UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10091 / June 7, 2016

SECURITIES EXCHANGE ACT OF 1934
Release No. 78009 / June 7, 2016

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3780 / June 7, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-16729

In the Matter of

MILLER ENERGY RESOURCES, INC., PAUL W. BOYD, CPA, DAVID M. HALL, AND CARLTON W. VOGT, III, CPA

Respondents.

ORDER MAKING FINDINGS AND IMPOSING REMEDIAL SANCTIONS PURSUANT TO SECTIONS 4C AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE AS TO CARLTON W. VOGT, III, CPA

I.

On August 6, 2015, the Securities and Exchange Commission ("Commission") instituted proceedings pursuant to Sections 4C[1] and 21C of the Securities Exchange Act of 1934 ("Exchange

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

> The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have

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Act") and Rule 102(e)(1)(ii) of the Commission's Rules of Practice[2] against Carlton W. Vogt, III, CPA ("Vogt" or "Respondent").

II.

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 Making Findings and Imposing Remedial Sanctions Pursuant to Section 4C of the Exchange Act and Rule 102(e) of the Commission's Rules of Practice as to Carlton W. Vogt, III, CPA (the "Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds[3] that:

SUMMARY

1. This case involves financial accounting and reporting fraud, as well as audit failures, related to the valuation of certain oil and gas assets in Alaska ("the Alaska Assets") acquired by Miller Energy Resources, Inc. ("Miller Energy" or "the Company"). Miller Energy, an oil and gas company headquartered in Houston, Texas, purchased these assets for $2.25 million in cash – along with the assumption of certain liabilities it valued at approximately $2 million – during a competitive bid in a bankruptcy proceeding in December 2009.

2. The Company subsequently reported those assets at an overstated value of $480 million and recognized a one-time "bargain purchase" gain of $277 million for its fiscal third quarter ended January 2010 and fiscal year ended April 2010.

> engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

[2] Rule 102(e)(1)(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.

[3] The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person in this or any other proceeding.

3. Miller Energy's financial statements for its fiscal year 2010, the first annual period in which the Company reported the fair value of the acquired assets, were audited by Sherb & Co. LLP ("Sherb & Co."), a now defunct CPA firm that was suspended by the Commission in 2013 for improper professional conduct unrelated to this matter. The lead engagement partner on the Miller Energy audit, Vogt, failed to comply with the Public Company Accounting Oversight Board (the "PCAOB") rules and standards in auditing Miller Energy's financial statements that included its accounting for its Alaska acquisition. Vogt failed to exercise due professional care and skepticism by not adequately assessing whether the Company's accounting treatment for the acquisition complied with GAAP. Vogt also failed to obtain sufficient competent evidential matter for management's assertions regarding the fair value of the Alaska Assets.

RESPONDENT

4. Carlton W. Vogt, III, CPA, resides in Warwick, New York. From January 2005 to October 2012, Vogt was a partner at Sherb & Co., LLP, an accounting firm based out of New York. He has been a licensed CPA in the state of New York since 1998.

THE COMPANY

5. ***Miller Energy Resources, Inc.*** is a Tennessee corporation with its principal place of business in Houston, Texas. It was founded in 1967 as an oil and gas exploration and production company, and went public via a reverse merger in 1996. It changed its name from Miller Petroleum to Miller Energy Resources in April 2011. The Company operated oil and gas assets in the Appalachian region of east Tennessee until selling them in November 2014 for $3.3 million in cash. Miller Energy's securities, registered pursuant to Exchange Act Section 12(b), were listed on the NYSE until September 2015, when the securities were delisted. Between early 2002 and December 2009, Miller Energy's stock price regularly traded below one dollar per share, falling to a low of $0.04 per share in December 2007. On October 1, 2015, Miller Energy filed a voluntary petition for reorganization under chapter 11 of title 11 of the U.S. Code in the United States Bankruptcy Court for the District of Alaska (the "Bankruptcy Case").

FACTS

Miller Energy Acquires and Overvalues the Alaska Assets

6. In the fall of 2009, Miller Energy became aware of certain oil and gas properties in Alaska that were in the process of being "abandoned" as part of the bankruptcy proceedings of a California-based energy company.

