

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10055 / March 15, 2016

SECURITIES EXCHANGE ACT OF 1934
Release No. 77372 / March 15, 2016

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3758 / March 15, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17171

In the Matter of

**MODUSLINK GLOBAL
SOLUTIONS, INC.
JOSEPH C. LAWLER,
STEVEN G. CRANE, and
CATHERINE L. VENABLE**

Respondents.

**ORDER INSTITUTING CEASE-
AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF
THE SECURITIES ACT OF 1933
AND SECTION 21C OF THE
SECURITIES EXCHANGE ACT
OF 1934, MAKING FINDINGS,
AND IMPOSING A CEASE-AND-
DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against ModusLink Global Solutions, Inc. (“ModusLink”), Joseph C. Lawler, Steven G. Crane, and Catherine L. Venable (collectively, “Respondents”).

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, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 8A of the

Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds¹ that:

Summary

1. ModusLink is a Massachusetts-based company that provides supply chain and logistics services to other companies. In providing products and services to its clients, ModusLink routinely purchased products and services from third-party vendors on behalf of its clients. ModusLink also routinely obtained rebates from vendors. In numerous instances, and without a sufficient basis to conclude that it was entitled to do so, ModusLink kept rebates that should have benefited certain ModusLink clients, which were contractually entitled to them under cost-plus and pass-through contracts. In some other instances, ModusLink marked-up the prices charged by the vendors and billed the higher price to certain ModusLink clients, also in contravention of their contracts. ModusLink had no legal entitlement to these rebates and mark-ups and inappropriately included these sums in computing and reporting its revenue and net income in its financial statements filed with the Commission.

2. In June 2012, ModusLink announced its intent to restate certain financial statements, which it did in January 2013, restating more than five years of inaccurate financial statements that had appeared in the company’s periodic filings with the Commission. The restated financial statements reversed the revenue and net income ModusLink had inappropriately reported from these rebates and mark-ups. As a result of these practices, ModusLink misstated its net income by up to 1038%, 23%, and 22% in certain years.

3. ModusLink’s financial misstatements resulted from failures to act reasonably at every level in the company. ModusLink’s management was made aware on multiple occasions that certain rebates needed to be passed through to clients. Although ModusLink’s management directed subordinates to pursue rebates aggressively and set rebate targets for those subordinates to hit, management failed to take appropriate steps to ensure rebates were passed on to clients when required. Simultaneously, ModusLink’s operations staff worked with vendors to implement covert procedures to obtain rebates, and rebate information was kept secret from client-facing sales staff. And when an internal whistleblower alerted the Internal Audit department and the company’s Audit Committee, the resulting review was incomplete and ineffective. In addition, staff sitting at the intersection between operations and corporate staff responsible for financial reporting during this time, including the CFO of the Supply Chain Business Unit, Catherine L. Venable, failed to ensure that such rebates and mark-ups were accurately reflected in ModusLink’s books and records.

¹ 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. ModusLink's then-Chief Executive Officer, Joseph C. Lawler, and then-Chief Financial Officer, Steven G. Crane, both received bonuses, incentive compensation, and/or equity-based compensation during the 12-month periods following certain of the filings ModusLink restated. Neither Lawler nor Crane, however, has reimbursed any portion of this compensation to ModusLink pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002.

Respondents

5. **ModusLink Global Solutions, Inc.**, is a Delaware corporation with its corporate headquarters in Waltham, Massachusetts. Its common stock is registered pursuant to Section 12 of the Exchange Act and traded on the NASDAQ under the symbol "MLNK." Before 2008, ModusLink operated under the names CMGI, Inc. and CMG Information Services, Inc. In its Form 10-K filing for its fiscal year 2015 (filed October 14, 2015), ModusLink reported net revenue of \$561.7 million, an operating loss of \$14.3 million, and a net loss of \$18.4 million. Nearly all of ModusLink's current officers and directors joined the company in the period since ModusLink announced its intention to restate its financial statements in June 2012.

6. **Joseph C. Lawler**, age 65, lives in Skokie, IL. From August 2004 to 2012, he was ModusLink's President and Chief Executive Officer. Lawler was also a ModusLink director from August 2004 to June 2012, and Chairman of the Board from August 2006 to November 2011.

