

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 79176 / October 27, 2016**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3819 / October 27, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17104**

**In the Matter of**

**BioElectronics Corp.,  
IBEX, LLC,  
St. John's, LLC,  
Andrew J. Whelan  
Kelly A. Whelan, CPA, and  
Robert P. Bedwell, CPA,**

**Respondents.**

**ORDER PURSUANT TO 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 AS TO  
ROBERT P. BEDWELL, CPA**

**I.**

On February 5, 2016, the Securities and Exchange Commission ("Commission") instituted proceedings against Robert P. Bedwell, CPA ("Respondent" or "Bedwell") pursuant to Section 4C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e) of the Commission's Rules of Practice.

**II.**

Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Pursuant to 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 as to Robert P. Bedwell, CPA ("Order"), as set forth below.

### III.

On the basis of this Order and Bedwell's Offer, the Commission finds<sup>1</sup> that:

#### **Summary**

1. The proceedings in this matter as to Bedwell concern his failures as a Certified Public Accountant in connection with his audit of Respondent BioElectronics Corp. ("BIEL"). Bedwell was the audit engagement partner who audited the financial statements included in BIEL's 2009 10-K, filed with the Commission on March 31, 2010, in which BIEL recorded revenue from two invalid "bill and hold" transactions. Bedwell engaged in improper professional conduct under Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

#### **Respondent**

2. Respondent Robert P. Bedwell, CPA, age 58, is a resident of Coral Springs, Florida. Bedwell is currently licensed as a CPA in Florida and is a partner in a Florida accounting firm. He was the audit engagement partner for BIEL's 2009 10-K.

#### **Related Party**

3. Respondent BioElectronics Corp. is a Maryland corporation with a sole location employing approximately twelve people in Frederick, Maryland. The company is engaged in the business of making inexpensive, drug-free, anti-inflammatory medical devices and patches which use electromagnetic energy. During the relevant period, BIEL shares were a penny stock as that term is defined in Section 3(a)(51) of the Exchange Act and Rule 3a51-1 thereunder. 15 U.S.C. § 78c(a)(51) and 17 C.F.R. § 240.3a51-1.

#### **Background**

4. On a Form 10-K filed with the Commission on March 31, 2010 ("2009 10-K"), BIEL recorded revenue from two "bill and hold" transactions in which BIEL retained the goods it claimed to have sold. These transactions, which totaled \$366,000, represented 47% of the revenue in 2009 and were material to BIEL.

5. BIEL disclosed an accounting policy in its 10-K filed on March 31, 2010 that it "recognize[d] revenue when evidence of an arrangement exists, such as the presence of an executed sales agreement, pricing is fixed and determinable, collection is reasonably assured and shipment has occurred or title of the goods has been transferred to our buyers."

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<sup>1</sup> The findings herein are made pursuant to Bedwell's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

6. BIEL further disclosed its policy for bill and hold revenue recognition. “We recognize revenue on bill and hold arrangements when the following 7 criteria have been met: 1) the risk of ownership has passed to the buyer; 2) the buyer has made a fixed commitment to purchase the goods, preferably in writing; 3) the buyer, and not the seller, has requested that the transaction is on a bill and hold basis; 4) there is a fixed schedule for delivery of the goods, indicating a delivery date that is reasonable and consistent with the buyer’s business purpose; 5) the buyer has not retained any specific performance obligations such that the earnings process is not complete; 6) the ordered goods are segregated from the seller’s inventory and is not being used to fill other orders; and 7) the product must be complete and ready for shipment. In addition, payment must be received and/or fixed payment dates be agreed with the customer pursuant to which the risk of collection is reduced to a minimal level.”

7. Contrary to its disclosures and Generally Accepted Accounting Principles (“GAAP”), BIEL improperly recognized revenue on the two bill and hold transactions.

8. BIEL made the first of the two bill and hold transactions pursuant to a distribution agreement between BIEL and YesDTC Holdings, Inc. (“YesDTC”), a company owned by an individual who had performed strategic consulting services for BIEL. BIEL entered into a distribution agreement with YesDTC on December 31, 2009, the final day of BIEL’s fiscal year. This transaction failed to meet the criteria for recognizing revenue for multiple reasons. First, at the time the agreement was entered into and revenue was recognized by BIEL, the sale was not final and no fixed commitment to purchase the goods existed because YesDTC had a contractual right to cancel the distribution agreement for a period of six months. Second, YesDTC never met the contractual requirement that it obtain regulatory approval to sell BIEL’s products, and, resultantly, BIEL would not turn over its product to YesDTC without that approval. Third, the agreement contained no fixed schedule for delivery of the goods.

9. The second bill and hold transaction that failed to meet revenue recognition criteria involved BIEL and eMarkets Group, LLC (“eMarkets”), a distributor of BIEL products owned by the sister of BIEL’s CEO, a related party. The agreement between BIEL and eMarkets also contained no fixed schedule for delivery of the goods. Also, at the time BIEL recognized revenue related to this transaction, certain finishing activities called for under the agreement, such as the application of adhesive strips, had not been completed.

10. Bedwell was the audit engagement partner responsible for the audit of BIEL’s financial statements included in its 2009 10-K.

