

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58605 / September 19, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2882 / September 19, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13226

In the Matter of

DAVID BLAIN, CPA,

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 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 David Blain, CPA (“Respondent” or “Blain”) pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(iii) 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

¹ 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 . . . [t]o have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rule of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds² that:

SUMMARY

1. These proceedings arise out of Blain's role in improper accounting practices within the Insurance Services division of The BISYS Group, Inc., a leading provider of financial products and support services. Based primarily on improper accounting within the company's Insurance Services division from July 2000 through December 2003, in May 2007, BISYS was the subject of a settled Commission enforcement action charging it with violations of the financial reporting, books-and-records, and internal control provisions of the Exchange Act.

2. The improper accounting practices at BISYS were the product of a corporate focus on meeting aggressive, short-term earnings targets and a lax internal control environment. Throughout the relevant period, Insurance Services was a major factor in the company's success in achieving those targets. The division's finance department responded to the corporate focus on making numbers by engaging in improper accounting practices.

3. For much of the period of the improper accounting, Blain was one of three directors of finance in the Insurance Services division and participated in a variety of improper accounting practices at the behest of his supervisor, the vice president of finance for the Insurance and Education Services group. Specifically, from at least July 2000 until at least March 2002, Blain participated in the following accounting practices that had the purpose and effect of materially overstating BISYS's income and revenue in the company's reported financial results and rendering its books and records inaccurate: (1) at least one instance of improper and unsupported acquisition accounting – the recording as revenue to BISYS of the bonus commission income that had already been earned but not recorded by an acquired company, Ascensus Insurance Services; (2) the creation of inflated and unsupported receivables for commissions on the sale of a particular insurance product, "419" plans; and (3) the creation of phony revenue entries that were reversed promptly after BISYS reported its results for the quarter.

² 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. These accounting practices and others resulted in the misstatement of the company's operating results, enabled the company to meet earnings targets, and resulted in the filing of inaccurate reports with the Commission and the creation and maintenance of inaccurate books and records from at least July 2000 through at least April 2003.

5. By virtue of this conduct, Blain willfully aided and abetted, and was a cause of, BISYS's violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20, 13a-1 and 13a-13 thereunder.

RESPONDENT

6. David Blain, age 37, a certified public accountant licensed in Pennsylvania, was a director of finance in Insurance Services from 1998 until April 2003, reporting during most of that period to the vice president of finance for the Insurance and Education Services Group. From 1993 to 1998, he was an accountant at Coopers and Lybrand. Blain is currently a principal at a registered public accounting firm in Pennsylvania.

FACTS

Background

7. At all relevant times, BISYS was a publicly-held Delaware corporation headquartered in New York, New York, with securities registered pursuant to Section 12(b) of the Exchange Act. As a result of the improper accounting practices within Insurance Services and other divisions, the company ultimately issued two restatements, filing a \$103.7 million restatement in August 2004 and a second restatement of \$108.7 million in April 2006. The bulk of the restatements concerned improper accounting for Insurance Services' revenues in fiscal years 2001 through 2003, including improper acquisition accounting and the failure to adequately reserve for uncollectible commission receivables. On May 23, 2007, the Commission filed a settled civil action against BISYS charging the company with violating Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder. See SEC v. The BISYS Group, Inc., 07-Civ-4010 (RJS) (S.D.N.Y.); see also Accounting and Auditing Enforcement Release No. 2611 (May 23, 2007).

8. During the relevant period, directly and through wholly-owned subsidiaries, BISYS provided products and support services to financial institutions such as insurance companies, banks and mutual funds.³ At the time, BISYS was divided into three business groups: (1) Investment Services; (2) Insurance and Education Services; and (3) Information Services. Insurance and Education Services was, during the relevant period, comprised of the Insurance Services division and the Education Services division. Through the Insurance Services division, BISYS was the nation's largest independent distributor of life insurance. It essentially acted as an insurance

³ After the relevant period, BISYS sold some of its businesses. On August 1, 2007, the company was acquired by Citigroup, Inc.

broker, and its revenues primarily consisted of commissions on the sale and renewal of insurance policies.

9. From 2000 through 2003, BISYS reported tremendous growth, consistently reporting profitable quarters and record earnings. This growth was driven in large part by Insurance Services, which the company described to analysts as its “fastest growing and highest margin business.” As a percentage of the company’s total revenues, the revenues produced by Insurance Services increased from 15.7% in fiscal year 2000 to 25.5% in fiscal year 2003.⁴ In fact, however, a material portion of Insurance Services’ growth was illusory and much of it was the result of intentional efforts to make numbers and blatant deviations from Generally Accepted Accounting Principles (“GAAP”).

10. Blain’s supervisor, the vice president for finance for the Insurance and Information Services group, responded to the corporate focus on meeting earnings targets by urging and often directing Blain and other personnel within Insurance Services’ finance department to apply what the supervisor characterized as “smoke and mirrors accounting.” Quarterly closings for the division were a scramble to find revenue, with a make-numbers-at-all-costs approach. These efforts paid off, making Insurance Services the major driver in the company’s reported growth and ability to meet Wall Street expectations.

Improper Accounting for the Ascensus Acquisition

11. In July 2000, BISYS acquired Ascensus, a privately-held insurance company. Ascensus used the accrual method of accounting and thus for commissions earned had already recorded revenue on its income statement and the associated receivables on its balance sheet. While performing due diligence for the acquisition, however, Blain and others learned that Ascensus’s final balance sheet understated receivables by over \$4 million because Ascensus had earned but failed to record over \$4 million of bonus commission revenue pertaining to fiscal 1999 and 2000 in its income statements. (Bonus commissions are additional commissions on the sale of insurance, based on the achievement of certain sales targets.)

12. Blain failed to record a receivable for this additional income as an asset on Ascensus’s opening balance sheet, as required by GAAP.⁵ Instead, following the acquisition, he

⁴ BISYS’s fiscal year ended on June 30th. Thus, for example, “fiscal year 2001” refers to the year ended June 30, 2001.

⁵ The applicable GAAP, Accounting Principle Board Opinion No. 16, Business Combinations, required that all:

assets acquired, . . . and liabilities assumed in a business combination whether or not shown in the financial statements of the acquired company should be assigned a portion of the cost of the acquired company, normally equal to their fair values at date of acquisition [and that acquiring companies establish] receivables at present

booked Ascensus's unrecorded bonus commission revenue as revenue for BISYS over a period of several months, recording over \$4 million of revenue for BISYS between August and December 2000. Blain knew that this accounting failed to comply with GAAP and inflated the company's reported results but accounted for the revenue in this manner because his supervisor directed him to do so.

13. As a result, for the quarter ended September 30, 2000, BISYS improperly recorded \$3.2 million in revenue related to the bonus commission income earned by Ascensus, which resulted in BISYS overstating income before taxes by approximately 18%.⁶ In addition, the company was able to report earnings per share ("EPS") of \$0.22, exceeding analysts' expectations (excluding merger charges) by \$0.01. Without the revenue attributable to the Ascensus bonus commission income, EPS would have been \$0.19 and fallen short of analysts' expectations.

14. For the quarter ended December 31, 2000, the improper accounting for the bonus commission income earned by Ascensus inflated BISYS's revenue by \$1.2 million, which resulted in its overstating income before taxes by approximately 4%. On January 22, 2001, BISYS issued an earnings release for the quarter, announcing "Record Revenues Up 22%" from the same quarter the previous year. The company reported \$0.32 EPS for the quarter, matching analysts' mean and median expectations. Insurance Services was the driving force behind this apparent improvement, with an announced segment increase of \$17.9 million or 81.4%. Without the revenue inflation attributable to the accounting for the Ascensus-earned bonus commissions, BISYS's results for the quarter would have fallen short of analysts' expectations by \$0.01. When the company restated, the income attributable to the bonus commissions earned by Ascensus represented approximately 60% of the acquisition income restated for fiscal year 2001.