7. **Steven G. Crane**, age 58, lives in Charleston, SC. From April 2007 to 2014, he was ModusLink's Chief Financial Officer. Crane was also ModusLink's Treasurer from April 2007 to June 2008.

8. **Catherine L. Venable**, age 51, lives in Gold Canyon, AZ. From 2008 to 2010, she was ModusLink's CFO of Global Operations and from 2010 to 2012, she was ModusLink's CFO of the Supply Chain Business Unit. Venable was also the CFO of the Americas region from 2005-2007 and CFO of the Asia and Europe regions from 2007-2008. Venable held a CPA license from 1989 to 2003.

ModusLink's Business and Pricing Models

9. ModusLink provides "global supply chain business process management" primarily to computer, electronics, and communications companies. Its supply chain management business manufactures, stores, and distributes for sale its clients' products. ModusLink operates in North America, Europe, and Asia.

10. Often as part of its supply chain services, ModusLink buys components (such as power cords or compact discs), raw materials (such as corrugated cardboard), or auxiliary services (such as printing) on behalf of its clients.

11. ModusLink enters into contracts with clients that can employ one or more of three models for pricing those components, materials, and/or auxiliary services:

- a. “Cost” or “Pass-through” model: Costs incurred by ModusLink to purchase components, materials, and/or auxiliary services are passed through directly to the client;
- b. “Cost-Plus” model: The client agrees to pay the costs incurred by ModusLink to purchase components, materials, and/or auxiliary services, plus an agreed-to percentage mark-up on those costs;
- c. “Fixed-Price” model: ModusLink and its client negotiate a fixed unit price for the supply chain services to be provided, where the level of costs incurred by ModusLink does not determine the contractual price.

12. ModusLink’s biggest clients tended to have cost or cost-plus contracts, as those clients had more bargaining power with ModusLink; smaller clients tended to have fixed-price contracts. At the time of its restatement, approximately 17% of ModusLink’s contracts were cost, 33% were cost-plus, and 50% were fixed price.

13. ModusLink’s business model – which included purchasing commodity materials in bulk and charging its clients for the materials, as described above – resulted in high revenues (approximately \$1 billion annually), but low profit margins for ModusLink as a whole during the five and one-half year restatement period (2007-2012). During that period, ModusLink turned an annual profit only twice (\$37.7 million in 2007 and \$0.5 million in 2008).

ModusLink’s Retention of Rebates and Cost Mark-Ups

14. Beginning no later than the mid-2000s and extending through the first half of 2012, ModusLink negotiated for certain of its vendors to pay rebates to ModusLink on the components, materials, and auxiliary services ModusLink bought from the vendors to fulfill its contracts with its clients. ModusLink used its size and purchasing power to arrange rebates with vendors whenever possible.

15. Rebate amounts would generally be calculated per-unit (*e.g.*, 10 cents or 10% off per item) or based on ModusLink hitting certain volume criteria (in which cases the rebates were sometimes termed “volume discounts”). The rebates effectively lowered the actual price ModusLink paid the vendors for the components, materials, and auxiliary services purchased, and were accounted for as a reduction in ModusLink’s material costs (*i.e.*, cost of goods sold).

16. Notwithstanding the fact that the rebates lowered ModusLink’s vendor costs, ModusLink generally did not pass the cost savings through to its clients, including those with cost and cost-plus contracts that required such savings to be passed on to the clients. Instead, ModusLink generally kept the rebate savings for itself and billed the clients at the original, pre-rebate (higher) price charged by vendors.

17. At times, ModusLink negotiated the rebate amount with a vendor at the same time that it negotiated the original price for the product or service with the same vendor. In these instances, ModusLink directed the vendor to bill ModusLink at the original price – rather than the

“net” price, inclusive of the rebate. The original (higher) price was used to bill ModusLink’s clients.

