

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 73763 / December 5, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3602 / December 5, 2014

Admin. Proc. File No. 3-15012

In the Matter of

S.W. HATFIELD, CPA and
SCOTT W. HATFIELD, CPA

OPINION OF THE COMMISSION

RULE 102(e) PROCEEDING

CEASE-AND-DESIST PROCEEDING

Ground for Remedial Action

Fraud

Accounting firm and its sole proprietor willfully violated the antifraud provisions of the federal securities laws by issuing false audit reports. *Held*, it is in the public interest to permanently deny respondents the privilege of appearing or practicing before the Commission as accountants, impose a cease-and-desist order, order disgorgement of \$112,529, plus prejudgment interest, and assess a \$110,500 civil penalty.

APPEARANCES:

Scott W. Hatfield, CPA, pro se and for S.W. Hatfield, CPA.

David B. Reece and Jessica B. Magee, for the Division of Enforcement.

Appeal filed: October 1, 2013
Last brief received: April 14, 2014

The Division of Enforcement appeals from the decision of an administrative law judge dismissing a proceeding brought pursuant to Sections 4C(a)(1) and (3), 21B, and 21C of the Securities Exchange Act of 1934 and Rule 102(e)(1)(i) and (iii) of the Commission's Rules of Practice and based on allegations that Respondents willfully violated the antifraud provisions of the federal securities laws.¹ The law judge found that the Division failed to allege that S.W. Hatfield, CPA ("the Firm"), a Texas accounting firm, and Scott W. Hatfield, the Firm's sole proprietor (together, "Respondents"), made misrepresentations with respect to certain audit reports that Respondents issued while the Firm was not in possession of a state license to do so. Accordingly, the law judge found that there was no basis for sanctioning Respondents.

We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal. We find that the legal conclusions on which the law judge based her dismissal were incorrect. We further find that the Division met its burden under Rule of Practice 250 to show that "there is no genuine issue with regard to any material fact" and that it "is entitled to a summary disposition as a matter of law."² We find that Respondents willfully violated the antifraud provisions and that certain sanctions are in the public interest.

I. Background

A. Respondents issued thirty-eight audit reports for twenty-one public company issuers while the Firm was not licensed by the State of Texas.

The underlying facts are largely undisputed. Hatfield has been licensed by the Texas State Board of Public Accountancy ("TSBPA") as a certified public accountant ("CPA") since 1985. He is the Firm's sole officer, director, and accountant. The Firm has been licensed by the TSBPA as a CPA firm since 1994, and Hatfield renewed the Firm's license annually through January 2009. At the relevant times, the Firm also was registered with the Public Company Accounting Oversight Board ("PCAOB").

In a letter dated October 9, 2009, the TSBPA notified Respondents that the Firm's license for 2010 would not be issued because the Firm had failed to report peer review results as required by the TSBPA's Peer Review Program.³ The letter instructed Hatfield to complete and submit an "Affidavit for Exemption from Peer Review" if he believed that the Firm was exempt from undergoing a peer review. If, for example, a CPA firm has issuer clients only, the firm can

¹ 15 U.S.C. §§ 78d-3(a)(1) and (a)(3), 78u-2, 78u-3; 17 C.F.R. § 201.102(e)(1)(i) and (iii).

² 17 C.F.R. § 201.250.

³ See TEX. ADMIN. CODE § 515.3(b)(4) ("If a firm is subject to peer review, then a firm's office license shall not be renewed unless the office has met the peer review requirements as defined in Chapter 527 of this title" (relating to Peer Review)). The Peer Review Program monitors firms' compliance with applicable accounting, auditing, and other attestation standards adopted by generally recognized standard-setting bodies. The program includes education, remediation, disciplinary sanctions, or other corrective action when a firm is not in compliance. TEX. ADMIN. CODE § 527.1.

claim an exemption and instead satisfy the peer review requirement by having the PCAOB conduct an inspection and provide a report to the TSBPA stating that the peer review had been completed. Although Respondents claim the Firm had only issuer clients, they did not submit such an affidavit. In fact, the PCAOB had been investigating Respondents since 2008, and Respondents could not provide the TSBPA with the requisite assurances that the PCAOB inspection process had been completed. Hatfield did not claim any exemption. By the end of 2009, the TSBPA notified Respondents in writing that the Firm's license would expire on January 31, 2010.

On March 8, 2010, the TSBPA sent an e-mail to Ronald Johnson, a Firm affiliate, stating that the Firm's license was delinquent and expired. On that same date, Johnson forwarded that e-mail to Hatfield at his e-mail address on file with the TSBPA, asking "What is up with this?" At about the same time, a TSBPA attorney informed Respondents' attorney by telephone that the Firm's license was expired, the Firm was three years delinquent in satisfying peer review requirements, and Respondents could be sanctioned for providing attest services without a valid license.⁴ The TSBPA sent a letter to Respondents' attorney on March 15, 2010, stating that because it had recently learned that the Firm had issuer clients only, the Firm could satisfy its peer review by having the PCAOB inspect the Firm, and that the TSBPA would need to "receive a letter from PCAOB stating that all issues have been 'Satisfactorily Addressed' by the firm." In a letter dated July 8, 2010, the TSBPA again advised Respondents' counsel that the Firm could not hold itself out as a CPA firm or perform audits or attestations because its license was delinquent and expired. In May 2011, the TSBPA permitted the Firm to renew its license.

From January 31, 2010 until May 19, 2011, the period during which the Firm's license was expired ("the Relevant Period"), Respondents issued thirty-eight audit reports for twenty-one public company issuers. Each audit report was issued on letterhead titled, "S.W. Hatfield, CPA," and was signed by Hatfield on behalf of the Firm as "S.W. Hatfield, CPA." The audit reports were included, with Respondents' authorization, in the issuers' periodic reports and registration statements filed with the Commission.⁵ Respondents charged approximately \$200,000 in fees for audits conducted or completed while the Firm was not in possession of a valid license.

B. The Commission instituted proceedings.

On September 6, 2012, the Commission issued a Corrected Order Instituting Proceedings ("OIP") alleging that Respondents willfully violated Exchange Act Section 10(b) and Rule 10b-5

⁴ Attest services include issuing audit reports. TEX. OCC. CODE § 901.002(a)(1).

⁵ We take official notice of the twenty-one issuers' thirty-eight periodic reports and registration statements cited in this opinion pursuant to Rule 323. 17 C.F.R. § 201.323.

thereunder⁶ and did not possess the requisite qualifications to represent others.⁷ The OIP authorized, if appropriate, the imposition of sanctions under Exchange Act Section 4C(a)(1) and (3) and Rule 102(e)(1)(i) and (iii); and Exchange Act Sections 21B and 21C. The Division moved for summary disposition pursuant to Rule of Practice 250.

