

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10863 / September 29, 2020

SECURITIES EXCHANGE ACT OF 1934
Release No. 90045 / September 29, 2020

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4180 / September 29, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-20102

In the Matter of

MICHAEL SCHNEIDER,
CPA

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933, 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 Michael Schneider, CPA (“Schneider” or “Respondent”) pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 4C¹ and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Rule 102(e)(1)(iii) of the Commission’s Rules of Practice.²

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 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 issued thereunder.

² Rule 102(e)(1)(iii) provides, in pertinent part, that:

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 Section 8A of the Securities Act of 1933, 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 finds³ that:

SUMMARY

1. This matter involves financial and accounting fraud by Schneider, the former Controller and Chief Financial Officer (“CFO”) of Manitex International, Inc. (“Manitex”), a publicly-traded company that manufactures and distributes cranes, forklifts and other heavy equipment and machinery. During a downturn in Manitex’s business, Schneider, along with other senior Manitex employees, engaged in a fraudulent scheme involving the use of related party entities to engage in fraudulent accounting practices. The fraud, which resulted in a restatement, involved Schneider, Manitex’s former Chief Operating Officer (the “COO”), and the former general manager of Manitex’s Crane & Machinery subsidiary (the “GM”). As a result of the scheme, Manitex issued materially misstated financial statements in its public filings for every period in 2016 through the second quarter of 2017.

2. In the scheme, Manitex improperly recognized revenue on and misled its auditor about approximately \$12 million in purported “bill and hold” sales of cranes to S.V.W. Crane Equipment Company (“SVW”). In March 2016, Manitex approached SVW to enter into an agreement to purchase Manitex cranes and rent them to third parties. SVW had no operations, revenue, or significant assets, and did not have the financial ability to obtain financing or otherwise pay for or store the cranes purchased from Manitex. At the COO’s direction, the GM took charge of the SVW relationship, secured the financing for SVW’s crane purchases, and, on behalf of

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . 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.

³ 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.

Manitex, guaranteed the financing for the cranes. The GM, in consultation with the COO, then created a purported financing subsidiary for SVW called Rental Consulting Services Company (“RCSC”), to conceal the fact that Manitex was making the financing payments. In order to make the payments, the GM created a series of fraudulent invoices on RCSC letterhead for fictitious services that RCSC purportedly provided to Manitex. Schneider approved the payments although he knew that the RCSC invoices were not genuine. Manitex should not have recognized revenue on the purported sales. As a result of the fraud, Manitex overstated its 2016 net revenues by over 6.9% and its 2016 gross profits by approximately 8.2%. On April 3, 2018, Manitex issued restated financial statements for 2016 and the first two quarters of 2017.⁴

3. As a result of his conduct, Schneider willfully violated Section 17(a) of the Securities Act, and Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13b2-1 and 13b2-2 promulgated thereunder. Schneider also willfully aided and abetted and caused Manitex’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 promulgated thereunder.

RESPONDENT

4. **Michael Schneider**, 56 years old, is a resident of Arlington Heights, Illinois. From at least November 2015 until August 2017, Schneider served as Manitex’s Controller. From August 2017 until his termination in January 2018, Schneider served as Manitex’s CFO. Schneider reported to Manitex’s previous CFO until August 2017 and to Manitex’s CEO thereafter. Schneider has been a licensed Certified Public Accountant (“CPA”) in the State of Illinois since May 1995.

OTHER RELEVANT ENTITIES

5. **Manitex International, Inc.**, is a Michigan corporation headquartered in Bridgeview, Illinois, that manufactures and distributes cranes, forklifts and heavy equipment. Manitex operates through several subsidiaries both in the United States and Europe, including Crane & Machinery which also was headquartered in Bridgeview, Illinois. Manitex and its predecessors have been in business since 1993. Manitex has a class of securities registered under Section 12(b) of the Exchange Act and its shares trade on the NASDAQ as “MNTX.” During the relevant period, Manitex sold securities to the public pursuant to several Form S-3 registration statements filed with the Commission. A broad range of investors purchased Manitex stock in these offerings. During the relevant period, the Form S-3 registration statements incorporated by reference the company’s public filings with the Commission.