18. For example, if ModusLink needed to provide a power cord for a client with a cost contract, it might negotiate with a vendor to supply that power cord for \$1 with a 10% rebate. ModusLink would initially pay \$1 to the vendor for each power cord and then bill the client for the \$1 paid to the vendor. At a later point (generally at month-end or quarter-end), however, ModusLink would receive 10 cents back from the vendor. Despite ModusLink’s true cost of 90 cents, ModusLink generally did not pass back to its clients the 10 cents per power cord, but instead kept the 10 cents for itself.

19. Rebates were a key element of profitability at ModusLink, often comprising a substantial portion of the company’s net income for the quarter or year. One executive referred to rebates as “pure profit,” and they were considered part of ModusLink’s business model. Notwithstanding their direct impact on ModusLink’s bottom line and their importance to ModusLink’s business, however, ModusLink’s SEC filings did not identify or describe rebates in any way before the SEC began an investigation into its rebate practices.

20. ModusLink also added profit to its bottom line by directly marking up vendor costs. In some instances, however, mark-ups were added in contravention of certain clients’ cost or cost-plus contracts, which called for vendor costs to be either passed-through to clients with no mark-ups or with only agreed-upon mark-ups.

21. As described more fully below, ModusLink’s retention of vendor rebates and mark-ups in contravention of certain clients’ cost and cost-plus contracts resulted in ModusLink retaining revenue and net income to which it was not entitled. The following chart compares the net income ModusLink originally reported in its Forms 10-K and 10-Q filed with the Commission with the amounts that ModusLink restated in 2013 based on its improper rebate and mark-up practices. While ModusLink’s revenues were misstated by less than 1% in each period, its net income was misstated exponentially more.

Impact of Improper Rebates and Mark-Ups on Net Income (in Millions)

	FY2007	FY2008	FY2009	FY2010	FY2011	Q1 2012	Q1 & Q2 2012
As Reported Net Income	\$49.4	\$9.1	(\$193.5)	(\$17.8)	(\$49.0)	\$1.2	(\$11.4)
Rebate/Pricing Adjustment	(\$9.3)	(\$8.3)	(\$6.6)	(\$4.9)	(\$2.0)	(\$0.4)	(\$0.9)
Adjusted Net Income	\$40.1	\$0.8	(\$200.1)	(\$22.7)	(\$51.0)	\$0.8	(\$12.3)
Misstatement Percentage	23%	1038%	3%	22%	4%	50%	7%

ModusLink Failed to Ensure the Accurate Treatment of Rebates

22. ModusLink’s financial misstatements resulted from failures to act reasonably at every level in the company. Despite being aware that certain rebates could not be kept by ModusLink, the company nevertheless aggressively – and covertly – pursued rebates from vendors without regard to its contractual obligations to clients with cost and cost-plus contracts.

23. ModusLink personnel generally knew, at least as to ModusLink's larger clients, which had cost and cost-plus contracts and which did not. Client pricing models – which were critically important to whether ModusLink would turn a profit on a particular client's business – were reviewed when ModusLink considered both new business projects and existing business projects.

24. ModusLink's pursuit and retention of vendor rebates was also well known to, and driven by, ModusLink's management. Management put pressure on the operations staff to aggressively pursue rebates as a way to reduce ModusLink's costs and improve its profits. As part of the budget process, management set targets for the amount of rebates the business units were expected to obtain.

25. Management would thereafter periodically receive reports on the company's success obtaining rebates and their effect on the company's financial performance. Rebates were also regularly discussed in reports from ModusLink's business units.

26. The possibility of obtaining new rebates was also periodically a factor when ModusLink considered whether a new business project was expected to be sufficiently profitable to undertake.

27. Management was informed on multiple occasions that the company could not keep vendor rebates associated with clients on cost and cost-plus contracts, including in memos and reports authored by or received by ModusLink's managers.

28. Management was also apprised on multiple occasions that ModusLink was marking up vendor costs on business associated with some of its biggest clients, including clients with which ModusLink had cost or cost-plus contracts.

29. Notwithstanding management's general knowledge of its clients' contracts and knowledge of the company's pursuit of rebates and mark-ups, ModusLink did not have any meaningful processes in place to ensure rebates and mark-ups were properly treated under its different contract models. ModusLink failed to direct the relevant parts of the company, including its legal staff, operations staff, sales staff, and finance staff, to develop any procedures for the proper treatment of rebates.