In dismissing the proceeding, the law judge found that the Firm was not licensed during the Relevant Period. The law judge determined that because the Firm was unlicensed when it issued the thirty-eight audit reports, the reports were signed by a CPA that was "not state-licensed and in good standing" contrary to the requirements of Regulation S-X. Accordingly, the law judge concluded that "the issuers who included [the Firm]'s audit reports with their filings violated the Exchange Act and Securities Act reporting provisions, and Hatfield and [the Firm] were secondarily liable for [those] violations" (which were not charged in the OIP). But the law judge also determined that "there is no allegation that the audit reports or the financial statements that were the subject of the audit reports contained misrepresentations, much less that Respondents were in any way liable for misrepresentations in the reports and financial statements." The law judge concluded that the "the allegation that Respondents violated Exchange Act Section 10(b) and Rule 10b-5 is unproven."

The law judge found that there was "no basis for sanctioning Respondents pursuant to Rule 102(e)(1)(iii)" in light of her determination that the Division failed to allege that Respondents made misrepresentations.⁸ The law judge also found that there was no basis for sanctioning Respondents under Rule 102(e)(1)(i) because, "[t]o the extent that Rule 102(e)(1)(i) is referenced in any litigated case, it is associated with Rule 102(e)(1)(iii) and a respondent's having willfully violated the federal securities laws. There is no litigated case in which a respondent was sanctioned pursuant to Rule 102(e)(1)(i) alone." This appeal followed.

II. The Law Judge's Dismissal Was Improper.

Rule 250(a) permits a law judge to consider and rule on a motion for summary disposition at any time after a respondent files an answer and the Division has made its documents available to that respondent for inspection and copying.⁹ A law judge may grant a motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law.¹⁰ Where the Division is the moving party and the law judge determines that the Division has not met the

⁶ 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

⁷ The OIP was reissued in November 2012 to correct a clerical error.

⁸ The law judge did not mention Exchange Act Section 21B or 21C in reaching her disposition, but, without a finding that Respondents violated or were a cause of any securities laws violations, there would be no basis for sanctions under those provisions either.

⁹ 17 C.F.R. § 201.250(a); *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *10 (Feb. 13, 2009).

¹⁰ 17 C.F.R. § 201.250(b); *Kornman*, 2009 WL 367635, at *11.

standard for summary disposition under Rule 250, and where a respondent has not filed its own Rule 250 motion, our rules make no express provision for the law judge to sua sponte dismiss the proceeding without a hearing, as the law judge did here. Rather, the language of Rule 250(b) directing the law judge to either grant or deny the motion, together with language in the OIP ordering "that a public hearing for the purpose of taking evidence on the questions set forth in [the OIP] shall be convened" suggests that, in the circumstances here, a law judge's only alternative to granting the motion is to deny it and proceed with a hearing. At the very least, if a law judge concludes that it may be necessary to summarily dismiss a proceeding as a matter of law, the parties should be provided notice and an opportunity to be heard as to the possible basis for such a disposition.¹¹ Here, the Division had no notice either from the law judge, or through any arguments made by Respondents, that its case might be dismissed on the grounds that it failed to allege that Respondents made a misrepresentation.

On this record, we do not find it necessary to remand to the law judge for a hearing. The record before us supports our conclusion that the law judge's dismissal was incorrect as a matter of law and, further, that the Division has met its burden under Rule 250.¹² Contrary to the

¹¹ Although we are not governed by the Federal Rules of Civil Procedure, those rules sometimes provide helpful guidance. See *Robert M. Ryerson*, Exchange Act Release No. 57839, 2008 WL 2117161, at *5 (May 20, 2008) ("Under certain circumstances, the Federal Rules of Civil Procedure provide helpful guidance, such as when issues are not directly addressed by our Rules of Practice.") (citation omitted). We note that a federal district court may respond to a motion for summary judgment by granting summary judgment sua sponte in a nonmoving party's favor, but only if the court provides the losing party with adequate notice about the issue ultimately decided against that party and an opportunity to address that issue. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986) (stating that "district courts are widely acknowledged to possess the power to enter summary judgments sua sponte, so long as the losing party was on notice that she had to come forward with all of her evidence"); see also *Advantage Consulting Grp., Ltd. v. ADT Sec. Sys., Inc.*, 306 F.3d 582, 588 (8th Cir. 2002) (finding that the district court did not err when it granted summary judgment sua sponte and stating that "[t]he court has inherent power to grant dispositive motions sua sponte so long as the losing party was on notice that she had to come forward with all of her evidence" (quoting *McClure v. Am. Family Mut. Ins. Co.*, 223 F.3d 845, 856 (8th Cir. 2000)); *Gibson v. Mayor & City Council of Wilmington*, 355 F.3d 215, 222-23 (3d Cir. 2004) (finding that, although there is authority for a court to grant summary judgment to the nonmoving party, a court should not do so without "first placing the adversarial party on notice that the court is considering a sua sponte summary judgment motion" and finding that notice means "that the targeted party had reason to believe the court might reach the issue and received a fair opportunity to put its best foot forward" (internal quotation marks omitted)); *Kassbaum v. Steppenwolf Prods., Inc.*, 236 F.3d 487, 494 (9th Cir. 2000) ("[I]f a court concludes that a non-moving party is entitled to judgment, great care must be exercised to assure that the original movant has had an adequate opportunity to show that there is a genuine issue and that his [or her] opponent is not entitled to judgment as a matter of law." (internal quotation marks omitted)).

¹² Where we have concluded that the record does not provide a basis for summary disposition, we have remanded for a hearing. See *Diane M. Keefe*, Exchange Act Release No. (continued...)

conclusion in the Initial Decision, the Division did allege that the audit reports contained misrepresentations. The OIP alleges that Respondents knew they were not permitted to act as CPAs because the Firm's license had expired and that Hatfield nonetheless "knowingly signed the firm's name [as CPAs] to each audit report [the Firm] issued during the period [the Firm's] license was expired." In its brief in support of its motion for summary disposition, the Division devoted two pages to a discussion of these misrepresentations, stating specifically that "inclusion of an audit report issued by a person not recognized as an accountant is a material misstatement," along with citation to authority, and that "[i]mplicit in each of SWH's audit reports issued between January 31, 2010 and May 19, 2011 was the representation to each issuer that SWH was recognized as a CPA under the federal securities laws and qualified and permitted to issue audit reports on its clients' financial statements." Respondents' opposition to the Division's motion argued that the issuers, not they, actually made the alleged misrepresentations; that Hatfield's signature on the audit reports during the Relevant Period was not material due to the "technical and administrative" reason for their license having lapsed; and that because they purportedly made good-faith efforts to renew their license, they did not have the requisite scienter for fraud. We address, and reject, these arguments below, but the fact that Respondents made them demonstrates that they understood what misrepresentations they were alleged to have made.