15. Blain participated in another instance of improper accounting related to the Ascensus acquisition. In June 2001, nearly a year after the company had acquired Ascensus and the last month of fiscal 2001, BISYS became aware that a vendor called Quotesmith claimed that it was owed monies by Ascensus. Over the next six months, BISYS investigated the matter and reached a settlement with Quotesmith requiring BISYS to pay Quotesmith \$551,000. Most of the \$551,000 pertained to policies placed after the Ascensus acquisition and accordingly was properly recorded as BISYS's expense. In January 2002, at his supervisor's direction, Blain arranged to capitalize this expense as goodwill from the acquisition, thereby reducing BISYS's expenses, under the purported rationale that a liability for these payments should have been recorded at the acquisition date. In addition, Blain inflated the amount by \$256,000, an amount that had already been booked and paid by Ascensus prior to the acquisition and for which BISYS had therefore

values of amounts to be received determined at appropriate current interest rates, less allowances for uncollectibility and collection costs, if necessary.

⁶ Because BISYS recorded revenue on a net basis – the company deducted the amount it owed/paid out to the agents when calculating the revenue number – the amount of revenue improperly recorded equals the inflation of income before taxes.

incurred no liability or expense. As a result, BISYS reduced its expenses by \$807,000, with a corresponding increase to goodwill. This accounting was clearly improper and inflated BISYS's pre-tax income for fiscal years 2001 and 2002 by a total of \$718,000.⁷

16. To achieve the desired accounting, at his supervisor's urging, Blain lied to BISYS's controller, who was under the correct impression that the \$256,000 was a pre-acquisition expense paid by Ascensus, and therefore not attributable to BISYS, and raised the issue with Blain. In an e-mail, Blain told his supervisor that the controller "was wise to what we were trying to do," to which his supervisor responded "can't you backdate?" (The reference to backdating was erroneous because what Blain and his supervisor sought to do was to convince the controller that the payments to Quotesmith were made later than they actually were, i.e., that BISYS, rather than Ascensus, had made the payments.) Blain responded, "I can do whatever you need me to do. Let me talk to [the controller] and tell him that I discovered that these commissions were actually paid [by BISYS] as part of the settlement with Quotesmith." In an e-mail he sent the controller later that day, Blain did that, falsely telling him that the Quotesmith payment followed the acquisition and should therefore be included in the goodwill adjustment.

Other Kinds of Improper Accounting in Which Blain Participated

17. Blain also inflated BISYS's results by increasing the rate at which Insurance Services accrued commissions on the sale of so-called "419 plans" – insurance products marketed to companies seeking to qualify for tax benefits related to Internal Revenue Code Sections 419 and 419A.⁸ Initially, BISYS accrued as commission revenue five percent of its total sales of a carrier's 419 and 419A products. In December 2001, Blain's supervisor told Blain that Insurance Services' results for November were below its forecasted results. As a result, in order to improve the

⁷ This accounting inflated pre-tax income in two ways: (1) by eliminating the \$551,000 expense for the settlement payments BISYS agreed to make, and (2) by crediting BISYS with reductions to expenses for the \$256,000 BISYS purportedly made but which in fact Ascensus had made and for which BISYS had not recorded an expense. The elimination of most of the \$551,000 expense to BISYS was improper because most of that expense pertained to policies placed after the acquisition, and therefore under GAAP should have been treated as BISYS's expense and not a liability of Ascensus. See FAS 141 and Accounting Principle Board Opinion No. 16, Business Combinations (stating that the liabilities of an acquired entity must be recorded at fair value as of the date of the acquisition). The reduction of expenses in the amount of the \$256,000 paid by Ascensus prior to the acquisition was improper because BISYS had not incurred the expense, and did not make any payments. Ultimately, BISYS restated all but \$89,000 of the \$807,000, based on its conclusion that only that amount had been paid by BISYS and pertained to the period before the acquisition.

⁸ Internal Revenue Code Sections 419 and 419A deal with tax treatment of contributions to multi-employer employee benefit plans that can be used for life, disability and severance payments.

division's numbers, and without any reasonable basis for doing so, Blain increased the 419 accrual from 5% to 10%, resulting in an additional \$1.15 million in revenue for November 2001. At the end of December 2001, in order to further increase revenue, Blain increased the 419 accrual rate to 15%. This accrual increase enabled BISYS to book an additional \$1.5 million of revenue in December 2001. There was no basis for these increases in the accrual for 419 plan commissions.

