

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 59751 / April 13, 2009**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 2960 / April 13, 2009**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13439**

**In the Matter of**

**Jesus A. Lago, CPA,**

**Respondent.**

**ORDER INSTITUTING PUBLIC  
ADMINISTRATIVE PROCEEDINGS  
PURSUANT TO RULE 102(e) OF THE  
COMMISSION'S RULES OF PRACTICE,  
MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS**

**I.**

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative proceedings be, and hereby are, instituted against Jesus A. Lago, CPA ("Respondent" or "Lago") pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice.<sup>1</sup>

**II.**

In anticipation of the institution of these 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 him and the subject matter of these

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<sup>1</sup> Rule 102(e)(1)(ii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in unethical or improper professional conduct.

proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order") as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>2</sup> that:

#### A. SUMMARY

VoIP Inc. ("VoIP" or "the Company") is a telecommunications company based in Altamonte Springs, Florida. Among other things, VoIP fraudulently overstated its revenues and understated its net losses for the year ended December 31, 2004, through a series of phony sales and sham transactions, in violation of generally accepted accounting principles ("GAAP"). As engagement partner for Berkovits & Co. LLP f/k/a Berkovits, Lago & Co. ("BLC"), Lago supervised BLC's annual audit of VoIP's 2004 financial statements. In March 2005, BLC issued an audit report, signed by Lago, containing an unqualified audit opinion on VoIP's 2004 financial statements. In supervising the audit, Lago did not adequately perform his work in accordance with the auditing standards of the Public Company Accounting Oversight Board ("PCAOB"). With regard to certain audit items in the 2004 audit, he did not adequately plan and supervise the audits, did not obtain sufficient competent evidential matter, did not maintain an attitude of professional skepticism, and did not ensure adequate work paper documentation. Lago thereby engaged in improper professional conduct in connection with BLC's audit of VoIP's 2004 financial statements within the meaning of Rule 102(e)(ii).

#### B. RESPONDENT

Lago, 47, is a resident of Aventura, Florida. Until September 2007, Lago was a partner of a Fort Lauderdale, Florida firm, BLC, and, from 2004 to September 2007, served as the engagement partner for the firm's annual audits of VoIP. In September 2007, Lago left BLC to become a partner for another accounting firm. Lago is a certified public accountant and has been licensed to practice in the state of Florida since 1983.

#### C. OTHER RELEVANT ENTITY

VoIP is a Texas corporation with principle executive offices in Altamonte Springs, Florida. VoIP provided voice-over-Internet telecommunication services to retail and wholesale customers. VoIP's common stock has been registered pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act") since January 19, 2000. From April 2004 through July 2007, VoIP's stock traded on the Over-The-Counter Bulletin Board. It is currently quoted on the Pink Sheets disseminated by Pink OTC Markets, Inc. VoIP closed its offices in Altamonte Springs and ceased the majority of its operations in February 2008.

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<sup>2</sup> 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.

## **D. FACTS**

### **1. VoIP's False Financial Statements**

a. VoIP engaged in fraudulent accounting practices that resulted in inflated revenues and understated net losses in its annual financial statements for 2004, among other quarters. These practices involved the recording of fictitious sales and sham transactions on the books of a VoIP subsidiary, DTNet Technologies, Inc. ("DTNet"), by the Company's former CFO, and the former General Manager of DTNet. As part of this scheme, VoIP overstated its revenues by recording phony sales to five companies owned and operated by the former owner of DTNet. The purported products and services, however, were not actually provided to these companies. VoIP also overstated its revenues by reporting sham sales transactions with a plumbing supply company owned and operated by long-time friends of the DTNet General Manager. Under these arrangements, DTNet agreed to ship inventory to the plumbing supply company with the agreement that it would be repurchased at a later date. VoIP improperly recorded the phony sales and sham transactions as revenue and accounts receivable.

b. As a result, VoIP filed a Form 10-K for the year ended December 31, 2004 that materially overstated VoIP's revenues and understated its losses. In May 2006, VoIP restated its financial statements for the year ended December 31, 2004. The restatements establish that VoIP's revenues and net loss for the year ended December 31, 2004 were misstated by 43% (\$791,200) and 8% (\$462,618), respectively.

