

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 59584 / March 17, 2009

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2950 / March 17, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13410

In the Matter of

ANDREW SIMS, CPA,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 4C AND 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 Andrew Sims, CPA (“Sims” or “Respondent”) pursuant to Sections 4C¹ and 21C of the Securities

¹ Section 4C provides, in relevant part, that “[t]he Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (2) . . . to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.”

Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) and 102(e)(1)(iii) of the Commission’s Rules of Practice.²

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, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Exchange Act and Rule 102(e) of the Commission’s Rules of Practice, 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 finds³ that:

Summary

This matter involves a violation of the auditor independence rules by an auditor seeking employment with his audit client. Between November 2004 and June 2005, Andrew Sims, an audit partner at Mazars LLP, engaged in employment discussions with his audit client Publicis Groupe, S.A. (“Publicis”) to become the chief accounting officer of Re:Sources, a U.S. back-office organization owned by Publicis that was to become responsible for the financial reporting of Publicis’ U.S. operations. During this period, Sims was responsible for auditing the financial statements of Publicis’ U.S. operations for Mazars LLP, a U.S. audit firm and an affiliate of Mazars & Guerard, S.A (“M&G”). M&G, a French auditing firm, was one of Publicis’ two joint auditors (the other being Ernst & Young). Contrary to auditor independence rules that required Sims to report the employment discussions to his firm and remove himself from the Publicis audit, Sims continued working on the engagement and concealed his employment discussions with Publicis from his firm until the employment negotiations were almost complete in early June 2005.

² Rule 102(e)(1)(ii) provides, in pertinent part, that “[t]he Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in unethical or improper professional conduct.” Rule 102(e)(1)(iii) provides, in pertinent part, that “[t]he Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.”

³ 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.

Respondent

Andrew Sims, CPA, age 36, of New York, New York, is a certified public accountant licensed in New York and Maine. Sims was the Mazars LLP audit partner responsible for auditing the financial statements of Publicis' U.S. operations for the fiscal year ended December 31, 2004. During all times relevant to this case, Sims was also a partner with Mazars SCRL and Weiser LLP.

Other Relevant Entities

1. **Publicis Groupe S.A.**, based in Paris, France, is an international advertising and media services conglomerate with offices throughout the world. During the relevant period, Publicis was a foreign private issuer whose American Depository Receipts were registered with the Commission pursuant to Exchange Act Section 12(g), and were listed on the NYSE. In September 2007, Publicis voluntarily terminated its registration with the Commission.

2. **Mazars SCRL**, is an international audit and advisory organization based in Paris, France, and incorporated in Belgium. It has a worldwide network of member firms and joint venture partnerships. Its member firms include M&G and Mazars LLP. One of its joint venture partners is Weiser LLP.

3. **Mazars and Guerard, S.A.** is an accounting firm based in Paris, France. It is a member firm of the Mazars SCRL international network. M&G and Ernst & Young ("E&Y") were joint auditors responsible for the audit of Publicis' financial statements for the fiscal year ended December 31, 2004 and issued a joint audit opinion. M&G is registered with the Public Company Accounting Oversight Board ("PCAOB").

4. **Mazars LLP**, is an accounting firm based in New York, New York, that is a member of the Mazars SCRL network. It was responsible for auditing the financial statements of Publicis' U.S. operations for the fiscal year ended December 31, 2004. It has few employees and relies on employees of Weiser LLP to perform most of the audit work on its engagements. Mazars LLP is registered with the PCAOB.

5. **Weiser LLP**, is an accounting firm based in New York, New York. As a joint venture partner of Mazars SCRL, its employees perform most of the audit work on Mazars LLP engagements. Consequently, while Mazars LLP was responsible for auditing Publicis' U.S. operations on behalf of M&G, it was Weiser LLP employees who actually performed the audit. Weiser LLP is registered with the PCAOB.

Facts

1. Between November 2004 and June 2005, Sims engaged in employment discussions with his audit client Publicis to become the chief accounting officer ("CAO") of Re:Sources, a U.S. back-office organization Publicis owned. Re:Sources was to become responsible for the financial reporting of Publicis' U.S. operations.

2. Between January and March 2005, Sims had multiple discussions with the managing director of Re:Sources regarding Sims' potential employment as the CAO of Re:Sources. The managing director was leading the employment discussions on behalf of Publicis. These employment discussions occurred while Sims was overseeing the Mazars LLP audit work for the fiscal 2004 audit of Publicis' U.S. operations. On February 7, 2005, Sims informed the managing director that he wanted to complete the year-end audit work before informing his supervisors about his interest in joining Publicis in order to avoid the perception that his audit objectivity had been impaired.

3. In early June 2005, Sims learned that Publicis would be sending him an employment contract shortly. On or about June 8, 2005, Sims disclosed his employment discussions with Publicis to M&G, Mazars LLP, and Weiser LLP, and asked to be removed from the Publicis audit. By June 9, 2005, Sims had informed the managing director that he intended to accept the offer to become Re:Sources' CAO.

