

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 83169 / May 4, 2018

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3940 / May 4, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-16819

In the Matter of	:	ORDER GRANTING APPLICATION FOR
KEVIN W. MCALEER,	:	REINSTATEMENT TO APPEAR AND PRACTICE
CPA	:	BEFORE THE COMMISSION AS AN
	:	ACCOUNTANT RESPONSIBLE FOR THE
	:	PREPARATION OR REVIEW OF FINANCIAL
	:	STATEMENTS REQUIRED TO BE FILED WITH
	:	THE COMMISSION

On September 17, 2015, Kevin W. McAleer, CPA (“McAleer”) was denied the privilege of appearing or practicing before the Commission as an accountant as a result of settled public administrative proceedings instituted by the Commission against him pursuant to Rule 102(e)(1)(iii) of the Commission’s Rules of Practice.¹ This order is issued in response to McAleer’s application for reinstatement to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.

The Commission found that McAleer willfully violated the federal securities laws with respect to his conduct as the Chief Financial Officer of Penson Worldwide, Inc. (“PWI”). In Forms 10-K, for annual periods ended December 31, 2009 and December 31, 2010, and in Forms 10-Q, for periods ended March 31, 2010 through June 30, 2011, filed with the Commission, PWI’s financial statements failed to comply with Generally Accepted Accounting Principles because they failed to recognize losses from certain loans made by a subsidiary of PWI. In addition, PWI failed to adequately disclose the nature of the loans in those annual filings in violation of applicable disclosure requirements. As a result, the Commission found that McAleer willfully violated Exchange Act Section 13(b)(5), and Rules 13a-14 and 13b2-1, and caused PWI’s violations of Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B), and Rules 12b-20, 13a-1, and 13a-13.

¹ See Accounting and Auditing Enforcement Release No. 3697 dated September 17, 2015. McAleer was permitted, pursuant to the order, to apply for reinstatement after one year upon making certain showings.

In his capacity as a preparer or reviewer, or as a person responsible for the preparation or review, of financial statements of a public company to be filed with the Commission, McAleer attests that he will undertake to have his work reviewed by the independent audit committee of any company for which he works, or in some other manner acceptable to the Commission, while practicing before the Commission in this capacity. McAleer is not, at this time, seeking to appear or practice before the Commission as an independent accountant. If he should wish to resume appearing and practicing before the Commission as an independent accountant, he will be required to submit an application to the Commission showing that he has complied and will comply with the terms of the original suspension order in this regard. Therefore, McAleer's suspension from practice before the Commission as an independent accountant continues in effect until the Commission determines that a sufficient showing has been made in this regard in accordance with the terms of the original suspension order.

Rule 102(e)(5) of the Commission's Rules of Practice governs applications for reinstatement, and provides that the Commission may reinstate the privilege to appear and practice before the Commission "for good cause shown."² This "good cause" determination is necessarily highly fact specific.

On the basis of information supplied, representations made, and undertakings agreed to by McAleer, it appears that he has complied with the terms of the September 17, 2015 order suspending him from appearing or practicing before the Commission as an accountant, that no information has come to the attention of the Commission relating to his character, integrity, professional conduct or qualifications to practice before the Commission that would be a basis for adverse action against him pursuant to Rule 102(e) of the Commission's Rules of Practice, and that McAleer, by undertaking to have his work reviewed by the independent audit committee of any company for which he works, or in some other manner acceptable to the Commission, in his practice before the Commission as a preparer or reviewer of financial statements required to be filed with the Commission, has shown good cause for reinstatement. Therefore, it is accordingly,

² Rule 102(e)(5)(i) provides:

"An application for reinstatement of a person permanently suspended or disqualified under paragraph (e)(1) or (e)(3) of this rule may be made at any time, and the applicant may, in the Commission's discretion, be afforded a hearing; however, the suspension or disqualification shall continue unless and until the applicant has been reinstated by the Commission for good cause shown." 17 C.F.R. § 201.102(e)(5)(i).

ORDERED pursuant to Rule 102(e)(5)(i) of the Commission's Rules of Practice that Kevin W. McAleer, CPA is hereby reinstated to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.

By the Commission.

Brent J. Fields
Secretary