

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

**SECURITIES ACT OF 1933**  
**Release No. 10352 / May 1, 2017**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 80564 / May 1, 2017**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3869 / May 1, 2017**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17956**

**In the Matter of**

**MAGNACHIP  
SEMICONDUCTOR  
CORPORATION and  
MARGARET HYE-  
RYOUNG SAKAI, CPA,**

**Respondents.**

**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 RULE 102(e) OF THE  
COMMISSION'S RULES OF PRACTICE,  
MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND CEASE-  
AND-DESIST ORDERS**

**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 and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against MagnaChip Semiconductor Corporation (“MagnaChip”) and Margaret Hye-Ryoung Sakai (“Sakai”); and that public administrative proceedings be, and hereby are, instituted against Sakai pursuant to Exchange Act Section 4C<sup>1</sup> and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice.<sup>2</sup>

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<sup>1</sup> 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 . . . (1) not to possess the requisite qualifications to

## **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.J, Respondents consent to the entry of this Order, as set forth below.

## **III.**

On the basis of this Order and Respondents’ Offers, the Commission finds<sup>3</sup> that:

### **Summary**

1. This matter involves accounting practices at MagnaChip Semiconductor Corp., which violated the antifraud, books and records and internal control provisions of the federal securities laws. MagnaChip is a South-Korea-based semiconductor company which has been publicly traded in the United States since its Initial Public Offering (“IPO”) in 2011. Shortly after

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represent others . . . (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.

<sup>2</sup> 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.

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.

<sup>3</sup> 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.

its IPO, MagnaChip began engaging in a variety of practices to inappropriately inflate its revenues and meet the gross margin targets it previously had announced to the public. In several instances, the improper accounting practices involved employees throughout the company, including some employees directed and overseen by MagnaChip’s former Chief Financial Officer. At all relevant times, most of MagnaChip’s employees and management, including the CFO, were based in Korea.

2. MagnaChip’s fraudulent accounting practices were executed through a variety of means. From mid-2011 through December 2013 (the “relevant period”), it engaged in a variety of practices that artificially boosted revenue, improperly delayed or avoided expenses or reductions in revenue, smoothed reported gross margin, and concealed delays in collections. For example, to boost revenue, MagnaChip employees based in Korea engaged in channel stuffing by entering into undisclosed side agreements giving distributors concessions to incentivize them to take products earlier than wanted or needed. MagnaChip employees in Korea also maintained false corporate records that made it appear as if products that had not yet completed manufacturing had in fact been completed and shipped to customers. As MagnaChip’s accounts receivable on these products began to age, the Company entered into a series of transactions that made it appear that distributors were paying down invoices when, in reality, they were not. MagnaChip also improperly delayed the recording of certain expenses and manipulated its reserves to hit pre-defined targets.

3. As a result, MagnaChip’s financial statements and related disclosures were materially misstated in its periodic, annual, and current reports relating to fiscal years 2011 and 2012 and fiscal quarters in 2013, each of which was filed with the Commission. MagnaChip also falsely stated in an October 2013 press release that it had met its revenue and gross margin guidance for ten consecutive quarters following its IPO. Over the relevant period, MagnaChip’s stock price increased by 69% and the Company benefitted from issuing debt at more favorable rates than were historically available to it.

4. Beginning in the Fall of 2013, members of MagnaChip’s Board and Audit Committee began to question management in Korea about the Company’s rising accounts receivable balances. In late 2013, MagnaChip’s outside auditors also raised concerns about the Company’s accounts receivable balances. After discussing these concerns with MagnaChip’s outside auditors in late 2013, the Audit Committee initiated an independent internal investigation in January 2014 that uncovered certain revenue recognition problems. The Company self-reported the revenue issues, and during the ensuing investigation uncovered additional fraudulent practices. As a result, the Company restated its financial statements in early 2015, reducing its previously reported revenue during the relevant period by \$121 million. For 2011, MagnaChip’s previously reported net profit was restated to a net loss. For the first three quarters of 2013, MagnaChip had overstated revenue by more than 5% in every quarter, creating the false impression that revenue was growing when in fact it was declining. The restatement also revealed that, contrary to MagnaChip’s claim to have met its guidance for ten consecutive quarters, it had in fact missed its revenue guidance from Q4 2012 through Q3 2013 and its gross margin guidance from Q1 2012 through Q3 2013. Following the announcement, MagnaChip’s stock price dropped by 50% and has not yet recovered.