7. Unable to service its heavy debt and pay the significant monthly costs required to operate the properties, the bankrupt entity unsuccessfully sought for almost a year to sell its Alaska Assets. Beginning in December 2008, months before it filed for bankruptcy, the former owner of the assets marketed the same group of assets that Miller Energy ultimately bought to 40 potential buyers. This process failed to attract any bidders, and the assets were auctioned by the bankruptcy

court in July 2009, with the winning bidder agreeing to a total purchase price of $8 million for the assets. A second entity, who bid $7 million, was designated as the back-up purchaser. Neither bidder closed.

8. As a result, the former owner of the assets sought in August 2009, and was granted in September, an order from the bankruptcy court allowing it to abandon title to the assets due to a lack of interest.

9. Due to renewed interest in the assets from Miller Energy following their abandonment, the bankruptcy court permitted the debtor to reacquire the Alaska Assets and sell them to Miller Energy in a competitive auction for $2.25 million in cash and the assumption of certain limited liabilities. The transaction closed on December 10, 2009.

10. On March 22, 2010, Miller Energy filed its quarterly report on Form 10-Q for its fiscal third quarter ended January 31, 2010 and reported a value of $480 million for the Alaska acquisition. That amount was comprised of $368 million for oil and gas properties and $110 million for fixed assets. Miller Energy also reported an after-tax $277 million "bargain purchase gain" which boosted net income for the quarter to $272 million – an enormous increase over the $556,097 loss reported for the same period the year before.

11. These inflated balance sheet and income statement numbers were repeated in numerous documents subsequently filed with the Commission, including the Company's Form 10-K for the year ended April 30, 2010.

12. The newly-booked value of the Alaska acquisition, which resulted in a nearly 5,000% increase in Miller Energy's total assets, had a significant impact on Miller Energy's stock price. On December 10, 2009, the date of the transaction, Miller Energy's stock closed at $0.61 per share. By March 31, 2010, Miller Energy's stock closed 982% higher at $6.60 per share. Weeks later, its stock began trading on NASDAQ and, after moving to the NYSE a year later, reached an all-time high price on December 9, 2013 of $8.83 per share.

13. Miller Energy materially overstated the value of its Alaska Assets by more than four hundred million dollars.

Miller Energy Failed to Record the Alaska Acquisition at Fair Value

14. ASC 805, *Business Combinations* – formerly Statement of Financial Accounting Standards ("SFAS") 141(R) – became effective in December 2008. Among its principal revisions, ASC 805 requires acquisitions that result in a "bargain purchase," *e.g.*, entities purchased at fire sales prices in non-orderly transactions, to be measured at fair value, with any resulting gain recorded on the income statement.

15. ASC 820, *Fair Value Measurements* (formerly SFAS 157), provides the framework for measuring fair value. "Fair value" is defined in ASC 820 as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at

the measurement date." A reporting entity must determine an appropriate fair value using one or more of the valuation techniques described in accounting literature.

16. ASC 820 outlines three broad approaches to measure fair value: the market approach, income approach, and cost approach. Under the market approach, prices and other relevant information generated by market transactions involving identical or comparable assets or liabilities are used to measure fair value. The income approach utilizes valuation techniques to convert future amounts to a single discounted present value amount. Finally, the cost approach is based on the amount that currently would be required to replace the assets in service, *i.e.*, current replacement cost.

17. ASC 820 emphasizes that fair value is a market-based measurement, not an entity-specific measurement, and should be determined based on the assumptions market participants would use in pricing the asset or liability.

18. ASC 820 emphasizes that when a price for an identical asset or liability is not observable entities should use a "valuation technique that maximizes the use of relevant observable inputs and minimizes the use of unobservable inputs" and entities may not ignore assumptions market participants would use.[4]

19. Miller Energy purported to value the Alaska acquisition using the income approach for the oil and gas reserves and the cost approach for certain fixed assets. But the values that Miller Energy recorded for these assets did not reflect fair value and thus did not comply with GAAP.