### **2. Lago's 2004 Audit of VoIP**

a. In March 2005, Lago issued an unqualified audit report on behalf of BLC stating that VoIP's 2004 financial statements were presented fairly, in all material respects, in conformity with GAAP. However, Lago did not adequately conduct the 2004 Audit in accordance with the auditing standards of the PCAOB (hereinafter referred to as the "Auditing Standards"). Among other things, Lago did not properly plan and supervise the audit, exercise due professional care and skepticism, obtain sufficient competent evidential matter to afford a reasonable basis for an opinion regarding the financial statements, and prepare appropriate audit documentation.

#### **Lago Did Not Adequately Plan the 2004 Audit**

b. As the engagement partner, Lago was responsible for VoIP's audit planning. Proper audit planning under the Auditing Standards requires, among other things, (1) the identification of areas requiring special attention or of special concern; (2) the consideration of conditions that may require the extension or modification of audit tests, such as the risk of material error or fraud; (3) the incorporation of identified risks into both audit planning and audit execution; and (4) adequate communication of identified risks to the audit team. As discussed below, Lago's planning for VoIP's 2004 Audit did not comply with these Auditing Standards.

c. Lago did not comply with the Auditing Standards because he did not incorporate, or confirm that the BLC audit team incorporated, known risks into the BLC audit plan

for VoIP. During an initial planning meeting, the BLC audit team identified several potential risks, including VoIP's small and inexperienced accounting staff, the pressures on VoIP to meet budget expectations, and the potential for VoIP's management to manipulate information and improperly recognize revenue. Despite identifying potential fraud risk factors during the initial planning meeting, Lago did not further address these risks in the planning of the audit, or require that the BLC audit team document these risks or otherwise address them in their audit planning. Lago further did not incorporate appropriate audit procedures that would require the audit team to heighten their overall awareness or levels of professional skepticism as they related to the identified risks.

d. Lago also did not require that the BLC audit team perform the most basic preliminary and analytical procedures necessary for audit planning and fraud consideration, including the assessment and documentation of the risk of material misstatement, the assessment and risk of management override of internal controls, and the assessment and identification of potential related parties and related transactions. Lago's failure to require the BLC audit team to perform these basic planning procedures during VoIP's 2004 audit represented a significant departure from the Auditing Standards.

**Lago Did Not Obtain Sufficient Competent Evidence and Maintain an Attitude of Professional Skepticism**

e. Although the Auditing Standards presume there to be a material risk of misstatement due to fraud in the recognition of revenue, the 2004 VoIP audit work papers reveal that Lago's audit team performed limited procedures regarding the existence and accuracy of VoIP's recorded revenues. While Lago's audit identified this Auditing Standard requirement, he did not incorporate the risk into audit procedures and did not maintain the required heightened sense of skepticism in this area. BLC's own audit program, included in the audit work papers, included procedures for testing revenue, including, but not limited to, basic audit steps such as sales cutoff testing and the investigation of revenue transactions with related parties. However, the overwhelming majority of these audit steps were either ignored, initialed as "not considered necessary," or initialed as "done" without any supporting documentation.

f. For example, one of the steps in BLC's audit program required the audit team to scan VoIP's sales journals and investigate large or unusual transactions near year end. The BLC audit program reflected the step as done and it was initialed and dated by a member of the audit team. There was no further explanation or supporting documentation evidencing this audit step. However, on the last day of 2004 (i.e., December 31<sup>st</sup>) \$250,000 in revenues from sales to only two customers had been record on DTNet's sale journal, representing more than 8% of VoIP's consolidated revenues for the entire year. Given the size and timing of these transactions, the audit team's failure to review or obtain supporting documentation constituted a clear departure from the Auditing Standards.

g. Lago also did not obtain sufficient evidence and did not maintain an attitude of professional skepticism while performing the audit procedures related to VoIP's accounts receivable. Because he did not perform any planning procedures with respect to related

parties, he could not ensure that he would respond appropriately to suspicious receivables. For example, as part of the accounts receivable confirmation process, the audit team received a confirmation response related to amounts due to VoIP from entities that the team noted should be considered related parties. The confirmed balance represented almost 17% of VoIP's receivable balance at the end of 2004 (or approximately \$254,000). Nonetheless, the audit team did not perform additional audit procedures to understand the nature or purpose of these related party transactions as required under the Auditing Standards. Although BLC's audit program required certain procedures to be performed with respect to accounts receivable and related party transactions, the steps were either documented as "done," without any supporting evidence, or "not considered necessary" in BLC's audit program. These same transactions were found to be fictitious and were reversed when VoIP restated its 2004 financial statements.

#### **Lago Did Not Obtain Adequate Work Paper Documentation**

h. The Auditing Standards require that the auditors' work papers clearly demonstrate the work that was, in fact, performed. They must also contain sufficient information to enable an experienced auditor, having no previous connection to the engagement, to: (1) understand the nature, timing, extent, and results of the procedures performed, evidence obtained, and conclusions reached and (2) determine who performed the work and the date such work was completed, as well as the person who reviewed the work and the date of such review.

i. Certain documentation of substantive procedures in many of the BLC audit work papers was inadequate, with little evidence of analysis, tests performed, or information obtained. In numerous instances, the work paper documentation simply consisted of the auditor initialing or stating "done" on the audit program, without further explanation or supporting work papers. By not directing the BLC audit team to get, and to confirm that they obtained, the appropriate documentation, Lago violated the Auditing Standards. This also impeded BLC's ability to adequately test and determine whether VoIP's financial statements were prepared in conformity with GAAP.

#### **Lago Did Not Adequately Supervise the 2004 Audit**

j. The Auditing Standards require that audits be adequately staffed and audit assistants be properly supervised, and that the auditor with final responsibility (generally, the audit partner) assign tasks to, and supervise, any assistants. As noted above, the Auditing Standards relating to documentation also require that work papers contain enough information to be able to determine the person who reviewed the work and the date of such review.

k. Lago, as engagement partner, was responsible for ensuring that the 2004 VoIP audit was properly staffed and supervised. He was also responsible for reviewing the work of the senior member of the audit staff. However, certain of the audit work papers prepared by the senior staff, including planning areas and areas considered to be high risk such as accounts receivable and revenue, were not reviewed. This constituted a violation of the Auditing Standards and added to the audit team's inability to respond to "red flags" and other significant matters identified during the VoIP audit.

### **3. Violations**

a. Rule 102(e)(1)(ii) provides that the Commission may temporarily or permanently deny an accountant the privilege of appearing or practicing before it if it finds, after notice and opportunity for hearing, that the accountant engaged in “improper professional conduct.” Such improper professional conduct includes, as applicable here, negligent conduct, defined as “repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards that indicate a lack of competence to practice before the Commission.” Rule 102(e)(1)(iv)(A)-(B).

b. Lago failed (i) to exercise due professional care in the planning and performance of the audit, Auditing Standards § AU 230, (ii) to properly plan and supervise the audit, Auditing Standards §AU 311, (iii) to appropriately consider fraud, risk and materiality in conducting the audit, Auditing Standards § AU 312 and § AU 316, (iv) to obtain sufficient competent evidential matter to afford a reasonable basis for the opinion rendered, Auditing Standards §AU 326, (v) to appropriately consider related parties, Auditing Standards § AU 334, and (vi) failed to adequately prepare audit documentation, Auditing Standards No. 3. As a result of the actions detailed above, Lago engaged in improper professional conduct with respect to BLC’s audit of VoIP’s 2004 financial statements.

### **4. Findings**

a. Based on the foregoing, the Commission finds that Lago engaged in improper professional conduct pursuant to Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.

## **IV.**

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

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

A. Lago is denied the privilege of appearing or practicing before the Commission as an accountant.

B. After one year from the date of this Order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company’s financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent’s work in his practice before the

Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, or the public accounting firm with which he is associated, is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the PCAOB and that inspection did not identify any criticisms of or potential defects in the Respondent's or the firm's quality control system that would indicate that the Respondent will not receive appropriate supervision;

(c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the PCAOB (other than reinstatement by the Commission); and

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

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Elizabeth M. Murphy  
Secretary