## **Respondents**

5. **MagnaChip Semiconductor Corp.** (“MagnaChip” or “the Company”) is a Delaware corporation headquartered in Luxembourg with the majority of its operations in South Korea. It designs, manufactures and sells semiconductor products through a subsidiary in South Korea. MagnaChip also has a sales subsidiary in Cupertino, CA. Since its initial public offering in March 2011, MagnaChip’s stock has been registered pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange under the ticker “MX.” Throughout the relevant period, MagnaChip filed with the Commission public reports on Forms 10-Q and 10-K. In addition, MagnaChip filed an S-3, an S-4 and two Forms S-8 during the relevant period, which incorporated various Forms 10-K and 10-Q filed during the relevant period. MagnaChip stated in its public filings that it prepared its financial statements in accordance with United States Generally Accepted Accounting Principles (“GAAP”).

6. **Margaret Hye-Ryoung Sakai**, age 60, is a U.S. citizen who maintains residences in South Korea and Weston, MA. She is a Certified Public Accountant licensed to practice in California since 1991 (license currently inactive). She joined MagnaChip as Senior Vice President, Finance in November 2006, and served as the Company’s Chief Financial Officer and Principal Accounting Officer from April 2009 until she resigned from the positions at the Company in March 2014.

## **Background**

7. Following its March 2011 IPO, MagnaChip’s senior-most executives in Korea placed immense pressure on employees to meet the revenue and gross margin targets MagnaChip communicated to its Board and to the public. It was well known throughout the organization in Korea that the Company executives wanted to demonstrate the Company’s financial strength and stability after emerging from a prior bankruptcy. MagnaChip’s then-CEO also hoped that strong financial performance would facilitate the sale of its majority shareholder’s position (which was acquired by a U.S. turnaround firm as part of MagnaChip’s reorganization) so that the Company could return to South Korean control. MagnaChip’s executives set aggressive revenue and gross margin targets and, in several instances when employees objected to the targets, management refused to lower them. Executives in Korea held weekly sales meetings with the Company’s sales and manufacturing personnel to track their progress, often berating them when they fell short. As a result, employees throughout MagnaChip’s sales, finance, and manufacturing organizations in Korea resorted to committing improper acts to meet the Company’s revenue and gross margin targets. Although these improper practices were well-known through MagnaChip’s Korea-based management, the Company’s then-CFO Sakai directed or approved several of the practices, failed to remediate other practices, and understood how the practices would impact MagnaChip’s reported financial results.

## A. MagnaChip's Fraudulent Revenue Recognition Practices

8. To help ensure that MagnaChip hit its targets, certain employees in Korea engaged in two primary improper practices to inflate its revenue. The first, which certain employees referred to as “pull-in” sales, was a systematic effort to offer distributors incentives or concessions to purchase products earlier than they otherwise would have. The second, which certain MagnaChip employees referred to as “sun ip go,” a Korean phrase translated roughly as “advance warehousing,” involved improperly recognizing revenue on unfinished goods that had not yet been completed or shipped. MagnaChip also improperly recognized revenue on certain discrete transactions in order to help it meet its revenue targets.

### ***“Pull-in” Sales***

9. During the relevant period, MagnaChip sold its products both through a direct sales force and a network of distributors. For sales through distributors, MagnaChip stated in its public filings that it recognized revenue on a “sell-in” basis under GAAP, *i.e.*, when it sold and shipped the product to a distributor, not when the distributor sold and shipped the product to an end customer. This revenue recognition treatment for sales to distributors is consistent with GAAP only when persuasive evidence of an arrangement exists, the product has been delivered and title and risk of loss have transferred, the price is fixed and determinable, and collection of the resulting receivable is reasonably assured. To ensure MagnaChip complied with GAAP, its internal financial policy required the CFO among others to approve new significant sales contracts and any changes to existing payment terms and the issuance of credit or credit limit increases above certain thresholds, and that revenue could be recognized only according to the terms of sale.

