

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 76607 / December 10, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3721 / December 10, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16993

In the Matter of

**PETER MESSINEO, CPA and
MESSINEO & CO., CPAS,
LLC,**

Respondent.

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

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Peter Messineo ("Messineo") and Messineo & Co., CPAs, LLC ("Messineo & Co.") (together, "Respondents") pursuant to Sections 4C¹ and 21C of the Securities Exchange Act of 1934

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 thereunder.

(“Exchange Act”) and Rule 102(e)(1)(ii) and 102(e)(1)(iii) of the Commission’s Rules of Practice.²

II.

In anticipation of the institution of these proceedings, Respondents have 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting 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 Respondents’ Offer, the Commission finds³ that:

A. SUMMARY

Messineo & Co. is a small, Florida-based accounting firm. Among other things, it has performed audits of public companies whose stock is registered with the Commission and who file audited financial statements with the Commission. Messineo is a partner at and majority owner of Messineo & Co. Messineo & Co. and Messineo performed deficient audits of public company clients, which caused those clients to file misleading audited financial statements with the Commission. To cover up their deficiencies, certain employees of Messineo & Co. backdated and falsified its audit documentation. Messineo also performed sub-standard engagement quality reviews for another auditor. In late 2012, Messineo effectively merged his

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.

Rule 102(e)(1)(iii) 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 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 Respondents’ Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

firm with another firm to form DKM Certified Public Accountants, Inc. (“DKM”). The merger exacerbated Respondents’ on-going violations of the independence rules for accountants involving DKM’s clients and Messineo. Prior to the merger, Messineo had been the chief financial officer (“CFO”) of two of DKM’s clients and concurrently the employer of a partner on DKM’s audit engagement team. After the merger, Messineo was a shareholder of two of DKM’s clients and DKM was auditing Messineo’s work. Lastly, Messineo failed to timely file with the Commission Forms 3, 4, or 5 and Schedule 13Ds detailing his beneficial ownership of stock in these audit clients.

As a result, Messineo & Co. and Messineo violated auditing standards and independence rules, caused issuers to file misstatements, and failed to disclose his beneficial ownership. In addition, Messineo falsely certified annual and quarterly reports as chief financial officer of two issuers. Respondents’ conduct violated the Federal securities laws and the rules and regulations thereunder. Respondents’ conduct was willful and constitutes improper professional conduct.

B. RESPONDENTS

Messineo & Co., CPAs, LLC (“Messineo & Co.”) is registered with the Public Company Accounting Oversight Board (“PCAOB”) as a public accounting firm based in Clearwater, Florida. The limited liability company operated as a sole proprietorship under the name Peter Messineo, CPA from 2009 until December 17, 2012, when it effectively merged with Drake & Klein, CPAs PA (“Drake & Klein”) to form DKM Certified Public Accountants, Inc. (“DKM”). Peter Messineo separated from DKM in April 2013 and began operating Messineo & Co. again, but under its present name and form. During 2012, Messineo & Co. performed audit services for over 70 clients, but only had one partner -- sole owner Peter Messineo -- authorized to sign or issue audit reports. In 2012, Messineo & Co. employed Robin Bigalke and Richard Confessore and paid Joseph E. Mohr to perform engagement quality reviews (“EQRs”).

Peter Messineo, age 54, resides in Palm Harbor, Florida and is currently a partner at and 95% owner of Messineo & Co. In 2012, he was the sole owner of Messineo & Co. (then named “Peter Messineo, CPA”) and CFO of Issuer A and Issuer B (described below). From December 17, 2012 to April 16, 2013, Messineo was a partner and one third owner of DKM and a shareholder of Issuer A and Issuer B stock. Messineo has been licensed as a certified public accountant (“CPA”) in New York since 1989 and in Florida since 2007.

C. OTHER RELEVANT PARTIES

DKM Certified Public Accountants, Inc. (“DKM”) is a PCAOB-registered public accounting firm based in Clearwater, Florida. DKM is a Florida corporation and successor to audit firms: (i) Drake Klein & Messineo CPAs PA and (ii) Drake & Klein. In December 2012, when Peter Messineo joined DKM, the firm changed its operational name from Drake & Klein to DKM. From December 2012 through April 2013, DKM had four partners authorized to issue audit reports on behalf of the firm, including: Messineo, Confessore, and Charles Klein.

Ronald R. Chadwick, P.C. (“Chadwick”) was a PCAOB-registered public accounting firm based in Aurora, CO. From at least September 2010 through October 2013, Messineo performed engagement quality reviews of audits conducted by Chadwick. In April 2015, the PCAOB revoked Chadwick’s registration and has barred Mr. Ronald Chadwick from being an associated person of a registered public accounting firm. The PCAOB imposed those sanctions on the basis of its findings of violations of the PCAOB’s rules and auditing standards in connection with the audits of financial statements of five issuer clients for which Messineo provided the engagement quality review.

Richard Confessore, age 73, resides in Sarasota, Florida and has been a licensed CPA in Florida since 1970. Confessore is currently a “Quality Review Partner” at DKM. During 2011, Confessore was the CFO and worked at Issuer C Corporation. During 2012-2013, Confessore performed engagement quality reviews for the annual audits and interim reviews DKM performed for Issuers A and B. In addition, from June 2012 – December 2012, Confessore was an employee for Messineo & Co, then a sole proprietorship owned by Peter Messineo.

Charles U. Klein, age 60, resides in Dunedin, Florida and is currently President of DKM. From approximately February 2012 through June 2013, Klein was the lead engagement partner for the services DKM performed for Issuer A and Issuer B, including annual audits and interim reviews of Issuer B’s and Issuer A’s financial statements. Klein has been a licensed CPA in Florida since 1985, excluding 1995 to 1998 when his license was inactive.

Joseph E. Mohr, age 49, resides in Spring Hill, Florida and is currently an assistant professor at a Florida university. From 2009 through 2012, Messineo & Co. hired Mohr to perform EQRs. At the time, Mohr lived and worked in Florida, but was not licensed as a CPA in Florida or in any other state.

Issuer A was incorporated in Delaware in 2005 and is currently headquartered in California. During 2012 and 2013, Issuer A’s common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act. In its most recent Form 10-K filed with the Commission, Issuer A states that its business offers marketing tools and expertise to advertisers. From February 2010 through November 2012, Messineo served as CFO of Issuer A. In 2012 and 2013, Issuer A engaged Drake & Klein and then DKM to perform audit services.

Issuer B was incorporated in Nevada in 2004 and is currently headquartered in St. Petersburg, FL. During 2012 and 2013, Issuer B’s common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act. In its most recent Form 10-K filed with the Commission, Issuer B states that its business “creates a unified solution path to securely manage Advanced Metering Infrastructure and other Smart Grid optimization applications such as substation and distribution automation.” From September 2010 through October 2012, Messineo served as CFO of Issuer B. In 2012 and 2013, Issuer B engaged Drake & Klein and then DKM to perform audit services.

Issuer C was incorporated in Colorado in 1981. Currently, it is a Florida corporation headquartered in Southbury, CT. During 2012 and 2013, Issuer C’s common stock was registered

with the Commission pursuant to Section 12(g) of the Exchange Act. In its most recent Form 10-K filed with the Commission, Issuer C states that its business consists of “operating motor freight carriers, providing truck load service throughout the forty-eight contiguous United States.” Confessore resigned as CFO of Issuer C on April 12, 2011. In 2012, Issuer C engaged Messineo & Co. to provide audit services. Messineo & Co. did not complete its audit or issue an audit report before the formation of DKM. In 2013, Issuer C engaged DKM to provide audit services for the same period for which Messineo & Co. had been engaged.

D. MESSINEO & CO. AND MESSINEO ENGAGED IN IMPROPER PROFESSIONAL CONDUCT BY CONDUCTING AUDITS AND REVIEWS NOT IN ACCORDANCE WITH PCAOB STANDARDS.

1. During 2011 and 2012, Messineo & Co. -- at Messineo’s direction -- issued audit reports to at least 13 issuers without first obtaining the required engagement quality review (“EQR”) and concurring approval in violation of PCAOB auditing standards.
2. PCAOB Auditing Standard No. 7 (*Engagement Quality Review*) (“AS 7”) enumerates the standards for an EQR or concurring review. An EQR is required for every audit of an annual report and review of interim financial information for a quarterly report. *See* PCAOB AS 7.1.
3. PCAOB AS 7 provides that “[i]n an audit, the firm may grant permission to the client to use the engagement report only after the engagement quality reviewer provides concurring approval of issuance” and “[i]n a review of interim financial information, the firm may grant permission to the client to use the engagement report (or communicate an engagement conclusion to its client, if no report is issued) only after the engagement quality reviewer provides concurring approval of issuance.” *See* PCAOB AS 7.13 and AS 7.18.
4. For some of the 13 engagements, Messineo requested an EQR from Joseph Mohr after he had already issued the audit report. For other engagements, Messineo requested the EQR before he issued the audit report, but failed to wait for Mohr to respond before issuing the audit report and granting permission to use it.
5. For at least one engagement, Messineo & Co. issued an audit report without even soliciting an EQR because it erroneously deemed EQRs “unnecessary” for clients who were “blank check” companies.
6. By issuing audit reports to the 13 issuers without an EQR and concurring approval, Messineo & Co. violated PCAOB standards. *See* PCAOB AS 7.

E. RESPONDENTS VIOLATED RULE 2-02 OF REGULATION S-X BECAUSE MESSINEO & CO'S AUDIT REPORTS DID NOT COMPLY WITH PCAOB STANDARDS.

7. Rule 2-02(b)(1) of Regulation S-X (*Representations as to the Audit included in Accountants' Reports*) requires an accountant's report to state "whether the audit was made in accordance with generally accepted auditing standards." 17 CFR §210.2-02(b). These standards include the standards of the PCAOB. "[R]eferences in Commission rules and staff guidance and in the federal securities laws to [generally accepted auditing standards "GAAS"] or to specific standards under GAAS, as they related 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.
8. Messineo & Co.'s audit reports for each of these 13 engagements inaccurately stated that Messineo & Co. had "conducted [its] audit in accordance with the standards of the Public Company Accounting Oversight Board (United States)."
9. In fact, Messineo & Co.'s audits were not conducted in accordance with PCAOB auditing standards because they lacked an EQR and concurring approval of issuance. See PCAOB AS 7.1 and AS 7.13.
10. Accordingly, Messineo & Co. violated and Messineo aided and abetted and caused a violation of Rule 2-02 of Regulation S-X.

F. RESPONDENTS' CONDUCT CAUSED VIOLATIONS OF EXCHANGE ACT SECTIONS 13(a) AND 15(d) AND RULES 13a-1 AND 15d-1 THEREUNDER.

11. Exchange Act Sections 13(a) and 15(d) and Rules 13a-1 and 15d-1 require an issuer to file accurate annual reports on Form 10-K.
12. As detailed above, Messineo & Co. and Messineo issued false audit reports to at least 13 issuers because they lacked an EQR and concurring approval of issuance. Twelve of the 13 issuers were required to file annual statements under Sections 13(a) and 15(d). In accordance with Messineo & Co.'s and Messineo's expectations, the 12 issuers incorporated the false audit reports into their respective annual reports (Form 10-Ks) filed with the Commission. As a result, the issuers' annual reports contained material misstatements because they included false audit reports that lacked an EQR and concurring approval of issuance.
13. Messineo & Co. and Messineo, therefore, caused at least 12 different issuers to violate Sections 13(a) and 15(d) of the Exchange Act and Rules 13a-1 and 15d-1 thereunder.

G. RESPONDENTS ENGAGED IN IMPROPER PROFESSIONAL CONDUCT BY FALSIFYING RECORDS AND BACKDATING DOCUMENTS.

14. The PCAOB had issued an inspection report to Messineo & Co. in April 2012 and notified Messineo that it was going to conduct another inspection approximately 12 months following its report.
15. In August 2012, Messineo directed Messineo & Co. personnel to review its audit files to identify and correct deficiencies in its audit documentation. Because Messineo had issued engagement reports without concurring approval, deficiencies existed in Messineo & Co.'s EQR documentation.
16. PCAOB Auditing Standard No. 7 requires that documentation of an EQR should "contain sufficient information to enable an experienced auditor, having no previous connection with the engagement, to understand the procedures performed by the engagement quality reviewer...to comply with the provisions of this standard, including information that identifies:

* * *

- c. The date the engagement quality reviewer provided concurring approval of issuance or, if no concurring approval of issuance was provided, the reasons for not providing the approval.

See PCAOB AS 7.19.

17. PCAOB AS 7 also states that "[d]ocumentation of an engagement quality review should be included in the engagement documentation" and that "[t]he requirements related to retention of and subsequent changes to audit documentation in PCAOB Auditing Standard No. 3, Audit Documentation, apply with respect to the documentation of the engagement quality review." *See* PCAOB AS 7.20 and 7.21.
18. PCAOB Auditing Standard No. 3 (*Audit Documentation*) ("AS 3") provides the requirements for documentation an auditor should prepare and retain for engagements. Per PCAOB AS 3, audit documentation must document the nature, timing, and results of the procedures performed. *See* PCAOB AS 3.6.
19. PCAOB AS 3 requires an auditor to assemble a complete and final set of audit documentation no more than 45 days after the report release date ("documentation completion date"). Audit documentation may not be deleted or discarded following the documentation completion date. PCAOB AS 3 mandates that any documentation added after the document completion date "must indicate the date the information was added, the name of the person who prepared the additional documentation, and the reason for adding it." *See* PCAOB AS 3.15 and AS 3.16.

20. To document EQRs, Messineo & Co. used a “Concurring Review Questionnaire,” otherwise known as a “Form 4.2.”
21. After completing an EQR, the engagement quality reviewer—typically Mohr—was supposed to answer the questions on the Concurring Review Questionnaire and then sign and date the Questionnaire. The date on the form was to indicate when Mohr provided concurring approval of the issuance of the audit report. Messineo had no other system of tracking when Mohr completed an EQR other than the Form 4.2.
22. Mohr then emailed the signed forms to Messineo & Co. where the executed Concurring Review Questionnaires were included within the firm’s audit files.
23. Beginning in August 2012, Messineo & Co. identified many engagements for which either:
 - a. it was missing a Concurring Review Questionnaire signed by Mohr; or
 - b. the signed Concurring Review Questionnaire was dated after the audit report had been issued by Messineo & Co., indicating that Messineo & Co. had issued the audit report prior to Mohr’s completion of his EQR.
24. As a result, Messineo & Co. personnel under Messineo’s general supervision requested Mohr backdate his signature on Concurring Review Questionnaires for multiple public company audit clients.
25. Mohr complied with many—if not all—of Messineo & Co.’s requests. He knowingly misrepresented the dates that he completed his EQRs.
26. Messineo & Co. personnel then inserted the backdated Concurring Review Questionnaires into Messineo & Co.’s audit files, including into files which should have been—pursuant to auditing standards—closed because the audit report had been issued more than 45 days earlier.
27. In addition, in connection with audits of two clients, Messineo & Co. personnel completed at some time various audit checklists and forms, including “Audit Documentation Checklists” and “Supervision, Review, and Approval Forms.”
28. On the forms, Messineo & Co.’s audit manager signed Peter Messineo’s name and initials on his behalf thereby certifying that the EQRs for those two audits were timely and adequately performed and that the audit files contained documentation of the EQRs. Those representations were false. As of the date indicated on the respective forms, Mohr had not performed the EQRs for those two audits. These false documents were included within Messineo & Co.’s audit files.

29. The backdating and falsification of audit documentation and the insertion of the false documents into Messineo & Co.'s audit files constitutes violations of PCAOB AS 3 and PCAOB AU 230 (*Due Professional Care in the Performance of Work*).
30. PCAOB Interim Auditing Standard AU 230 "requires the independent auditor to plan and perform his or her work with due professional care. Due professional care imposes a responsibility upon each professional within an independent auditor's organization to observe the standards of field work and reporting." *See* PCAOB AU 230.02.

H. MESSINEO ENGAGED IN IMPROPER PROFESSIONAL CONDUCT WHEN HE CONDUCTED ENGAGEMENT QUALITY REVIEWS FOR AN ANOTHER AUDITOR IN CONTRAVENTION OF PCAOB STANDARDS.

31. From approximately September 2010 until October 2013, Messineo functioned as Ronald Chadwick's engagement quality reviewer. He consented to the issuance of over 130 audit reports for over 80 different Chadwick issuer clients during that period. For at least 5 of these engagements, Messineo conducted substandard reviews.
32. PCAOB AS 7 requires that "an engagement quality reviewer must have competence, independence, integrity, and objectivity." *See* PCAOB AS 7.4.
33. Per PCAOB AS 7, in an audit the engagement quality reviewer should review engagement documentation, and specifically "should":

* * *

10(g). Read other information in documents containing the financial statements to be filed with the Securities and Exchange Commission ("SEC") and evaluate whether the engagement team has taken appropriate action with respect to any material inconsistencies with the financial statements or material misstatements of fact of which the engagement quality reviewer is aware.

See PCAOB AS 7.10.

34. To conduct the EQRs, Messineo relied upon Chadwick to provide him with audit materials and documents. But Chadwick did not provide him with the requisite documentation for Messineo to conduct a proper EQR.
35. For example, for at least five reviews, Chadwick failed to provide a complete draft filing (Form 10-K, Form S-1, etc.) for Messineo's review. While Messineo may have reviewed some form of the financial statements, Messineo did not read -- as required

- by PCAOB AS 7 -- the information in documents containing the financial statements that were to be filed with the Commission prior to issuing his EQR. Nor could he evaluate whether Chadwick had taken appropriate action with respect to any material inconsistencies with the financial statements or material misstatements of fact.
36. Despite lacking sufficient documentation to conduct a proper EQR, Messineo approved Chadwick's issuance of the audit reports in violation of PCAOB auditing standards. *See* PCAOB AS 7.