6. **S.V.W. Crane Equipment Company** is a Texas corporation established in 1996, with its office in Pearland, Texas. Prior to the start of its relationship with Manitex in 2016, SVW had no operations, revenues, or significant assets.

⁴ In addition to the adjustments for the second fraud, Manitex also made other unrelated adjustments to its previously issued financial statements.

7. **Rental Consulting Services Company** is a Texas corporation established in June 2016, as a subsidiary of SVW. RCSC was created and controlled by the GM on Manitex's behalf.

FACTS

8. Manitex manufactures and distributes cranes, forklifts and heavy equipment. Historically, many of Manitex's largest customers purchased its equipment for use in support of the oil and gas industry. As a result, Manitex's business generally experienced a downturn in periods when the price of oil diminished substantially.

9. After a downturn in the oil and gas services industry in late 2015 impacted the demand by many of Manitex's customers, Manitex began seeking new purchasers for its cranes. Manitex decided to expand its small rental business, and the GM was charged with developing a rental business plan.

10. In March 2016, Manitex entered into an agreement with SVW, a dormant company that never had any operations, revenue, or significant assets, to purchase Manitex cranes and rent them to third parties. As part of the agreement, between April 2016 and January 2017, Manitex paid SVW's owner a monthly fee of \$16,000 to find rental customers for Manitex and SVW. SVW did not find any rental customers for the cranes.

11. SVW did not have a storage facility or the ability to take physical delivery of the cranes. Manitex kept the cranes at an offsite storage yard it leased in Texas and recorded the sales in its books and records as "bill and hold" transactions.

12. In April 2016, the COO asked the GM to take charge of the SVW relationship.

13. Because SVW did not have the financial ability to obtain financing or otherwise pay for the cranes it was purchasing from Manitex, the GM negotiated with various financing companies and prepared financing documents for SVW's owner to sign. In consultation with the COO, the GM also prepared "remarketing agreements" which obligated Manitex to guarantee that payments would be made to fulfill SVW's financing obligations. The GM also orally told the financing companies that Manitex would buy back any cranes from SVW upon default.

14. In order to conceal the fact that Manitex was paying for SVW's financing obligations, the GM proposed the idea of creating a purported financing subsidiary for SVW. The COO sarcastically suggested the possibility of calling the purported subsidiary "Vandalay Industries," the name of a fake company repeatedly referenced in the *Seinfeld* television show. The GM named the subsidiary RCSC, created RCSC as a corporate entity, and listed SVW's owner as its president. The GM also opened a bank account for RCSC and listed himself and SVW's owner as co-signers. In reality, RCSC was controlled by the GM and the COO, and SVW's owner was unaware of the RCSC bank account and had no control over RCSC.

15. The GM directed SVW's owner to send him all of the invoices for the SVW crane financing loans. Then, in order to make the financing payments through Crane & Machinery, the GM created a series of fraudulent invoices on RCSC letterhead primarily for "consulting" and other fictitious services that RCSC purportedly provided to Manitex. In reality, none of the RCSC

invoices were legitimate and they instead contained fictitious descriptions for amounts necessary to fund the monthly payments that SVW was required to make to the financing companies for the cranes it purchased from Manitex.

16. The GM submitted the fake invoices to Crane & Machinery's controller for entry into Crane & Machinery's payment system. The GM then directed Crane & Machinery's controller to submit the fake invoices to Schneider, as Manitex's controller, for approval.

17. Schneider knew that the RCSC invoices were not genuine. Schneider also knew that the purpose of the invoices was to make SVW's financing payments for its purported purchases of cranes from Manitex. Despite his knowledge, on at least two occasions, Schneider changed the invoice descriptions to reflect another purpose in order to make them more believable. For example, Schneider changed the description on one invoice to reflect that RCSC had provided services related to the sale of an unrelated Manitex subsidiary. On another invoice, Schneider changed the description to reflect that it related to a trade show. The COO also knew that the invoices were fictitious and were designed to conceal Manitex's payments of SVW's financing obligations. Despite this knowledge, the COO instructed Schneider to pay the invoices when the GM brought them to Schneider.

18. Based upon Schneider's approval of the RCSC invoices prepared by the GM, Manitex made payments through Crane & Machinery of approximately \$1.3 million to RCSC in 2016 and approximately \$600,000 during 2017 to cover SVW's financing obligations in connection with SVW's "purchase" of the cranes from Manitex.

19. Pursuant to its agreement with Manitex, SVW "purchased" 39 cranes from Manitex for a combined cost of \$15 million throughout 2016, including: approximately \$9.7 million during the first quarter of 2016, approximately \$2.9 million during the second quarter of 2016, approximately \$1.7 million during the third quarter of 2016, and approximately \$538,000 during the fourth quarter of 2016. SVW later returned 10 of the 39 cranes to Manitex during the third and fourth quarters of 2016. As a result, Manitex recorded revenue of approximately \$12 million from the remaining 29 cranes purportedly sold to SVW during 2016.

20. When its business started to improve in late 2016, Manitex began "purchasing" the cranes back from SVW and reselling them to third-party customers.

21. Despite his knowledge discussed above, Schneider signed management representation letters to Manitex's external auditor denying any knowledge of fraud for year-end 2016 and the first two quarters of 2017.

22. In October 2017, Manitex's auditor began asking questions about the accounting for the crane sales to SVW after discovering a lease agreement listing Manitex as the debt-holder for certain of the cranes. In the course of the inquiry, the external auditor also discovered certain of the facts discussed above.

23. Shortly after the external auditor began its inquiry, Manitex engaged an outside law firm to conduct an investigation. Based on the investigation's findings, Manitex terminated

Schneider's and the GM's employment. The COO was no longer at the company, having previously left his employment at Manitex in December 2016.

24. After consulting with the external auditor, Manitex determined that it should not have recognized revenue on the crane sales to SVW. On November 6, 2017, Manitex announced that its quarterly and annual financial statements for 2016 and the first two quarters of 2017 should not be relied upon and that a restatement was possible.

25. On April 3, 2018, Manitex filed an amended Form 10-K for 2016 and amended Forms 10-Q for the first two quarters of 2017 restating its financial results. The restated financial statements indicated that, as a result of the SVW transactions, Manitex had overstated its 2016 net revenues by approximately \$12 million and its 2016 gross profits by approximately \$2.45 million, representing material overstatements of 6.91% and 8.19%, respectively. The financial statements for the affected periods included the following material misstatements attributable to SVW:

Impact of SVW Transactions on Net Revenue

Reporting Period	1Q 2016	2Q 2016	3Q 2016	YE 2016	1Q2017	2Q2017
Originally Reported Net Revenues	102,361*	96,277	74,131	288,959	67,852	51,592
SVW Transactions	(9,688)	(2,940)	(495)	(11,961)	836	459
Other Adjustments**	(45,443)	(47,592)	(34,505)	(103,801)	(28,569)	-
Net Adjustments	(55,131)	(50,532)	(35,000)	(115,762)	(27,733)	459
<i>Restated Net Revenues</i>	<i>47,230</i>	<i>45,745</i>	<i>39,131</i>	<i>173,197</i>	<i>40,119</i>	<i>52,051</i>
Impact of SVW Transactions as Percentage of Restated Net Revenues	-20.5%	-6.4%	-1.3%	-6.9%	+2.1%	+0.9%

Impact of SVW Transactions on Gross Profit

Reporting Period	1Q 2016	2Q 2016	3Q 2016	YE 2016	1Q2017	2Q2017
Originally Reported Gross Profit	18,445	16,845	11,655	48,584	11,793	9,429
SVW Transactions	(2,048)	(334)	(353)	(2,452)	219	182
Other Adjustments**	(7,652)	(8,350)	(4,760)	(16,195)	(4,620)	(207)
Net Adjustments	(9,700)	(8,684)	(5,113)	(18,647)	(4,401)	(25)
<i>Restated Gross Profit</i>	<i>8,745</i>	<i>8,161</i>	<i>6,542</i>	<i>29,937</i>	<i>7,392</i>	<i>9,404</i>

Impact of SVW Transactions as Percentage of Restated Gross Profit	-23.4%	-4.1%	-5.4%	-8.2%	+3.0%	+1.9%
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*All Dollar Amounts in Thousands.

** The other adjustments primarily were associated with retroactive presentation of discontinued operations under ASC 205-20.

VIOLATIONS

26. As a result of the conduct described above, Schneider willfully violated Section 17(a) of the Securities Act which prohibits fraudulent conduct in connection with the offer or sale of securities, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

27. As a result of the conduct described above, Schneider willfully violated Section 13(b)(5) of the Exchange Act which prohibits anyone from knowingly circumventing or knowingly failing to implement a system of internal accounting controls, or knowingly falsifying any book, record or account. Also, Schneider willfully violated Exchange Act Rule 13b2-1, which prohibits any person from, directly or indirectly, falsifying or causing to be falsified, any book, record or account subject to Exchange Act Section 13(b)(2).

28. As a result of the conduct described above, Schneider willfully violated Exchange Act Rule 13b2-2, which prohibits any director or officer of an issuer from, directly or indirectly: (a) making or causing to be made a materially false or misleading statement; or (b) omitting or causing another person to omit to state a material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with financial statement audits, reviews, or examinations or the preparation or filing of any document or report required to be filed with the Commission.

29. As a result of the conduct described above, Schneider willfully aided and abetted and caused Manitex's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 promulgated thereunder which require issuers of securities registered pursuant to Section 12 of the Exchange Act to file periodic and other reports with the Commission, including annual, quarterly and current reports, on the appropriate forms and within the period specified on the form that must contain any material information necessary to make the required statements made in the report not misleading.

30. As a result of the conduct described above, Schneider willfully aided and abetted and caused Manitex's violations of Section 13(b)(2)(A) of the Exchange Act which requires issuers of securities registered pursuant to Section 12 of the Exchange Act to make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of assets.

31. As a result of the conduct described above, Schneider willfully aided and abetted and caused Manitex's violations of Section 13(b)(2)(B) of the Exchange Act which requires issuers of securities registered pursuant to Section 12 of the Exchange Act to devise and maintain a system

of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to, among other things, permit preparation of financial statements in accordance with Generally Accepted Accounting Principles.

IV.

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

Accordingly, pursuant to Section 8A of the Securities Act, Sections 4C and 21C of the Exchange Act, and Rule 102(e) of the Commission's Rules of Practice, it is hereby ORDERED that:

A. Respondent Schneider shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B) and 13(b)(5) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-13, 13b2-1 and 13b2-2 promulgated thereunder.

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

C. After 5 years from the date of this Order, Respondent Schneider 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 (other than as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934). Such an application must satisfy the Commission that Respondent Schneider's work in his practice before the Commission as an accountant 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. 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 as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Exchange Act. Such an application will be considered on a facts and circumstances basis with respect to such membership, and the applicant's burden of demonstrating good cause for reinstatement will be particularly high given the role of the audit committee in financial and accounting matters; and/or
3. an independent accountant.

Such an application must satisfy the Commission that:

- (a) Respondent Schneider, 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 Schneider, 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 Respondent Schneider will not receive appropriate supervision;
- (c) Respondent Schneider 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 Schneider acknowledges his responsibility, as long as he 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 Schneider 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 Schneider’s character, integrity, professional conduct, or qualifications to appear or practice before the Commission as an accountant. Whether an application demonstrates good cause will be considered on a facts and circumstances basis with due regard for protecting the integrity of the Commission’s processes.

E. Respondent Schneider is prohibited, pursuant to Section 21C(f) of the Exchange Act, for a period of 5 years from the date of this Order, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

F. Respondent Schneider shall pay a civil money penalty in the amount of \$55,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made within 10 days of

the entry of this Order. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Michael Schneider as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Anne C. McKinley, Assistant Director, Securities and Exchange Commission, Chicago Regional Office, 175 West Jackson Boulevard, Suite 1450, Chicago, Illinois 60604.

G. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by

Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary