internal controls over financial reporting because the preparation and review process for the calculation of its tax provision was inadequate, which led to errors in the computation of deferred tax assets, deferred tax liabilities, and the income tax provision. Medifast's audit firm also reported that the Company had not maintained effective internal control over financial reporting as of December 31, 2009 because of the material weakness in its accounting for income taxes.

The 2011 Restatement

12. Soon after filing its 2010 Restatement, Medifast engaged a new audit firm.[5] During its audit of Medifast's 2010 financial statements, the audit firm identified additional accounting errors that required Medifast to again restate its financial statements, this time for the years 2008 and 2009. These additional errors related to the Company's use of improper accounting policies with regard to expense accrual and revenue recognition that were not in compliance with GAAP.[6] These errors caused Medifast to materially overstate its income and understate expenses for the affected years.

Medifast's Improper Expense Accrual and Revenue Recognition

13. In 2008 and 2009, Medifast consistently deferred recording certain expenses that were charged to a credit card until the following month when the credit card payment was due, rather than at the time the card purchase was made. This deferral of expense recording was not in compliance with FAS Statement No. 5, *Accounting for Contingencies*, and resulted in certain expenses being improperly recorded on a cash basis rather than an accrual basis.

14. In 2008 and 2009, Medifast also failed to properly recognize revenue earned through its brick-and-mortar weight loss clinics in accordance with GAAP. *See* ASC 605, *Revenue Recognition*; AICPA Accounting Research Bulletin 43; FASB Statement of Concepts No. 5, *Recognition and Measurement in Financial Statements of Business Enterprises,* Staff Accounting Bulletin No. 104, *Revenue Recognition*. The Company's clinics, called Medifast Weight Control Centers ("MWCCs"), allow customers to pre-pay for weight loss programs that Medifast provides over a period of time, depending on the amount of weight to be lost. Medifast prematurely recognized the revenue associated with these weight loss programs at its MWCCs at the time its clients paid the program fee, rather than over the period of time the revenue was earned by Medifast, in contravention of GAAP.

15. Taken together, Medifast's accounting errors with regard to expense accrual and revenue recognition caused Medifast's 2008 and 2009 net income to be materially misstated. In 2009, Medifast improperly overstated its revenue by $169,000 and understated its expenses by

[5] Medifast Form 8-K, Item 4.01, filed with the Commission on April 16, 2010.

[6] The Company also took a $496,000 write-off in 2008 and 2009 related to an intangible asset for which it had no supporting documentation.

$539,000. These errors, in combination with other adjustments, resulted in an overstatement of the Company's net income by $606,000, or 5.1%. In 2008, the Company improperly overstated its revenue by $143,000 and understated its expenses by $588,000. These errors, in combination with other adjustments, resulted in an overstatement of the Company's restated net income by $523,000, or 10.8%.

16. Medifast filed its Form 10-K for fiscal year 2010 in April 2011. The Form 10-K included the Company's 2011 Restatement as well as the report of Medifast's audit firm on the effectiveness of Medifast's internal control over financial reporting as of December 31, 2010. In its report, the audit firm identified material weaknesses in that Medifast did not maintain sufficient in-house accounting personnel with the technical accounting knowledge, training, and expertise in the selection, application and implementation of GAAP in the areas of revenue recognition and expense accrual, among other things, and that the Company had continued ineffectiveness in its internal controls over its accounting for income taxes.

17. Medifast acknowledged in its 2011 Restatement that, among other things: i) it failed to do a detailed review of ending liability balances for the costs and expenses affected by the 2011 Restatement, which resulted in certain expenses being recorded when they were paid rather than incurred; and ii) it had been improperly recording program fees for its MWCCs on a cash basis for customers who paid up-front.

18. Medifast also acknowledged in its 2011 Restatement that it had a material weakness in its internal control over financial reporting that resulted in incorrect accounting policies with regard to its revenue recognition and expense accrual. In addition, Medifast stated that a material weakness still existed in the preparation and review process for the calculation of its tax provision, due to the lack of internal tax expertise at the Company and the fact that the controls designed to remediate the weakness had not been in place for a sufficient period of time.

Violations

19. Under Section 21C of the Exchange Act, the Commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act.

20. Section 13(a) of the Exchange Act requires issuers that have securities registered pursuant to Section 12 of the Exchange Act to file such periodic and other reports as the Commission may prescribe and in conformity with such rules as the Commission may promulgate. Exchange Act Rule 13a-1 requires issuers to file annual reports with the Commission. In addition to the information expressly required to be included in such reports, Rule 12b-20 under the Exchange Act requires issuers to add such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading. "The reporting provisions of the Exchange Act are clear and unequivocal, and they are satisfied only by the filing of complete, accurate, and timely reports." *SEC v. Savoy Industries*,

587 F. 2d 1149, 1165 (D.C. Cir. 1978). A violation of the reporting provisions is established if a report is shown to contain materially false or misleading information. *SEC v. Kalvex, Inc.*, 425 F. Supp. 310, 316 (S.D.N.Y. 1975).

21. Section 13(b)(2)(A) of the Exchange Act requires public companies "to make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer." Section 13(b)(2)(B) requires public companies "to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are recorded to permit the preparation of financial statements in conformity with generally accepted accounting principles.

22. By engaging in the conduct above, Medifast violated Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder.

23. In determining to accept the Offer, the Commission considered remedial acts undertaken by Medifast, including its enhancement of internal controls and retention of additional accounting personnel.

IV.

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

Accordingly, it is hereby ORDERED that**:**

A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder.

B. Respondent shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of $200,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or
(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Medifast, Inc. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Stephen L. Cohen, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5553.

By the Commission.

Elizabeth M. Murphy
Secretary