

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT of 1933
Release No. 8651 / January 4, 2006

SECURITIES EXCHANGE ACT of 1934
Release No. 53049 / January 4, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2359 / January 4, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12138

In the Matter of

APPLIX, INC.,

Respondent.

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

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 Applix, Inc. (“Applix” or “Respondent”).

II.

In anticipation of the institution of these cease-and-desist proceedings, 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 it and over the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

III.

On the basis of this Order and the Respondent’s Offer, the Commission finds¹ that:

A. SUMMARY

1. Applix materially overstated net income in two periodic reports and a registration statement filed with the Commission. The overstatements relate to two transactions. In the first transaction, the Respondent improperly recognized \$898,000 of software license revenue under a December 31, 2001 reseller agreement. Because the agreement included the right to resell a future product that was currently in development, Applix should have recognized the license revenue ratably over the 12 month term of the agreement, i.e., throughout 2002. By improperly recognizing all of the license revenue up-front, Applix met its 2001 revenue goals, and improperly understated its net loss for the year by 8.3%.² In the second transaction, Applix improperly recognized \$341,000 in revenue for the quarter ended June 30, 2002 under a sales contract, even though the customer had not yet accepted the product.³ As a result, Applix understated its net loss for the quarter by 33.6%.⁴

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

² The company also improperly included in its financial statements \$333,333 as cash received as payment on the transaction even though those funds were not received until the following year.

³ The customer did accept the product before year end 2002 and made the initial payment due on acceptance.

⁴ For the second quarter of 2002, the increase in revenue of \$225,000 from the December 31, 2001 software license revenue recognized in 2002 partially offset the decrease in revenue of \$341,000 for a net decrease of \$116,000. Accordingly, the net overstatement of revenue for the quarter is 1.3% and the net understatement of net loss is 14.7%.

2. On February 28, 2003, Applix announced it would restate its periodic filings to report correctly the revenue from the two transactions in the proper periods. After the public announcement, Applix's stock price fell approximately 13%, or twenty-six cents, closing at \$1.70 per share. On March 31, 2003, Applix filed an amended Form 10-K for the year ended December 31, 2001 and amended Forms 10-Q for the first three quarters of 2002.⁵

B. FACTS

3. Applix, a Massachusetts corporation based in Westborough, Massachusetts develops, sells and supports business performance management software. Applix stock is registered under Section 12(g) of the Exchange Act and traded on the NASDAQ SmallCap Market. Applix reports its results of operations on a calendar year basis.

4. Applix materially misstated the company's financial results of operation for the year ended December 31, 2001 and the quarter ended June 30, 2002. The misleading financial information was included in press releases, periodic and current filings with the Commission and incorporated by reference into a registration statement filed with the Commission.

5. For the year ended December 31, 2001, Applix improperly recognized \$898,000 in revenue under a reseller agreement with a privately held company headquartered in New York City ("the Partner"). Applix originally entered a reseller agreement with the Partner in March 2000. The March 2000 reseller agreement granted the Partner the right to market, demonstrate and sublicense Applix software over a five-year period. The agreement contemplated yearly amendments on the March anniversary date. In March 2001, the parties entered into the first amendment. On December 31, 2001, the parties entered into a second amendment (the "December 31, 2001 amendment") even though the March 2001 amendment was still in effect and not due to be amended until March 2002. The December 31, 2001 amendment granted the Partner rights to resell additional products for a one-year term.

6. Under Statement of Position 97-2 ("SOP 97-2"), if the December 31, 2001 amendment granted the Partner rights to any "*unspecified* additional software products" (emphasis in original) then the transaction would need to be accounted for as a subscription and revenue recognized ratably over the one-year term of the agreement.

7. However, Applix determined that it was appropriate to recognize the entire amount of the Partner license revenue as of December 31, 2001, even though the Respondent knew, or was reckless in not knowing, that the amendment granted the Partner the right to resell Applix's new product, Integra, which the company had recently announced (in late 2001) as its next-generation product. Revenue recognition was improper. In late 2001, Applix expected Integra to become generally available during the one-year term covered by the December 31,

⁵ On April 4, 2003, Applix filed a second amendment to the Form 10-Q for the third quarter of 2002 to include information that was inadvertently omitted in the first amendment.

2001 amendment. The Partner understood it obtained the rights to resell Integra as part of the December 31, 2001 amendment as did the Applix salesperson directly involved in negotiations with the Partner.

