

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 89552 / August 13, 2020

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4159 / August 13, 2020

ADMINISTRATIVE PROCEEDING
File No. 3-19914

	:		ORDER INSTITUTING PUBLIC
	:		ADMINISTRATIVE AND CEASE
	:		AND-DESIST PROCEEDINGS
In the Matter of	:		PURSUANT TO SECTIONS 4C AND 21C
	:		OF THE SECURITIES EXCHANGE ACT
BRIAN DEE MATLOCK, CPA	:		OF 1934 AND RULE 102(e) OF THE
	:		COMMISSION’S RULES OF PRACTICE,
Respondent	:		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 pursuant to Sections 4C¹ and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice² (“CRP”) against Respondent, Brian Dee Matlock, CPA

¹ Section 4C provides, in relevant part, as follows:

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 . . . 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)(ii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . .

(“Matlock” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“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, and except as provided herein in Section V, 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 that:³

A. SUMMARY

1. Rothstein, Kass & Company, P.C. (“RK”), formerly a PCAOB-registered audit firm headquartered in Roseland, New Jersey, was retained to audit the financial statements of Breitling Energy Corporation, Inc. (“Breitling” or “the company”), a Dallas-based oil and gas company, for the two-year period ended December 31, 2013.⁴ Over the course of that audit, RK, and Matlock as the engagement partner, engaged in improper professional conduct, and RK violated, and Matlock caused violations of Section 10A(b)(1)(A)(i) of the Exchange Act, by failing to take appropriate steps in relation to potential illegal activity on the part of Breitling and its management.⁵

2. Over the course of the Breitling audit, RK and Respondent Matlock, who served as the engagement partner on the Breitling engagement, were advised that Breitling’s predecessor, Breitling Oil and Gas Corporation (“BOG”), was misrepresenting its business model to the investors who purchased oil-and-gas interests sold by BOG, and in so doing, inflating the return

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 or entity in this or any other proceeding.

⁴ RK was also retained to audit the financial statements of Breitling’s predecessor entities for the two-year period ended December 31, 2012, but that audit is not the subject of this Order.

⁵ On June 24, 2016, the Commission filed an action in the U.S. District Court for the Northern District of Texas (Civil Action No. 3:16-cv-01735-D), alleging, *inter alia*, transactional registration, antifraud, reporting, Sarbanes-Oxley certification, accounting controls, books and records, proxy, and lying to auditor violations in connection with an alleged \$80 million oil and gas fraud, naming as defendants in its action Breitling, Breitling Oil and Gas Corporation, Crude Energy LLC, and Patriot Energy, Inc., and eight individuals associated with the defendant entities. The case is pending.

on investment the investors could reasonably expect to receive. RK and Respondent were also advised over the course of the audit that certain procedures designed to safeguard investor funds and ensure their appropriate use, specifically, the segregation of investor funds, delimited authorization to substitute the investors' interests, and validation of claimed business expenses were not, in fact, being implemented. Respondent Matlock became aware of this misconduct, and was therefore aware that illegal acts may have occurred, but Respondent failed to determine whether illegal acts likely occurred. Respondent's failure caused violations by RK of Section 10A(b)(1)(A)(i) of the Exchange Act. In addition, Matlock, by failing to comply with a certain PCAOB auditing standard, engaged in improper professional conduct pursuant to CRP Rule 102(e)(1)(ii), and caused violations by RK of Rule 2-02(b)(1) of Regulation S-X.

B. RESPONDENT

3. **Brian Dee Matlock**, age 41, is a resident of Colleyville, Texas, and a CPA licensed in Texas. Matlock served as the lead engagement partner on the Breitling audit.

C. RELEVANT ENTITIES

4. **Breitling Energy Corporation** is a corporation organized in Nevada with its principal place of business in Dallas. Breitling is the result of an asset-for-stock sale transaction between Bering Exploration, Inc. (OTC: BERX), on the one hand, and BOG and Breitling Royalties Corporation ("BRC") on the other.⁶ Breitling's common stock was registered with the Commission under Section 12(g) of the Exchange Act until November 1, 2016, when the Commission declared final the ALJ's decision de-registering all Breitling securities due to Breitling's filing delinquency.⁷ Breitling's stock (ticker: BECC), before de-registration, had been quoted on OTC Link operated by OTC Markets Group, Inc., had one or more market makers, and was eligible for the "piggyback" exception of Exchange Act Rule 15c2-11(f)(3).

5. **Rothstein, Kass & Company, P.C.** was a public accounting firm that had been registered with the PCAOB since at least 2006, and was headquartered in Roseland, New Jersey. At all relevant times, RK had approximately 83 partners operating out of eight offices and serving approximately 40 issuer/audit clients. On June 30, 2014, RK's assets were acquired by another public accounting firm, at which point RK resigned as Breitling's auditor, and RK ceased operations.

D. FACTS

BOG's Offering Fraud

⁶ BOG is a limited liability company originally organized in the state of Oklahoma in 2004 under the name Southwest Energy Exploration, LLC. Christopher Faulkner (CEO, President, and Chairman of Breitling) controlled Southwest Energy, and changed its name to Breitling Oil and Gas Corporation in July 2010 when he started the company. BOG's principal place of business was in Dallas, until December 9, 2013, when it was part of the asset-for-stock sale transaction that created Breitling. BOG is not registered with the Commission.

⁷ Breitling failed to file its 2014 and 2015 annual reports and its quarterly reports for the quarters ended March 31, 2015, June 30, 2015 and September 30, 2015.

6. Commencing at least as early as 2011, Chris Faulkner, Breitling's CEO, orchestrated a massive fraudulent scheme that ultimately bilked investors of \$80 million. The scheme involved the unregistered and fraudulent offer and sale by Faulkner-controlled entities of working interest investments in more than 20 oil-and-gas prospects in several states. Faulkner conducted three versions of this core fraud, initially using BOG to offer the investments. The confidential information memoranda ("CIMs") and marketing brochures Faulkner drafted and that were provided to prospective investors were replete with material misrepresentations and omissions.

7. BOG commenced operations at least as early as 2011, when it began offering and selling unregistered investments – in the form of working interests in oil-and-gas prospects in Texas, Oklahoma, and North Dakota – to investors across the country on a turnkey basis. In this turnkey arrangement, investors made lump-sum payments to BOG for a fractionalized working interest in an oil-and-gas prospect. BOG represented to investors that the amounts of these lump-sum payments equaled the reasonable estimated costs to drill, test, and complete the prospects. In return, BOG agreed to assume the risk of any cost overruns; i.e., BOG would not require additional contributions from investors. BOG offered and sold these turnkey investments through a combination of cold-calling and general advertising on its website. From January 2011 through December 2013, BOG offered and sold more than \$43 million in investments in oil-and-gas working interests in fifteen prospects (collectively the "BOG Offerings"), none of which were registered with the Commission.

8. In Authorizations for Expenditures ("AFE's") included in BOG's offering materials, BOG and Faulkner provided detailed line-item estimates of costs BOG claimed it reasonably expected to incur in drilling, testing and completing the prospect wells. As mentioned, the purchase price for the working interest units purportedly equaled these estimated costs. For example, if a prospect well was estimated to cost \$5 million to drill, test, and complete, BOG would offer investments in one percent of that prospect for \$50,000 (1% x \$5 million). BOG's offering documents repeatedly linked and cross-referenced BOG's estimated costs, the AFEs, and the purchase prices of working interest units.

9. Well operators for the BOG prospects created the AFEs and provided them to BOG and Faulkner at the time they were hired to operate a new well; however the operators' AFEs were never included in the BOG offering documents provided to prospective investors. Instead, Faulkner either: (i) significantly inflated the line items in the AFEs provided by the well operators, or (ii) simply concocted exorbitant line item estimates. Faulkner and BOG then included these doctored AFEs in BOG's offering documents, representing that they were estimates of costs BOG reasonably expected to incur in drilling, testing, and completing the wells. By grossly inflating the estimated costs in the AFEs, Faulkner locked in huge profits for BOG, because there was no possibility that the actual costs would equal, or even approach, Faulkner's grossly inflated "estimates." Faulkner even re-used AFEs from prior offerings, even though they were for prospects that were in different locations and for wells that were to be drilled to different depths and by different operators.