30. Ultimately, in connection with its 2013 restatement of financial statements, ModusLink admitted to deficiencies in its accounting and financial controls, including a failure to reconcile its pricing and billing processes to its contractual obligations.

ModusLink's Secretive Approach to Rebate Negotiation and Retention

31. ModusLink's embrace of rebates as a profit strategy created an incentive to retain rebates to which it was not entitled. Vendor rebates were pursued and implemented on the operations side of ModusLink's business (rather than the client-facing sales side). The operations side, accordingly, turned from a cost center into a mixed cost *and* profit center, with a profit goal it was expected to hit each year.

32. By turning the operations side of its business into a profit center, ModusLink engendered a competitive and contentious dynamic between sales and operations, and the operations staff developed practices that were aimed at increasing rebates while hiding them from scrutiny. ModusLink's internal procedures and information systems were designed to keep rebate-related information away from sales and other client-facing personnel and to conceal rebate practices from clients. Management was aware of and directed this deliberate information withholding, ostensibly so that sales personnel did not negotiate away the profits made from the rebates. The effect was that those with the most knowledge about the client contracts – the client-facing personnel – were kept in the dark about the company's rebate practices. Company-wide rebate information, likewise, was generally available at the management level only.

33. Among the ways the operations staff kept rebate information hidden was by directing vendors to make sure that their invoices did not reflect the anticipated payment of rebates. Emails dating as far back as 2003, and as late as 2011, reflect that operations staff would arrange with vendors to invoice ModusLink at the higher, original price and then return the difference between the "real" or "net" price and the higher price to ModusLink at month- or quarter-end in the form of a rebate. By keeping the rebate information off of the vendor invoices, the client-facing sales personnel (and the clients themselves) would be unaware of the rebates.

34. The ModusLink personnel responsible for the concealed rebate program hid their activities by providing inflated cost figures (which included the higher, non-rebated price) to those ModusLink employees who dealt with clients.

35. In some instances, members of the operations staff pursued rebates in this fashion specifically because they knew that the client contracts would be structured as cost or cost-plus and thus they could not directly mark-up the vendor costs. Numerous middle- and upper-level managers in operations received and sometimes sent emails reflecting these practices.

36. At times, operations staff members clashed with sales staff members who suspected (accurately) that operations had included rebate-inflated prices into pricing quotes, making it tougher to make a sale to a client. Members of senior management would occasionally have to mediate these disputes between operations and sales.

37. ModusLink operations staff also made sure that its main accounting and billing systems did not contain detailed information regarding rebates. These practices were designed to and did conceal rebates from those select clients that had contractual rights to review and audit what ModusLink had charged them.

38. At various times, ModusLink operations staff referred to its rebate efforts internally as a "masked pricing program" and, more colloquially, as "Scooby Snacks."²

² In the cartoon *Scooby Doo*, Scooby Snacks were a food item (or possibly a dog treat) frequently used as an incentive for the dog Scooby-Doo and his owner Shaggy.

ModusLink Failed to Adequately Address Internal Whistleblower Complaint

39. In November 2008, an anonymous whistleblower put ModusLink's management and Audit Committee on notice of the problem posed by ModusLink's rebate practices, but ModusLink failed to effectively respond.

40. An allegation was received through ModusLink's "EthicsPoint" system regarding the collection of rebates. This system allowed for the reporting of anonymous tips concerning improper conduct at the company. The allegation stated that ModusLink's sourcing department – which was part of the operations function at ModusLink – was conducting a rebate program in which purchase orders provided to vendors and invoices received from vendors were not reduced by the rebate amount, and rebates were paid from vendors to ModusLink on separate paperwork. The allegation further asserted that these rebates were not being disclosed to clients, who were told they were receiving cost-plus pricing. The allegation squarely identified the problem with this program: "[V]endor rebate agreements in existence [sic] which are not being passed to customers per the contract terms and conditions."

