UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58310 / August 5, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2859 / August 5, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13115 / August 5, 2008

In the Matter of **MARK C. THOMPSON,** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Mark C. Thompson ("Thompson" 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, Respondent consents to the entry of this Order Instituting Cease and-Desist Proceedings, 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[1] that:

A. Overview

This matter arises from a business relationship between Respondent Mark C. Thompson and Ernst & Young LLP ("E&Y") at a time when E&Y was serving as auditor for three public companies on whose boards Thompson sat: Company A, Company B and Company C. The business relationship involved Thompson's and E&Y's collaboration in creating a series of audio CDs designed for business development purposes. The relationship spanned 19 months -- October 2002 through early May 2004 -- during the entirety of which Thompson served on Company A's board, and during parts of which Thompson also served (i) as a member of Company A's Audit Committee; and (ii) as a member of the boards of directors of Company B and Company C. All three companies had engaged E&Y as auditor prior to the commencement of Thompson's business relationship with E&Y. As detailed below, the relationship impaired E&Y's independence as the auditor of each of these issuers, thereby causing each issuer to lack independently audited financial statements. By entering into and participating in this independence-impairing relationship, by failing to disclose the resulting conflict of interest, and by signing three annual reports and one audit committee report incorrectly claiming that the companies' auditor was independent, Thompson was a cause of each issuer's resulting reporting violations.

B. Respondent

Mark C. Thompson is a resident of San Jose, California. Respondent is in the business of facilitating and coaching others to facilitate interviews and discussions with business, political and entertainment leaders. At the time he entered into the business relationship with E&Y that is the subject of this proceeding, Thompson had recently completed a two-year project involving the production of eight CDs of prominent-leader interviews for his first customer for such an effort. Thompson served on Company A's board from March 2000 through May 4, 2004, and on its Audit Committee from March 2000 until August 2003. Thompson served on Company B's board from March 2000 until September 10, 2003; and on Company C's board from February 26, 2004 until May 10, 2004.

C. Relevant Issuers

At all relevant times, Company A's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange, and its fiscal year has ended on the last day of February. E&Y served as Company A's auditor from August 1994 through February 2005.

At all relevant times, Company B's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the New York Stock Exchange, and

[1] 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.

its fiscal year has ended on the last day of April. E&Y has served as Company B's auditor since April 2002.

At all relevant times, Company C's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and traded on the NASDAQ National Market, and its fiscal year has ended on the last day of December. E&Y served as Company C's auditor from May 2002 until May 2007.

D. The Audit Firm

Ernst & Young LLP ("E&Y") is a professional services firm, headquartered in New York City, with offices located throughout the United States. At all relevant times and continuing to the present, E&Y has provided auditing, consulting, and tax services to a variety of companies, including companies whose securities are registered with the Commission and trade in the U.S. markets.

E. FACTS

1. The Relationship Between Respondent and E&Y

In mid-October 2002, Thompson entered into the business relationship with E&Y that is the subject of this proceeding. At the time Thompson entered into this relationship, he should have known that (i) Company A and Company B were then employing E&Y as their outside auditor; (ii) as a Company A and Company B director he was called upon, at least annually, to sign each company's annual report stating its auditor was independent, to vote on the retention of each company's auditor, and to vote on the inclusion of auditor-retention recommendations in proxy solicitations to each company's shareholders; and (iii) as a member of Company A's audit committee, Thompson shared direct responsibility, under Company A's Audit Committee Charter, "for the appointment … compensation and oversight … of the [company's] independent auditor." See Appendix A to Company A's May 20, 2003 proxy statement.

The relationship entailed the creation of a series of audio CDs of interviews of corporate CEOs, with each CD featuring a particular industry or industry sector. Thompson appeared as host on each CD; on each CD various E&Y partners, with Thompson's coaching and assistance, conducted interviews of the executives. (None of the E&Y partners appearing on the CDs performed any work on E&Y's Company A, Company B or Company C audit engagements.) The CDs were provided to prospective E&Y audit and non-audit clients for business development purposes. Each CD's packaging included both E&Y's and Thompson's proprietary logos and website addresses. Each CD's packaging also listed the name, title and contact information for E&Y personnel within the relevant industry or industry sector. Each CD contained statements reflecting that it was the product of collaboration between Thompson and E&Y. During the course of the relationship, E&Y and Thompson produced a total of seven completed CDs, in five separate audiobooks; and E&Y paid Thompson compensation of $377,500. Also during the course of the relationship, Thompson's director compensation from Company A, Company B and Company C totaled $100,662.33.

2. Insufficient Communication about the Nature of the Relationship to the Issuers' Boards

As a member of three boards of directors, Thompson was required to complete annual Director and Officer ("D&O") questionnaires for use in compiling their annual reports and proxy statements. Each of these questionnaires included queries concerning the nature of any relationships between Thompson and E&Y. Thompson did not fully furnish the details of his relationship with E&Y in response to these items.

During the course of the relationship, Thompson took part in votes to retain E&Y as each company's outside auditor and to recommend the same to shareholders in annual proxy solicitations. At the time he cast these votes, Thompson did not disclose his business relationship with E&Y, and the proxy solicitations likewise did not disclose the relationship. As a board member of Company A and Company B, Thompson signed annual reports on Form 10-K stating that each company's auditor was independent. As an Audit Committee member of Company A, Thompson shared responsibility, under Company A's Audit Committee Charter, for the "appointment … compensation and oversight" of the company's outside auditor. See Appendix A to Company A's May 20, 2003 proxy statement. Company A's proxy statement filed May 20, 2003 stated that the Audit Committee had appointed E&Y as the company's independent auditor and that the Board recommended that shareholders ratify that appointment.