The Valuation of the Acquired Oil and Gas Reserves Was Based Upon a Reserve Report, Which Did Not Represent Fair Value

20. Reserve reports are commonly used in the oil and gas industry to estimate quantities of oil and gas (the reserves) expected to be recovered from existing properties.[5] Generally, these

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[4] ASC 820 defines "unobservable inputs" as "inputs that reflect the reporting entity's own assumptions about the assumptions market participants would use in pricing the asset or liability developed based on the best information available in the circumstances" and "observable inputs" as "inputs that reflect the assumptions market participants would use in pricing the asset or liability developed based on market data obtained from sources independent of the reporting entity."

[5] Oil and gas reporting companies are subject to two principal authoritative pronouncements governing financial accounting and reporting for oil and gas activities: Rule 4-10 of Regulation S-X (17 C.F.R. 210.4-10), *Financial Accounting and Reporting for Oil and Gas Producing Activities Pursuant to the Federal Securities Laws and the Energy Policy and Conservation Act of 1975* ("Rule 4-10"); and ASC 932-235-50-29 through 33 (formerly SFAS 19, *Financial Accounting and Reporting by Oil and Gas Producing Companies* and SFAS 69, *Disclosures About Oil and Gas Producing Activities*). ASC 932 establishes disclosure requirements for significant oil and gas activities, including disclosure of the "standardized measure," which is the future after-tax net cash flows discounted at 10%. A non-GAAP measure known as "PV-10" is similar to the standardized measure but is typically presented on a pretax basis. The FASB has noted that the standardized measure supplies investors with useful information, however, they also noted their concern "that users of financial statements understand that it is neither fair market

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reports list reserves in categories based on a minimum estimated percentage probability of eventual recovery and production, *i.e.*, proved, probable, and possible. Information in reserve reports that are prepared in accordance with Commission regulations is frequently used, for among other purposes, to satisfy supplemental accounting disclosure requirements concerning estimates of future oil and gas production. However, the numbers used in reserve reports for this purpose are expressly not considered "an estimate of fair market value."

21. To value the Alaska Assets oil and gas reserves, Miller Energy used a reserve report prepared by an independent petroleum engineer firm that used a pretax present value of net cash flows discounted at 10% ("PV-10"). That reserve report reflected a PV-10 of $368 million.

22. Although that reserve report specifically cautioned that "*[t]he discounted values shown are for your information and should not be construed as our estimate of fair market value*," Miller Energy, without undertaking any additional analysis, recorded as the fair value of the acquired oil and gas properties the sum of the PV-10 estimates for 100% of the proved, probable, and possible reserves.

23. The $368 million reserve report value did not represent fair value for several reasons.

24. First, the reserve report did not represent fair value in part because the $237 million of projected operating and capital expenses that Miller Energy provided the petroleum engineer were unrealistically low, resulting in an overstated valuation. For example, internal Miller Energy documents indicate that the cost to drill certain new wells was roughly $13 million. However, Miller Energy told the petroleum engineer firm to use a cost of $4.6 million per well in its reserve report. And instead of using recent expense data, Miller Energy gave the engineer firm nearly three year old operating expense data, which in some cases, was even further reduced.

25. Overall, the reserve report implied operating expenses of $4 per barrel of oil equivalent ("boe") for all categories of reserves. That level of operating expenses was unreasonable in light of its predecessor's actual operating expenses of $32.50/boe in 2008 and $55.42/boe in the first half of 2009, before the wells were shut-in.

26. Vogt was aware of the potential problems with the expense projections, cautioning the Company's Chief Financial Officer in December 2009 that the lack of any controls over the expense estimates was a "concerning void."

27. Second, the reserve report did not include amounts for certain asset retirement obligations, *i.e.*, the legal obligations associated with the retirement of tangible long-lived assets.

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value nor the present value of future cash flows. It is a rough surrogate for such measures, a tool to allow for a reasonable comparison of mineral reserves and changes through the use of a standardized method that recognizes qualitative, quantitative, geographic, and temporal characteristics." Paragraph 83 of the Basis for Conclusions of SFAS 69.

28. Third, despite showing years of net profit that market participants would expect to be taxable, the reserve report did not make any adjustments for income taxes.

29. Fourth, the reserve report used a 10% discount rate that was inappropriate under GAAP for determining fair value. In a discounted cash flow model, a discount rate is used to account for the uncertainties associated with risk and the time value of money. A discount rate is the required rate of return that an investor would demand – based on the risks associated with the benefit stream under consideration – to induce the investor to make an investment. The 10% standard discount rate failed to consider assumptions market participants would use for the Alaska Assets given the unique risks associated with those assets.

30. Finally, the valuation also overstated cash flows from certain categories of reserve estimates (*e.g.*, "probable" and "possible" reserves) by failing to apply any risk weight to such reserves and the resulting cash flows. Given the high degree of uncertainty associated with cash flows from these reserve estimate categories, they are required to be risk weighted in order to reflect an appropriate valuation.

Miller Energy Improperly Valued the Fixed Assets

31. In addition to the $368 million value recorded for the oil and gas properties, Miller Energy also erroneously recorded a separate value of $110 million for acquired fixed assets, such as facilities and pipelines ancillary to the oil and gas reserves. This valuation violated GAAP for several reasons.

32. First, recording a separate and additional value for the fixed assets essentially amounted to double counting those assets. Specifically, the reserve report Miller Energy relied on to value the acquired oil and gas properties used a discounted cash flow model. Valuation specialists use such models to estimate the value of an enterprise's "operating assets" – *i.e.*, the assets employed to generate future cash flows – by converting future benefit streams into a net present value. In Miller Energy's case, the fixed assets were the very same operating assets that were expected to generate the future cash flows in the reserve report. Accordingly, they should not have been separately valued.

33. Second, Miller Energy improperly relied on an insurance report for the fair value of the fixed assets. The values for the fixed assets in that report had been given to the insurance broker, and its predecessor, by its clients (*i.e.*, Miller Energy and the previous owners of the fixed assets) as far back as 2007 and were used as starting points for other types of estimates, such as estimates for possible losses resulting from fire or natural disasters.

34. The two employees at the insurance broker who were most familiar with the original report stated that no one at the broker ever tested or in any way double-checked the values given to them.

35. Finally, the values in that report purported to show "asset replacement cost." Absent further adjustments, replacement cost new does not qualify as fair value under GAAP.

Vogt's Fiscal Year 2010 Audit of Miller Energy

36. As described below, Vogt failed to perform the 2010 Miller Energy audit in accordance with PCAOB Standards. These deficiencies included, among other items, failing properly to audit the fair value measurements, use the work of a specialist, plan, staff and supervise the audit, obtain sufficient competent audit evidence, exercise due care and professional skepticism, and perform required audit testing.

37. In August 2008, Miller Energy hired Sherb & Co. to become the company's independent public accountant. Vogt led an audit team that audited Miller Energy's financial statements for fiscal years ended 2009 and 2010.

38. As the partner in charge of the fiscal year 2010 Miller Energy audit, Vogt failed to perform the 2010 Miller Energy audit in accordance with PCAOB Standards.

39. Vogt's failures related to the auditing of the Alaska asset acquisition. Despite the materiality of the transaction on Miller Energy's financial statements, Vogt failed to adequately test the valuation of the assets and the related calculation of the gain on acquisition. Instead, he inappropriately relied on the aforementioned reserve report and the so-called asset replacement cost study to justify Miller Energy's $480 million valuation of the Alaska Assets.

40. Vogt did not perform the necessary procedures to enable him to use the findings of the reserve report. *See* AU § 336.12.[6] He and his audit staff performed a limited evaluation of the petroleum engineer firm's work and its qualifications as a specialist (as a petroleum engineer, not as a fair value appraiser). The reserve report, which was included in the audit workpapers, clearly stated that the engineer firm was not engaged to – and did not in fact – perform a fair value estimate for the Alaska Assets. Among other significant flaws, Vogt never obtained an understanding of the objectives and scope of the specialist's work or the appropriateness of using the specialist's work for the purpose of fair valuing the assets. *See* AU § 336.09. Nor did he make the appropriate tests of data provided to the specialist, including operating and capital expenses estimated and provided by Miller Energy. *See* AU § 336.12.

41. The audit of the recorded fixed assets of $110 million was similarly flawed. A member of the audit team obtained the asset replacement cost study and placed a copy of it in the workpapers, but Vogt failed to consider the nature of the fixed assets and whether they would be utilized to generate the cash flow from the oil and gas properties, and, if so, what remainder value would exist. Nor did Vogt or the audit team perform any meaningful work to consider the expertise and experience of those persons determining the fair value measurement, the significant

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6 References in this order are to the PCAOB standards in effect at the time of the relevant conduct.

management assumptions used in determining the fair value, and the documentation supporting management's assumptions. *See* AU § 328.12.