41. The allegation was referred to ModusLink's Internal Audit team, which began to investigate the rebate program. At the outset, the Internal Audit director identified that the allegation raised concerns "from a legal and accounting perspective." The investigation, however, failed to sufficiently evaluate and investigate the allegation from either perspective.

42. No one at ModusLink appears to have sought either a legal or accounting opinion about whether ModusLink could properly charge the non-rebate price to clients on cost and cost-plus contracts. Nor did the Internal Audit investigation involve a review by anyone of the terms of the cost and cost-plus contracts to determine whether rebate amounts needed to be passed back to those clients. Instead, the Internal Audit team simply asked the operations staff, including its finance personnel, about the rebate program, and they uniformly asserted that the collection of rebates was acceptable because the vendors providing the rebates served multiple ModusLink clients. When the internal auditors sought historical data concerning rebate practices, they were told that the available data did not contain the level of detail requested and was unreliable, notwithstanding that the requested data was in fact being maintained by ModusLink's operations staff. Despite later being told that more detailed information was available, Internal Audit did not obtain or evaluate the information.

43. Internal Audit, along with ModusLink's general counsel, thereafter closed the EthicsPoint investigation, calling the allegation "unfounded" based on its insufficient inquiry. In March 2009, Internal Audit reported to ModusLink's Audit Committee that the investigation was closed and that Internal Audit had concluded that the rebates received were ModusLink's "entitlement."

44. During the Internal Audit investigation, staff at ModusLink identified a risk "that a client could come back and ask for the rebates received on their part orders when the client contract holds a cost or cost-plus option." That risk does not appear to have been communicated to ModusLink's Audit Committee when the complaint was closed.

45. The Audit Committee did not engage in any discussion or ask any questions about Internal Audit's review or its conclusions. No legal opinion was sought or obtained and no inquiry was made regarding the basis for the cursory conclusion reported to the Audit Committee. In other words, the Audit Committee tacitly accepted Internal Audit's report that the rebate program was justified.

46. Following the closing of the investigation, ModusLink's supply chain managers were told to review the company's rebate practices to eliminate the risk that a client with a cost or cost-plus contract might seek rebates ModusLink received on that client's business. While the managers and staff reviewed the company's rebate practices, they did nothing to change their fundamental nature. ModusLink failed to implement any new processes, including any processes to check client contracts to determine whether they were cost or cost-plus. Instead, the responsible managers merely documented the rebate practices then in existence.

Role of Catherine Venable

47. Catherine Venable held the most senior finance role on the operations side of ModusLink's business, CFO of Global Operations and its equivalent, from 2008 to 2012. In prior years, she was CFO of the Americas (2005-2007) and CFO of Asia and Europe (2007-2008). Venable often served as an intermediary between operations and the corporate accounting staff on issues related to rebates (including, for example, whether they were sufficiently predictable to warrant an accrual), and was a strong and consistent advocate for rebates, given their positive impact on the bottom line.

48. Venable was responsible for preparing the financial statements for her region and/or business unit (as she was promoted), which were provided to the corporate accounting staff.

49. Venable was familiar with ModusLink's client contracts. She knew the company's contracts with certain clients required pass-through pricing of vendor costs, and knew or should have known that certain cost savings, including rebates, had to be passed back to clients on those contracts.

50. Venable also knew that the procurement staff was negotiating rebates from vendors at the direction of management.

51. During her tenure, Venable repeatedly prepared financial statements knowing that ModusLink was retaining rebates for goods and services procured, in part or whole, for use in performing work for clients with cost and cost-plus contracts. Venable unreasonably relied on the unfounded rationale that retention of these rebates was acceptable because the vendors providing the rebates were believed to be serving multiple ModusLink clients. Venable took no independent steps to determine whether rebates should have been or were passed back to clients with cost and cost-plus contracts, and thereby, through her negligence, was a cause of ModusLink's failure to accurately record rebates and, by extension, its revenue and net income.