18. The unsupported increases in the 419 revenue accruals resulted in an overstatement of BISYS's income before taxes for the quarter ended December 31, 2001 of \$2.65 million, or 7%. They also resulted in an overstatement of EPS of \$0.03 and allowed the company to exceed analysts' expectations for the quarter by one cent. The corresponding inflated receivable of \$2.65 million was never collected and was written off when the company restated.

19. On occasion, at his supervisor's behest, Blain also recorded revenue solely to meet revenue projections, making unsupported revenue entries and offsetting expense adjustments, which were promptly reversed after BISYS announced its inflated revenues.

20. For example, in January 2001, at his supervisor's direction and for the sole purpose of increasing revenue for the quarter ended December 31, 2000, which was falling short of Wall Street expectations, Blain directed a clerk in the finance department to book \$1 million of renewal commission income while creating an offsetting expense accrual. Simultaneously, Blain directed the clerk to reverse the entries effective the next month, reducing revenue and increasing expenses for the next quarter. The company reported revenue of \$168.3 million for the quarter and without the false entry would have reported revenue of \$167.3 million. These reported results narrowly missed at least three analysts' revenue expectations and without the false entry, the revenue miss would have been wider.

21. Similarly, the following year, Blain instructed accounting personnel to make offsetting revenue and expense entries of \$2.05 million for the quarter ended December 31, 2001, which again were reversed in the next quarter. He did so at the direction of his supervisor, who had told him that senior management was looking to Insurance Services for additional revenue because the company's results were falling short of expectations. Although it would have met analysts' consensus revenue estimates without the additional \$2.05 million in reported revenue, that additional revenue enabled BISYS to beat at least one analyst's revenue expectations.

VIOLATIONS

22. At all relevant times, BISYS was a reporting company and subject to the provisions of Section 13(a) of the Exchange Act. Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require issuers with securities registered pursuant to Section 12 of the Exchange Act to file, respectively, annual and quarterly reports with the Commission. Inherent in these provisions is the requirement that such filings be accurate. *See, e.g., United States v. Bilzerian*, 926 F.2d 1285, 1298 (2d Cir. 1991); *SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978) (citing *SEC v. IMC Int'l, Inc.*, 384 F.Supp. 889, 893 (N.D. Tex. 1974)). Rule 12b-20 under the Exchange Act requires disclosure of such additional material information as may be necessary to make the required statements made in the reports not misleading.

23. BISYS filed annual and quarterly reports with the Commission that materially misstated its results for the quarters ended September 30, 2000 and December 31, 2000, the fiscal year ended June 30, 2001, and the quarters ended September 30, 2001 and December 31, 2001, and other periods. Accordingly, BISYS violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13.

24. Section 13(b)(2)(A) of the Exchange Act requires Section 12 registrants to make and keep books, records, and accounts that accurately and fairly reflect the transactions and dispositions of their assets. Section 13(b)(2)(B) of the Exchange Act requires Section 12 registrants to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP and to maintain the accountability of assets.

25. BISYS violated Section 13(b)(2)(A) of the Exchange Act by failing to make and keep books, records and accounts that accurately, and in reasonable detail, reflected its true financial condition. BISYS also failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in accordance with GAAP, thereby violating Section 13(b)(2)(B) of the Exchange Act.

FINDINGS

26. Based on the foregoing, the Commission finds that Blain willfully aided and abetted and caused BISYS's violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20, 13a-1 and 13a-13 thereunder.

IV.

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

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

A. Blain shall cease and desist from causing any violations and any future violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20, 13a-1 and 13a-13 thereunder.

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

C. After one year from the date of this order, Blain 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 Blain'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) Blain, 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) Blain, 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 Blain's or the firm's quality control system that would indicate that the Blain will not receive appropriate supervision;

(c) Blain 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) Blain 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 Blain 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 Blain's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Florence E. Harmon
Acting Secretary