10. MagnaChip acknowledged these revenue recognition criteria in its quarterly and annual filings during the relevant period, each of which was signed by Sakai. It added that it utilized these criteria to recognize revenue “upon shipment, upon delivery of the product at the customer’s location or upon customer acceptance … when the risks and rewards of ownership have passed to the customer” and that, outside of warranty obligations and contractual terms, its sales contracts “do not include any other post-shipment obligations that could have an impact on revenue recognition.” Those statements were later determined to have been materially false and misleading because MagnaChip recognized substantial revenue even when the disclosed criteria were not met.

11. Contrary to the disclosures in its public filings, as well as to its written policies, from late 2011 through the third quarter of 2013, certain MagnaChip employees engaged in what they called a “pull-in” sales practice whereby they offered distributors undisclosed concessions via side agreements to incentivize them to order products earlier than wanted or needed so that MagnaChip would hit revenue targets. The concessions included payment term extensions, credit limit increases, unlimited return and stock rotation rights on unsold inventory, and price protection. As a result of the concessions, MagnaChip improperly recognized revenue on certain transactions that did not meet the requirements of GAAP, including because the price was not fixed and determinable, collectability was not reasonably assured, or the risk of loss had not yet transferred.

12. Although the “pull-in” sales practice was known to numerous individuals throughout MagnaChip’s Korean management structure, Sakai, as CFO of MagnaChip, approved payment term extensions and credit limit increases for certain of the improper pull-in sales, failed to correct the improper accounting treatment of other pull-in sales, and understood how they would impact MagnaChip’s reported revenue.

13. Sakai either knew or was reckless in not knowing that the concessions and side agreements precluded revenue recognition under GAAP and violated MagnaChip’s disclosed revenue recognition policy. Further, Sakai either knew or was reckless in not knowing that the Company engaged in these practices solely to meet revenue targets. As CFO, she signed MagnaChip’s financial statements disclosing the company’s revenue recognition policy and GAAP requirements. She also represented to MagnaChip’s auditors in management representation letters that MagnaChip had not entered into any side agreements, and certified MagnaChip’s public filings stating that the Company recognized revenue in accordance with GAAP when in fact she either knew or was reckless in not knowing about the improper accounting treatment of certain of these transactions.

14. In early 2014, in anticipation of employee interviews to be conducted after the Audit Committee began investigating the Company’s revenue recognition practices, MagnaChip’s Korea-based management circulated to their subordinates a list of words to avoid using during their interviews. The words MagnaChip used to describe their pull-in sales practices were on that list.

#### ***“Sun Ip Go” – Recognizing Revenue on Sales of Unfinished Products***

15. MagnaChip also improperly recognized revenue on “sales” of non-existent or unfinished products in order to meet revenue targets. In 2011, some MagnaChip Korean sales employees met with some manufacturing employees to express concern about their ability to meet the sales targets set by senior management because manufacturing could not keep up. After that meeting, certain of MagnaChip’s manufacturing employees in Korea began circumventing the Company’s accounting controls and falsified books and records to create entries that made it appear that products that had not yet begun production or were still in production had been completed, shipped and billed to customers. MagnaChip then recognized revenue on the sales of those unfinished products. In so doing, MagnaChip violated GAAP because it recognized revenue on purported sales of products that had not yet completed manufacturing and therefore had not yet shipped or been delivered, and the risk of loss had not transferred to the purchaser.

16. Certain MagnaChip’s manufacturing employees knew that this practice, which they referred to in Korean as “sun ip go,” was improper. MagnaChip’s written internal financial policy at the time stated that billing invoices shall be issued only for actual goods shipped or delivered, and required that those sales be timely recorded and revenue recognized only according to the sales terms. By late 2011 however, based on their meetings with MagnaChip’s sales employees, these manufacturing employees knew that MagnaChip could not hit its revenue targets if they complied with the policy. These manufacturing employees therefore implemented the “sun ip go” practice to allow the Company to report revenue on sales of these unfinished products so that it could claim that it had met targets when, in truth, it had not.