11. Public Company Accounting Oversight Board (“PCAOB”) Auditing Standards require an auditor to exercise due professional care in the performance of work. AU § 150.02, Generally Accepted Auditing Standards, states that “due professional care is to be exercised in the

performance of the audit and the preparation of the report.” Furthermore, “sufficient competent evidential matter is to be obtained . . . to afford a reasonable basis for an opinion regarding the financial statements under audit.” AU § 230.06, Due Professional Care in the Performance of Work, states: “Auditors should be assigned to tasks and supervised commensurate with their level of knowledge, skill, and ability so that they can evaluate the audit evidence they are examining. The auditor with final responsibility for the engagement should know, at a minimum, the relevant professional accounting and auditing standards and should be knowledgeable about the client.”

12. Bedwell did not make himself knowledgeable about the client through his own actions or the actions of those who worked under him. He failed to determine that BIEL was a high risk audit client, as was evidenced by the lack of adequate accounting staff, the presence of related party transactions, and the hundreds of millions of shares BIEL had issued to the public despite its size and the share price. He further failed to determine that the two bill and hold transactions themselves exhibited additional red flags over and above being bill and hold transactions: the YesDTC transaction occurred on the final day of the annual reporting period, the two transactions amounted to a significant percentage, *i.e.*, 47%, of BIEL’s revenue, and the counterparties to BIEL in these transactions were either claimed as a related party in BIEL’s 10-K, *i.e.*, eMarkets, or a party that had other dealings with BIEL, *i.e.*, YesDTC through its president, who also provided consulting services to BIEL. Further, he failed to recognize that there was no fixed delivery schedule under either the YesDTC or the eMarkets transactions, he failed to observe the segregation of inventory related to these bill and hold transactions after he became aware of them, and he failed to properly evaluate whether revenue recognition was met, given that BIEL’s agreement with YesDTC granted YesDTC a contractual right to cancel that agreement.

13. PCAOB Auditing Standards require an auditor to exercise professional skepticism. AU § 230.07, Due Professional Care in the Performance of Work, defines professional skepticism as “an attitude that includes a questioning mind and a critical assessment of audit evidence.” AU § 230.09, Due Professional Care in the Performance of Work, states that an “auditor neither assumes that management is dishonest nor assumes unquestioned honesty. In exercising professional skepticism, the auditor should not be satisfied with less than persuasive evidence because of a belief that management is honest.”

14. Bedwell’s acceptance of the statements in the bill and hold memorandum, particularly the statements concerning the fixed delivery schedules and the completed nature of the goods sold, without establishing sufficient independent audit evidence, demonstrates that Bedwell failed to exercise the required professional skepticism.

15. PCAOB Auditing Standards also require that an auditor obtain sufficient knowledge of the audited company to competently plan and perform the audit. AU § 311.06, Planning and Supervision, states: “[T]he auditor should obtain a level of knowledge of the entity’s business that

will enable him to plan and perform his audit in accordance with generally accepted auditing standards. That level of knowledge should enable him to obtain an understanding of the events, transactions, and practices that, in his judgment, may have a significant effect on the financial statements.” AU § 311.13, Planning and Supervision, states: “[T]he work performed by each assistant should be reviewed to determine whether it was adequately performed and to evaluate whether the results are consistent with the conclusions to be presented in the auditor's report.”

16. As detailed above, Bedwell failed to obtain sufficient knowledge of BIEL, either directly or through his assistants, to recognize that it was a high risk client that entered into high risk transactions. His failure to obtain sufficient knowledge resulted in an audit that was inadequately planned and executed.

17. PCAOB Auditing Standards require that audit conclusions be supported by competent evidence. AU § 326.01, Evidential Matter, states that “[s]ufficient competent evidential matter is to be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit.”

18. Examples of Bedwell’s failure to obtain sufficient competent evidence include his failure to obtain evidence of a fixed delivery schedule under either bill and hold transaction, his failure to obtain evidence that the inventory related to the two bill and hold transactions was segregated after the transactions came to light and his failure to establish evidence that the YesDTC transaction was final with a fixed commitment to purchase the goods and not cancellable.

19. PCAOB Auditing Standards require related party transactions be treated with heightened scrutiny. AU § 334.07, Related Parties, states that an “auditor should place emphasis on testing material transactions with parties he knows are related to the reporting entity.” Further, at AU § 334.09, Related Parties, provides specific procedures that should be considered when auditing related party transactions including examining “invoices, executed copies of agreements, contracts, and other pertinent documents, such as receiving reports and shipping documents” and “Test for reasonableness the compilation of amounts to be disclosed, or considered for disclosure, in the financial statements.”

20. Bedwell failed to follow the PCAOB guidance described in paragraph 19 and to properly audit the eMarkets transaction as a related party transaction. Instead, he relied on the representations of management, through the bill and hold memorandum, and eMarkets, the related party, through customer confirmations that a fixed delivery schedule had been established, when, in fact, none had. Bedwell also failed to consider additional procedures contained in the standards to the eMarkets transaction.

## **Findings**

21. Based on the foregoing, the Commission finds that Bedwell engaged in improper professional conduct pursuant to Section 4C(a)(2) 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 Respondent Bedwell's Offer.

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

A. Robert P. Bedwell is denied the privilege of appearing or practicing before the Commission as an accountant.

B. After two years from the date of this order, Bedwell 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 Bedwell'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) Bedwell, or the public accounting firm with which he is associated, is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;
- (b) Bedwell, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the Respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;
- (c) Bedwell 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) Bedwell acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply

with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

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

By the Commission.

Brent J. Fields  
Secretary