

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9513 / January 17, 2014

SECURITIES EXCHANGE ACT OF 1934
Release No. 71348 / January 17, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3529 / January 17, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15680

In the Matter of
EUGENE M. EGEBERG III, CPA,
Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTIONS
4C AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, AND RULES
102(e)(1)(ii) AND (iii) OF THE
COMMISSION'S RULES OF PRACTICE
AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate 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”), Sections 4C¹ and 21C of the Securities

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.”

Exchange Act of 1934 (“Exchange Act”), and Rules 102(e)(1)(ii) and (iii) of the Commission’s Rules of Practice² against Respondent Eugene M. Egeberg III, CPA (“Egeberg” or “Respondent”).

II.

After an investigation, the Division of Enforcement alleges that:

A. **RESPONDENT**

1. Eugene M. Egeberg III, CPA (“Respondent” or “Egeberg”), a resident of Hampstead, Maryland, operates a self-named sole-proprietorship accounting firm in Baltimore, Maryland. Egeberg is a Maryland-licensed CPA and was previously registered with the Public Company Accounting Oversight Board (“PCAOB”) before his voluntary request for withdrawal was accepted by the Board in November 2012.

B. **RELATED ISSUERS**

2. Fox Petroleum, Inc. (“Fox Petroleum”) is a Nevada corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Egeberg audited Fox Petroleum’s financial statements for its fiscal years ended February 28, 2010, February 28, 2011, and February 28, 2012.

3. RPM Advantage, Inc. (“RPM Advantage”) is a Nevada corporation located in Houston, Texas. RPM Advantage’s stock was previously registered with the Commission pursuant to Exchange Act Section 12(g). On November 8, 2011, and again on January 30, 2012, RPM Advantage had its registration revoked by the Commission pursuant to Exchange Act Section 12(j). Egeberg audited RPM Advantage’s financial statements for its fiscal years ended December 31, 2006 through December 31, 2010.

C. **FACTS**

Failure to Conduct Audits with Due Professional Care and Skepticism, and Failure to Obtain Competent and Sufficient Evidential Matter.

4. AU³ §230.01, *Due Professional Care in the Performance of Work*, requires that an auditor exercise due professional care in the planning and performance of an audit, and in preparation of the audit report. Due professional care requires an auditor to exercise professional skepticism throughout the audit process. AU § 230.07-08. Similarly, AU § 326, *Evidential Matter*, required that the auditor obtain sufficient competent audit evidence to support the opinion

² Rule 102(e)(1)(ii) & (iii) provide, in pertinent part, that: (ii) “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;” and (iii) “to have willfully violated, . . . any provision of the Federal securities laws or the rules and regulations thereunder.”

³ References in this order are to the PCAOB standards in effect at the time of the relevant conduct.

expressed in the auditor's report, for fiscal years beginning before December 15, 2010. AU § 315.09, *Communications Between Predecessor and Successor Auditors*, requires a successor auditor to make specific and reasonable inquiries of the predecessor auditor regarding information that might bear on the integrity of management, disagreements with management as to accounting principles or auditing procedures, communications to audit committees regarding fraud or illegal acts by clients, and the predecessor auditor's understanding as to the reasons for the change of auditors.

5. Egeberg violated AU § 230 by conducting the purported Fox Petroleum audits for Fiscal Years 2010 and 2011, without exercising appropriate due professional care or professional skepticism and violated AU § 326 by failing to obtain sufficient evidential matter. Egeberg did so by failing to perform any audit tests or procedures to determine the accuracy of Fox Petroleum's financial statements. On a checklist Egeberg completed for Fox Petroleum, he noted, for example, that the company's large accounts payable balance was a troublesome audit area.⁴ Egeberg, however, performed no tests to determine whether the balance was accurate. Instead, Egeberg simply concluded that management's representations were adequate. *See also* AU § 333.02, *Management Representations*, which states, in part, "...[R]epresentations from management are part of the evidential matter the independent auditor obtains, but they are not a substitute for the application of those auditing procedures necessary to afford a reasonable basis for an opinion regarding the financial statements under audit."

6. Similarly, Egeberg noted that unrecorded liabilities were a potential fraud risk for Fox Petroleum, but that his concerns were satisfied by the company's "overhauled financials." Egeberg never identified what he was specifically referring to by that, nor did he point to any documentation showing how the supposed overhauls satisfied him. Egeberg's acceptance of these assertions at face value, without further inspection or procedures, constituted a failure to exercise due professional care and skepticism and a failure to obtain sufficient competent evidential matter.