The law judge also incorrectly concluded that Rule 102(e)(1)(i) cannot stand alone as a basis for sanctioning Respondents. The plain language separating the subparts of Rule 102(e)(1) uses the disjunctive "or," meaning that any one basis in the rule is sufficient to establish the Commission's authority to proceed. Such a reading is consistent with our previous determination that "Rule 102(e)(1) provides that a person may be denied the privilege of appearing or practicing before the Commission once the Commission makes *one* of three findings" ¹³ Whether all prior matters brought under Rule 102(e)(1)(i) also have been brought under Rule 102(e)(1)(iii) is not dispositive.

III. Respondents Willfully Violated Exchange Act Section 10(b) and Rule 10b-5(b) Thereunder.

To establish liability under Exchange Act Section 10(b) and Rule 10b-5(b) thereunder, the Division must show by a preponderance of the evidence that Respondents made a misrepresentation or omission, that such misrepresentation or omission was material, that the Respondents acted with scienter, and that the conduct was made in connection with the purchase

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61928, 2010 WL 1514182, at *2 (Apr. 16, 2010) (remanding for amplification of the record where the law judge decided the matter on summary disposition).

¹³ *Steven Altman, Esq.*, Exchange Act Release No. 63306, 2010 WL 5092725, at *15 n.50 (Nov. 10, 2010) (citing *Robert W. Armstrong, III*, Exchange Act Release No. 51920, 2005 WL 1498425, at *12 (June 24, 2005)) (emphasis added).

or sale of securities.¹⁴ The Division also must show that Respondents' violations were willful to obtain relief under Exchange Act Section 4C(a)(3) and Rule 102(e)(1)(iii) and Exchange Act Section 21B(a)(1)(A). Because the law judge found that the Division did not allege misrepresentations, she did not address the parties' arguments regarding any of the other elements necessary to impose sanctions. We address those elements here.

A. Respondents made misrepresentations.

Under Commission rules, a signature on an audit report is a representation that the signer is a CPA. Exchange Act Section 13(a) requires that financial statements filed with the Commission be certified by a public accountant.¹⁵ That certification occurs in the form of an audit report in which the CPA expresses an opinion about whether an issuer's financial statements fairly present the issuer's financial position in conformity with generally accepted accounting principles.¹⁶ Under Rule 1-02(a) of Regulation S-X, an audit report must be prepared by a CPA.¹⁷ Rule 2-01(a) of Regulation S-X provides that CPAs are only those accountants "duly registered and in good standing" in the jurisdiction in which they reside.¹⁸ If a person issues an audit report as to a public issuer's financial statements, that person impliedly is stating that he is a CPA within the meaning of Regulation S-X. And if such person signs the audit report using the title CPA, that person is expressly stating that he is a CPA within the meaning of Regulation S-X.

From January 2010 until May 2011, when Respondents were not duly registered and in good standing in Texas, the jurisdiction in which they resided, they issued thirty-eight audit reports that were included in documents filed with the Commission pursuant to Regulation S-X by twenty-one issuers. As the Division argued, it was implicit in the filing of these audit reports that they were signed by a CPA because they were issued with issuers' financial statements filed pursuant to Regulation S-X. In fact, in the signature line and heading, Respondents explicitly represented that they were CPAs. The representations in the thirty-eight audit reports that Respondents were CPAs on the dates the reports were issued were false.

¹⁴ See 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5(b); *Joseph John VanCook*, Exchange Act Release No. 61039, 2009 WL 4005083, at *8 (Nov. 20, 2009) (describing requirements for liability under antifraud provisions); see also *SEC v. Dain Rauscher, Inc.*, 254 F.3d 852, 855-56 (9th Cir. 2001) (noting that the antifraud provisions "forbid making a material misstatement or omission" in connection with the purchase or sale of securities); *SEC v. Brooks*, No. Civ. A. 3:99-CV-1326-D, 1999 WL 493052, at *2 (N.D. Tex. July 12, 1999).

¹⁵ 15 U.S.C. § 78m.

¹⁶ 17 C.F.R. § 210.2-02(c).

¹⁷ *Id.* at § 210.1-02(a)(1).

¹⁸ *Id.* at § 210.2-01(3)(a).

Respondents argue they did not make the alleged misrepresentations.¹⁹ They argue that "because they did not have 'ultimate authority' over the statements, the Respondents were not makers of those statements for purposes of Section 10(b) and Rule 10b-5(b)," citing *Janus Capital Group, Inc. v. First Derivative Traders*.²⁰ *Janus* involved a private civil action alleging claims under Exchange Act Rule 10b-5 based on misrepresentations made in prospectuses filed with the Commission by Janus Investment Fund, a mutual fund company. The plaintiffs alleged that Janus Capital Management ("JCM"), the fund's investment adviser and administrator, committed fraud because it had been significantly involved in the creation of the misrepresentations.²¹ The Court held that "the maker of a statement is the entity with authority over the content of the statement and whether and how to communicate it."²² The Court found that "attribution within a statement or implicit from surrounding circumstances is strong evidence that a statement was made by—and only by—the party to whom it is attributed."²³ The Court found that JCM did not have ultimate control over the misrepresentations and therefore did not make the misrepresentations for purposes of Rule 10b-5.²⁴

In stark contrast to the *Janus* facts, Respondents drafted, dated, printed on Firm letterhead, and signed thirty-eight audit reports that were included in documents filed with the Commission by twenty-one issuers. Under Regulation S-X, it is the CPA—and only the CPA—who has the authority over the content of the audit report and whether such audit report is issued

¹⁹ Respondents have not filed any briefs or otherwise participated in the appeal before us. The Office of the Secretary notified Respondents in a letter dated June 26, 2014 that Respondents failed to file two briefs due in this appeal on December 23, 2013 and April 28, 2014, respectively. The letter noted that, on December 27, 2013, Respondents' counsel filed a Notice of Withdrawal as counsel and, in that notice, stated that it had sent Respondents all the pleadings in this matter, along with a copy of the notice. The letter explained that, pursuant to Rule 180(c), 17 C.F.R. § 201.180(c), the Commission may "decide the particular matter at issue against that person . . . if a person fails . . . to make a filing required under these Rules of Practice." The letter further explained that the Commission was deliberating and "could affirm, reverse and remand the proceeding to the law judge, or reverse and find against [Respondents] in a final order." Respondents were instructed to contact the Office of the Secretary if they intended to file any document in this matter, but they did not reply. Our discussion of Respondents' arguments is based on pleadings in their opposition to the Division's motion for summary disposition below.

²⁰ 131 S. Ct. 2296, 2302 (2011).

²¹ The plaintiffs also alleged that JCM had a close relationship with the fund, exercised significant influence over the fund and its prospectus disclosures, and was understood by investors to be the "maker" of disclosures issued by the fund.

²² 131 S. Ct. at 2303.

²³ *Id.* at 2302.

²⁴ *Id.* at 2305.

for purposes of being included in an issuer's filing with the Commission.²⁵ Respondents were the purported CPAs who opined about the twenty-one issuers' financial statements and permitted those issuers to include the thirty-eight audit reports in their filings. Respondents thus were the makers of the misstatements.

