UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58273 / July 31, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2855 / July 31, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13111

In the Matter of **JAMES B. KINNEY, CMA** **Respondent.**	**ORDER INSTITUTING PUBLIC ADMINISTRATIVE PROCEEDINGS PURSUANT TO RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission (the "Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against James B. Kinney (the "Respondent" or "Kinney") pursuant to Rule 102(e)(3) of the Commission's Rules of Practice.[1]

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, and the findings contained in Section III.2. below, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative Proceedings Pursuant to Rule

[1] Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions (the "Order"), as set forth below.

III.

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

1. Kinney, age 53, is and has been a certified management accountant ("CMA") licensed to practice in Canada. From August 2002 through April 2004 he was the Vice President of Finance for the Wireless business unit of Nortel Networks Corporation ("Nortel"), a Canadian telecommunications equipment manufacturer. Nortel's common stock is and at all relevant times was registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and trades publicly on the New York and Toronto Stock Exchanges under the symbol "NT."

2. On May 2, 2008, a final judgment was entered against Kinney, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 (the "Securities Act"), Exchange Act Sections 10(b) and 13(b)(5), and Exchange Act Rules 10b-5 and 13b2-1, and from aiding and abetting future violations of Exchange Act Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) and Exchange Act Rules 12b-20, 13a-1 and 13a-13 in the civil action entitled United States Securities and Exchange Commission v. Frank A. Dunn, et al., Civil Action Number 07-CV-8851 (LAP), in the United States District Court for the Southern District of New York. Kinney was also ordered to pay $52,000 in disgorgement of ill-gotten gains, $16,481 in prejudgment interest, and a $75,000 civil money penalty.

3. The Commission's complaint alleged that, from the second half of 2002 through January 2003, Kinney determined that his business unit held tens of millions of dollars in excess reserves, and that he did not release those excess reserves as required under U.S. Generally Accepted Accounting Principles ("GAAP"), but instead used them for earnings management purposes. The complaint also alleged that, in early January 2003, during the 2002 year-end closing process, Kinney and other finance executives improperly established additional excess reserves in order to lower Nortel's consolidated earnings and bring it in line with internal and market expectations. As alleged, his efforts, in conjunction with those of other finance executives, helped erase Nortel's *pro forma* profit for the fourth quarter of 2002 and caused it to report a loss instead. The complaint also alleged that, in the first and second quarters of 2003, Kinney and other finance executives improperly released hundreds of millions of dollars in excess reserves as part of a company-wide effort to inflate consolidated earnings and pay bonuses. According to the complaint, these efforts turned Nortel's first quarter 2003 loss into a reported profit under U.S. GAAP, largely erased Nortel's second quarter loss and generated a *pro forma* profit in the second quarter.

IV.

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

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

A. Kinney is suspended from appearing or practicing before the Commission as an accountant.

B. After 5 years from the date of the Order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, 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, 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 the Respondent will not receive appropriate supervision;

(c) Respondent 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 acknowledges his responsibility, as long as Respondent 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.

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission as an accountant provided that he is in possession of an accounting license in good standing and he has resolved any disciplinary issues with any applicable licensing authority. However, if the resolution of any disciplinary action by a licensing authority 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's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Florence E. Harmon
Acting Secretary