10. Representations that the prices investors were paying for working interests were reasonable estimates of actual costs, and that BOG's profits would flow from a share in any

ultimate production revenue, presented a business model in which the financial interests of BOG mirrored those of the investors. However, given Faulkner's fraudulent inflation of the AFEs, that mirror inverted reality: BOG's profits flowed, not on the back end of the investment as disclosed – as a portion of the total production revenue – but rather on the front end, as the difference between BOG's bloated AFEs and its actual prospect costs.

11. In the CIMs for the BOG Offerings, BOG and Faulkner represented that investor funds would be deposited into segregated bank accounts in the name of the particular offering or prospect, and that payments for drilling, testing, and completing costs would be paid from these segregated bank accounts. Maintaining the funds intact in the segregated accounts offered assurance to investors that their funds would be available to drill, test, and complete their prospect. However, BOG's representations that they would maintain funds intact in the segregated accounts were false. BOG – typically at Faulkner's request – transferred purchaser funds into a commingled BOG operating account shortly after receipt. BOG then paid costs associated with multiple prospects out of this BOG operating account. The result was that BOG often had difficulty paying bills on its prospects, and later lost investors' interests in prospects when it failed to pay bills. This mismanagement is all the more egregious and shocking in light of the fact that BOG raised vastly more money than it needed to drill, test and complete the prospects.

12. BOG also regularly oversold working interests in its prospects, i.e., it sold interests it had not, itself, acquired. A material portion of BOG's working interest sale revenues were the product of these oversales. BOG often transferred the oversold investors' interests to other BOG prospects, even though BOG had no authority under the CIMs to do so. A provision in the CIMs allowed the company to substitute working interests to “a comparable drilling site” only in the event that the operator or company obtained “additional geological information” warranting the substitution, not in the event of oversales. Further, the CIMs required that any substituted original drill site “compare favorably with the general character of the proposed [original] [w]ell regarding degree of risks, drilling depth and cost.” BOG improperly substituted working interests due to oversales, not additional geological information, and BOG did not adequately determine whether the original and substitute wells compared favorably as defined in the CIMs.

13. BOG's and Faulkner's misrepresentations and deceptive practices misled investors about the expected costs of the prospects and how their funds would be safeguarded and used, and saddled many of the investors with working interests in prospects they had not bargained for. Making matters worse, BOG and Faulkner never disclosed to investors the negative impact of these practices on their potential investment returns.

14. Faulkner also misappropriated a significant portion of the investor funds. His *modus operandi* was two-fold: He directed payments to American Express (“Amex”) for expenses he incurred on the Amex cards he and his wife used; and (ii) he received checks issued to him or entities he controlled for claimed expense reimbursements and service fees. Faulkner used his Amex cards for BOG-related expenses such as advertising and lead fees, but he also used them extensively for personal expenditures. Without segregating personal expenditures or providing statements detailing his charges, Faulkner repeatedly requested that BOG pay his Amex bills in their entirety. As a result, in 2013, BOG paid approximately \$6.9 million for charges incurred by Faulkner on his credit cards. In addition to these payments to Amex, Faulkner sought payments

from BOG for personal expenses through claimed expense reimbursements and phony service fees. Even though he often failed to provide supporting documentation for these claims, BOG issued checks or wired funds totaling approximately \$4 million directly from BOG to him personally or to entities he controlled during this time period.

RK's Audit of Breitling's Financial Statements

15. In an engagement letter dated December 9, 2013, RK agreed to audit the consolidated and combined balance sheets of Breitling, and the related consolidated and combined statements of operations, changes in stockholders' deficit, and cash flows, as of and for the periods ended March 31, 2014 and 2013 (or December 31, 2013 if Breitling filed a transition filing with the SEC on Form 8-K).

16. Breitling included these financial statements, together with RK's unqualified audit report, dated March 31, 2014, in the Form 10-K "Transition Report" Breitling filed with the Commission on March 31, 2014, for the "transition period from March 31, 2013 to December 31, 2013."

17. During the audit, RK and Matlock identified several of the issues identified above, including:

- The costs listed in the AFEs were substantially greater than the company's actual costs.
- Most if not all of BOG's profits derived from the difference between BOG's AFEs and its lower actual prospect costs, not from participation in production revenue.
- A material amount of Breitling revenue was the result of the "oversold" prospects. Matlock also learned that the company, in some cases, had substituted oversold interests for interests in dissimilar prospects.
- The company reimbursed Faulkner for highly questionable purported business expenses.
- The company transferred cash out of segregated cash accounts before the prospects were drilled and completed.

