

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 62761 / August 24, 2010**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3175 / August 24, 2010**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-14018**

**In the Matter of**

**STEPHEN BURKE, CPA**

**Respondent.**

**ORDER INSTITUTING PUBLIC  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS PURSUANT  
TO SECTIONS 4C AND 21C OF THE  
SECURITIES EXCHANGE ACT OF 1934  
AND RULE 102(e) OF THE  
COMMISSION'S RULES OF  
PRACTICE, MAKING FINDINGS, AND  
IMPOSING REMEDIAL SANCTIONS  
AND A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Stephen Burke, CPA ("Respondent" or "Burke") pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

**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 proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### **Summary**

1. These proceedings arise out of material misstatements of revenue and net income by Fischer Imaging Corporation ("Fischer") in its filings on Form 10-Q for the second and third quarters of 2002. From January 2000 through September 2002, Fischer materially misstated revenue and net income in its financial statements as a result of, among other things, Fischer's improper recognition of revenue from equipment orders upon shipment to warehouses controlled by Fischer. Burke was hired as a consultant by Fischer's board of directors in March, 2002, and received information regarding this practice shortly thereafter. After Burke became Fischer's CFO in October 2002, Burke signed an amended quarterly filing for Fischer's second quarter of 2002 and signed Fischer's quarterly filing for the third quarter of 2002 without taking sufficient steps to determine whether Fischer's revenue recognition practices were appropriate. Further, despite his knowledge of Fischer's shipments to storage facilities, Burke did not take sufficient steps to implement a system of internal accounting controls to ensure that Fischer's revenue and net income were properly reported. Through his inactions, Burke violated and aided and abetted violations of the reporting, internal controls and books and records provisions of the Exchange Act. Burke also made or caused to be made false or misleading statements to Fischer's external auditors regarding Fischer's revenue recognition practices and provided false certifications in connection with Fischer's amended filing for the second quarter of 2002 and Fischer's quarterly filing for the third quarter of 2002.

#### **Respondent**

2. Stephen Burke, age 61, of Lake Bluff, Illinois, was a consultant for Fischer's board of directors from March 2002 through October 2002. Burke was Fischer's CFO, executive vice president of finance, and secretary from October 2002 to January 2004. Burke has held a Minnesota CPA license since 1998, which is currently inactive. In 2005, the Commission filed a civil injunctive action in the U. S. District Court for the District of Colorado against Burke and five other Fischer executives and board members based on their roles in Fischer's improper revenue recognition and other accounting misstatements. SEC v. Louis E. Rivelli, et al., Civil Action No. 1:05-cv-01039 (D.Colo).

#### **Other Relevant Entity**

3. Fischer Imaging Corporation, during the relevant period, was a Delaware corporation with its principal place of business in Denver, Colorado. Fischer was dissolved as of May 18, 2007, pursuant to a Chapter 11 Liquidating Plan. Prior to its dissolution, Fischer designed, manufactured, and marketed specialty medical imaging systems used for the diagnosis and screening of disease. Fischer's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and Fischer was required to file periodic reports with the SEC on Forms 10-K and 10-Q. In 2004, the Commission imposed a cease-and-desist order

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<sup>1</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.

against Fischer for violations of the anti-fraud, reporting, internal controls and books and records provisions of the federal securities laws resulting from Fischer's improper revenue recognition and other accounting misstatements. In the Matter of Fischer Imaging Corp., Exchange Act Rel. No. 34-50663 (Nov. 15, 2004).

## **Facts**

### **A. Fischer's Improper Revenue Recognition**

4. From January 2000 through September 2002, Fischer improperly recognized revenue upon shipment of products to storage facilities rather than upon shipment to customers or customer designated locations. Fischer paid for the storage costs while the equipment was at these storage facilities, insured the equipment, and continued to exercise control over it. It was improper under Generally Accepted Accounting Principles ("GAAP") for Fischer to recognize revenue on these orders at the time they were shipped to the storage facilities because, among other reasons, delivery had not occurred and the revenue had not been earned. As a result of these and other improper revenue recognition practices, Fischer materially misstated its revenue and net income in its filings with the Commission from January 2000 through September 2002.

### **B. Burke's Conduct**

5. In March 2002, Burke was hired by Fischer's board of directors to work at Fischer's headquarters as a consultant and was charged with addressing various accounting issues about which the board had concerns. Through his role as a Fischer consultant Burke became aware that Fischer recognized revenue for certain sales when products were shipped to storage facilities, rather than when they were shipped to customers or customer designated locations. Burke also learned that Fischer was constrained from collecting accounts receivable related to products that were in storage.