I. AS CHIEF FINANCIAL OFFICER OF ISSUER A AND ISSUER B, MESSINEO FALSELY CERTIFIED THEIR ANNUAL AND QUARTERLY REPORTS IN 2012 IN VIOLATION OF SECTION 13(a) OF THE EXCHANGE ACT AND RULE 13a-14 THEREUNDER AND AIDED AND ABETTED AND CAUSED ISSUER A AND ISSUER B TO VIOLATE SECTION 13(a) OF THE EXCHANGE ACT AND RULES 13a-1 AND 13a-13 THEREUNDER.

37. As Chief Financial Officer of Issuer A, Messineo provided certifications included with Issuer A's Forms 10-Qs for the quarters ending June 30, 2012 (filed August 14, 2012) and September 30, 2012 (filed November 14, 2012).
38. As Chief Financial Officer of Issuer B, Messineo provided certifications included with Issuer B's Form 10-K for the annual period ending June 30, 2012 (filed October 15, 2012) and its amended Form 10-K filed October 22, 2012 covering the same period.
39. With respect to each report, Messineo certified that:
- "Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report."
40. Messineo provided certifications for Issuer A and Issuer B pursuant to Rule 13a-14 under the Exchange Act.
41. Rule 13a-14(a) under the Exchange Act requires the principal financial officer to certify that, based on his knowledge, the Form 10-K or 10-Q submitted to the Commission by the issuer "does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading...." 17 CFR §240.13a-14(a).

42. Messineo’s certifications were false because Messineo knew that Issuer A’s and Issuer B’s auditor, DKM, was not independent as required by Section 13(a) of the Exchange Act and Rule 10-01(d) of Regulation S-X. *See* Exchange Act Section 13(a) (requiring issuers to file annual reports certified by “independent public accountants”); 17 CFR §210.10-01(d) (requiring that prior to filing, interim financial statements included in quarterly reports on Form 10-Q “must be reviewed by an independent public accountant using professional standards and procedures for conducting such reviews....”). An auditor’s lack of independence is a material fact.
43. DKM lacked independence because the engagement quality reviewer at DKM for the Issuer A and Issuer B engagements -- Richard Confessore -- concurrently maintained a prohibited business relationship with Messineo.
44. Rule 2-01(b) of Regulation S-X (*Qualifications of Accountants*) states that the “Commission will not recognize an accountant as independent, with respect to an audit client, if the accountant is not...capable of exercising objective and impartial judgment on all issues encompassed within the accountant’s engagement.” 17 CFR §210.2-01.
45. Rule 2-01(c) (3) states certain “business relationships” are inconsistent with independence:

Business Relationships. An accountant is not independent if, at any point during the audit and professional engagement period, the accounting firm or any covered person in the firm has any direct or material indirect business relationship with an audit client, or with persons associated with the audit client in a decision-making capacity, such as an audit client’s officers, directors, or substantial stockholders.

17 CFR §210.2-01(c)(3)

46. Rule 2-01(f)(11) defines “covered person” to include partners, principals, shareholders, and employees of an accounting firm on the “audit engagement team.” 17 CFR §210.2-01(f)(11). The “audit engagement team” includes the “concurring or reviewing partner.” 17 CFR §210.2-01(f)(7)(ii)(B).
47. PCAOB standards also require auditor independence. PCAOB Rule 3520 (*Auditor Independence*) requires that, “[a] registered public accounting firm and its associated persons must be independent of the firm’s audit client throughout the audit and professional engagement period.”
48. PCAOB AS 7 requires that “an engagement quality reviewer must have competence, independence, integrity, and objectivity.” *See* PCAOB AS 7.4.

49. In June 2012, Messineo hired Confessore to work for him at Messineo & Co. Confessore worked at Messineo & Co. until mid-December 2012. Thus, at the same time Confessore conducted engagement quality reviews for DKM's reviews of Issuer A's interim financial statements filed August 14, 2012 and November 14, 2012 and for DKM's audit of Issuer B's annual financial statements filed October 15, 2012 and amended October 22, 2012, Confessore worked under Messineo -- the Chief Financial Officer of both Issuer A and Issuer B. Confessore's employment with Messineo constitutes an improper business relationship and conflict of interest.
50. As an auditor subject to independence rules, Messineo knew or should have known that the audits and reviews being performed by DKM with Confessore as the engagement quality reviewer violated the independence rules and relevant professional standards.
51. Despite Confessore's and, therefore, DKM's lack of independence, DKM issued an audit report to Issuer B falsely stating that its audit was performed in accordance with PCAOB standards.
52. Despite knowing Confessore and DKM lacked independence, Messineo still certified Issuer A's quarterly reports and Issuer B's annual report and amended annual report in violation of Rule 13a-14.
53. Messineo signed and approved for filing Issuer B's annual report even though it included DKM's false audit report and had not been certified by an independent public accountant. He signed and approved for filing Issuer A's quarterly reports even though Issuer A's interim financial statements had not previously been reviewed by an independent public accountant.
54. Therefore, Messineo aided and abetted and caused Issuer A's and Issuer B's violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 promulgated thereunder.

