

**UNITED STATES OF AMERICA**  
**Before The**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**

**Release No. 53391 / March 1, 2006**

**ACCOUNTING AND AUDITING ENFORCEMENT**

**Release No. 2389 / March 1, 2006**

**ADMINISTRATIVE PROCEEDING**

**File No. 3-12225**

In the Matter of	:	
	:	ORDER INSTITUTING PUBLIC
	:	ADMINISTRATIVE PROCEEDINGS, MAKING
Michael A. Conway, CPA,	:	FINDINGS AND IMPOSING REMEDIAL
	:	SANCTIONS PURSUANT TO RULE 102(e)
Respondent.	:	OF THE COMMISSION'S RULES OF PRACTICE
	:	
	:	

**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 Respondent Michael A. Conway, CPA ("Conway" or "Respondent") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.<sup>1</sup>

**II.**

In anticipation of the institution of these proceedings, Conway has submitted an Offer of Settlement ("Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceeding brought by or on behalf of the Commission or to which the Commission is a party, and without admitting or denying the findings, except as to the Commission's jurisdiction over the subject matter of these proceedings and as to the entry of the injunction set forth in Section III, which are admitted, Conway consents to the entry of this Order

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<sup>1</sup> 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.

Instituting Public Administrative Proceedings, Making Findings and Imposing Remedial Sanctions Pursuant to Rule 102(e) of the Commission's Rules of Practice ("Order").

### III.

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

A. Conway, age 62, is a certified public accountant licensed in New York and was, during the relevant period covered by this Order, a partner at KPMG LLP ("KPMG"). Conway was the co-engagement partner for Xerox Corporation ("Xerox" or the "Company") for the year 2000. Conway retired from KPMG in 2004.

B. KPMG is a national public accounting firm and, during the relevant period covered by this Order, served as the independent public accountant for Xerox.

C. Xerox is a New York corporation with its principal place of business in Stamford, Connecticut. At all times pertinent to the period covered by this Order, the common stock of Xerox was registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") and traded on the New York Stock Exchange. Xerox's fiscal year ends on December 31.

D. On January 29, 2003, the Commission filed a complaint against Conway and others in the United States District Court for the Southern District of New York. SEC v. KPMG LLP, et al., No. 03-0671 (DLC). On February 27, 2006, the Court entered a final judgment permanently enjoining Conway from violating Sections 17(a)(2) and (3) of the Securities Act of 1933 ("Securities Act") and from aiding and abetting violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder. Conway consented to the entry of the final judgment without admitting or denying the allegations of the Commission's complaint.<sup>2</sup>

E. The Commission's complaint alleged, among other things, that Conway violated Sections 17(a)(2) and (3) of the Securities Act and aided and abetted violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder. The complaint alleged that in the course of serving as the co-engagement partner for Xerox, Conway authorized the issuance of the KPMG audit report that accompanied the 2000 Annual Report on Form 10-K filed by Xerox with the SEC. That audit report stated that KPMG conducted an audit of Xerox's financial statement in accordance with Generally Accepted Auditing Standards, that KPMG planned and performed the audit to obtain reasonable assurance that the financial statements were free of material misstatement, that KPMG assessed the accounting principles used and significant estimates made by Xerox management and that it evaluated the overall consolidated financial statement presentation. The audit report further represented that, as a result of KPMG's audit, it was KPMG's opinion that Xerox's financial statements presented fairly, in all material respects,

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<sup>2</sup> Scienter is not required to prove violations of Sections 17(a)(2) or (3) of the Securities Act. Aaron v. SEC, 446 U.S. 680, 697 (1980). Violations of these sections may be established by showing negligence alone. SEC v. Hughes Capital Corp., 124 F.3d 449, 453-54 (3d Cir. 1997); SEC v. Steadman, 967 F.2d 636, 643 n.5 (D.C. Cir. 1992).

Xerox's financial position and results of operations in conformity with Generally Accepted Accounting Principles. The Complaint further alleged that each of these representations was materially false and misleading or omitted to disclose material information which would make the statements not false and misleading.

#### IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to accept Conway's Offer of Settlement.

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

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

B. After two (2) years from the date of this order, Conway 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 Conway'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) Conway, 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) Conway, 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 Conway's or the firm's quality control system that would indicate that Conway will not receive appropriate supervision;

(c) Conway 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) Conway acknowledges his responsibility, as long as Conway 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 Conway 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 Conway's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Nancy M. Morris  
Secretary