RK and Matlock Failed to Conduct the Breitling Audit in Accordance with PCAOB Standards.

Failure to determine whether illegal acts likely occurred (AU § 317)

18. AU § 317.07 provides that "[t]he auditor should be aware of the possibility that ... illegal acts may have occurred. If specific information comes to the auditor's attention that provides evidence concerning the existence of possible illegal acts ["violations of laws or governmental regulations" AU § 317.02] that could have a material indirect effect on the financial statements, the auditor should apply audit procedures specifically directed to ascertaining whether an illegal act has occurred. AU § 317.10 prescribes that "[w]hen the auditor becomes aware of

information concerning a possible illegal act, the auditor should obtain an understanding of the nature of the act, the circumstances in which it occurred, and sufficient other information to evaluate the effect on the financial statements,” and “the auditor should apply additional procedures, if necessary, to obtain further understanding of the nature of the acts.” AU § 317.10.b.

19. During the audit, RK reviewed the company’s CIMs to determine their audit significance. During RK’s initial review, the company’s management provided shifting, incomplete, or erroneous answers to questions about identical and inflated AFEs, substituted oversold interests, failed cash segregation, and Faulkner’s expenses. Matlock separately concluded that each of the four categories of misconduct was caused by the company’s lack of proper internal technical expertise and controls, without determining whether the misconduct constituted illegal acts, or whether it was likely that illegal acts had occurred.

20. Matlock’s failure was a violation of AU § 317.

E. VIOLATIONS

21. Section 10A(b)(1)(A)(i) of the Exchange Act requires registered public accounting firms that, in the course of conducting an audit, “detect[] or otherwise become[] aware of information indicating that an illegal act (whether or not perceived to have a material effect on the financial statements of the issuer) has or may have occurred” to “determine whether it is likely that an illegal act has occurred.” No showing of scienter is necessary to establish a violation of Section 10A. As a result of the conduct described above, Matlock caused RK’s violation of Section 10A(b)(1)(A)(i).

22. Rule 2-02(b)(1) of Regulation S-X requires an accountant’s report to state “whether the audit was made in accordance with generally accepted auditing standards” (“GAAS”). “[R]eferences in Commission rules and staff guidance and in the federal securities laws to GAAS or to specific standards under GAAS, as they relate to issuers, should be understood to mean the standards of the PCAOB plus any applicable rules of the Commission.” See SEC Release No. 34-49708 (May 14, 2004). Through the conduct described above, Matlock caused RK to violate Regulation S-X Rule 2-02(b)(1) when RK issued the Breitling audit report stating that it had conducted the audit in accordance with PCAOB standards when, in fact, it had not.

23. Section 4C of the Exchange Act and CRP Rule 102(e)(1)(ii) provide, in 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. With respect to persons licensed to practice as accountants, “improper professional conduct” includes “intentional or knowing conduct, including reckless conduct that results in a violation of applicable professional standards.” CRP Rule 102(e)(1)(iv)(A). In addition, under CRP Rule 102(e)(1)(iv)(B), negligent conduct can constitute “improper professional conduct.” The conduct described above constituted “improper professional conduct” within the meaning of Exchange Act Section 4C(a)(2) and CRP Rule 102(e)(1)(ii).

F. FINDINGS

24. Based on the foregoing, the Commission finds that Respondent caused violations of Section 10A(b)(1)(A)(i) of the Exchange Act and Rule 2-02(b)(1) of Regulation S-X.

25. Based on the foregoing, the Commission finds that Respondent engaged in improper professional conduct pursuant to Section 4C(a)(2) of the Exchange Act and 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 Matlock's Offer.

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

A. Respondent Matlock shall cease and desist from committing or causing any violations and any future violations of Section 10A(b)(1)(A)(i) of the Exchange Act and Rule 2-02(b)(1) of Regulation S-X.

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

C. After one year from the date of this Order, Matlock 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 Exchange Act). Such an application must satisfy the Commission that Matlock'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) Matlock, 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) Matlock, 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 Matlock will not receive appropriate supervision;

(c) Matlock 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) Matlock 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 Matlock 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 Matlock'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.

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