7. Egeberg was also required to inquire with the prior auditor for Fox Petroleum's 2009 financial statements, the period immediately prior to the 2010 financial period. Egeberg never inquired with the previous auditor regarding Fox Petroleum, in violation of AU § 315. Fox Petroleum's 2010 financial statements had already been audited and filed with the Commission in a Form 10-K, but the prior auditor, who was hired to audit just that one period, had his PCAOB registration permanently revoked on October 19, 2010 for non-cooperation with a PCAOB investigation. Egeberg was unaware that his audit of the 2010 financial statements was a re-audit, even though it was public knowledge and the Form 10-K was available on the Commission's website. Egeberg was required to try to inquire with the prior auditor regarding the re-audit of the 2010 financial statements for Fox Petroleum, pursuant to AU § 315.14.

⁴ Egeberg downloaded the checklist from the American Institute of Certified Public Accountants' ("AICPA") website. This checklist came from the AICPA's Peer Review Program Manual. AICPA STANDARDS FOR PERFORMING AND REPORTING ON PEER REVIEWS § 20, 400, *et seq.* (Am. Inst. of Certified Pub. Accountants 2009). The checklist was designed as part of the AICPA's Peer Review Programs and was designed for independent reviewers to examine member-auditors' engagements after completion of the engagement to promote accounting and auditing quality. (AICPA STANDARDS FOR PERFORMING AND REPORTING ON PEER REVIEWS § 1000.02 (Am. Inst. of Certified Pub. Accountants 2013).

8. Egeberg also violated AU § 230 by conducting the purported RPM Advantage audits without exercising appropriate due professional care or professional skepticism and violated AU § 326 by failing to obtain sufficient competent evidential matter. Much like with Fox Petroleum, Egeberg failed to document any audit procedures he performed for any of RPM Advantage's financial balances on its financial statements. Moreover, it is questionable that Egeberg actually audited RPM Advantage's financial statements, because they were arithmetically incorrect.

9. Egeberg claimed he inquired about RPM Advantage's predecessor auditor, but he determined that the auditor was "unavailable." RPM Advantage's prior auditor had, on January 7, 2010, just one month prior to Egeberg's engagement, been suspended from appearance or practice before the Commission as an accountant with the right to apply for reinstatement after five years pursuant to Rule of Practice 102(e)(1)(ii) and (iii) for numerous audit deficiencies, including failure to exercise due professional care and failure to maintain adequate audit documentation. The order suspending the prior auditor was publicly available, and a minimal search would have informed Egeberg of the suspension.

10. An example of Egeberg's lack of due care and skepticism on the RPM Advantage audits is the lack of work to obtain audit evidence to analyze the impact of the balances carried over from the 2005 financial statements on the 2006 financial statements and consistency of accounting principles. *See* AU § 315.12. Egeberg noted on his checklist for RPM Advantage, under the section for past adjustments and risk, that the financial statements were materially misstated and that "there was no method to ascertain." Egeberg claimed that the only records the company had were the previous SEC filings, and thus he had no method to ascertain past adjustments. Egeberg failed to point to any actual procedures that he performed. Egeberg had no audit work papers, and had no other evidence to overcome his lack of audit documentation on the subject. Because there were no records for prior periods and because Egeberg did not make inquiries of the prior auditor for RPM Advantage, due professional care and skepticism should have caused him to apply appropriate auditing procedures to account balances at the beginning of fiscal year 2006 and to transactions in prior periods, but he did not. *See* AU § 315.12. *See also* AU § 315.13 ("[t]he successor auditor's review of the predecessor auditor's working papers may affect the nature, timing, and extent of the successor auditor's procedures with respect to the opening balances and consistency of accounting principles.")

Failure to Obtain Engagement Quality Reviews.

11. Auditing Standard No. 7, *Engagement Quality Review*, requires an engagement quality review and concurring approval of issuance for each audit engagement and for each engagement to review interim financial information for fiscal years beginning after December 15, 2009. The engagement quality reviewer may not be the same person as the engagement partner. A sole practice firm, like Egeberg's, is thus required to engage a qualified individual from outside the firm to serve as the engagement quality reviewer.

12. Egeberg failed to obtain an engagement quality review for the Fox Petroleum audit engagement for its fiscal years ended February 28, 2011 and February 28, 2012, and for the audit

of RPM Advantage's financial statements for its fiscal year ended December 31, 2010, in violation of Auditing Standard No. 7.

Deficiencies in the Audits of Fox Petroleum's Subsidiaries.

13. In September 2011, Fox Petroleum purchased two companies, Renfro Energy, LLC ("Renfro") and Cameron Parish Pipelines, LLC ("CPP"). Fox Petroleum engaged Egeberg to conduct audits of Renfro and CPP for each company's fiscal years ended December 31, 2009 and December 31, 2010. On November 1, 2011, at 11:49 p.m., the CEO of Fox Petroleum emailed Egeberg informing him of the purchase of the two companies. The CEO told Egeberg that the two companies' financial statements would need to be audited as part of the purchase agreement, and that the two separate auditors for each company were unable to complete the audits by November 3, less than two days later. The Fox Petroleum CEO asked whether Egeberg would be able to complete the audits for both companies for fiscal years 2009 and 2010 within the less than two-day period, and told Egeberg that a \$5 million credit line was contingent upon the deal closing, and that if the deal closed on time, Egeberg would be able to collect outstanding bills for his audit of Fox Petroleum that he had thus far been unable to collect. Less than forty hours later, Egeberg signed off on the audits of four years' worth of financial statements for Renfro and CPP. Egeberg provided audit reports stating that he conducted the audits in accordance with PCAOB standards. Those audit reports, along with the financial statements for Renfro and CPP, were both included in a Form 8-K that Fox Petroleum publicly filed on November 3, 2011.

14. It is implausible that Egeberg could have conducted proper audits for Renfro and CPP, each with two years of financial statements, in such a short time, regardless of the companies' small sizes. Further, each company had separate auditors who were each unable to complete the audits in this short time, despite having already begun the work. Similarly troubling is that Fox Petroleum's CEO enticed Egeberg to complete the two audits under significant pressure by promising him past-due payment owed for the Fox Petroleum audits, but only if Egeberg could complete the audits in the two-day timeframe. These circumstances suggest that Egeberg rubber-stamped the audit reports to help Fox Petroleum acquire the \$5 million credit line in hopes of payment for his completed audit of Fox Petroleum.

15. Neither Renfro nor CPP were SEC issuers. Notwithstanding, Egeberg included in his audit report for each company the statement that the audits were conducted "in accordance with standards required by the [PCAOB]." The audit reports were subsequently included on Forms 8-K filed by Fox Petroleum with the Commission. The egregiously deficient audits of Renfro and CPP further demonstrate Egeberg's pattern of poor audit work and strengthen the need for the Rule 102(e) suspension.

16. Egeberg violated Auditing Standard No. 3, *Audit Documentation*, for his audits of Renfro and CPP because he had no evidence demonstrating that he performed audit work for Renfro or CPP. Egeberg's failure to maintain documentation places a burden upon the auditor to provide persuasive other evidence that sufficient procedures were performed, sufficient evidence was obtained, and appropriate conclusions were reached with respect to the relevant financial statement assertions, which Egeberg failed to do.

17. Egeberg failed to perform the audits of Renfro and CPP with due professional care and professional skepticism, in violation of AU § 230. Egeberg also failed to collect competent evidential matter for those audits, in violation of AU § 326. Egeberg has provided no documented evidence of procedures performed to ensure that Renfro's and CPP's financial statements were presented fairly and accurately. Similarly, Egeberg could not identify any procedures performed to determine the accuracy of the financial statements.

18. Egeberg violated Auditing Standard No. 7 by failing to obtain an engagement quality review for Renfro's and CPP's fiscal years ended December 31, 2010.

Additional Audit Deficiencies in RPM Advantage and Fox Petroleum Audits.

19. Egeberg lacked the knowledge, proficiency, training, and skill to audit issuers registered with the Commission. AU §§ 210 and 230, *Training and Proficiency of the Independent Auditor* and *Due Professional Care in the Performance of Work*, respectively, which require that an audit be performed by "a person or persons having adequate technical training and proficiency as an auditor." AU § 210.01. PCAOB auditing standards further require that auditors engage in audit tasks "commensurate with their level of knowledge, skill, and ability so that they can evaluate the audit evidence they are examining," and that "[t]he auditor with final responsibility for the engagement should know, at a minimum, the relevant professional accounting and auditing standards" AU § 230.06.

20. Egeberg has never had any audit training. He has taken only four courses during his professional career relating to audits and audit procedures, with at least two of them being self-directed online courses completed as part of his continuing professional education requirements. The extent of Egeberg's professional practice since college has primarily been preparing tax returns and general ledger bookkeeping for individuals and businesses. Yet he issued audit reports covering financial statements for as many as twenty public companies before withdrawing his PCAOB registration.

21. Because he had no training, Egeberg conducted all of his audits according to a checklist he downloaded from the AICPA's website, as discussed *supra* in footnote 4. This checklist came from the AICPA's Peer Review Program Manual. AICPA STANDARDS FOR PERFORMING AND REPORTING ON PEER REVIEWS § 20,400, *et seq.* (Am. Inst. of Certified Pub. Accountants 2009). The peer review checklist that Egeberg used for his engagements was not designed to substitute for the more rigorous and detail-oriented requirements for audit engagements. Furthermore, AICPA's Peer Review Program is not applicable to Commission issuers. *Id.* §1000.03.

22. By following the Peer Review Program checklist, without any other experience or guidance, Egeberg demonstrated his complete lack of understanding of public company audits. Following these checklists also contributed to Egeberg's performance of grossly deficient audits.

Failure to Design and Plan Audits.

23. AU § 311, *Planning and Supervision*, required that for audits of companies with fiscal years beginning before December 15, 2010,

the auditor should consider the nature, extent, and timing of work to be performed and should prepare a written audit program (or set of written audit programs) for every audit. The audit program should set forth in reasonable detail the audit procedures that the auditor believes are necessary to accomplish the objectives of the audit. The form of the audit program and the extent of its detail will vary with the circumstances. In developing the program, the auditor should be guided by the results of the planning considerations and procedures. As the audit progresses, changed conditions may make it necessary to modify planned audit procedures.

AU §311.05.

24. Egeberg was required to design and plan audit procedures and programs for each audit engagement. The audit programs should have taken into consideration, among other things, the companies' industries, the companies' business practices, and judgments of potential materiality and risk. AU § 311. Egeberg failed to perform any of these planning activities. Instead, he simply followed the Peer Review Program checklist for each of his clients, which simply asks whether the auditor properly designed an audit for the client, and for each of Egeberg's clients, he checked "yes." There was no planning by Egeberg for any of the audits for 2006 to 2011, in violation of AU § 311.

Egeberg's Complete Lack of Audit Work Papers.

25. Egeberg's audits completely lacked audit work papers. Thus, Egeberg repeatedly violated Auditing Standard No. 3, ¶ 6, *Audit Documentation*, which requires that audit documentation "contain sufficient information to enable an experienced auditor, having no previous connection with the engagement (a) to understand the nature, timing, extent, and results of the procedures performed, evidence obtained, and conclusions reached, and (b) to determine who performed the work and the date such work was completed as well as the person who reviewed the work and the date of such review." An auditor that has not adequately documented that he performed a procedure, obtained evidence, or reached an appropriate conclusion must demonstrate with persuasive other evidence that it did so, and oral assertions and explanations alone do not constitute persuasive other evidence. *See* Auditing Standard No. 3, ¶ 9.

Egeberg's Failure to Issue Accurate Audit Reports.

26. PCAOB standards require that the auditor's report contain an opinion on the financial statements taken as a whole and contain a clear indication of the character of the auditor's work. The auditor can determine that he is able to issue an audit report containing an unqualified opinion only if he has conducted the audit in accordance with standards set forth by the PCAOB. (AU § 508.07, *Reports on Audited Financial Statements*.)

27. Additionally, Regulation S-X, 17 CFR § 210 *et seq.*, prescribes the qualifications of accountants and the contents of the accountants' reports that must be submitted with corporate financial statements. In particular, it requires that the financial statements of a public corporation must be audited by an accountant in accordance with Generally Accepted Auditing Standards

(“GAAS”). 17 CFR § 210.1-02(d). “[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 plus any applicable rules of the Commission.” (See SEC Release No. 34-49708 (May 14, 2004)). Thus, an auditor violates Regulation S-X Rule 2-02(b)(1) if it issues a report stating that it had conducted its audit in accordance with PCAOB standards when it had not. See *Andrew Sims, CPA*, Rel. No. 34-59584, AAER No. 2950 (Mar. 17, 2009) (settled action).

28. The culmination of Egeberg’s numerous audit deficiencies made any representation by Egeberg in his audit reports that his audits complied with PCAOB standards inaccurate. Egeberg falsely made these representations in his audit reports for RPM Advantage and Fox Petroleum, and Fox Petroleum’s subsidiaries, Renfro and CPP.

D. VIOLATIONS

29. Section 102(e)(1) of the Commission’s Rules of Practice provides that: “The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice and opportunity for hearing in the matter: . . . (ii) to be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or (iii) to have willfully violated, . . . any provision of the Federal securities laws or the rules and regulations thereunder.” Section 4C of the Exchange Act 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 . . . have engaged in . . . improper professional conduct; or (3) to have willfully violated, . . . any provision of the securities laws or the rules and regulations thereunder.”

30. Section 4C of the Exchange Act and Rule 102(e)(1)(iv) of the Commission’s Rules of Practice define improper professional conduct with respect to persons licensed to practice as accountants. Section 4C of the Exchange Act and Rule 102(e)(1)(iv) of the Commission’s Rules of Practice provide that improper professional conduct means “intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards” Rule 102(e)(1)(iv)(A); and the following two types of negligent conduct:

- (1) a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted.
- (2) 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. Rule 102(e)(1)(iv)(B).

As noted previously, “unreasonable conduct” as used in this provision means ordinary negligence. See *In re Dohan & Co. CPA, et al.*, Int. Dec. Rel. No. 420, at p. 16 (June 27, 2011), final, Securities Exchange Act Rel. No. 64970 (July 26, 2011). The Commission defines recklessness under Rule 102(e) to be the same as recklessness under the antifraud provisions. Thus, recklessness

is “an extreme departure from the standards of ordinary care, . . . which presents a danger of misleading buyers or sellers that is either known to the [actor] or is so obvious that the actor must have been aware of it.” Amendment to Rule 102(e) of the Commission’s Rules of Practice, 63 Fed. Reg. 57164, 57167 (Oct. 26, 1998). It is “a lesser form of intent,” “not merely a heightened form of ordinary negligence.” *Id.* (internal citations and quotations omitted). Egeberg’s conduct of falsely representing that his audit reports were conducted in accordance with PCAOB standards was reckless and intentional under Rule 102(e).

31. As a result of the conduct described above, Egeberg engaged in improper professional conduct within the meaning of Section 4C of the Exchange Act and Rule 102(e)(1)(iv)(B)(2) of the Commission’s Rules of Practice. Egeberg’s unreasonable conduct included his failures with respect to his audits of Fox Petroleum for its fiscal years ended February 28, 2010, 2011, and 2012, and his audits of Fox Petroleum subsidiaries Renfro and CPP for their fiscal years ended December 31, 2009 and 2010. These repeated instances of unreasonable conduct resulted in violations of PCAOB Standards AU Section 210, AU Section 230, AU Section 311, AU Section 315, AU Section 326, AU Section 508, Auditing Standard No. 3, and Auditing Standard No. 7.

32. Egeberg engaged in improper professional conduct under Rule 102(e)(1)(ii), and willfully violated Exchange Act Section 10(b) and Rule 10b-5(b) thereunder, and Rule 2-02(b)(1) of Regulation S-X, which calls for sanction under Rule 102(e)(1)(iii), because his auditing practices were so deficient that the audits amounted to no audits at all. *SEC v. Price Waterhouse*, 797 F. Supp. 1217, 1240 (S.D.N.Y. 1992) citing *McLean v. Alexander*, 599 F.2d 1190, 1198 (3rd Cir. 1979). An auditor violates Exchange Act Section 10(b) and Rule 10b-5 thereunder by issuing false audit reports. Egeberg violated these antifraud provisions by intentionally issuing audit reports that falsely stated that his audits were conducted in accordance with PCAOB standards, and these statements were material. Egeberg’s audits were not conducted in accordance with PCAOB standards, but instead constituted complete departures from professional standards.

33. Egeberg willfully violated Regulation S-X Rule 2-02(b)(1) because he issued reports stating that he had conducted his audits of RPM Advantage, Fox Petroleum, Renfro, and CPP in accordance with PCAOB standards, when he had not.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Rules 102(e)(1)(ii) and (iii) of the Commission’s Rules of Practice; and

C. Whether, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing

violations of and any future violations of Exchange Act Section 10(b), and Rules 10b-5(b) and Regulations S-X Rule 2-02(b)(1) thereunder, whether Respondent should be ordered to pay a civil money penalty pursuant to Section 8A(g) of the Securities Act and Section 21B of the Exchange Act, and whether Respondent should be ordered to pay disgorgement pursuant to Section 8A(e) of the Securities Act, and Sections 21B(e) and 21C(e) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness

or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Elizabeth M. Murphy
Secretary