

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10478 / April 9, 2018

SECURITIES EXCHANGE ACT OF 1934
Release No. 83017 / April 9, 2018

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3933 / April 9, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18431

In the Matter of

Philip John James, CA and
Kevin Silverwood, CA

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 A CEASE-AND-
DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Philip John James, CA and Kevin Silverwood, CA (collectively, “Respondents”) pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 4C¹ and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice.²

¹ Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

² Rule 102(e)(1)(iii) provides, in pertinent part, that:

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (“Offer”) that 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, Respondents admit the Commission’s jurisdiction over them and the subject matter of these proceedings, and consent to the entry of this 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 a Cease-A-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds³ that:

SUMMARY

1. This matter involves financial reporting fraud conducted by two former employees of Tech Data’s U.K. subsidiary. In fiscal years 2012 and 2013, Respondents Philip John James, the subsidiary’s Finance Director, and Kevin Silverwood, the subsidiary’s Financial Management Controller, fraudulently overstated Tech Data’s income by concealing uncollectible receivables that should have been written off, reversing previously-recorded expenses and foreign exchange losses, and prematurely recognizing a vendor rebate. As a result of this fraud, Tech Data overstated its consolidated pretax income by 7% in the third quarters of fiscal years 2012 and 2013 and by 5% in the fourth quarter of fiscal year 2013.

RESPONDENTS

2. Philip John James, 47, a citizen and resident of the U.K., was Computer 2000’s Finance Director from January 2007 until he resigned in March 2013. James is a Chartered Accountant in the U.K.

3. Kevin Silverwood, 40, a citizen and resident of the U.K., was Computer 2000’s Financial Management Controller from August 2011 until he resigned in February 2013. Silverwood is a Chartered Accountant in the U.K.

OTHER RELEVANT ENTITIES AND PERSONS

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

³ The findings herein are made pursuant to Respondents’ Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

4. Tech Data Corp. is a wholesale distributor of technology products. It is a Florida corporation headquartered in Clearwater, Florida. Tech Data's common stock is registered with the Commission pursuant to Exchange Act Section 12(b) and trades on NASDAQ. During the relevant period, Tech Data sold securities pursuant to registration statements on Forms S-3 and S-8 that incorporated by reference periodic filings with the material misrepresentations described in this Order.

5. Computer 2000 Distribution Limited, now doing business under the name Tech Data Limited, was at all relevant times a U.K. corporation wholly-owned by Tech Data. For public reporting purposes, Computer 2000's financial results were consolidated in the results of Tech Data.

FACTS

The Accounting Fraud in the U.K. Subsidiary

A. Misconduct in the Company's Third Quarter of Fiscal Year 2012

6. In Q3FY2012, James and Silverwood learned that Computer 2000 had \$5 million in aged receivables that were uncollectible. GAAP required Computer 2000 to write off this amount by reducing the balance of its receivables account (an asset on its balance sheet) by \$5 million and recording a corresponding \$5 million expense.⁴ This would have reduced Computer 2000's income by \$5 million. To avoid this result, James and Silverwood made journal entries that transferred the \$5 million from the receivables account to an unrelated liability account on Computer 2000's balance sheet, where it remained until Tech Data restated its financials in February 2014.

7. This misconduct overstated Tech Data's reported income before taxes by 7% in Q3FY2012.

B. Misconduct in the Company's Third Quarter of Fiscal Year 2013

8. The following year, James and Silverwood again fraudulently overstated Tech Data's income. During the process of closing Computer 2000's Q3FY2013, James and Silverwood learned that the subsidiary's expenses were higher than expected. To improve their results, James and Silverwood made journal entries that transferred over \$3 million in costs relating to wages, car expenses, unrealized foreign exchange currency losses, and product discounts and rebates – all of which Computer 2000 had previously, and appropriately, recorded as reductions on its income statement – to the same balance sheet liability account they had used to

⁴ GAAP requires that a receivable be recorded as impaired when, based on all available information, it is probable that a loss has been incurred. See ASC 310-10-35-4.

hide the uncollectible receivables in the prior year. Doing so artificially reduced Tech Data's expenses, and hence boosted the company's income, by over \$3 million.

9. James and Silverwood overstated Tech Data's income further in this period by again not recording expenses for uncollectible receivables as GAAP required. Though they knew about \$650,000 in receivables from a vendor were uncollectible, and would hence need to be written off, James and Silverwood avoided the required reduction in Computer 2000's income by making journal entries that transferred this amount from the receivables account to an unrelated balance sheet liability account.

10. Their fraud in this period overstated Tech Data's reported income before taxes by 7% in Q3FY2013.

C. Misconduct in the Company's Fourth Quarter of Fiscal Year 2013

11. James and Silverwood overstated Tech Data's income yet again in the following quarter.

12. First, Silverwood, with James's knowledge, failed to record about \$750,000 in foreign exchange losses as required by GAAP. At the close of Q4FY2013, Silverwood learned Tech Data had recorded a \$1.8 million loss in its income statement due to fluctuations in the value of the euro and certain associated hedging transactions. Rather than continuing to record the full loss, Silverwood directed subordinates to make journal entries that reversed – under the guise of “deferring” to an unspecified future period – about \$750,000 of this loss. There was no basis in GAAP for this action.

13. Second, James allowed Tech Data to prematurely recognize about \$750,000 in rebates. In November 2012, James learned that a vendor had agreed to issue a \$750,000 credit to Computer 2000 if it ordered a certain volume of products from the vendor with delivery dates in February and March 2013. Because the delivery dates were not until Tech Data's Q1FY2014, GAAP prohibited Computer 2000 from recognizing the \$750,000 credit in Q4FY2013.⁵ Nevertheless, Computer 2000, with James's knowledge, recorded the entire amount of the credit in Q4FY2013.

14. Third, as they had done the prior quarter, James and Silverwood overstated Tech Data's income by making journal entries that improperly transferred over \$350,000 in costs (wages and car expenses) that had already been recorded in the company's income statement to a balance sheet liability account.

⁵ GAAP requires that companies recognize vendor incentives in a systematic fashion that properly allocates the cash consideration the vendor offers to the particular underlying transaction that results in progress toward earning the incentive. ASC 605-50-25-10.

15. Fourth, as they had also done previously, James and Silverwood failed to write off two uncollectible receivables as required by making journal entries that transferred over \$2.2 million from the receivables account to unrelated balance sheet liability accounts.

16. In all, the misconduct in this period overstated Tech Data's reported income before taxes by 5% in Q4FY2013, as reported in its March 4, 2013 earnings release on Form 8-K.

D. James and Silverwood Concealed Certain of Their Activities

17. James and Silverwood tracked their fraudulent activity in one of the balance sheet liability accounts they used to manipulate Computer 2000's earnings through a reconciliation spreadsheet maintained by one of Silverwood's subordinates that included a list of the unrelated expenses they had transferred to that account.

18. In Q4FY2013, James and Silverwood falsified the reconciliation by altering the amounts in the spreadsheet to match the balance in Computer 2000's accounting system for that account.⁶ Silverwood provided the false reconciliation to Tech Data's internal audit group. Both he and James understood the company's external auditors would have access to the reconciliation.⁷

VIOLATIONS

19. Securities Act Section 17(a)(1), Exchange Act Section 10(b) and Rule 10b-5 thereunder prohibit fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

20. Securities Act Section 17(a)(2) prohibits any person from obtaining money or property in the offer or sale of securities by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

21. Securities Act Section 17(a)(3) prohibits any person from engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser in the offer or sale of securities.

22. Exchange Act Rule 10b-5(a) prohibits any person from employing any device, scheme, or artifice to defraud.

⁶ James and Silverwood altered the reconciliation so that it would match the balance in the accounting system simply by removing digits from the actual figures. For example, "£394,439.73" became "£94,439.73" and "£2,417,311.94" became "£17,311.94."

⁷ The external auditors did in fact receive and incorporate the false reconciliation in their audit workpapers.

23. Exchange Act Rule 10b-5(c) prohibits any person from engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

24. Exchange Act Section 13(a) and Rules 13a-11 and 13a-13 thereunder require that every issuer of a security registered pursuant to Exchange Act Section 12 file with the Commission, among other things, current and quarterly reports as the Commission may require.

25. Exchange Act Section 13(b)(2)(A) requires reporting companies to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

26. Exchange Act Section 13(b)(2)(B) requires all reporting companies to 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 GAAP.

27. Exchange Act Section 13(b)(5) prohibits any person from knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record, or account described in Section 13(b)(2).

28. Rule 13b2-1 under the Exchange Act prohibits any person from, directly or indirectly, falsifying or causing to be falsified, any book, record, or account subject to Exchange Act Section 13(b)(2)(A).

29. As a result of the conduct described above, James and Silverwood willfully violated Securities Act Section 17(a), Exchange Act Sections 10(b) and 13(b)(5), and Rules 10b-5(a) and (c) and 13b2-1 thereunder, and willfully aided and abetted and caused Tech Data's violations of Securities Act Sections 17(a)(2) and (3), and Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rules 13a-11 and 13a-13 thereunder.

FINDINGS

30. Based on the foregoing, the Commission finds that James and Silverwood willfully violated Securities Act Section 17(a), Exchange Act Sections 10(b) and 13(b)(5), and Rules 10b-5(a) and (c) and 13b2-1 thereunder, and willfully aided and abetted and caused Tech Data's violations of Securities Act Sections 17(a)(2) and (3), and Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rules 13a-11 and 13a-13 thereunder.

REGULATORY SETTLEMENT

31. Respondent James has entered into a settlement agreement with the U.K.'s Financial Reporting Council (FRC) involving conduct relating to the findings in the Order. Pursuant to the settlement, James admitted his misconduct related to Computer 2000, paid a fine of £35,625 (approximately \$46,300), and agreed to be excluded as a member of the Association of Chartered Certified Accountants for 10 years.

32. Respondent Silverwood has also entered into a settlement agreement with the FRC. Silverwood took responsibility for his actions, fully admitting to his conduct during the FRC's investigation. Pursuant to the settlement, Silverwood admitted his misconduct related to Computer 2000, paid a fine of £11,250 (approximately \$14,850), and agreed to be excluded as a member of the Institute of Chartered Accountants in England and Wales for 4 years.

IV.

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. James and Silverwood shall cease and desist from committing or causing any violations and any future violations Securities Act Section 17(a), Exchange Act Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5), and Rules 10b-5(a) and (c), 13a-11, 13a-13, and 13b2-1 promulgated thereunder.

B. James is prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

C. Silverwood is prohibited for five years from the date of this Order from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

D. James and Silverwood are denied the privilege of appearing or practicing before the Commission as an accountant.

E. After five years from the date of this Order, Silverwood 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 (other than as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities

Exchange Act of 1934). Such an application must satisfy the Commission that Silverwood's work in his practice before the Commission as an accountant 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. 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 as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934. Such an application will be considered on a facts and circumstances basis with respect to such membership, and the applicant's burden of demonstrating good cause for reinstatement will be particularly high given the role of the audit committee in financial and accounting matters; and/or

3. an independent accountant.

Such an application must satisfy the Commission that:

(a) Silverwood, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Silverwood, 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 Silverwood will not receive appropriate supervision;

(c) Silverwood 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) Silverwood acknowledges his responsibility, as long as he appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

F. The Commission will consider an application by Silverwood to resume appearing or practicing before the Commission provided that his practicing certificate is current, and he has resolved all other disciplinary issues with the Institute of Chartered Accountants in England and Wales. However, if 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 Silverwood's character, integrity, professional conduct, or qualifications to appear or practice before the Commission as an accountant. Whether an application demonstrates good cause will be considered on a facts and circumstances basis with due regard for protecting the integrity of the Commission's processes.

G. With respect to James, disgorgement of \$22,500 and prejudgment interest of \$4,200 is deemed satisfied by James' payment of approximately \$46,300 to the U.K. Financial Reporting Council.

H. With respect to Silverwood, disgorgement of \$2,190 and prejudgment interest of \$395 is deemed satisfied by Silverwood's payment of approximately \$14,850 to the U.K. Financial Reporting Council.

I. The Commission will forgo seeking civil penalties against James or Silverwood in light of the fines Respondents paid to the U.K. Financial Regulatory Council in connection with the conduct relating to the findings in this Order.

By the Commission.

Brent J. Fields
Secretary