8. On January 29, 2002, Applix announced revenue of \$40.3 million and a net loss of \$9.9 million for the year ended December 31, 2001. By improperly including the entire \$898,000 license revenue amount in revenue for 2001, Applix overstated its revenue by 2.3% and understated its net loss by 8.3%. The inclusion of that revenue enabled Applix to meet a previously announced \$40 million revenue goal. On April 1, 2002, Applix filed a Form 10-K with the Commission, that contained financial statements that included the improperly recorded revenue.

9. During 2002, the Partner obtained license codes for Integra. Although the Partner did not actually sell any Integra during the year, the Partner made Integra sales presentations to customers during 2002. In fact, Applix marketing employees provided information to assist the Partner in drafting sales presentations. Applix also prepared a business plan that specifically referenced the Partner's rights to resell Integra pursuant to the terms of the December 31, 2001 amendment. Lastly, in figuring the fee the Partner owed Applix at year end 2002, under a formula based on a percentage of Applix's 2001 revenue from sales of goods the Partner was licensed to resell, Applix included Integra sales in the calculation, thereby increasing the amount the Partner was required to pay.

10. In the second improperly reported transaction, Applix included \$341,000 of revenue for the second quarter of 2002 from a transaction with a German customer, even though the customer had approximately five additional months after quarter close to either accept or reject the software goods. The payment terms on the transactions required the customer to pay 50% on acceptance and 50% within ninety days. Applix knew of the contingent sales provision, knew of the existence of a specified testing period that was scheduled to last for most of that five month period and knew of the payment terms. Applix knew, or was reckless in not knowing, that the customer had not accepted the software product by the end of the second quarter of 2002. Applix generated an invoice dated June 30, 2002 falsely indicating that payment was due in thirty days.

11. On July 18, 2002, Applix announced revenue of \$9.2 million and a net loss of \$675,000 for the quarter ended June 30, 2002. Applix's press release highlighted that the net loss was a "74% improvement" over the net loss for the same quarter of the prior year. By improperly including the German customer revenue, Applix overstated its revenue by 3.9% and understated its net loss by 33.6%. The inclusion of the German customer revenue also enabled Applix to come within 1% of an internal quarterly revenue goal. On August 14, 2002, Applix

filed a Form 10-Q with the Commission that contained financial statements that included the improperly recorded revenue.⁶

12. Applix prepared an audit confirmation dated November 26, 2002, for the transaction with the German customer. The confirmation falsely indicated that the first 50% payment (i.e., the payment due on acceptance) was due December 31, 2002. Upon review of the confirmation in early December 2002, the outside auditors questioned Applix as the auditors had been informed that payment was due within 30 days of the invoice date of June 30, 2002, the last day of the quarter. In mid-January 2003, Applix informed the outside auditors of an issue concerning when the German customer had accepted under the terms of the agreement. The outside auditors told Applix that the company needed to investigate the matter to determine what transpired.

13. Applix senior management informed the audit committee of the acceptance issue. Following up on that information from management, on January 27, 2003, Applix's audit committee held a telephonic meeting concerning the transaction with the German customer. At that meeting, Applix senior management failed to explain that when they made the revenue recognition decision, they knew of the existence of a specified testing period that was scheduled to last for approximately five months after the end of the second quarter. Applix senior management failed to fully disclose and explain the generation of the false invoice and did not reveal the existence of the false audit confirmation or the fact that the outside auditors had raised questions when they reviewed the audit confirmation. Two days after the meeting, Applix's audit committee met with the outside auditors and voted to retain the company's regular outside counsel to conduct an internal investigation of the German transaction.

14. On February 5, 2003, the audit committee met with the outside auditors concerning the Partner license revenue matter and voted to retain the company's regular outside counsel to conduct an internal investigation of the transaction.

15. After obtaining the results of counsel's investigations, the Applix board of directors requested and obtained the chief executive officer's resignation. The board did not request the chief financial officer's ("CFO") resignation at that time. Applix proposed to the outside auditors that the chairman of the audit committee oversee the CFO's activities and the auditors agreed to this arrangement. In June 2003, the CFO was asked to and did resign.

⁶ On July 25, 2002, Applix filed a Form S-8 Registration Statement to register shares for a directors stock option plan. The filing incorporated by reference the December 31, 2001 Form 10-K and all reports filed subsequent to the Form S-8 until the filing of a post-effective amendment. On February 5, 2003, Applix filed a Form 8-K related to the sale of a division. That filing included a pro-forma statement of operations for the nine months ended September 30, 2002 and accordingly included the improperly recorded June 30, 2002 revenue from the German customer.

C. VIOLATIONS

16. As a result of the conduct described above, Applix violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the offer, sale or purchase of securities.

17. Also as a result of the conduct described above, Applix violated Section 13(a) of the Exchange Act and Rules 13a-1, 13a-11, 13a-13 and 12b-20 thereunder.