42. Vogt knew at the time of the accounting for the acquisition that Miller Energy had insufficient accounting staff and that any accounting was suspect. In a December 22, 2009 email to Miller Energy's senior management, Vogt indicated that he believed the Company's accounting staff was deficient, and that the Company's CFO cut too many corners on the accounting documentation. Furthermore, Vogt stated that Miller Energy's modeling of cash flows and expenses was "concerning" because there was no one taking a detailed look at the cost estimates that the CEO of Miller Energy's Alaska subsidiary provided to the petroleum engineer for the Alaska Assets. In an email dated March 17, 2011, Vogt also knew that the reserve report used suspect data and was completed on what he described as a "rushed basis," as Miller Energy "had very little time if none for any true due diligence of much depth into what [it] purchased."

43. Vogt, on behalf of Sherb & Co., issued an audit report containing an unqualified opinion for use in Miller Energy's 2010 Form 10-K that stated falsely that the audit had been conducted in accordance with the PCAOB's standards and that Miller Energy's financial statements were presented fairly, in all material respects, in conformity with GAAP. The specific failures are detailed below.

Failures Auditing Fair Value Measurements and Disclosures (AU § 328)

44. AU § 328 requires auditors to obtain sufficient competent audit evidence to provide reasonable assurance that fair value measurements and disclosures are in conformity with GAAP. AU § 328.03. The standard provides that "[t]he auditor should test the data used to develop the fair value measurements and disclosures and evaluate whether the fair value measurements have been properly determined" including "whether the data on which the fair value measurements are based, including the data used in the work of a specialist, is accurate, complete and relevant . . . ." AU § 328.39. In addition, "[t]he auditor should evaluate the sufficiency and competence of the audit evidence obtained from auditing fair value measurements and disclosures as well as the consistency of that evidence with other audit evidence obtained and evaluated during the audit." AU § 328.47. If a valuation model is utilized, the auditor reviews the model and evaluates whether the assumptions used are reasonable. AU § 328.38.

45. Vogt failed to comply with these requirements in connection with the 2010 audit of Miller Energy. While Vogt performed some testing on the data used to create the reserve report, he failed to test key elements such as the discount rate utilized, the risk weighting of the probable and possible reserves, estimated oil prices, and operating and capital expenses. Vogt also never properly considered the relevancy of the reserve report, improperly relying exclusively on the report since the specialist, a petroleum engineer, was not engaged to estimate a fair valuation, as expressly indicated in the report. Nor did he consider the consistency of the evidence in light of the other evidence, such as Miller Energy's actual purchase price of the assets (reported at less than $5 million), and the fact that the assets had previously been abandoned during a bankruptcy proceeding. While Vogt and his staff reviewed some aspects of the specialist's valuation model, they failed to sufficiently review and evaluate the reasonableness of assumptions such as the

discount rate, risk weighting of certain reserves, future oil prices, and operating and capital expenses.

46. Vogt also failed to obtain sufficient audit evidence to support the fair value of the fixed assets. Vogt performed limited, if any, testing of the asset replacement cost study purportedly supporting the fixed asset valuation. He did not assess the competency or sufficiency of the asset replacement cost study, or understand who created the study, their qualifications, and the data underlying their valuation. Finally, Vogt failed to consider whether some or all of the fixed assets were being utilized in the estimated values captured in the reserve report.

Failure in Using the Work of a Specialist (AU § 336)

47. AU § 336 provides guidance to auditors when the work of a specialist is used in performing an audit of financial statements prepared in accordance with GAAP. Among other items, the standard requires the auditor to evaluate the specialist to ensure that the specialist possesses the necessary skill or knowledge in the type of work under consideration and the appropriateness of using the specialist's work for the intended purpose. Specifically, AU § 336.08 states that "[t]he auditor should consider the following to evaluate the professional qualifications of the specialist in determining that the specialist possesses the necessary skill or knowledge in the particular field:

a. The professional certification, license, or other recognition of the competence of the specialist in his or her field, as appropriate
b. The reputation and standing of the specialist in the views of peers and others familiar with the specialist's capability or performance
c. The specialist's experience in the type of work under consideration."