J. IN 2013, MESSINEO CAUSED DKM NOT TO BE INDEPENDENT BY POSSESSING A DIRECT FINANCIAL INTEREST IN DKM'S AUDIT CLIENTS ISSUER A AND ISSUER B.

55. Messineo resigned as Issuer B's Chief Financial Officer effective October 30, 2012 and Issuer A's Chief Financial Officer effective November 15, 2012.
56. In mid-December 2012, Messineo joined DKM. Messineo was a partner and one-third owner of DKM.
57. Issuer A engaged DKM to perform audit services for the annual period ending December 31, 2012 (Form 10-K filed April 15, 2013). Issuer B engaged DKM to

perform a review for the quarter ending December 31, 2012 (Form 10-Q filed February 19, 2013).

58. Charles Klein continued to be DKM's lead partner for the Issuer A and Issuer B engagements and Confessore continued as the engagement quality reviewer. DKM continued to lack independence from Issuer A and Issuer B because Messineo owned stock in both companies during the audit and professional engagement periods.
59. Rule 2-01(c)(1) (*Financial Relationships*) states that an accountant is not independent if, at any point during the audit and professional engagement period, the accountant has a "direct financial interest" in the accountant's audit client, including when:
- A. The accounting firm [or] any covered person in the firm...has any direct investment in an audit client, such as stocks, bonds, notes, options, or other securities.
- * * *
- B. Any partner, principal, shareholder, or professional employee of the accounting firm...has filed a Schedule 13D...with the Commission indicating beneficial ownership of more than five percent of an audit client's securities.

17 C.F.R. §210.2-01(c)(1)(i)(A)-(B)

60. Rule 2-01(f)(11) defines "covered person" to include any "other partner, principal, or shareholder from an 'office' of the accounting firm in which the lead audit engagement partner primarily practices in connection with the audit." 17 CFR §210.2-01(f)(11). "Office" means "a distinct sub-group within an accounting firm, whether distinguished along geographic or practice lines." 17 CFR §210.2-01(f)(15).
61. During the professional engagement periods of DKM's audit of Issuer A and interim review of Issuer B from January through April 2013, Messineo -- a DKM partner working in the same small office as Klein -- owned stock in DKM's clients Issuer A and Issuer B. As of April 15, 2013, when Issuer A's Form 10-K was filed, Messineo owned approximately 6% of the outstanding stock of Issuer A.
62. DKM was, therefore, not independent of its clients Issuer A and Issuer B with respect to DKM's audit and interim review of their public filings made in February 2013 and April 2013, respectively, because Messineo possessed a direct financial interest (stock ownership) in those companies during DKM's professional engagement periods. *See* Regulation S-X Rule 2-01(c)(1).

K. IN 2013, MESSINEO CAUSED DKM NOT TO BE INDEPENDENT BECAUSE HE WAS AN OFFICER OF DKM'S AUDIT CLIENTS ISSUER A AND ISSUER B DURING THEIR RESPECTIVE AUDIT PERIODS.

63. Rule 2-01(c)(2) (*Employment Relationships*) states that an accountant is not independent if, at any point during the audit and professional engagement period, the accountant has an "employment relationship" with an audit client, including when:

A former officer, director, or employee of an audit client becomes a partner, principal, shareholder, or professional employee of the accounting firm, unless the individual does not participate in, and is not in a position to influence, the audit of the financial statements of the audit covering any period during which he or she was employed by or associated with that audit client.

17 CFR §210.2-01(c)(2)(iv) (*Employment at Accounting Firm of Former Employee of Audit Client*).

64. From at least January 2013 through April 2013, Messineo had space at DKM's small office in Clearwater, Florida along with Charles Klein and approximately 6-8 staff personnel. Messineo's office was less than 10 feet away from the offices of those providing audit services to Issuer A and Issuer B.
65. From December 2012 through April 2013, Messineo had access to all of DKM's audit files, including those for the audit of Issuer A and the interim review of Issuer B. Messineo supervised the audit staff at DKM, including the audit manager who worked on the Issuer A audit, in some of DKM's other engagements.
66. During a significant portion of the professional engagement period for DKM's audit of Issuer A, Messineo possessed Issuer A's books and records.
67. DKM was, therefore, not independent of its clients Issuer A and Issuer B with respect to DKM's audit and interim review of their financial statements made in February 2013 and April 2013 because Messineo -- a partner and shareholder of DKM -- was the CFO of Issuer A and Issuer B during the audit period and in a position to influence DKM's audit and interim reviews. *See* Regulation S-X Rule 2-01(c)(2).

L. MESSINEO CAUSED DKM NOT TO BE INDEPENDENT BY EMPLOYING ISSUER C'S FORMER CFO TO AUDIT ISSUER C FOR THE PERIOD HE WAS CFO.

68. Confessore was the CFO of Issuer C until April 12, 2011. Following his resignation, Confessore made himself available to Issuer C on a part-time basis to assist with accounting matters. On June 29, 2011, Issuer C filed a "Notification of Late Filing"

- for its Form 10-K. The notification explained that Issuer C was unable to complete its accounting at the subsidiary level. Issuer C's notification identified Confessore as the person to contact in regard to the notification.
69. In 2012, Issuer C engaged Messineo & Co. to perform audit services. Messineo employed Confessore to participate in the year-end March 31, 2012 audit of Issuer C even though Confessore had been CFO and worked for Issuer C during the audit period. As a result, Messineo & Co. was not independent of its client Issuer C.
 70. In June 2013, DKM issued an audit report for Issuer C's financial statements for the period from April 1, 2011 to March 31, 2012. Prior to his departure from DKM in April 2013, Messineo was the partner responsible for the engagement and allowed Confessore to participate despite his prior employment with Issuer C.
 71. As a result of Messineo's action, DKM was not independent of Issuer C with respect to its public filings made in June 2013 because Confessore -- a partner of DKM -- was the CFO of Issuer C during the audit period and participated in the audit. *See* Regulation S-X Rule 2-01(c)(2).

M. MESSINEO VIOLATED SECTIONS 13(d) AND 16(a) OF THE EXCHANGE ACT AND RULES 13d-1, 13d-2, AND 16a-3 THEREUNDER WHEN HE FAILED TO TIMELY FILE REQUIRED OWNERSHIP DISCLOSURES.

72. Messineo failed to file required Commission ownership disclosures, including Forms 3, 4, and 5 and Schedule 13Ds, concerning stock ownership in Issuer A and Issuer B, within the time period required.
73. Section 13(d) of the Exchange Act states:
 - (1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to section 12 of this title..., is directly or indirectly the beneficial owner of more than 5 per centum of such class shall, within ten days after such acquisition... file with the Commission, a statement containing such of the following information....”
 - (2) If any material change occurs in the facts set forth in the statement filed with the Commission, an amendment shall be filed with the Commission....”
74. Rule 13d-1 (*Filing of Schedule 13D and 13G*) requires that a person satisfy his obligations to file statements with the Commission under Section 13(d) by filing a Schedule 13D or 13G.

75. Rule 13d-2 (*Filing of Amendments to Schedules 13D or 13G*) directs that:

- (a) If any material change occurs in the facts set forth in the Schedule 13D... including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned, the person or persons who were required to file the statement shall promptly file or cause to be filed with the Commission an amendment disclosing that change.

* * *

[Any change] equal to one percent or more... shall be deemed “material” for purposes of this rule....

76. Section 16(a) of the Exchange Act requires that every officer, director, or beneficial owner of more than 10% of stock file with the Commission statements disclosing their holdings and transactions of any stock of the issuer.

77. The statements shall be filed “within 10 days after he or she becomes such beneficial owner, director, or officer...” Statements shall also be filed for any change in such ownership “before the end of the second business day following the day on which the subject transaction has been executed....”

78. Rule 16a-3 (*Reporting Transactions and Holdings*) states that:

- (a) Initial statements of beneficial ownership of equity securities required by Section 16(a) of the Act shall be filed on Form 3. Statements of changes in beneficial ownership required by that section shall be filed on Form 4. Annual statements shall be filed on Form 5.

* * *

- (f)(1) A Form 5 shall be filed by every person who at any time during the issuer’s fiscal year was subject to section 1 of the Act...[and] shall be filed within 45 days after the issuer’s fiscal year end, and shall disclose the following holdings and transactions not reported previously on Forms 3, 4 or 5:

* * *

- (iii) all holdings and transactions that should have been reported during the most recent fiscal year, but were not...