B. Respondents' misrepresentations were material.

A fact is material if there is a substantial likelihood that a reasonable investor would have considered the misstated or omitted fact important in making an investment decision and if disclosure of the misstated or omitted fact would have significantly altered the total mix of information available to the investor.²⁶ "The question of materiality, it is universally agreed, is an objective one, involving the significance of an omitted or misrepresented fact to a reasonable investor."²⁷

Under the circumstances described above, the misrepresentation that audit reports appearing in registration statements and/or periodic reports filed with the Commission have been signed by a CPA is material. Respondents' audit reports appeared in registration statements and/or periodic reports filed with the Commission. Registration statements and periodic reports, specifically Forms 10-K, are two of the most common types of investor resources. An audit report signed by a CPA is important to investors because it provides an independent evaluation of the issuer's financial position by a qualified professional on whose expertise investors can rely. A reasonable investor would want to know that a purported CPA does not have a valid license when rendering an opinion about financial statements, especially when the reason for the license lapse calls into question whether the auditor currently complies with applicable professional standards.²⁸

²⁵ Rule 1-02(a)(1) of Regulation S-X, 17 C.F.R. § 210.1-02(a)(1) (stating that "the term *accountant's report*, when used in regard to financial statements, means a document in which an independent public or certified public accountant indicates the scope of the audit (or examination) which he has made and sets forth his opinion regarding the financial statements taken as whole, or an assertion to the effect that an overall opinion cannot be expressed") (emphasis in original).

²⁶ *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988); *TSC Indus. Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

²⁷ *David Henry Disraeli*, Exchange Act Release No. 57027, 2007 WL 4481515, at *6 (Dec. 21, 2007) (quoting *TSC Indus.*, 426 U.S. at 445), *petition denied*, 33 F. App'x 334 (D.C. Cir. 2008) (per curiam); *see also Basic Inc.*, 485 U.S. at 232 ("We now expressly adopt the *TSC Industries* standard of materiality for the § 10(b) and Rule 10b-5 context."); *SEC v. Blatt*, 583 F.2d 1325, 1331 (5th Cir. 1978) ("We should emphasize, however, that the test for materiality is objective.") (citing *TSC Indus.*).

²⁸ *Ronald Effren*, Exchange Act Release No. 36713, 1996 WL 16981, at *3 (Jan. 16, 1996) (settlement order finding that respondent violated antifraud provisions and Rule 102(e)(1)(i) and (iii) by falsely holding himself out as a CPA and issuing an audit report that was included in an issuer's registration statement). While settled cases are not precedent, *Citizens Cap. Corp.*,

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Here, during the Relevant Period, Respondents could not render the requisite professional opinion because the Firm's license had expired and the Firm was prohibited from providing attest services or representing that it was an accounting firm or CPA firm.²⁹ Significantly, the reason Respondents were not able to renew their license was because they failed to comply with TSBPA rules by reporting the results of a timely PCAOB inspection. The PCAOB's report was important to show that investors could rely on Respondents' professional expertise by demonstrating that they were in compliance with applicable accounting, auditing, and other attestation standards. Moreover, a reasonable investor would want to know that an audit report was signed by someone who had been expressly informed by the TSBPA, a state licensing authority, that he was not legally authorized to issue such an audit report because he had not satisfied the TSBPA's peer review requirements.

Respondents argue that the misrepresentations are not material. They urge that the "best and most probative evidence of materiality would be what an investor actually said regarding the importance of the supposedly false or omitted information in question" and that the Division failed to offer any evidence on this point. But "the reaction of individual investors is not determinative of materiality, since the standard is objective, not subjective."³⁰ "[M]ateriality depends on the significance the reasonable investor would place on the withheld or misrepresented information."³¹ We have stated that, although in general materiality is primarily a factual inquiry, "the question of materiality is to be resolved as a matter of law when the information is 'so obviously important [or unimportant] to an investor, that reasonable minds

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Exchange Act Release No. 67313, 2012 WL 2499350, at *5 n.27 (June 29, 2012) (citation omitted), we "may use an opinion issued in connection with a settlement to state views on the issues presented in that case that [the Commission] would apply in other contexts." *George J. Kolar*, Exchange Act Release No. 46127, 2002 WL 1393652, at *4 (June 26, 2002) (finding that manager of broker-dealer failed to exercise reasonable supervision over registered representative who violated registration and antifraud provisions and that reference to a settled case with similar factual and legal findings was appropriate) (citation omitted).

²⁹ A firm is prohibited from providing attest services or holding itself out as an accounting or CPA firm unless it holds a validly issued license. TEX. OCC. CODE §§ 901.003, 901.456, 901.460; TEX. ADMIN. CODE § 501.80, Rules of Professional Conduct. At the very least, Respondents had a duty to know and observe the Rules of Professional Conduct. *See* TEX. ADMIN. CODE § 501.53 (stating that "[a]ll of the rules of professional conduct shall apply to and must be observed by" a CPA that practices in Texas).

³⁰ *Disraeli*, 2007 WL 4481515, at *6 & n.30 (citing *Richmark Capital Corp.*, Exchange Act Release No. 48758, 2003 WL 22570712, at *5 (Nov. 7, 2003) (citing *TSC Indus.*, 426 U.S. at 445)); *see also SEC v. Nat'l Student Mktg. Corp.*, 457 F. Supp. 682, 708 (D.D.C. 1978) (stating that the materiality analysis "is an [o]bjective one, involving the significance of an omitted or misrepresented fact to a [r]easonable investor, not the significance of the information to various individual investors") (citing *TSC Indus.*).

³¹ *Disraeli*, 2007 WL 4481515, at *6 & n.31 (citing *Basic, Inc.*, 485 U.S. at 240).

cannot differ on the question of materiality."³² We find that reasonable minds cannot differ here. The qualification of a CPA to render an opinion about an issuer's financial statements is and has been a fundamental aspect of an investor's decision about whether to invest in an issuer since the adoption of the Exchange Act in 1934.

Respondents state that, "due to the technical and administrative nature of the [Firm's] temporary license revocation, it is unreasonable and factually unsupported to assume the materiality of this revocation's non-disclosure to investors in the issuer companies." But the expiration was neither technical nor administrative. As demonstrated above, it was based on Respondents' failure to meet a requirement that goes to the heart of a CPA's competency and highlighted the fact that the PCAOB, a regulatory body uniquely qualified to evaluate a CPA firm's fitness to practice, had not yet resolved with the Respondents the significant audit deficiencies identified in its most recent inspection report.³³

C. Respondents acted with scienter.

The Supreme Court has defined scienter as "a mental state embracing intent to deceive, manipulate, or defraud."³⁴ Scienter includes recklessness, defined as conduct that is "an extreme departure from the standards of ordinary care, . . . which presents a danger of misleading buyers or sellers that is either known to the [respondent] or is so obvious that the [respondent] must have been aware of it."³⁵

³² *Id.* at *6 & n.32 (quoting *SEC v. Cochran*, 214 F.3d 1261, 1267 (10th Cir. 2000)) (alteration in original) (citations omitted); *see also TSC Indus.*, 426 U.S. at 450 ("Only if the established omissions are 'so obviously important to an investor, that reasonable minds cannot differ on the question of materiality' is the ultimate issue of materiality appropriately resolved 'as a matter of law' by summary judgment.") (citation omitted); *accord SEC v. Phan*, 500 F.3d 895, 908 (9th Cir. 2007) (same); *SEC v. Research Automation Corp.*, 585 F.2d 31, 35 (2d Cir. 1978) (same).

³³ We take official notice pursuant to Rule 323 (permitting the Commission to take official notice of, for example, "any material fact which might be judicially noticed by a district court of the United States"), that, in fact, the PCAOB disciplined Respondents in a final order issued on February 8, 2012. *S.W. Hatfield, CPA and Scott W. Hatfield, CPA*, PCAOB File No. 105-2009-003 (Feb. 8, 2012). The record in that case indicates that the PCAOB's disciplinary action against Respondents was instituted in 2009 and was pending throughout the Relevant Period. On appeal, we sustained the PCAOB's findings of violation and determination to revoke the Firm's PCAOB registration and permanently bar Hatfield from association with a registered public accounting firm. *S.W. Hatfield, CPA and Scott W. Hatfield, CPA*, Exchange Act Release No. 69930, 2013 WL 3339647, at *26 (July 3, 2013).

³⁴ *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976).

³⁵ *Sundstrand Corp. v. Sun Chem. Corp.*, 553 F.2d 1033, 1045 (7th Cir. 1977); *Hollinger v. Titan Corp.*, 914 F.2d 1564, 1568-69 (9th Cir. 1990). The Division may demonstrate scienter by circumstantial evidence. *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390 n.30 (1983); *Valicenti Advisory Servs., Inc. v. SEC*, 198 F.3d 62, 65 (2d Cir. 1999).

Respondents knew by at least March 8, 2010 that the Firm's license had not been renewed because that is when Hatfield received an email from the TSBPA expressly saying so.³⁶ Also in March, the TSBPA informed Respondents' counsel that, while Respondents' license was expired, they were not permitted to hold themselves out as CPAs and issue audit reports. The TSBPA reiterated this message to counsel in writing four months later.

Even before March 8, 2010, Respondents were at least reckless in misrepresenting their status. Respondents had been in the industry for over fifteen years and knew that the Firm had to renew its license annually. It is implausible that Respondents did not know that having a valid license was a prerequisite for holding themselves out as CPAs. Moreover, beginning in October 2009, well before the Firm's license expired, the TSBPA began to expressly notify Respondents through letters, e-mails, and telephone calls about the Firm's impending license expiration, the options Respondents had for renewing the Firm's license, and the consequences of not renewing the license. Respondents acted with *no* care when they held themselves out as CPAs, and the danger of deceiving investors about their qualifications could not have been more obvious.

Respondents argue that they did not act with scienter because there is no evidence that they acted with the specific, or even reckless, intent to deceive investors. Citing *Sundstrand Corp. v. Sun Chemical Corp.* and *Alvin W. Gebhart*, Respondents assert that "recklessness requires that the allegedly fraudulent material omission or misstatement 'derive from something more egregious than even 'white heart/empty head' good faith,'"³⁷ and that we must "'look at an actor's actual state of mind at the time of the relevant conduct.'"³⁸ Respondents assert that they tried repeatedly in good faith to have the PCAOB complete its inspection and maintained constant contact with the PCAOB and TSBPA regarding the status of the Firm's license.

When the defendant is aware of the facts that made the statement misleading, "he cannot ignore the facts and plead ignorance of the risk."³⁹ Notwithstanding any efforts Respondents

³⁶ *Disraeli*, 2007 WL 4481515, at *5 n.25 ("The scienter of a corporation's officers and directors establishes the scienter of the corporation for purposes of the antifraud provisions." (internal quotation marks and citation omitted)); *see also A.J. White & Co. v. SEC*, 556 F.2d 619, 624 (1st Cir. 1977) (holding that a firm "can act only through its agents, and is accountable for the actions of its responsible officers").

³⁷ *Sundstrand*, 553 F.2d at 1045. The *Sundstrand* court explained that recklessness includes subjective and objective components. The objective component is satisfied if the facts demonstrate that the danger of deceiving investors was known or so obvious that it would be known to any reasonable person. The subjective component is satisfied if the facts demonstrate something more than "'white heart/empty head' good faith" or "inexcusable negligence." *Id.*

³⁸ *Gebhart*, Exchange Act Release No. 58951, 2008 WL 4936788, at *7 (Nov. 14, 2008), *pet. for review denied*, *Gebhart v. SEC*, 595 F.3d 1034 (9th Cir. 2010), *cert. denied*, 130 S. Ct. 3485 (June 21, 2010).

³⁹ *SEC v. Platforms Wireless Intern. Corp.*, 617 F.3d 1072, 1094 (9th Cir. 2010) (quoting *Makor Issues & Rights, Ltd. v. Tellabs Inc.*, 513 F.3d 702, 704 (7th Cir. 2008) and holding that, in the context of a motion for summary judgment, "if no reasonable person could deny that the

(continued...)

may have made to renew the Firm's license, Respondents knew that those efforts were not successful during the Relevant Period. Thus, Respondents must have been cognizant of the obvious risk of deceiving investors by falsely identifying themselves as CPAs. For the reasons articulated above, we find that there is ample evidence to support our conclusion that Respondents acted with scienter. We therefore reject Respondents' arguments.

D. Misrepresentations were made "in connection with" the purchase or sale of securities.

The "in connection with" requirement is meant to be read broadly.⁴⁰ The requirement can be satisfied by statements made in public filings with the Commission, such as Forms 10-K and registration statements.⁴¹ During the pendency of this appeal, we requested supplemental briefing from the parties to address, among other things, in what way any of the thirty-eight audit reports are "in connection with" the purchases or sales of securities of the twenty-one issuers.⁴² In its response, the Division produced evidence that identifies certain audit reports along with details of related trading in the relevant issuers' securities.⁴³ The record establishes that

(...continued)

statement was materially misleading, a defendant with knowledge of the relevant facts cannot manufacture a genuine issue of material fact merely by denying (or intentionally disregarding) what any reasonable person would have known"); *see also Gebhart v. SEC*, 255 F. App'x 254, 255 (9th Cir. 2007) (unpublished) ("When warranted, the SEC is entitled to infer from circumstantial evidence that a defendant must have been cognizant of an extreme and obvious risk and reject as implausible testimony [or other evidence] to the contrary.").