48. Furthermore, AU § 336.09 states "[t]he auditor should obtain an understanding of the nature of the work performed or to be performed by the specialist. This understanding should cover the following:

a. The objectives and scope of the specialist's work
b. The specialist's relationship to the client
c. The methods or assumptions used
d. A comparison of the methods or assumptions used with those used in the preceding period
e. The appropriateness of using the specialist's work for the intended purpose

f. The form and content of the specialist's findings that will enable the auditor to make the evaluation described in paragraph [336].12."[7]

49. Although the Standard allows an auditor to use the work of a specialist as evidential matter in performing substantive tests to evaluate material financial statement assertions (*see* AU § 336.03), Vogt failed in several respects in his use of a specialist regarding the valuation of Miller Energy's Alaska acquisition.

50. Vogt did not properly consider the petroleum engineer's experience in fair valuation of assets, which was nonexistent. *See* AU § 336.08. Vogt also failed to obtain an understanding of the objectives and scope and intended purpose of the petroleum engineer's engagement for Miller Energy, which was to produce a reserve report for reserve disclosure purposes, not a fair valuation of acquired assets. *See* AU § 336.09. Indeed, the single page of the reserve report included in Vogt's workpapers, to support his evaluation of Miller Energy's $368 million valuation, clearly states that the "values shown . . . should not be construed as our estimate of fair market value."

51. Furthermore, Vogt failed to adequately obtain an understanding of the methods and assumptions used by the specialist, or appropriately test data provided to the specialist. *See* AU § 336.12. There is no evidence that Vogt considered the appropriateness of certain key assumptions used by the petroleum engineer, such as the discount rate, estimated price of oil and gas, and the lack of risk weighting of probable and possible reserves. Finally, Vogt, despite alerting Miller Energy's then CEO and CFO to the lack of sufficient review and inquiry, failed to adequately test the operating and capital expense estimates provided to the specialist by Miller Energy, and took few audit steps, other than inquiry, to assess the reasonableness of the expense estimates.

52. Vogt performed no steps to evaluate the qualifications of the authors of the asset replacement cost study, or understand the methods or assumptions they used or the appropriateness of using the Asset replacement cost study to support the valuation of the fixed assets at $110 million.

Failure to Exercise Due Professional Care in the Performance of Work (AU § 230)

53. PCAOB Standards require auditors to exercise due professional care in the planning and performance of the audit. *See* AU § 230.01. Due professional care requires the auditor to exercise professional skepticism: an attitude that includes a questioning mind and a critical assessment of audit evidence. *See* AU § 230.07. Moreover, gathering and objectively evaluating audit evidence requires the auditor to consider the competency and sufficiency of the evidence. *See* AU § 230.08.

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[7] AU § 336.12 states that an auditor should evaluate the appropriateness and reasonableness of methods and assumptions used, during which the auditor should: "(a) obtain an understanding of the methods and assumptions used by the specialist, (b) make appropriate tests of data provided to the specialist, taking into account the auditor's assessment of control risk, and (c) evaluate whether the specialist's findings support the related assertions in the financial statements."

54. Vogt failed to exercise due professional care regarding the audit of the Alaska acquisition valuation during the 2010 Miller Energy audit. Miller Energy had valued the assets purchased for a few million dollars at $480 million and had recorded a corresponding $277 million bargain purchase gain. Given the size of the transaction, Vogt should have focused more closely on the diligence required to gather and objectively evaluate the evidence supporting the fair value of the oil and gas properties acquired to comply with ASC 805 and common industry practice. He failed to adequately consider the competency and sufficiency of the reserve report as evidence of the fair value of the acquired oil and gas properties. Vogt also performed limited procedures and failed to sufficiently evaluate the evidentiary value of the asset replacement cost study, including failing to understand the source of the fixed asset values therein and the competency of the report authors.