17. As described above, MagnaChip’s Korea-based management circulated to subordinates a list of words not to use during interviews conducted in connection with the Audit Committee’s investigation into MagnaChip’s revenue recognition practices. The words MagnaChip used to describe the “sun ip go” practices were on that list.

#### ***Other Improper Transactions to Recognize Revenue***

18. In addition to the deceptive business practices described above, MagnaChip improperly recognized revenue on other transactions. In December 2011, for example, MagnaChip accelerated \$1.8 million of revenue into 2011 by altering a purchase order from a customer to conceal language stating that the customer did not accept title or risk of loss on the goods until January 1, 2012.

19. Sakai either knew or was reckless in not knowing that MagnaChip improperly recognized revenue on this transaction in 2011. She knew that the transaction was important to hitting 2011 revenue targets, was kept apprised of the negotiations as they occurred, understood that the customer would not accept title and risk of loss until 2012, and either understood or was reckless in not understanding that, as a result, MagnaChip could not recognize the revenue until 2012. After the transaction was agreed upon, Sakai received a copy of the purchase order stating that title and risk of loss transferred in 2012. She told the Korea-based sales employee who had overseen the deal negotiations that revenue could not be recognized if the purchase order contained that language. The sales employee then whited-out the relevant language in the purchase order and provided it to the finance department. Sakai approved the recording of revenue in 2011, even though she either knew or was reckless in not knowing that the customer had always insisted on title and risk of loss transferring in 2012. MagnaChip then gave its auditor the altered purchase order as support for recognizing the revenue.

20. In 2013, MagnaChip improperly recognized revenue on a gross basis on certain “turnkey” foundry services that it provided to a customer. In the “turnkey” sales, MagnaChip purchased silicon wafers from the customer, performed some additional processing services on them, and sold the finished product to a third party on behalf of its customer. Because MagnaChip acted as its customer’s agent, it was required under GAAP to recognize revenue only on the amount attributable to its processing services, net of the wafer costs. Initially, MagnaChip accounted for the sales properly. In mid-2013, however, it switched to recognize the revenue on a gross basis to boost MagnaChip’s reported revenue, overstating revenue on these “turnkey” sales by approximately \$5 million in the third quarter of 2013. Sakai either knew or was reckless in not knowing that MagnaChip’s decision to recognize the revenue on a gross basis violated GAAP.

21. MagnaChip also engaged in improper practices to avoid recording expenses or revenue reductions in the appropriate period. In April 2013, for example, MagnaChip agreed to settle a customer’s claim over certain product quality issues. As part of the settlement, MagnaChip agreed to certain cash and in-kind payments that could total up to \$18 million, which was a significant contingent liability for the Company. Under GAAP, MagnaChip was required to record the full amount of the contingent liability in its current period books and records (as well as

disclose the liability in its financial statements). Rather than record the full amount of the obligation, however, MagnaChip recognized the expense and/or reduction of revenue as it paid out the claim over time. MagnaChip's Korea-based employees also failed to disclose the settlement agreement to MagnaChip's outside auditors in response to their requests in connection with the 2013 quarterly reviews.

22. Sakai either knew or was reckless in not knowing that MagnaChip did not properly record or disclose the contingent liability in the appropriate period books and records or the appropriate period financial statements. Sakai knew about the product quality issue and the settlement agreement but failed to record it on MagnaChip's books and records even though she understood that GAAP required MagnaChip to record the full amount of the contingent liability in its current period books and records because it was probable and estimable. Despite this, Sakai certified that MagnaChip's Q2 and Q3 2013 financial statements complied with GAAP and signed representations to that effect in letters to MagnaChip's auditors. This certification was false.

#### ***Roundtrip Transactions and Attempts to Conceal Rising Accounts Receivable***

23. MagnaChip's written policies and procedures required customer payments to be accurately recorded against those customers' receivables in the proper period. MagnaChip's revenue practices, however, eventually caused increases to the amount of its accounts receivables that were not paid in a timely manner. To make those receivables appear less aged, certain finance employees in Korea under Sakai's supervision engaged in a practice of applying payments on more recent sales to receivables on older sales. As a result, receivables that had not yet been collected were incorrectly reflected in MagnaChip's books as collected. This violated GAAP because, among other things, the Company concealed the diminishing likelihood of collection on these aging receivables and did not appropriately consider that factor when analyzing its allowance for uncollectible receivables or ongoing sales activities with those same customers.

24. Sakai either knew or was reckless in not knowing about the practice, which violated GAAP and MagnaChip's written policies and procedures regarding customer payments.

25. Finance employees in Korea, under Sakai's responsibility, also engaged in a series of improper transactions to make it appear as if MagnaChip had collected approximately \$16 million of uncollected receivables from distributors, when it had not. As part of this pattern of conduct, MagnaChip repurchased its own, unsold products from Korea-based distributors and disguised the transactions as purchases from certain vendors based in Korea. MagnaChip provided cash to the vendors, which pretended to sell equipment and related supplies to MagnaChip. In actuality, the vendors used the money to buy MagnaChip goods from distributors, which in turn used that money to pay outstanding MagnaChip receivables. The payments were incorrectly recorded as being for outsourcing supplies and capital expenditures. Certain internal emails and documents that Sakai received referred to these transactions as "D-Project." These improper transactions violated GAAP, which required MagnaChip to reverse the previously booked revenue associated with the cash payments it had made to those customers.

26. Sakai either knew or was reckless in not knowing that the roundtrip transactions took place and were improper and violated GAAP. Initially, she rejected the idea of roundtrips proposed by her subordinates, but later assented when she learned that the auditors' concerns about the receivable balances and aging had become serious enough that they might not sign off on the Company's financial statements. MagnaChip's management did not disclose these transactions to MagnaChip's Board and Audit Committee.

#### **B. MagnaChip Manipulated Gross Margin**

27. Sakai either knew or was reckless in not knowing that MagnaChip sometimes engaged in efforts to manipulate its gross margins. For example, certain MagnaChip manufacturing employees in Korea consulted certain finance employees under Sakai's responsibility before scrapping inventory, and the finance department delayed scrapping for some obsolete inventory by several months or years. The delayed scrapping violated GAAP requirements that MagnaChip record the scrap as an expense when the inventory became aged or obsolete. By failing to do so, MagnaChip improperly inflated its gross margin and its books and records did not accurately reflect inventory values.

28. Certain MagnaChip finance employees in Korea engaged in other practices to manipulate MagnaChip's gross margins. For example, manufacturing employees in Korea, with knowledge of certain finance employees, made improper entries in Company systems reflecting that aged inventory had moved one step further along the manufacturing cycle so that it would not appear to be aged and therefore included in the reserve, when in reality the manufacturing step had not been completed. As a result, MagnaChip misstated gross margin and its assets were incorrectly reflected in its books and records. The "one-step move" practice violated GAAP because it allowed MagnaChip to increase the inventory value when no manufacturing process had in fact occurred. MagnaChip also manipulated its gross margins by increasing certain reserves when the Company exceeded its gross margin target and then using that "cushion" to reverse reserves in later quarters when they were not otherwise able to meet the gross margin target.

29. Sakai either knew or was reckless in not knowing about the improper gross margin smoothing practices described above. Sakai was reckless in not knowing that the finance employees engaged in the gross margin manipulations for the purpose of concealing the negative impacts of the roundtrips and other revenue-related manipulations. Certain finance employees in Korea tracked the gross margin manipulations in detailed spreadsheets identifying "action items" that were discussed in various meetings within MagnaChip, some of which included Sakai.

**C. MagnaChip Failed to Maintain Effective Internal Controls During the Relevant Period**

30. As a result of the improper practices, MagnaChip’s financial statements were materially false and misleading every quarter for almost two years. The misstatements resulted in part from material weaknesses in MagnaChip’s internal controls during the relevant period, which the then-management team did not disclose to the Board and the Audit Committee. Specifically, as acknowledged in its Form 10-K for 2013 issued in connection with the restatement, MagnaChip:

- a. did not maintain a control environment that effectively emphasized (i) an attitude of integrity and ethics against the pressure to achieve sales, gross margin and other financial targets, (ii) adherence to US GAAP, (iii) utilization of the whistleblower program, and (iv) prevention or detection of undisclosed business practices involving the circumvention of internal controls under the management team in place during the relevant period;
- b. did not maintain an appropriate level of accounting knowledge, experience and training commensurate with its financial reporting requirements under US GAAP; and
- c. failed to maintain an effective internal audit function whereby the internal control team exercised full authority to independently report to the Audit Committee in order to provide adequate monitoring of control activities related to financial reporting.

31. As a result, MagnaChip’s monitoring activities that should have detected errors or internal control weaknesses were not effective, and the then-management team did not disclose complete information to the Audit Committee, which limited the Audit Committee’s ability to oversee the accounting and financial reporting process.

32. Despite the above, in each of its quarterly and annual reports during the relevant period, the Company falsely stated, and the then-CFO certified pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, that MagnaChip’s internal controls over financial reporting were effective and provided reasonable assurance regarding the reliability of financial reporting, that MagnaChip had prepared its financial statements in accordance with GAAP, and that the filings did not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances in which they were made, not misleading. This certification was false.

**D. MagnaChip’s Required Restatement Revealed the Scope of the Fraudulent Accounting Practices**

33. As noted above, in late 2013, both MagnaChip’s outside auditors and members of its Board and Audit Committee independently raised concerns about the Company’s rising accounts receivable balances. MagnaChip’s Audit Committee postponed its fiscal 2013 earnings announcement and initiated an independent internal investigation.

34. On March 6, 2014, the Audit Committee determined that MagnaChip had incorrectly recognized revenue on certain transactions and as a result would restate its financial statements for the years 2011 and 2012 and the quarters in 2012 and 2013. On August 12, 2014, MagnaChip announced that the scope of the Audit Committee's investigation had expanded to include errors and adjustments to costs of goods sold, inventory, and reserves and related business practices.

35. On February 12, 2015, MagnaChip filed its 2013 Form 10-K, which contained restated financial statements for the years 2011 and 2012, and its Forms 10-Q for the first three quarters of 2014, which contained restated financial statements for the first three quarters of 2013. MagnaChip had also previously incorporated false financial statements for certain periods into its Forms S-3, S-4 and S-8 filed between April 2012 and September 2013.

### **Violations**

36. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit, in connection with the purchase or sale of securities, (1) employing any device, scheme or artifice to defraud; (2) making any material misrepresentation or omission; or (3) engaging in any transaction, practice, or course of business that operates as a fraud or deceit upon any person. As a result of the conduct described above, MagnaChip violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sakai willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

37. Section 17(a)(1) of the Securities Act prohibits the use of a device, scheme or artifice to defraud in the offer or sales of securities. Sections 17(a)(2) and 17(a)(3) 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 as a fraud or deceit upon the purchaser. As a result of the conduct described above, MagnaChip violated Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act, and Sakai willfully violated Sections 17(a)(1) and 17(a)(3) of the Securities Act.

38. 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, 13a-11 and 13a-13 of the Exchange Act require each issuer to file annual, current, 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 must contain any material information necessary to make the required statements made in the reports not misleading. Rule 13a-14 requires that the principal financial officer of an issuer sign a certification that the issuer's Forms 10-Q and 10-K fairly presented, in all material respects, the financial condition and results of operations of the company. As a result of the conduct described above, MagnaChip violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder, and Sakai was a cause of MagnaChip's violations of these provisions and willfully violated Rule 13a-14 under the Exchange Act.

39. 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, MagnaChip violated Section 13(b)(2)(A) of the Exchange Act, and Sakai was a cause of MagnaChip's violations of this provision.

40. 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, MagnaChip violated Section 13(b)(2)(B) of the Exchange Act, and Sakai was a cause of MagnaChip's violations of this provision.

41. Section 13(b)(5) of the Exchange Act prohibits any person from knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying books, records, or accounts described in Section 13(b)(2) of the Exchange Act. As a result of the conduct described above, Sakai willfully violated Section 13(b)(5) of the Exchange Act.