ModusLink's Required Restatement of Financial Statements Filed with the Commission

52. On March 12, 2012, ModusLink's Form 10-Q filing for the period ended January 31, 2012, defended the company's rebate practices:

As part of [ModusLink's supply chain management] services and in the normal course of our business we purchase certain commodity types of materials, including, but not limited to, print, packaging, media and labels, to meet client requirements, often in quantities well in excess of those required by any one client. As a result, we receive improved pricing on materials, as well as rebates based on aggregate volumes of purchases or other criteria established by the vendor. Cost of revenue for the second quarter of our 2012 fiscal year included the positive impact of approximately \$1 million attributable to such rebates. In response to an inquiry by the Securities and Exchange Commission, we are currently evaluating this practice, to determine the extent to which such rebates should be shared with certain of our clients. Based on our operating practices, including our ongoing periodic pricing negotiations with our clients, we believe the benefit of these rebates is effectively shared with our clients and that our accounting for such practices is correct.

53. On June 11, 2012, ModusLink filed with the Commission a Form 8-K, along with a press release from the company. The Press Release revised ModusLink's position on rebates, stating,

Concurrent with the [Securities and Exchange Commission's] inquiry, the Audit Committee of the Board of Directors initiated an internal investigation and has determined that certain client contracts have not been aligned consistently with ModusLink's practice of retaining volume discounts. In the course of the investigation, the Audit Committee also identified limited instances where vendor costs incurred were marked-up to clients in a manner not consistent with client contracts.

54. ModusLink then announced that "it [was] no longer able to conclude that amounts from such volume discounts and mark-ups, where now found to be inconsistent with client contracts, were correctly accounted for as revenue. As soon as practicable, the Company expects to restate its audited financial statements from fiscal years 2009 through 2011, as well as the first two quarters of fiscal 2012 and its unaudited selected financial data for fiscal years 2007 and 2008." In other words, ModusLink announced that its financial statements from 2007 to the present could not be relied upon.

55. On January 11, 2013, ModusLink filed an amended Form 10-K with the Commission in which it restated its financial results for the period 2007 through 2011 and the first two quarters of 2012. In that filing, ModusLink admitted, "based on additional accounting evaluations conducted in connection with the investigation and in consultation with the Audit Committee's advisors, the Company concluded, and recommended to the Audit Committee, that

revenue should not have been recognized for retained rebates and mark-ups associated with the cost-based client contracts.”

56. The restatement resulted in a cumulative downward adjustment of \$32.9 million in revenue, from 2007 through the first two quarters of 2012. ModusLink adjusted net income downward by \$18.0 million and restated its aggregate net loss of \$231.1 million. These adjustments flowed from the approximately \$45 million ModusLink determined that it had improperly billed clients based on rebates and mark-ups ModusLink retained in contravention of client contracts.

57. In a “Summary of Investigation Findings” in the Form 10-K filed on January 11, 2013, ModusLink conceded that:

The errors identified in the course of the Audit Committee’s investigation revealed deficiencies in the Company’s accounting and financial control environment, some of which were determined to be material weaknesses. These included a failure of effective controls to track and reconcile the Company’s belief that it was entitled to retain rebates and pricing mark-ups against the specific terms of the contractual pricing models and cost disclosure obligations required by client contracts.

Compensation of CEO Lawler and CFO Crane

58. During the 12-month periods following ModusLink’s filing with the Commission of inaccurate financial statements in its Forms 10-K for the full years of 2010 and 2011, Lawler and Crane received bonuses, incentive compensation, and equity-based compensation. Neither Lawler nor Crane has reimbursed any portion of this compensation to ModusLink.

ModusLink Offered Securities

59. On December 20, 2010, ModusLink filed a Form S-8 with the Commission. That filing detailed ModusLink’s registration of over five million shares of common stock, in connection with its adoption of a 2010 Incentive Award Plan on December 8, 2010. The registration statement incorporated ModusLink’s Fiscal Year 2010 10-K, which ModusLink later restated, as described above. ModusLink made this filing, and subsequently offered certain of the registered shares to employees, during the period it improperly billed and kept rebates and mark-ups.

Violations

60. Sections 17(a)(2) and 17(a)(3) of the Securities Act make it unlawful, in the offer or sale of securities, to (1) obtain money or property by means of any material misrepresentation or omission or (2) engage in any transaction, practice or course of business that operates or would operate as a fraud or deceit upon the purchaser. Negligence is sufficient to establish violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act. As a result of its negligent conduct described above, ModusLink violated Sections 17(a)(2) and (3) of the Securities Act.