In February 2004, Thompson joined Company C's board of directors. Thompson did not complete or return the D&O questionnaire he received from Company C until he resigned from its Board in May 2004. While a director, Thompson cast a vote to include in Company C's annual proxy solicitation to shareholders the recommendation that E&Y be retained as its outside auditor for the company's next fiscal year. Thompson did not disclose his business relationship with E&Y; Company C's subsequently filed proxy statement likewise did not disclose it.

F. LEGAL ANALYSIS

1. Impairment of E&Y's Independence As Auditor

The auditor independence rules generally prohibit all direct, and all material indirect, business relationships between auditors and their audit clients, including audit-client directors like Thompson. *See* Rule 2-01(c)(3) of Regulation S-X.[2] The Thompson/E&Y relationship that

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[2] Rule 2-01(c)(3) provides:

> 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. The relationships described in this paragraph do not include a relationship in which the accounting firm or covered person in the firm provides professional services to an audit client or is a consumer in the ordinary course of business.

is the subject of this proceeding falls within this general prohibition. The prohibition's sole exception -- for "consumer in the ordinary course of business" relationships -- is available only where a relationship is both "in the ordinary course of business" for both parties, and at least one of the parties is acting as a "consumer." *Id.; see also Commission Letter dated 2/14/89, responding to 3/29/88 Petition by Arthur Andersen & Co. and Others (available at: http://www.sec.gov/info/accountants/noaction/aaartan1.htm)* (hereinafter the "1989 Response") at 7-8. The *1989 Response* identifies features of business relationships that give rise to an unacceptable "mutuality of interest" between an auditor and an audit client, where "the advancement of the auditor's interest would, to some extent, be dependent upon the client," which is inconsistent with the essential requirement that the appearance of independence be maintained. Here, based on the facts detailed above, the relationship's collaborative nature gave it the very kind of "mutuality of interest" that the *1989 Response* proscribes. The CDs were joint products; and the furtherance of their business development aims hinged upon third parties reviewing and listening to, and thereby being the end-users of, those CDs. Thompson's past experience with closely similar ventures was limited to just one prior customer. In summary, Thompson's relationship with E&Y does not qualify for the consumer in the ordinary course of business exception because, while both of the exception's prongs must be satisfied, it satisfied neither.

2. The Issuer Reporting Violations

Each time non-independent audit reports were filed with Company A's and Company B's annual reports and proxy statements, the issuer violated federal securities statutes and rules requiring that those filings include independently audited financials. *See* Exchange Act §§ 13(a) and 14(a) and Rules 13a-1 and 14a-3 thereunder (requiring annual reports and proxy statements to include independently audited financials). With respect to the proxy statements, each time Company A, Company B and Company C issued proxy solicitations to shareholders recommending E&Y's retention as auditor without disclosing that one of the directors favoring the recommendation had a business relationship with E&Y, the issuer violated Exchange Act Section 14(a) and Rule 14a-9-thereunder. *See Wilson v. Great American Industries, Inc.*, 855 F.2d 987, 993-94 (2d Cir. 1988) (failure to disclose, in proxy statement recommending shareholder approval of company's sale, that a director recommending the transaction had a "long-standing business relationship" with individuals controlling the acquiring company, violated Exchange Act Section 14(a) and Rule 14a-9 thereunder); *accord Kas v. Financial General Bankshares, Inc.*, 796 F.2d 508, 515 (D.C. Cir. 1986) (directors' relationship with a party to a proposed transaction "would in all probability have assumed actual significance in the deliberations of a reasonable shareholder," so proxy soliciting shareholder approval of that transaction had to disclose the relationship, to give shareholders "a context to enable [them] to evaluate [the directors'] endorsement").

Commission statements interpreting Rule 2-01(c)(3) are found in the Commission's Codification of Financial Reporting Policies ("Codification") at Section 6.02.02.e. (available at 7 Fed. Sec. L. Rep. (CCH) ¶ 73,272).

3. Respondent's Liability for Causing the Reporting Violations

Liability for causing reporting violations requires findings that (1) a primary violation occurred; (2) an act or omission by the respondent contributed to the violation; and (3) the respondent knew, or should have known, that his or her conduct would contribute to the violation. *Gateway Int'l Holdings, Inc., Exchange Act Rel. No. 53907 (May 31, 2006), 88 SEC Docket 430, 444*; *Erik W. Chan,* 77 SEC Docket 851, 859-60 (Apr. 4, 2002). Here, based on the facts detailed above, Thompson was a cause of each issuer's resulting reporting violations.

IV.

Based on the foregoing, the Commission finds that Respondent Thompson was a cause of Company A's and Company B's violations of Exchange Act Sections 13(a) and 14(a) and Rules 13a-1 and 14a-3 thereunder, and was a cause of Company A's, Company B's and Company C's violations of Exchange Act Section 14(a) and Rule 14a-9 thereunder.

V.

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

Accordingly, it is hereby ORDERED, effective immediately, that Respondent Thompson shall cease and desist from causing any violations and any future violations of Sections 13(a) and 14(a) of the Securities Exchange Act of 1934, and Rules 13a-1, 14a-3 and 14a-9 thereunder;

IT IS FURTHER ORDERED that Respondent Thompson shall, within ten (10) days of the entry of this Order, pay disgorgement of $100,662.33 and prejudgment interest of $23,254.94, for a total of $123,917.27, to the Securities and Exchange Commission. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Thompson as a Respondent in these proceedings, and the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to J. Lee Buck, II, Deputy Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, D.C. 20549-5631.

By the Commission.

Florence E. Harmon
Acting Secretary