6. Burke became Fischer's CFO in October 2002. Despite Burke's knowledge of Fischer's practice of recognizing revenue upon shipment to storage facilities rather than to customer locations, he failed to implement a sufficient system of internal controls designed to provide reasonable assurances that Fischer reported its revenue and net income in conformity with GAAP. Burke also circumvented or failed to implement the internal controls Fischer did have and caused Fischer's revenue and net income to be falsified through his failure to fully investigate Fischer's practice of recognizing revenue on shipments to storage facilities.

7. After Burke became Fischer's CFO in October 2002, he reviewed and signed Fischer's amended filing on Form 10-Q for the quarter ended June 30, 2002, which Fischer filed on November 14, 2002, and Fischer's quarterly filing on Form 10-Q for the quarter ended September 29, 2002. Fischer's revenue and net income were materially misstated in these filings and in Fischer's books and records as a result of Fischer's improper revenue practices. In connection with these filings, Burke signed certifications that falsely stated that to the best of his knowledge, they complied with the requirements of Section 13(a) of the Exchange Act and fairly presented, in all material respects, the financial condition and results of operations of Fischer. Burke signed these certifications without taking sufficient steps to investigate whether Fischer's revenue recognition practices rendered the certifications false.

8. Burke also made materially false or misleading statements to Fischer's external auditors in connection with their reviews of Fischer's filings for the second and third quarters of 2002 regarding Fischer's revenue recognition practices and aged accounts receivable associated with orders that were in storage. Additionally, Burke signed management representation letters that contained false or misleading statements regarding, among other things, Fischer's revenue recognition practices and the validity of sales and associated receivables recorded in Fischer's accounting records.

### **Violations**

9. Section 13(a) of the Exchange Act and Rule 13a-13 thereunder require issuers with securities registered under Section 12 of the Exchange Act to file quarterly and other periodic reports with the Commission and to keep this information current. The obligation to file such reports embodies the requirement that they be true and correct. *See, e.g., SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978), *cert. denied*, 440 U.S. 913 (1979). In addition to the information expressly required to be included in a statement or report, Rule 12b-20 requires that there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

10. As discussed above, Burke caused Fischer to file false and misleading quarterly reports with the Commission for the second and third quarters of 2002 that misrepresented the revenue and net income of Fischer. By his conduct described above, Burke willfully aided and abetted and caused Fischer's violations of Section 13(a) of the Exchange Act and Rules 13a-13 and Rule 12b-20 thereunder.

11. Section 13(b)(2)(A) of the Exchange Act requires Section 12 registrants to make and keep books, records, and accounts that accurately and fairly reflect the transactions and dispositions of their assets. Section 13(b)(2)(B) requires registrants to devise and maintain a system of internal accounting controls that, among other things, provides reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP. Section 13(b)(5) provides that no person shall knowingly falsify any book, record, or account or circumvent internal controls. Rule 13b2-1 prohibits the falsification of any book, record, or account subject to Section 13(b)(2)(A).

12. As a result of the conduct described above, Burke willfully violated Section 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder, and willfully aided and abetted and caused Fischer's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

13. As a result of the conduct described above, Burke willfully violated Rule 13b2-2 under the Exchange Act which prohibits a director or officer of an issuer from, among other things, directly or indirectly, making or causing to be made a materially false or misleading statement to an accountant in connection with any audit, review or examination of the financial statements of the issuer required to be made pursuant to Section 13(b)(2) of the Exchange Act.

14. As a result of the conduct described above, Burke willfully violated Rule 13a-14 under the Exchange Act which sets forth the requirements for certain reports filed under Section

13(a) of the Exchange Act to include specified certifications by each principal executive and principal financial officer of the issuer.

### **Findings**

Based on the foregoing, the Commission finds that Burke (a) willfully violated Section 13(b)(5) of the Exchange Act and Rules 13b2-1, 13b2-2, and 13a-14 promulgated thereunder; and (b) willfully aided and abetted and caused Fischer's violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20 and 13a-13 promulgated thereunder.

### **IV.**

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

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

A. Burke shall cease and desist from committing or causing any violations and any future violations of Section 13(b)(5) of the Exchange Act and Rules 13b2-1, 13b2-2, and 13a-14 promulgated thereunder; and from causing any violations and any future violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20 and 13a-13 promulgated thereunder.

B. Burke is denied the privilege of appearing or practicing before the Commission as an accountant.

C. After 36 months 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 Public Company Accounting Oversight Board ("Board") 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 Board and that inspection did not identify any criticisms of or potential defects in the Respondent's or the firm's quality control system that would indicate that 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 Board (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 Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

D. 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

## Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), on the Respondent and his legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray  
Chief Administrative Law Judge  
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