42. Rule 13b2-1 promulgated under the Exchange Act prohibits any person from directly or indirectly falsifying any books and records subject to Section 13(b)(2)(A) of the Exchange Act. As a result of the conduct described above, Sakai willfully violated Exchange Act Rule 13b2-1.

43. Rule 13b2-2 promulgated under the Exchange Act prohibits any director or officer of an issuer from directly or indirectly making, or causing to be made, or omitting to state or causing another person to omit to state, a materially false or misleading statement or any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with any audit, review or examination of the financial statements of the issuer, or the preparation or filing of any document or report required to be filed with the Commission. As a result of the conduct described above, Sakai willfully violated Exchange Act Rule 13b2-2.

#### **MagnaChip's Remedial Efforts**

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by MagnaChip and cooperation afforded by MagnaChip to the Commission staff.

#### **IV.**

#### **Undertakings**

Respondent MagnaChip undertakes to:

Cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order. In connection with such cooperation, MagnaChip shall:

A. Produce, without service of a notice or subpoena, any and all non-privileged documents and other information requested by the Commission staff subject to any restrictions under the law of any foreign jurisdiction;

B. Use its best efforts to cause its officers, employees, and directors to be interviewed by the Commission staff at such time as the staff reasonably may direct;

C. Use its best efforts to cause its officers, employees, and directors to appear and testify without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission staff; and

D. In connection with any testimony of MagnaChip's officers, employees, and directors to be conducted at deposition, hearing, or trial pursuant to a notice or subpoena, MagnaChip:

i. Agrees that any such notice or subpoena for MagnaChip's officers', employees', and directors' appearance and testimony may be served by regular or electronic mail on: Alex Young K. Oh, Esq., Paul Weiss Rifkind Wharton & Garrison LLP, 2001 K Street, NW, Washington DC 20006-1047; aoh@paulweiss.com.

ii. Agrees that any such notice or subpoena for MagnaChip's officers', employees', and directors' appearance and testimony in any action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

In determining whether to accept the Offer, the Commission has considered this undertaking.

## V.

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

Accordingly, it is hereby ORDERED effective immediately that:

A. Respondent MagnaChip cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B) of the Exchange Act, and Rules 10b-5, 12b-20, 13a-1, 13a-11 and 13a-13 thereunder.

B. Within 30 days of the entry of this Order, MagnaChip shall pay a civil money penalty in the amount of \$3,000,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

C. Respondent Sakai shall pay a civil money penalty in the amount of \$135,000, to the Securities and Exchange Commission. Payment shall be made in the following installments: \$70,000 within 14 days of the effectiveness of this Order, and the remainder in equal monthly installments of \$5,909.09 thereafter, with each installment due and payable on or before the 15th day of each month and with the final payment of \$5,909.09 paid within 350 days after the effectiveness of this Order. If any payment is not made by the date required by this Order, the entire outstanding balance, plus any additional interest accrued pursuant to 31 U.S.C. §3717, shall be due and payable immediately, without further application.

D. Payment of the amounts described in paragraphs B and C 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 the 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 Erin E. Schneider, Division of Enforcement, Securities and Exchange Commission, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104-4802.

E. Respondent Sakai shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13, 13a-14, 13b2-1 and 13b2-2 thereunder.

F. Respondent Sakai is denied the privilege of appearing or practicing before the Commission as an accountant.

G. Respondent Sakai is barred from acting as an officer or director of any issuer that has a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

H. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties referenced in paragraphs C and D above. 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 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' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents 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 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.

I. Respondent MagnaChip acknowledges that the Commission is not imposing a civil penalty in excess of \$3,000,000 based upon its cooperation and undertaking to cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that MagnaChip knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, or the Division determines that MagnaChip has not complied with its undertaking to cooperate fully in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order, the Division may, at its sole discretion and with prior notice to MagnaChip, petition the Commission to reopen this matter and seek an order directing that MagnaChip pay an additional civil penalty not to exceed \$3,000,000. MagnaChip may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information or failed to comply with its undertaking to cooperate fully in any and all investigations, litigations or other proceedings relating to or arising from the matters described in the Order, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

J. 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 Respondent Sakai, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by these Respondents under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with the proceeding, is a debt for the violation by Respondent Sakai 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