79. A Form 4 must be filed to report new acquisitions, and must be “filed before the end of the second business day following the day on which the subject transaction had been executed. *See* Rule 16a-3(g)(1).
80. In January 2010, Messineo first acquired shares in Issuer A. The following month, February 2010, he became Issuer A’s CFO. Within 10 days of becoming CFO, Messineo was obligated to file a Form 3 disclosing his ownership of Issuer A stock. *See* Section 16(a) of the Exchange Act; *see also* Rule 16a-3. Messineo failed to do so. Instead, Messineo filed an erroneous Form 3 over three years late in 2013, after he had resigned as CFO.
81. Messineo acquired 2,000,000 and 70,000,000 shares of Issuer A stock on December 28, 2010 and December 28, 2011, respectively. Messineo failed to file Form 4s after acquiring the stock or Form 5s for either FY 2010 or 2011 listing all holdings and transactions that should have been reported previously on Forms 3 and 4. *See* Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.
82. By March 2011, Messineo owned 12% of Issuer A’s outstanding stock, and by March 2012 Messineo’s ownership share surpassed 30%. Yet, Messineo never filed a Schedule 13D with the Commission or any subsequent amendment disclosing his greater than 5% beneficial ownership. *See* Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder.
83. Messineo became CFO of Issuer B in September 2010 and resigned as Issuer B’s CFO effective October 30, 2012. Messineo acquired Issuer B stock on November 11, 2010. Messineo has never filed a Form 3, Form 4, or Form 5 with the Commission in connection with his ownership of Issuer B stock in violation of the securities laws. *See* Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

N. VIOLATIONS

84. As a result of the conduct described above, Messineo & Co. and Messineo engaged in improper professional conduct as defined in Rule 102(e)(1)(iv). Messineo & Co. and Messineo committed intentional and knowing conduct that resulted in violations of applicable professional standards and committed repeated instances of highly unreasonable negligent conduct each resulting in violations of applicable professional standards that indicate a lack of competence to practice before the Commission.
85. As a result of the conduct described above, Messineo & Co. willfully violated and Messineo willfully aided and abetted and caused violations of Rule 2-02 of Regulation S-X.

86. As a result of the conduct described above, Messineo & Co. and Messineo aided and abetted and caused 12 of its clients to violate Section 13(a) of the Exchange Act and Rule 13a-1 thereunder or Section 15(d) of the Exchange Act and Rule 15d-1 thereunder.
87. As a result of the conduct described above, in his capacity as CFO Messineo willfully violated Rule 13a-14 promulgated under the Exchange Act.
88. As a result of the conduct described above, in his capacity as CFO Messineo willfully aided and abetted and caused Issuer B's violations of Section 13(a) of the Exchange Act and Rule 13a-1 and thereunder.
89. As a result of the conduct described above, in his capacity as CFO Messineo willfully aided and abetted and caused Issuer A's violations of Section 13(a) of the Exchange Act and Rule 13a-13 thereunder.
90. As a result of the conduct described above, Messineo willfully violated Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-1, 13d-2, and 16a-3 thereunder.

O. FINDINGS

91. Based on the foregoing, the Commission finds that Messineo & Co. and Messineo 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.
92. Based on the foregoing, the Commission finds that Messineo & Co. and Messineo willfully violated, or willfully aided and abetted the violation of, provisions of the Federal securities laws or the rules and regulations thereunder pursuant to Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.
93. Based on the foregoing, the Commission finds that Messineo: (a) willfully violated Sections 13(d) and 16(a) of the Exchange Act, Rules 13a-14, 13d-1, 13d-2, and 16a-3, (b) willfully aided and abetted and caused a violation of Rule 2-02 of Regulation S-X; (c) willfully aided and abetted and caused 12 audit clients' violations of Sections 13(a) and 15(d) of the Exchange Act and Rules 13a-1 and 15d-1 thereunder; and (d) caused Issuer A's and Issuer B's violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder.
94. Based on the foregoing, the Commission finds that Messineo & Co.: (a) willfully violated Rule 2-02 of Regulation S-X; and (b) willfully aided and abetted and caused 12 clients' violations of Sections 13(a) and 15(d) of the Exchange Act and Rules 13a-1 and 15d-1 thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents Messineo & Co.'s and Messineo's Offer.

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

A. Respondents shall cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(d), 15(d) and 16(a) of the Exchange Act and Rules 13a-1, 13a-13, 13a-14, 13d-1, 13d-2, and 16a-3 thereunder and Rule 2-02 of Regulation S-X.

B. Respondents are denied the privilege of appearing or practicing before the Commission as accountants.

C. Respondents shall pay civil penalties of \$25,000 to the Securities and Exchange Commission. Payment shall be made in the following installments:

Within 14 days of the issuance of the Order \$10,000.00

Within 120 days of the issuance of the Order \$5,000.00

Within 210 days of the issuance of the Order \$5,000.00

Within 300 days of the issuance of the Order \$5,000.00

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 Peter Messineo and/or Messineo & Co., CPAs, LLC as a Respondent(s) 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 John T. Dugan, Associate Regional Director, Boston regional Office, Securities and Exchange Commission, 33 Arch Street, Boston, MA 02110.

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 Messineo, 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 Messineo 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.

Brent J. Fields
Secretary