

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 59648 / March 30, 2009

ACCOUNTING AND AUDITING ENFORCEMENT

Release No. 2958 / March 30, 2009

ADMINISTRATIVE PROCEEDING

File No. 3-13421

In the Matter of

DENNIS KAVELMAN, C.A.
and ARCANGELO LOBERTO, C.A.,

Respondents.

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**ORDER INSTITUTING 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 (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Dennis Kavelman, C.A. (“Kavelman”) and Arcangelo Loberto, C.A. (commonly known as Angelo Loberto) (“Loberto”) (collectively “Respondents”) pursuant to Rule 102(e)(3)(i) of the Commission’s Rules of Practice.¹

II.

In anticipation of the institution of these proceedings, Respondents have each submitted an Offer of Settlement (the “Offers”) that 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

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.

proceedings, and the findings contained in Section III.4 below, which are admitted, Respondents consent to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 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 Respondents' Offers, the Commission finds that:

1. Kavelman, age 38, is a chartered accountant and worked as an auditor at KPMG in Canada before joining Research in Motion Limited ("RIM" or the "Company"). He was RIM's Vice President of Finance from 1995 through 1997 and its Chief Financial Officer ("CFO") from 1997 through March 2007. Kavelman also was RIM's Corporate Secretary since 2004. He currently serves as RIM's Chief Operating Officer, Administration and Operations.

2. Loberto, age 37, is a chartered accountant and worked as an auditor at KPMG in Canada before joining RIM in 1997. He was RIM's Director of Finance from 1997 until 2001, when he was given the title of Vice President of Finance. He was Vice President of Finance until March 2007. He currently serves as RIM's Vice President, Corporate Operations.

3. Research in Motion Limited was, at all relevant times, an Ontario, Canada corporation headquartered in Waterloo, Ontario, Canada, and the designer, manufacturer, and marketer of the BlackBerry and other wireless handheld devices sold worldwide. RIM's stock is traded on the NASDAQ National Market under the symbol "RIMM" and the Toronto Stock Exchange under the symbol "RIM." Before July 31, 2006, RIM's common shares were registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78l(g)]. Since then, RIM's common shares have been registered with the Commission pursuant to Section 12(b) of the Exchange Act [15 U.S.C. § 78l(b)].

4. On March 25, 2009, a final judgment was entered against Kavelman and Loberto, permanently enjoining them from future violations of Section 17(a) of the Securities Act of 1933, Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13a-14 (Kavelman only), 13b2-1, and 13b2-2 thereunder, and from aiding and abetting any violation 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-16 thereunder, in the civil action entitled Securities and Exchange Commission v. Research in Motion Limited, Civil Action No. 09-00301, in the United States District Court for the District of Columbia. Kavelman and Loberto were ordered to pay disgorgement of their ill-gotten gains plus prejudgment interest, which was deemed satisfied based on the prior payments to the Company made by Kavelman (\$141,146.54, which included \$132,914.60 in disgorgement plus \$8,231.94 in prejudgment interest) and Loberto (\$52,638.56, which included \$47,950.56 in disgorgement plus \$4,688 in prejudgment interest). In addition, Kavelman was ordered to pay a \$500,000 civil money penalty and Loberto was ordered to pay a \$425,000 civil money penalty. Kavelman and Loberto each were prohibited from acting as an officer or director for five years.

5. The Commission's Complaint alleged, among other things, that RIM, Kavelman, Loberto and RIM's two co-Chief Executive Officers illegally granted undisclosed, in-the-money

options to RIM executives and employees by backdating approximately 1,400 stock option grants, of nearly seven million shares, to coincide with historically low closing prices for the Company's stock. The Complaint alleged that Kavelman and Loberto received numerous documents explaining that the Company was required to record compensation expenses for in-the-money options, but ignored the information they received and failed to record compensation expenses for the millions of backdated in-the-money options RIM granted. The Complaint alleged that from fiscal year 1999 to the first quarter of fiscal year 2007, RIM: (i) falsely disclosed in its periodic reports, management information circulars, and registration statements that RIM's options were granted at exercise prices equal to the fair market value of RIM's common stock at the date of the grants; and (ii) filed materially false and misleading financial statements that understated RIM's compensation expenses and overstated its quarterly and annual net income or understated its net losses. The Complaint alleged that Kavelman and Loberto knew, or were reckless in not knowing, that the options disclosures and financial statements in RIM's filings, which Kavelman and Loberto prepared, reviewed and/or signed and Kavelman certified, were materially false and misleading. The Complaint alleged that Kavelman made false representations in letters to RIM's independent auditors and that both men took steps to hide the backdating from the Company's auditors, U.S. and Canadian regulators and RIM's outside lawyer. The Complaint further alleged that at RIM's July 2006 annual general meeting, Kavelman denied that RIM was backdating options. The Complaint alleged that Kavelman and Loberto circumvented internal accounting controls and falsified books and records with regard to the backdated option grants. Finally, the Complaint alleged that as a result of the Company's internal review, Kavelman and Loberto stepped down from their positions in RIM's finance department.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

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

A. Kavelman and Loberto are suspended from appearing or practicing before the Commission as accountants.

B. After five years from the date of this Order, Kavelman and/or Loberto each 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 (the "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 (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 provided that his status as an accountant is current and he has resolved all other issues with the applicable board of accountancy. However, if his 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 Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Elizabeth M. Murphy
Secretary