4. Sims concealed his employment discussions with Publicis from M&G, Mazars LLP, and Weiser LLP, including through affirmative misstatements to the partners responsible for the Publicis engagement, until he received an employment offer from Re:Sources. During his employment discussions with Publicis, Sims twice signed confirmations required by M&G and Weiser LLP attesting that he had complied with the auditor independence rules.

5. Sims continued to make misrepresentations about his employment discussions with Publicis even after he disclosed to M&G, Mazars LLP, and Weiser LLP his intention to become a Publicis employee. On June 29, 2005, in anticipation of a quality control review by Weiser LLP regarding his expected employment by Publicis, Sims prepared a memorandum falsely claiming that Publicis first approached him about possible employment in early June 2005 and that he promptly stopped working on the Publicis audit at that time. After speaking with the Weiser LLP quality control partner, Sims prepared another memorandum correctly stating that Publicis first approached him about possible employment in November 2004.

6. On June 24, 2005, Publicis filed its Form 20-F for its fiscal year ended December 31, 2004. The audit report included in the Form 20-F, which M&G and E&Y issued jointly,⁴ states that M&G was independent and had conducted its audit in accordance with PCAOB standards.

7. After Publicis filed its Form 20-F in June 2005, concerns were raised about M&G's lack of independence as a result of Sims' employment discussions with Publicis. Consequently, Publicis self-reported the matter to the Commission and instructed E&Y to perform additional audit procedures so that E&Y could issue a new audit opinion on Publicis' fiscal year 2004 financial statements as the company's sole auditor. On December 23, 2005, Publicis filed an amended Form 20-F for the year ended December 31, 2004, with an audit opinion from E&Y as the sole auditor. The additional audit procedures conducted by E&Y did not detect any errors from work that Sims previously performed.

⁴ The date of the audit report was March 10, 2005, except as to footnote 31 to the financial statements ("Summary of differences between generally accepted accounting principles in France and the U.S."), which was dated June 24, 2005.

Violations

1. Professional independence standards for auditors, as set forth in PCAOB Rule 3600T, AICPA Code of Professional Conduct ET Section 101, and Independence Standards Board Independence Standard No. 3, require an auditor who is considering employment by an audit client promptly to notify his audit firm and remove himself from the audit of that client.⁵ These standards further require that upon removal of the auditor from the audit, the audit firm should consider what additional procedures may be necessary to provide reasonable assurance that any work performed for the client by that person was performed with objectivity and integrity.

2. Sims lacked independence under the aforementioned professional standards due to his employment discussions with Re:Sources. As a result, Publicis violated Exchange Act Section 13(a) and Rule 13a-1, which require issuers to file annual reports containing financial statements certified by independent public accountants.

3. As a result of the conduct described above, Sims caused and willfully aided and abetted Publicis' violations of Exchange Act Section 13(a) and Rule 13a-1 thereunder.

4. As a result of the conduct described above, M&G violated Regulation S-X Rule 2-02(b)(1). This provision requires accountants' reports to state "whether the audit was made in accordance with generally accepted auditing standards." "[R]eferences in Commission rules and staff guidance and in the federal securities laws to GAAS or to specific standards under GAAS, as they relate to issuers, should be understood to mean the standards of the PCAOB . . ." SEC Release No. 34-49708. Thus, an auditor violates Regulation S-X Rule 2-02(b)(1) if it issues a report stating that it had conducted its audit in accordance with PCAOB standards when it had not. M&G did not conduct its audit in accordance with PCAOB standards because Sims lacked independence.

5. As a result of the conduct described above, Sims caused and willfully aided and abetted M&G's violation of Regulation S-X Rule 2-02(b)(1).

6. As a result of the conduct described above, Sims engaged in improper professional conduct. For accountants, improper professional conduct includes "intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards." Rule 102(e)(1)(iv)(A). Sims' actions – negotiating employment with his audit client while conducting an audit and failing promptly to remove himself from the Publicis audit – violated PCAOB Rule 3600T, AICPA ET Rule 101.04, and ISB Standard No. 3 and were, at a minimum, reckless.

Findings

1. Based on the foregoing, the Commission finds that Sims caused and willfully aided and abetted Publicis' violations of Exchange Act Section 13(a) and Rule 13a-1 thereunder.

⁵ Although the ISB no longer exists, its rules were in force at all times relevant to this matter.

2. Based on the foregoing, the Commission finds that Sims caused and willfully aided and abetted M&G's violation of Regulation S-X Rule 2-02(b)(1).

3. Based on the foregoing, the Commission finds that Sims engaged in improper professional conduct within the meaning of Rule 102(e)(1)(ii) of the Commission's Rules of Practice, as defined by Rule 102(e)(1)(iv)(A), and willfully aided and abetted the violation of provisions of the federal securities laws and rules thereunder within the meaning of Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

IV.

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

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

1. Sims shall cease and desist from causing any violations and any future violations of Exchange Act Section 13(a) and Rule 13a-1 thereunder and Regulation S-X Rule 2-02(b)(1).

2. Sims is denied the privilege of appearing or practicing before the Commission as an accountant.

3. After three years from the date of this 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:

A. 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

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

(1) 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;

(2) 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;

(3) 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

(4) 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.

4. The Commission will consider an application by Respondent 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 Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Elizabeth M. Murphy
Secretary