Failure to Plan and Supervise (AU § 311)

55. AU § 311 requires an auditor to adequately plan the work and properly supervise assistants. AU § 311.01. In planning the audit, the auditor should consider, among other matters, the entity's business, the entity's accounting policies and procedures, and planned assessed level of control risk. AU § 311.03. A written audit program is required. AU § 311.05. Supervision involves directing the efforts of assistants who are involved in accomplishing the objectives of the audit and determining whether those objectives were accomplished. The extent of supervision appropriate in a given instance depends on many factors, including the complexity of the subject matter and the qualifications of persons performing the work. AU § 311.11.

56. Vogt's work did not meet this standard. Vogt's audit program to test Miller Energy's fair value assessment of the Alaska acquisition was insufficient. The planned procedures largely consisted of verifying the credentials of a specialist. Vogt's audit program failed to set forth procedures necessary to ensure the appropriateness of using the specialist's work for the purpose of a fair valuation. Nor did his audit program provide additional and alternate procedures for the insufficient evidence provided by the work of the specialist. As to the fixed assets, Vogt's program was insufficient in that it merely required agreeing the asset balance to the Asset replacement cost study provided by Miller Energy.

57. Vogt's supervision of his staff was also deficient. Vogt spent little time on-site while the field work was conducted, and he knew the staff auditors had insufficient oil and gas industry experience. It was evident during their respective testimonies that the two staff members assigned by Vogt to the Miller Energy audit, whose experience consisted almost entirely of auditing microcap companies, were ill-prepared to test a transaction purportedly valued in excess of $400 million. The most junior staff member was not a Certified Public Accountant, did not appear to comprehend basic accounting principles, including elementary aspects of fair value accounting, yet was charged with the testing of the oil and gas properties fair valuation.

Failure to Properly Assess Audit Risk and Materiality in Conducting an Audit (AU § 312)

58. AU § 312 states that, when an auditor has concluded that there is a significant risk of material misstatement of the financial statements, the auditor should consider this conclusion in

determining the nature, timing, or extent of procedures; assigning staff; or requiring appropriate levels of supervision. Ordinarily, higher risk requires more experienced personnel or more extensive supervision by the auditor with final responsibility for the engagement during both the planning and the conduct of the engagement. Higher risk may cause the auditor to expand the extent of procedures applied, apply procedures closer to or as of year-end, particularly in critical audit areas, or modify the nature of procedures to obtain more persuasive evidence. AU § 312.17

59. Vogt's knowledge of the magnitude of the Alaska acquisition, and his knowledge of the inadequacy of Miller Energy's accounting personnel, including the Company's CFO, should have resulted in increased scrutiny of Miller Energy's valuation of the Alaska Assets. Yet Vogt assigned crucial audit procedures to staff who lacked appropriate industry and auditing experience, and did not sufficiently supervise their work.

Failure to Obtain Sufficient Competent Evidential Matter (AU § 326)

60. Under the third standard of field work, sufficient competent evidential matter is to be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit. AU § 326.01. Since he over relied on a reserve report and the asset replacement cost study, and took limited to no additional audit steps to test that audit evidence, Vogt failed to obtain sufficient evidence for the fair value of the Alaska acquisition.

Failure to Issue an Accurate Audit Report (AU § 508)

61. Under AU § 508, an auditor may only express an unqualified opinion on historical financial statements when the auditor has formed such an opinion on the basis of an audit performed in accordance with PCAOB standards. AU § 508.07. Based upon the audit failures discussed above, Vogt should not have issued an audit report containing an unqualified opinion on Miller Energy's fiscal year 2010 financial statements.

VIOLATIONS

62. As a result of the conduct described above, Vogt engaged in a single instance of highly unreasonable conduct in circumstances for which heightened scrutiny was warranted within the meaning of Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice. Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) provide, in pertinent part, that the Commission may censure or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to any person who is found by the Commission to have engaged in improper professional conduct. Section 4C(b) of the Exchange Act and Rule 102(e)(1)(iv) define improper professional conduct with respect to persons license to practice as accountants as (1) a single instance of highly unreasonable conduct in circumstances for which heightened scrutiny is warranted; or (2) repeated instances of unreasonable conduct that indicate a lack of competence.

IV.

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

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

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

B. After three years from the date of this Order, Vogt 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 Vogt'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) Vogt, 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) Vogt, 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 Vogt's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

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

(d) Vogt acknowledges his responsibility, as long as Vogt 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 Vogt 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 Vogt's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Brent J. Fields
Secretary