18. Because Applix improperly recorded revenue, its books, records and accounts did not, in reasonable detail, accurately and fairly reflect its transactions and dispositions of assets.

19. In addition, Applix failed to implement internal accounting controls relating to its revenue accounts sufficient to provide reasonable assurances that these accounts were accurately stated in conformity with generally accepted accounting principles.

20. As a result of the conduct described above, Applix violated Section 13(b)(2)(A) of the Exchange Act, which 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.

21. Lastly, as a result of the conduct described above, Applix violated Section 13(b)(2)(B) of the Exchange Act and Rule 13b2-1 thereunder, which require 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 conformity with generally accepted accounting principles; and prohibit persons from directly or indirectly falsifying or causing to be falsified any book, record, or account.

D. ONGOING COOPERATION

22. In determining to accept the Offer, the Commission has considered the following undertaking by the Respondent - Applix shall cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in this Order. Applix shall: (i) produce, without service of a notice or subpoena, any and all documents and other information requested by the Commission's staff; (ii) use its best efforts to cause its employees to be interviewed by Commission's staff at such times as the staff reasonably may direct; (iii) use its best efforts to cause its employees to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by Commission's staff.

E. UNDERTAKINGS

Respondent undertakes to:

1. Retain, through its Board of Directors, within thirty days after the entry of this Order, an Independent Financial Policies Consultant (“Financial Policies Consultant”), not unacceptable to the staff of the Commission, to review Applix’s financial and accounting policies and procedures relating to: (i) revenue recognition on software licensing agreements, including the consideration of SOP 97-2 and documentation of that consideration; (ii) the segregation of duties between sales and finance employees in revenue recognition determinations; (iii) the signing and dating of material sales contracts and purchase orders and the retention by Applix corporate finance organization of all such contracts and purchase orders; (iv) written documentation that all sales contingencies have been met in material revenue transactions; (v) the generation and issuance to customers of sales invoices; and (vi) the preparation and review of accounts receivable confirmations. The Financial Policies Consultant shall also consider, based on his/her review, the nature and extent of Applix Board of Directors training required to minimize the possibility of future violations of the federal securities laws by Applix, acting through its finance and accounting employees. At the conclusion of the review, which in no event shall be more than 90 days after the date of entry of this Order, the Financial Policies Consultant shall submit a Report to Applix and to the Boston District Office of the Commission. The Report shall address the issues described above and shall include a description of the review performed, the conclusions reached and the Financial Policy Consultant’s recommendations for changes in or improvements to policies and procedures, including recommendation as to the nature and extent of Board of Directors training.

2. Respondent shall adopt all of the Financial Policies Consultant’s recommendations for changes in or improvement to policies and procedures as set forth below; provided however, that within 135 days after the date of entry of the Order, Respondent shall in writing advise the Financial Policies Consultant and the staff of the Commission’s Boston District Office of any recommendation that Respondent considers to be unnecessary, inappropriate, unreasonable, impractical or infeasible. Respondent need not adopt any such recommendation at that time but shall propose in writing an alternative policy or procedure designed to achieve the same objective.

3. As to any recommendation with respect to Respondent’s policies and procedures on which Respondent and the Financial Policies Consultant do not agree, they shall make a good faith attempt to reach agreement within 165 days of the date of entry of the Order. In the event the Respondent and the Financial Policies Consultant are unable to agree on an alternative proposal, Respondents will follow the recommendation of the Financial Policies Consultant. To the extent the Financial Policies Consultant proposes, in his/her report, alternative recommendations, any one of which is intended to address a given matter, Respondent may adopt one of the proposed alternatives and need not notify the Financial Policies or the staff of the Commission’s Boston District Office of alternative recommendations not adopted.

4. Applix (i) shall not have the authority to terminate the Financial Policies Consultant, without the prior written approval of the Commission’s Boston District Office; (ii) shall compensate the Consultant, and persons engaged to assist the Consultant, for services

rendered pursuant to this Order at their reasonable and customary rates; and, (iii) shall not be in and shall not have an attorney-client relationship with the Consultant and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Consultant from transmitting any information, reports, or documents to the staff of the Commission; and

5. Applix shall require the Financial Policies Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Financial Policies Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Applix, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Financial Policies Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Commission's Boston District Office, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Applix, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Applix's Offer.

Accordingly, it is hereby ORDERED that:

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

B. Respondent shall comply with the undertakings enumerated in Section III. E, above.

C. Deadlines: For good cause shown, the Commission staff may extend any of the procedural deadlines set forth herein.

By the Commission.

Nancy M. Morris
Secretary