61. Section 13(a) of the Exchange Act requires issuers of securities registered pursuant to Section 12 of the Exchange Act to file periodic and other reports with the Commission. With exceptions not applicable here, Rules 13a-1 and 13a-13 of the Exchange Act require each issuer to file annual and quarterly reports respectively on the appropriate forms and within the period specific on the form. Rule 12b-20 further requires that the required reports contain 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. As a result of the conduct described above, ModusLink violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder.

62. Section 13(b)(2)(A) of the Exchange Act requires issuers of securities registered pursuant to Section 12 of the Exchange Act to make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets. As a result of the conduct described above, ModusLink violated Section 13(b)(2)(A) of the Exchange Act.

63. Section 13(b)(2)(B) of the Exchange Act requires issuers of securities registered pursuant to Section 12 of the Exchange Act to, among other things, devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles. As a result of the conduct described above, ModusLink violated Section 13(b)(2)(B) of the Exchange Act.

64. As a result of her negligent conduct described above, Venable was a cause of ModusLink's violations of Section 13(b)(2)(A) of the Exchange Act.

65. Section 304 of the Sarbanes-Oxley Act of 2002 requires the chief executive officer and chief financial officer of any issuer required to prepare an accounting restatement due to material noncompliance with the securities laws as a result of misconduct to reimburse the issuer for (i) any bonus or incentive-based or equity-based compensation received by that person from the issuer during the 12-month periods following the false filings, and (ii) any profits realized from the sale of securities of the issuer during those 12-month periods. Section 304 does not require that the chief executive officer or chief financial officer personally engage in misconduct to trigger the reimbursement requirement, and the Commission does not allege that Lawler and/or Crane participated in misconduct. As described above, however, ModusLink engaged in misconduct giving rise to its restatement. During the 12-month period following ModusLink's filing of inaccurate financial statements in its Forms 10-K for 2010 and 2011, Lawler and Crane received bonuses, incentive compensation, and/or equity-based compensation. Neither Lawler nor Crane has, to date, reimbursed any portion of this compensation or profits stemming from this compensation to ModusLink. Lawler and Crane have, therefore, violated Sarbanes-Oxley Section 304.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent ModusLink shall cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act and Section 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.

B. Respondent ModusLink shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$1,600,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). 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 ModusLink 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 John T. Dugan, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, Boston, MA 02110.

C. Respondent Venable shall cease and desist from committing or causing any violations and any future violations Section 13(b)(2)(A) of the Exchange Act.

D. Respondent Venable shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$20,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). 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 Venable 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 John T. Dugan, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, Boston, MA 02110.

E. Respondent Lawler shall cease and desist from committing or causing any violations and any future violations of Section 304 of the Sarbanes-Oxley Act.

F. Respondent Lawler shall, within 14 days of the entry of this Order, reimburse ModusLink for cash and equity incentive compensation in the amount of \$78,991 and 24,200 shares of common stock (or the cash equivalent value calculated based on the last closing stock price as of the date of this Order) pursuant to Section 304(a) of the Sarbanes-Oxley Act. Respondent Lawler shall simultaneously deliver proof of satisfying this reimbursement obligation to John T. Dugan, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, Boston, MA 02110.

G. Respondent Crane shall cease and desist from committing or causing any violations and any future violations of Section 304 of the Sarbanes-Oxley Act.

H. Respondent Crane shall, within 14 days of the entry of this Order, reimburse ModusLink Global Solutions, Inc. for cash and equity incentive compensation in the amount of

\$51,957.60 pursuant to Section 304(a) of the Sarbanes-Oxley Act. Respondent Crane shall simultaneously deliver proof of satisfying this reimbursement obligation to John T. Dugan, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Boston Regional Office, 33 Arch Street, Boston, MA 02110.

I. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents ModusLink and Venable agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents ModusLink's and Venable's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents ModusLink and Venable agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against one or more Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary