

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71070 / December 12, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3738 / December 12, 2013

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3518 / December 12, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15645

In the Matter of

Rodney A. Smith,
Michael Santicchia, CPA, and
Stephen D. Cheaney, CPA,

Respondents.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940, 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**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Rodney A. Smith, Michael Santicchia, CPA, and Stephen D. Cheaney, CPA (collectively “Respondents”) pursuant to Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), Section 4C¹ of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) and 102(e)(1)(iii) of the Commission’s Rules of Practice.²

¹ 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 . . . (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.

² 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 unethical or improper professional conduct.

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 them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 203(k) of the Investment Advisers Act of 1940, 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 Respondent’s Offer, the Commission finds³ that

Summary

1. This matter involves misconduct by Respondents in completing surprise exams pursuant to Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder (the “Custody Rule”).⁴ Freedom One Investment Advisors, Inc. (“Freedom One”), a formerly registered investment adviser, had custody of client assets held in two omnibus accounts and was required by the Custody Rule to have an independent public accountant conduct annual surprise exams to verify those assets. For 2006 and 2008, Freedom One engaged UHY LLP (“Accounting Firm”) to perform the surprise exams. By failing to complete the surprise exams (i.e. conduct fieldwork, prepare and issue a surprise exam report, and file Forms ADV-E), Respondents, three accountants at Accounting Firm caused Freedom One to violate the Custody Rule. In addition, Smith willfully aided and abetted Freedom One’s 2006 violations of the Custody Rule, and Santicchia and Cheaney engaged in improper professional conduct within the meaning of Section 4C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.

Rule 102(e)(1)(iii) 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 willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

³ 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.

⁴ On December 31, 2009, the Commission revised Rule 206(4)-2. Freedom One’s conduct for 2006 through 2008 was governed by the Custody Rule in effect before the December 31, 2009 amendments (the “Prior Custody Rule”). See *Custody of Funds or Securities of Clients by Investment Advisers*, Release No. IA-2176 (Sept. 25, 2003).

Respondents

2. **Rodney A. Smith**, age 63, of Ann Arbor, Michigan, was an Accounting Firm principal from 2005 through 2008. He was a member of the engagement teams for both of Accounting Firm's surprise exams. Accounting Firm terminated his employment on November 21, 2008. Smith received his Bachelor of Science in Accounting and Corporate Finance from Penn State University. He is not and has never been a CPA.

3. **Michael Santicchia**, age 53, of Dearborn, Michigan, has been a partner with Accounting Firm or its predecessor since approximately 1994. While holding the position of Accounting Firm's Michigan Regional Attest Leader, he was a member of the engagement team, and the only partner thereon, for both of Accounting Firm's surprise exams. Santicchia has been a licensed Certified Public Accountant ("CPA") in Michigan since 1984, Pennsylvania since 1999, Oklahoma and New York since 2000, Indiana since 2002, and Massachusetts since 2010.

4. **Stephen D. Cheaney**, age 58, of Northville, Michigan, has been employed by Accounting Firm, or its predecessor, since 1983, and has been an Accounting Firm principal for approximately the last 15 years. After Smith left Accounting Firm, Santicchia assigned Cheaney to replace Smith on the 2008 surprise exam. Cheaney has been a licensed CPA in Michigan since 1985.

Other Relevant Entities

5. **Freedom One Investment Advisors, Inc.**, was a privately-held Michigan corporation headquartered in Clarkston, Michigan and registered with the Commission as an investment adviser from December 1995 until April 2, 2013, when it filed a Form ADV-W to withdraw its registration with the Commission.

6. **Freedom One Retirement Services, LLC ("FORS")**, is a Michigan and North Carolina limited liability company headquartered in Clarkston, Michigan. FORS provided retirement plan services, including record keeping services, to Freedom One. FORS was an affiliate of Freedom One.

7. **Freedom One Financial Group, LLC ("FOFG")** was the 66% owner of Freedom One and FORS until December 31, 2012, when it was acquired by a dually-registered broker-dealer and investment adviser.

Background

8. From 2006 through 2008, Freedom One offered four different types of discretionary and non-discretionary investment management services, including to individuals with IRA accounts ("IRA Accounts"); and to individuals with personal taxable accounts ("Managed Accounts"). During the relevant period, Freedom One managed approximately \$625 million in assets, approximately \$69 million of which were held in the IRA Accounts and Managed Accounts.

9. The Custody Rule requires registered investment advisers with custody of client funds or securities to implement certain controls designed to protect those client assets from loss, misappropriation, misuse, or the adviser's insolvency. Before the December 31, 2009 amendment of the Custody Rule, Rule 206(4)-2(a)(3) required these advisers to have a reasonable basis for believing that a "qualified custodian," such as a bank or broker-dealer, was sending quarterly account statements to each of the clients for which they maintained funds or securities, or to send the quarterly account statements themselves and obtain an annual surprise examination by an independent public accountant to verify all of the client funds and securities.

10. From 2006 through 2008, Freedom One held funds and securities for the IRA Accounts and Managed Accounts in an omnibus account at a broker-dealer registered with the Commission ("Custodian 1"). A third-party custodian and trustee ("Custodian 2") instructed Custodian 1 as to which trades to execute, based on instructions it received from Freedom One. Custodian 2 maintained two separate omnibus accounts – one for the IRA Accounts and one for the Managed Accounts.

11. From 2006 through 2008, FORS maintained the records for Custodian 2's omnibus accounts on a participant level (i.e. keeping track of how the assets in the IRA and Managed Accounts broke down by client) and directed Custodian 2 to make distributions. Since FORS' responsibilities gave it the authority to obtain possession of clients' funds and securities held in Custodian 2's omnibus accounts, and FORS was an affiliate of Freedom One, Freedom One was deemed to have custody of the assets contained in Custodian 2's omnibus accounts.

12. From 2006 through 2008, because FORS was not a qualified custodian and it sent quarterly account statements to Freedom One's clients with IRA Accounts and Managed Accounts, the Prior Custody Rule required Freedom One to have a surprise exam for each of those years.

**FOFG Engaged Accounting Firm to Complete
Freedom One's 2006 and 2008 Surprise Exams**

13. FOFG engaged Accounting Firm to complete Freedom One's surprise exams for 2006 and 2008. FOFG executed two engagement letters with Accounting Firm, dated December 18, 2006 and November 5, 2007. According to each engagement letter, Accounting Firm was to perform an "annual surprise audit" of a "previously tested product that [Freedom One has] developed [i.e. the IRA Accounts]..." Neither of the engagement letters stated what year the surprise exams were for.

14. Although neither of the letters referred to the Custody Rule itself, they each provide surprise exam guidance directly from it, stating:

"An independent public accountant verifies all of those funds and securities by actual examination at least once during each calendar year...and files a certificate on Form ADV-E (17 CFR 279.8) with the Commission within 30 days after the completion of the

examination, stating that it has examined the funds and securities and describing the nature and extent of the examination.”

15. Both engagement letters also reference a November 2006 email from Freedom One’s chief compliance officer (“CCO”), to Smith, which states “The following is some of the regulatory language spelling out [sic] the requirement... § **275.206(4)-2 Custody of funds or securities of clients by investment advisers.**” The email also includes the entire text of the Prior Custody Rule. Smith drafted both engagement letters and Santicchia reviewed them.

**Respondents Conducted Some Field Work for
the 2006 and 2008 Surprise Exams**

16. During 2006 and 2007, the Accounting Firm engagement team conducted some field work for the first surprise exam, with a surprise exam date of December 31, 2006 (the “2006 exam”). Similarly, during 2008, the engagement team conducted some field work for the second surprise exam, with a surprise exam date of August 31, 2008 (the “2008 exam”).

17. Smith was a member of both surprise exam engagement teams until he left Accounting Firm at the end of November 2008. He was responsible for staffing the engagements, planning the exam procedures, reviewing the workpapers, preparing the report to be issued (the “surprise exam report”), and preparing the Form ADV-E. When Smith left Accounting Firm, a manager at Accounting Firm who performed some of the 2006 exam fieldwork and all of the 2008 exam fieldwork (“Accounting Firm Manager”) had already started performing the 2008 exam procedures, but his 2008 surprise exam work had not yet been reviewed.

18. Santicchia was a member of, and sole partner on, both surprise exam engagement teams. Santicchia was responsible for assigning Smith and Cheaney to the engagements, participating in some planning procedures, reviewing the workpapers, issuing the surprise exam report, and ensuring that the Form ADV-E was filed. Santicchia never performed this work on either exam and no report was ever issued.

19. On or about December 5, 2008, after Smith left Accounting Firm, Santicchia assigned Cheaney, who like Smith was a principal but not a partner, to replace Smith on the 2008 exam, and asked him to review Accounting Firm Manager’s work on that exam.

20. On December 8, 2008, Cheaney reviewed the workpapers, and prepared comments and questions for Accounting Firm Manager, which he memorialized in Accounting Firm’s electronic workpaper filing system (the “Notes”). Cheaney commented in the Notes that “some [exam] steps [had] not [been] completed.” In the Notes, he also questioned “where is [client] independence [affirmation] and engagement continuance forms?”

21. In the Notes, he also questioned whether “the work that is done accomplish[es] the audit objective that all of the assets reported are there on an unannounced day.” Finally, Cheaney commented that he “briefly looked at the 2006 [workpaper] file,” and found that “[i]t

appears that the job was not completed, no evidence that there is any report even drafted and never filed...the [workpapers] were not even reviewed. my [sic] guess is that nothing was ever filed with SEC.”

22. Cheaney then told Santicchia that he had completed his review and that the 2008 exam was incomplete. Santicchia also reviewed the Notes, and therefore knew Cheaney’s conclusions regarding the 2006 exam.

23. Santicchia never followed up with Cheaney and neither Santicchia nor Cheaney followed up with Accounting Firm Manager to determine whether he addressed the issues identified in the Notes, or took any other action to address the incomplete exams.

24. At the time, Accounting Firm did not tell Freedom One that it had not completed the exams. At the end of March 2009, Accounting Firm Manager left Accounting Firm. By the end of July 2010, Freedom One learned that no report had ever been issued for the 2008 exam. By mid-April 2011, Freedom One learned that Accounting Firm did not complete either exam, did not issue a report for either exam, and did not file the Forms ADV-E. On May 5, 2011, Accounting Firm refunded the fees Freedom One paid for both exams, totaling \$19,000.

Respondents Failed to Complete the 2006 and 2008 Surprise Exams in Accordance with Applicable Standards

25. Respondents failed to complete the 2006 and 2008 surprise exams. That is, they failed to conduct fieldwork, prepare and issue surprise exam reports, and file Forms ADV-E with the Commission. Alternatively, they failed to withdraw from the engagements and notify the client on a timely basis.

Respondents Failed to Conduct Fieldwork

26. Smith (for the 2006 exam), Santicchia (for both exams) and Cheaney (for the 2008 exam) failed to ensure that the Accounting Firm engagement team conducted fieldwork.

27. An accountant should conduct the surprise exam, or withdraw from the engagement, in accordance with U.S. Generally Accepted Auditing or Attestation Standards as established by the AICPA (“AICPA Attest Standards”), which are described in AT Section 101, “Attest Engagements.” See *Custody of Funds or Securities of Clients by Investment Advisers*, Release No. IA-2176 (Sept. 25, 2003).

28. On May 26, 1966, the Commission issued Accounting Series Release No. 103⁵, which described the nature of the exam required by Rule 206(4)-2(a) of the Advisers Act.⁶

⁵ ASR No. 103 has been incorporated into Financial Reporting Codification Section 404.01.b.

⁶ *The Nature of the Examination and Certificate Required by Paragraph (a)(5) of Rule 206(4)-2 Under the Investment Advisers Act of 1940*, Accounting Series Release No. 103, Investment Advisers Act Release No. 201 (May 26, 1966) (“ASR No. 103”).

According to ASR No. 103, to conduct an appropriate exam, an accountant should, among other things, conduct the following procedures:

- Make a physical examination of securities and obtain confirmation as appropriate;
- Obtain confirmation of funds on deposit in banks; and
- Reconcile the physical count and confirmations to the books and records.

ASR No. 103 further states that these books and records should be verified by examination of the security records and transactions since the last examination and by obtaining written confirmations from clients of the funds and securities in the clients' accounts as of the date of the physical examination. Also, if clients' accounts have been closed or securities or funds of such clients have been returned since the last examination, the accountant should confirm these on a test basis.

29. All of these procedures were applicable to Freedom One's 2006 and 2008 surprise exams, however, the Accounting Firm engagement team did not obtain confirmation of securities or funds held by Custodians 1 and 2 and did not send any confirmation requests to Freedom One's clients. Therefore, they also did not reconcile the confirmations to the books and records.

30. For the 2006 exam, the engagement team tested reconciliations, but the workpapers were not included in the Accounting Firm's official file. Also, the testing was not performed as of the surprise exam date – it was as of March 31, 2007, rather than December 31, 2006. Finally, the reconciliations compared Freedom One's books to the Custodian 2 IRA Account, but not to the Custodian 2 Managed Account and to the Custodian 1 Account.

31. For the 2008 exam, the Accounting Firm engagement team selected August 31, 2008 as the examination date. The engagement team tested reconciliations, but they were not performed as of the surprise exam date – they were as of August 18, 2008. Also, they only compared Freedom One's books to the Custodian 2 IRA Account, but not to the Custodian 2 Managed Account and to the Custodian 1 Account.

Respondents Failed to Issue Surprise Exam Reports or Withdraw from the Engagements

32. The Respondents failed to ensure that reports were issued for the surprise exams. Alternatively, they failed to withdraw from the engagements and notify the client on a timely basis.

33. The AICPA Attest Standards require that a "practitioner who accepts an attest engagement should issue a report on the subject matter or the assertion or withdraw from the attest engagement." AT §§101.64

Respondents Failed to File Forms ADV-E

34. The Respondents failed to ensure that Forms ADV-E were filed for the surprise exams.

35. Under the Prior Custody Rule, an accountant must transmit to the Commission, within 30 days of completing the surprise exam, a Form ADV-E along with a certificate stating that it has examined the funds and securities and describing the nature and extent of the exam (the “Exam Certificate”).

36. For the 2006 exam, Smith exchanged draft Forms ADV-E with Freedom One’s CCO at the time. On March 30, 2007, Smith emailed Freedom One’s CCO a blank Form ADV-E and stated “Please see the attached form which you must fill out for us to send.” Then, on April 10, Freedom One’s CCO emailed Smith a completed Form ADV-E that had an examination completed date of February 28, 2007. Finally, on July 12, Freedom One’s CCO emailed Smith attaching an updated Form ADV-E with an examination completed date of June 30, 2007. No drafts of Form ADV-E were contained in the workpapers.

37. No Form ADV-E or Exam Certificate was filed with the Commission for either exam.

Respondents Santicchia and Cheaney Failed to Meet the AICPA Standards Requiring “Due Professional Care”

38. AT Section 101 requires a practitioner to “exercise due professional care in the planning and performance of the engagement and the preparation of the report.” AT §§101.39, 101.40 and 101.41.

39. An accountant should also perform certain procedures during the course of the surprise exam in order to comply with the AICPA Attest Standards, as described in AT Section 601, “*Compliance Attestation*” (“AICPA Compliance Attest Procedures”). The AICPA Compliance Attest Procedures state that a practitioner should exercise (a) due care in planning, performing, and evaluating the results of his or her examination procedures...” AT §601.38.

40. Santicchia and Cheaney failed to exercise due professional care in accordance with AICPA Attest Standards AT §§101.39, 101.40 and 101.41, and AICPA Compliance Attest Procedure AT §§601 in performing the surprise exams. First, they did not have adequate knowledge or understanding of the Custody Rule and its requirements. They had never before conducted a surprise exam, and they did not consult with anyone from Accounting Firm that had conducted a surprise exam. Santicchia and Cheaney did not have any prior experience or training regarding the Custody Rule or surprise exams, and they did not determine or consider the requirements for the exams. In addition, Santicchia did not understand that the surprise exam was being conducted pursuant to the Custody Rule. The only reference to the Custody Rule requirements in the official workpapers is in the engagement letters, which include an excerpt from the rule.

41. Second, Santicchia and Cheaney did not follow Accounting Firm’s quality control practices and procedures. As to client acceptance and continuance, Santicchia did not evaluate whether the Accounting Firm engagement team had sufficient technical skills, knowledge of the industry, and personnel to perform the engagements, and document the client acceptance

evaluation procedures. Santicchia also failed to obtain the required sign-offs to accept Freedom One as a client – he failed to consult with the Michigan SEC “Leader” in his office and, because Freedom One was an SEC registered investment adviser, he should have consulted with Accounting Firm’s Office of the Managing Partner and the Director of Quality Control.

42. Santicchia did not follow Accounting Firm’s planning procedures, including reviewing background information on Freedom One, holding planning meetings, documenting the plans and approving the plans. There are no completed planning forms or any workpapers in the official file that detail the scope and objective of the exam.

43. Santicchia and Cheaney did not follow Accounting Firm’s supervisory procedures, including documenting the supervisory personnel responsible for reviewing the work performed, and ensuring that the surprise exams were supervised and reviewed by partners who had appropriate knowledge and expertise for the engagement. They also did not consult with any Accounting Firm partners who had experience with, or specialized in, SEC matters or the SEC rules that apply to investment advisers.

44. Third, Santicchia (for both exams) and Cheaney (for the 2008 exam) failed to ensure that the surprise exam engagements were completed. That is, they failed to ensure that fieldwork was conducted. Also, Cheaney failed to prepare a surprise exam report, and Santicchia failed to issue surprise exam reports. In addition, Cheaney failed to prepare a Form ADV-E, and Santicchia failed to file Forms ADV-E. Alternatively, they failed to withdraw from the engagements and notify the client on a timely basis.

Respondents Misconduct Under Section 4C of the Exchange Act and Rule 102(e)

45. Rule 102(e) of the Commission’s Rules of Practice, which has been codified into Section 4C of the Exchange Act, allows the Commission to censure a person, or deny the person, either permanently or temporarily, from appearing or practicing before the Commission if the Commission finds the person to be lacking in character or integrity or to have engaged in unethical or improper professional conduct or to have willfully aided and abetted the violation of any provision of the federal securities laws or the rules and regulations thereunder. Section 4C(a)(2) and (3) of the Exchange Act and Rule 102(e)(1)(ii) and (iii) of the Commission’s Rules of Practice.

46. Rule 102(e)(1)(iv) and Section 4C(b) defines “improper professional conduct” as including: (A) intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards; or (B) negligent conduct, including 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.⁷

⁷ Rule 102(e)(1)(iv) describes improper professional conduct with respect to persons licensed as accountants; Section 4C describes improper professional conduct with respect to any registered public accounting firm or associated person.

Respondent Smith Willfully Aided and Abetted Freedom One's 2006 Custody Rule Violation

47. Smith willfully aided and abetted Freedom One's 2006 violation of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder.

48. Smith was part of the 2006 surprise exam engagement team. He drafted the engagement letter for that exam and therefore knew that Accounting Firm was engaged to conduct an annual surprise exam, to verify funds and securities by actual examination, and to file a certificate on Form ADV-E with the Commission within 30 days after the completion of the examination.

49. Smith did not have adequate knowledge or understanding of the Custody Rule and its requirements in order to complete the engagement. He had never before conducted a surprise exam, and did not consult with anyone from Accounting Firm that had conducted a surprise exam. Smith did not have any prior experience or training regarding the Custody Rule or surprise exams, and he did not determine or consider the requirements for the exams. The only reference to the Custody Rule requirements in the official workpapers is in the engagement letters, which include an excerpt from the rule.

50. For the 2006 surprise exam, he exchanged draft Forms ADV-E before fieldwork was conducted. Before leaving Accounting Firm in November 2008, he took no action to ensure that the 2006 surprise exam fieldwork was conducted and that the surprise exam report was prepared, which meant that a Form ADV-E could not be issued. Alternatively, he failed to withdraw from the engagement and notify the client on a timely basis.

Respondents Santicchia and Cheaney Engaged in Improper Professional Conduct

51. Santicchia (for both exams) and Cheaney (for the 2008 exam) engaged in improper professional conduct. First, they failed to complete the surprise exams. That is, they failed to ensure that fieldwork was conducted. Also, Cheaney failed to prepare a surprise exam report, and Santicchia failed to issue reports. In addition, Cheaney failed to prepare a Form ADV-E, and Santicchia failed to file Forms ADV-E. Alternatively, they failed to withdraw from the engagements and notify the client on a timely basis.

52. Santicchia and Cheaney also failed to exercise due professional care in accordance with AICPA Attest Standards AT §§101.39, 101.40, and 101.41, and AICPA Compliance Attest Procedure AT §§601. They: (1) did not have adequate knowledge or understanding of the Prior Custody Rule and its requirements; (2) did not follow Accounting Firm's quality control practices and procedures; and (3) failed to ensure that the surprise exams were completed or withdraw from the engagements and notify the client on a timely basis.

Violations

53. As a result of the conduct described above, Smith (for the 2006 and 2008 surprise exams), Santicchia (for the 2006 and 2008 surprise exams), and Cheaney (for the 2008 surprise

exam) caused Freedom One's violations of Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder.

54. As a result of the conduct described above, Smith willfully aided and abetted Freedom One's 2006 violation of Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder.

55. As a result of the conduct described above, Santicchia and Cheaney engaged in improper professional conduct within the meaning of Section 4C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 203(k) of the Advisers Act, Section 4C of the Exchange Act, and Rule 102(e) of the Commission's Rules of Practice, it is hereby ORDERED that:

A. Respondents Smith, Santicchia and Cheaney cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-2 promulgated thereunder.

Smith

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

C. After three years from the date of this order, Respondent Smith 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 an accountant.

Santicchia

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

E. After three years from the date of this order, Respondent Santicchia 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 Santicchia'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 Santicchia, 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 Santicchia, 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 his or the firm’s quality control system that would indicate that he will not receive appropriate supervision;

(c) Respondent Santicchia 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 Santicchia acknowledges his responsibility, as long as he 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.

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

Cheaney

G. Respondent Cheaney is denied the privilege of appearing or practicing before the Commission as an accountant.

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

(b) Respondent Cheaney, 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 his or the firm's quality control system that would indicate that he will not receive appropriate supervision;

(c) Respondent Cheaney 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 Cheaney acknowledges his responsibility, as long as he 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.

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

By the Commission.

Elizabeth M. Murphy
Secretary