⁴⁰ *SEC v. Zandford*, 535 U.S. 813, 819-20 (2002) (interpreting Exchange Act Section 10(b)'s "in connection with" requirement broadly; noting that "the statute should be construed not technically and restrictively, but flexibly to effectuate its remedial purposes" (internal quotation marks omitted) (citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963))).

⁴¹ *See SEC v. Wolfson*, 539 F.3d 1249, 1262 (10th Cir. 2008) (finding that misrepresentations in a small business issuer's Form 10-K and 10-Q satisfied the "in connection with requirement"); *McGann v. Ernst & Young*, 102 F.3d 390, 397 (9th Cir. 1996) (finding that fraudulent Forms 10-K fall within the ambit of Exchange Act Section 10(b)); *Ames Dep't Stores, Inc. Stock Litig.*, 991 F.2d 953, 965 (2d Cir. 1993) (finding that the "in connection with" requirement is satisfied when misrepresentations are disseminated in public reports); *see also SEC v. Rana Research, Inc.*, 8 F.3d 1358, 1362 (9th Cir. 1993) ("Where the fraud alleged involves public dissemination in a document such as a press release, annual report, investment prospectus or other such document on which an investor would presumably rely, the 'in connection with' requirement is generally met by proof of the means of dissemination and the materiality of the misrepresentation or omission." (citing *Ames Dep't Stores*)).

⁴² Respondents did not reply. *See supra* note 19.

⁴³ Attached to the Division's supplemental brief is a declaration of David R. King, a staff accountant, identifying the sources of information for the chart, including the Commission's public website, the OTCBB's public website, and a Bloomberg terminal located on Commission premises. We take official notice of the information sources pursuant to Rule 323.

purchases or sales occurred in the relevant issuers' securities after thirteen of the thirty-eight audit reports appeared in Forms 10-K or registration statements and while those reports were the most current on file (*i.e.*, while investors would have been relying on them). Those audit reports are as follows:

No.	Issuer	Audit Report	Issuer's Public Filing	Date Range of Purchase or Sale
1.	8888 Acquisition Corp.	Fiscal Year End ("FYE") 8/31/10 audit report dated 10/7/10	FYE 8/31/10 10-K filed 10/15/10	10/19/10 to 6/21/11
2.	Eight Dragons Co.	FYE 12/31/09 audit report dated 2/23/10	FYE 12/31/09 10-K filed 3/9/10	4/6/10 to 11/16/11
3.	Eight Dragons Co.	FYE 12/31/10 audit report dated 1/26/11	FYE 12/31/10 10-K filed 1/28/11	4/6/10 to 11/16/11
4.	HPC Acquisitions, Inc.	FYE 12/31/09 audit report dated 2/11/10	FYE 12/31/09 10-K filed 3/17/10	5/11/10 to 1/25/12
5.	HPC Acquisitions, Inc.	FYE 12/31/10 audit report dated 1/6/11	FYE 12/31/10 10-K filed 3/1/11	5/11/10 to 1/25/12
6.	Truwest Corp.	FYE 9/30/10 audit report dated 11/9/10	FYE 9/30/10 10-K filed 11/15/10	12/14/10 to 9/9/11
7.	X-Change Corp.	FYE 12/31/09 audit report dated 3/31/10	FYE 12/31/09 10-K filed 4/21/10	4/22/10 to 5/7/12
8.	X-Change Corp.	FYE 12/31/10 audit report dated 1/14/11	FYE 12/31/10 10-K filed 1/18/11	4/22/10 to 5/7/12
9.	Asia Green Agriculture Corp. f/k/a SMSA Palestine Acquisition Corp.	FYE 12/31/09 audit report dated 3/15/10	FYE 12/31/09 10-K filed 3/30/10	4/21/10 to 7/23/10
10.	Marketing Acquisition Corp.	FYE 12/31/09 audit report dated 3/2/10	FYE 12/31/09 10-K filed 3/5/10	3/16/10 to 3/28/11
11.	Signet International Holdings, Inc.	FYE 12/31/09 audit report dated 4/7/10	FYE 12/31/09 10-K filed 4/12/10	4/13/10 to 3/29/11
12.	SMSA Gainesville Acquisition Corp.	FYE 12/31/09 audit report dated 3/11/10	FYE 12/31/09 10-K filed 3/16/10	10/15/10 to 10/28/10
13.	SMSA Crane Acquisition Corp.	FYE 12/31/09 audit report dated 2/17/10	Form 10-12G/A filed 2/22/10	11/5/10

We find that the misstatements in the thirteen audit reports listed above are "in connection with" the purchase or sale of securities and that, the other elements of the violation having been met, Respondents violated Exchange Act Section 10(b) and Rule 10b-5 thereunder.

E. Respondents' violations were willful.

Under Exchange Act Section 4C(a)(3) and Rule 102(e)(1)(iii), the Commission may

censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice and opportunity for hearing in the matter . . . 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.

We have found that Respondents violated the federal securities laws. The question here is whether Respondents did so willfully.

It is well established that a willful violation of the securities laws means "intentionally committing the act which constitutes the violation" and does not require that the actor "also be aware that he is violating one of the Rules or Acts."⁴⁴ There is no dispute that Respondents intentionally identified themselves as CPAs in audit reports that they issued for inclusion in public filings. Respondents argue that their "mental state in permitting SWH's license to lapse and in issuing any relevant audit reports during that time was far less than intentional or the result of any willfulness on their part." But the record evidence contradicts their argument. Respondents also argue that "there is no evidence that the Respondents acted willfully, that is, with the specific intent to deceive investors or potential investors." The intent to deceive, *i.e.*, scienter, is different from the intent to commit the act, *i.e.*, willfulness, and we have addressed Respondents' scienter above. We thus reject Respondents' arguments and find that Respondents acted willfully.

Accordingly, for all of the above reasons, we find that there is no genuine issue with regard to any material fact and that the Division is entitled to a summary disposition as a matter of law that Respondents willfully violated Exchange Act Section 10(b) and Rule 10b-5 thereunder within the meaning of Exchange Act Section 4C(a)(3) and Rule 102(e)(1)(iii).

IV. Sanctions

A. Respondents are denied the privilege of appearing or practicing before the Commission under Exchange Act Section 4C(a)(3) and Rule 102(e)(1)(iii).

In assessing the need for sanctions in the public interest, we consider, among other things: the egregiousness of the respondent's actions, the isolated or recurrent nature of the

⁴⁴ *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (internal quotation marks and citation omitted).

infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations. Our "inquiry into . . . the public interest is a flexible one, and no one factor is dispositive."⁴⁵ We also consider the extent to which the sanction will have a deterrent effect.⁴⁶

Respondents' actions were egregious and recurrent. They repeatedly issued audit reports for over one year while the Firm failed to possess a license despite knowing they were prohibited from doing so. Respondents concealed the truth from the investing public by issuing such audit reports despite knowing that they were prohibited from doing so, and thus acted with a high degree of scienter. Respondents make no assurances against future violations and do not recognize the wrongful nature of their conduct. In fact, Respondents continue to blame the PCAOB for the license expiration, asserting that "it was in no way [their] fault or responsibility . . ." Respondents ignore that they are the only ones responsible for issuing audit reports despite not holding a valid firm license. We find that Respondents' callous disregard for such a basic regulatory requirement as the necessity of having a license to practice as a certified public accountant demonstrates that there is a high likelihood that they will commit future violations.

On July 3, 2013, following Respondents' appeal of a separate disciplinary proceeding by the PCAOB regarding conduct unrelated to this proceeding, we sustained PCAOB's decision to revoke the Firm's PCAOB registration and permanently bar Hatfield from association with a registered public accounting firm.⁴⁷ But those sanctions do not prohibit Respondents from appearing and practicing before the Commission in other capacities, such as working in an accounting capacity for Commission-registered investment advisers.⁴⁸ As we have stated, "[t]he

⁴⁵ *Michael C. Pattison*, Exchange Act Release No. 67900, 2012 WL 4320146, at *8 (Sept. 20, 2012) (citing *Disraeli*, 2007 WL 4481515, at *15).

⁴⁶ *Id.* (citing *James E. Franklin*, Exchange Act Release No. 56649, 2007 WL 2974200, at *6 & n.28 (Oct. 12, 2007) (citing *Ahmed Mohamed Soliman*, Exchange Act Release No. 35609, 1995 WL 237220, at *3 n.12 (Apr. 17, 1995); *Lester Kuznets*, Exchange Act Release No. 23525, 1986 WL 625417, at *3 (Aug. 12, 1986); *McCarthy v. SEC*, 406 F.3d 179, 188, 190 (2d Cir. 2005))).

⁴⁷ *S.W. Hatfield, CPA*, 2013 WL 3339647, at *26. Pursuant to Rule 323, we take official notice that in March 2014, the TSBPA revoked Hatfield's and the Firm's licenses citing violations regarding discreditable acts, violation of a rule of professional conduct adopted by the Board, conduct indicating a lack of fitness to serve the public as a professional accountant, and an "other rule or order violation."

⁴⁸ *See James M. Schneider, CPA*, Exchange Act Release No. 69922, 2013 WL 3327751, at *6 (July 2, 2013) (finding that a Rule 102(e) order protects against the "breadth of ways in which accountants can threaten our processes" and denying respondent's motion for the Commission to clarify that his Rule 102(e) suspension order did not preclude him from "serving on the audit committee of a Commission registrant or as the CFO of a public company, so long as he does not serve as the principal accounting officer" (citing *SEC v. Brown*, 878 F. Supp. 2d 109, 125 (D.D.C. 2012) (quoting *Armstrong*, 2005 WL 1498425, at *11-12 (finding that the controller of a
(continued...)

Commission disciplines professionals pursuant to Rule 102(e) in order to 'protect the integrity of its processes.'"⁴⁹ We find that permanently disqualifying Respondents from appearing or practicing before the Commission is remedial because it will prevent Respondents and deter others from disregarding their professional responsibilities and protect the investing public by encouraging diligent compliance with regulatory requirements. Because we have found that a bar under Exchange Act Section 4C(a)(3) and Rule 102(e)(1)(iii) is in the public interest, we do not reach the need for a sanction under Exchange Act Section 4C(a)(1) and Rule 102(e)(1)(i).

B. A cease-and-desist order is warranted.

Exchange Act Section 21C(a) authorizes us to impose a cease-and-desist order on any person who is violating, has violated, or is about to violate that Act or any rule thereunder.⁵⁰ In determining whether a cease-and-desist order is appropriate, we consider, in addition to the factors above, "whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions."⁵¹

We conclude that a cease-and-desist order is necessary. The violations are recent, having occurred from 2010 to 2011. Although the record does not identify any pecuniary harm to investors, our public interest analysis "focus[es] . . . on the welfare of investors generally."⁵² Investors and the marketplace are harmed when a purported CPA misrepresents his qualification to opine on an issuer's financial statements because such conduct undermines the reliability of fundamental investment tools that help investors make informed decisions. We conclude that Respondents pose a substantial, continuing risk of harm to investors and the marketplace. A cease-and-desist order will serve the remedial purpose of encouraging Respondents to understand and obey their obligations under the securities laws.

(...continued)

public company's subsidiary appeared and practiced before the Commission as an accountant)); accord *SEC v. Prince*, No. 09-1423, 942 F. Supp. 2d 108, 146 (D.D.C. May 2, 2013) (quoting *Armstrong* and finding that a public company employee, serving as "Director of Mergers and Acquisitions," violated a Rule 102(e) order by appearing and practicing before the Commission as an accountant).

⁴⁹ *Pattison*, 2012 WL 4320146, at *12 & n.70 (citing *Armstrong*, 2005 WL 1498425, at *11 & n.62 (citing *Touche Ross & Co. v. SEC*, 609 F.2d 570, 582 (2d Cir. 1979) (stating that Rule of Practice 2(e), the predecessor to Rule of Practice 102(e), "represents an attempt by the Commission to protect the integrity of its own processes" and upholding the validity of Rule of Practice 2(e) as "reasonably related" to the purposes of the federal securities laws))).

⁵⁰ 15 U.S.C. § 78u-3(a).

⁵¹ *KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 WL 47245, at *26 (Jan. 19, 2001), *petition denied*, 289 F.3d 109 (D.C. Cir. 2002).

⁵² *Kornman*, 2009 WL 367635, at *9.

C. Disgorgement, plus prejudgment interest, is appropriate.

Exchange Act Section 21C(e) authorizes disgorgement, including reasonable prejudgment interest, in a cease-and-desist proceeding.⁵³ Disgorgement is an equitable remedy designed to deprive wrongdoers of their unjust enrichment and deter others from similar misconduct.⁵⁴ Accordingly, "[t]he amount of disgorgement should include all gains flowing from the illegal activities," but calculating disgorgement "requires only a reasonable approximation of profits causally connected to the violation."⁵⁵ Once the Division shows that its disgorgement figure is a reasonable approximation of the amount of unjust enrichment, the burden shifts to the respondents to demonstrate that the Division's estimate is not a reasonable approximation.⁵⁶ Where disgorgement cannot be exact, the "well-established principle" is that the burden of uncertainty in calculating ill-gotten gains falls on the wrongdoer whose illegal conduct created that uncertainty.⁵⁷

The record shows that total fees charged by Respondents for the thirteen reports issued in violation of the antifraud provisions is \$112,529. We conclude that this amount represents a reasonable approximation of Respondents' ill-gotten gains.⁵⁸ Respondents have submitted no evidence to the contrary and therefore have not met their burden of showing that this estimate is not a reasonable approximation. We order Respondents to disgorge \$112,529 plus prejudgment interest.⁵⁹ Because the misconduct committed by Hatfield and the Firm was inextricably

⁵³ 15 U.S.C. § 78u-3(e).

⁵⁴ See, e.g., *Platforms Wireless*, 617 F.3d at 1096 (quoting *SEC v. First Pacific Bancorp*, 142 F.3d 1186, 1191 (9th Cir. 1998) ("Disgorgement is designed to deprive a wrongdoer of unjust enrichment, and to deter others from violating securities laws by making violations unprofitable.")).

⁵⁵ *Id.* (quoting *SEC v. JT Wallenbrock & Assocs.*, 440 F.3d 1109, 1114 (9th Cir. 2006) and *First Pacific Bancorp*, 142 F.3d at 1192 n.6).

⁵⁶ *Id.* (quoting *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1232 (D.C. Cir. 1989)).

⁵⁷ *Id.* (quoting *First City Fin. Corp.*, 890 F.3d at 1232).

⁵⁸ The Division urges us to impose disgorgement of fees paid to Respondents for all thirty-eight audit reports at issue because such disgorgement "comports with prior Commission decisions in which unregistered auditors were required to disgorge audit fees for work performed in violation of Section 102(a) of the Sarbanes-Oxley Act of 2002" But Respondents were not charged with such a violation. We order disgorgement here for violations charged and proven by the Division.

⁵⁹ *Terence Michael Coxon*, Exchange Act Release No. 48385, 2003 WL 21991359, at *14 (Aug. 21, 2003) ("[E]xcept in the most unique and compelling circumstances, prejudgment interest should be awarded on disgorgement, among other things, in order to deny a wrongdoer the equivalent of an interest free loan from the wrongdoer's victims."), *aff'd*, 137 F. App'x 975 (9th Cir. 2005); 17 C.F.R. § 201.600(b) (stating that "[i]nterest on the sum to be disgorged shall be computed at the underpayment rate of interest established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), and shall be compounded quarterly").

entwined, their liability for the disgorgement and prejudgment interest shall be joint-and-several.⁶⁰

D. A second-tier civil monetary penalty is in the public interest.

Exchange Act Section 21B(a)(1)(A) authorizes us to impose a civil monetary penalty for willful violations of the federal securities laws.⁶¹ In considering whether a civil penalty is in the public interest, we consider: whether the conduct involved fraud or resulted in harm to others; the extent to which any person was unjustly enriched; whether the individual has committed prior violations; the need for deterrence; and such other matters as justice may require.⁶² Second-tier penalties are appropriate if the violation "involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement," and third-tier penalties are appropriate if, in addition, the violation "directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed" the violation.⁶³

The Division seeks a second-tier penalty, and we find this appropriate. As discussed above, Respondents' conduct involved fraud and deceit under the securities laws and undermined the reliability of disclosure resources used by investors to make investment decisions. The record does not demonstrate any pecuniary loss to investors, and Respondents' pecuniary gain (*i.e.*, the audit report fees) is not substantial. Respondents' unjust enrichment also is not substantial. Respondents have a disciplinary history and were sanctioned by the PCAOB for having engaged in improper professional conduct in the audit of the financial statements of two public companies.⁶⁴ Respondents' misconduct addressed in the PCAOB proceeding, together with the misconduct here, demonstrates that the need for deterrence is high.

The statutory maximum amount that may be imposed as a second-tier penalty for each act or omission occurring after March 3, 2009 but before March 5, 2013 is \$75,000 against a natural

⁶⁰ *Montford and Co., Inc., d/b/a Montford Assoc. and Ernest V. Montford, Sr.*, Investment Advisers Act Release No. 3829, 2014 WL 1744130, at *23 & n.205 (May 2, 2014) ("Numerous courts recognize that 'where two or more individuals or entities collaborate or have a close relationship in engaging in the violations of securities laws, they have been held jointly and severally liable for the disgorgement of illegally obtained proceeds.'") (quoting *David R. Lehl*, Securities Act Release No. 8102, 2002 WL 1315552, at *14 (May 20, 2002) (citation omitted)); *see also SEC v. Hughes Capital Corp.*, 124 F.3d 449, 455 (3d Cir. 1997) ("When apportioning [disgorgement] liability among multiple tortfeasors, it is appropriate to hold all tortfeasors jointly and severally liable for the full amount of the damage unless the liability is reasonably apportioned.").

⁶¹ 15 U.S.C. § 78u-2(a)(1)(A).

⁶² *Id.* § 78u-2(c).

⁶³ *Id.* § 78u-2(b).

⁶⁴ *S.W. Hatfield, CPA*, 2013 WL 3339647, at *1, *24.

person and \$375,000 against any other person.⁶⁵ Within this statutory framework, we have discretion in setting the amount of penalty.⁶⁶ We find that a civil penalty in the total amount of \$110,500, for which Respondents are jointly and severally liable, is appropriate. The figure represents a second-tier penalty of \$8,500 for each of the thirteen audit reports issued by Respondents while the Firm's license was expired.

An appropriate order will issue.⁶⁷

By the Commission (Chair WHITE and Commissioners AGUILAR, GALLAGHER, STEIN, and PIWOWAR).

Brent J. Fields
Secretary

⁶⁵ See Debt Collection Improvement Act of 1996, Pub. L. 104-134, title III, § 31001; 17 C.F.R. § 201.1004.

⁶⁶ *Phlo Corp.*, Exchange Act Release No. 55562, 2007 WL 966943, at *14 (Mar. 30, 2007).

⁶⁷ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73763 / December 5, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3602 / December 5, 2014

Admin. Proc. File No. 3-15012

In the Matter of

S.W. HATFIELD, CPA and
SCOTT W. HATFIELD, CPA

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day, it is

ORDERED that S.W. Hatfield, CPA and Scott W. Hatfield, CPA are permanently denied the privilege of appearing or practicing before the Commission as accountants; and it is further

ORDERED that S.W. Hatfield, CPA and Scott W. Hatfield, CPA cease and desist from committing or causing any violations or future violations of Exchange Act Section 10(b) and Rule 10b-5 thereunder; and it is further

ORDERED that S.W. Hatfield, CPA and Scott W. Hatfield, CPA, jointly and severally, disgorge \$112,529, plus prejudgment interest of \$18,469.78, such prejudgment interest calculated beginning from March 1, 2010, in accordance with Commission Rule of Practice 600; and it is further

ORDERED that S.W. Hatfield, CPA and Scott W. Hatfield, CPA pay a civil monetary penalty of \$110,500, for which they are jointly and severally liable.

Payment of the amounts to be disgorged and the civil money penalty shall be: (i) made by United States postal money order, certified check, bank cashier's check, or bank money order; (ii) made payable to the Securities and Exchange Commission; (iii) mailed to Enterprises Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; and (iv) submitted under cover letter that identifies the respondent and the file number of this proceeding.

By the Commission.

Brent J. Fields
Secretary