

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 56399 / September 13, 2007**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 2679 / September 13, 2007**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12760**

**In the Matter of**

**Beckman Kirkland & Whitney,  
James M. Kirkland, CPA, and  
Robert J. Whitney, CPA,**

**Respondents.**

**ORDER INSTITUTING PUBLIC  
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 cease-and-desist proceedings be, and hereby are, instituted against Beckman Kirkland & Whitney, James M. Kirkland, CPA, and Robert J. Whitney, CPA (collectively "Respondents") pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and that public administrative proceedings be, and hereby are, instituted against Beckman Kirkland & Whitney pursuant to Section 4C<sup>1</sup> of the Exchange Act and Rule 102(e)(1)(iii) of the

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<sup>1</sup> Section 4C provides, in relevant part, that:

The 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 . . . to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

Commission's Rules of Practice.<sup>2</sup>

## II.

In anticipation of the institution of these proceedings, Respondents have 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 them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Public 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 ("Order"), as set forth below.

## III.

On the basis of this Order and Respondents' Offer, the Commission finds<sup>3</sup> that:

### A. RESPONDENTS

1. Beckman Kirkland & Whitney (the "Firm") is a California partnership and a public accounting firm headquartered in Agoura Hills, California. The Firm audited The Flamemaster Corporation's financial statements for the company's 2003 fiscal year ended September 30, 2003. The firm resigned as The Flamemaster Corporation's independent auditor on May 5, 2004.

2. James M. Kirkland, CPA ("Kirkland"), age 46, is a certified public accountant licensed in the state of California since 1993. Kirkland was the engagement partner in connection with the Firm's audit of The Flamemaster Corporation's financial statements for the company's 2003 fiscal year ended September 30, 2003.

3. Robert J. Whitney, CPA ("Whitney"), age 45, is a certified public accountant licensed in the state of California since 1990. Whitney was the reviewing partner in connection with the Firm's audit of The Flamemaster Corporation's financial statements for the company's

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<sup>2</sup> Rule 102(e)(1)(iii) provides, in relevant part, that:

The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way 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.

<sup>3</sup> The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

2003 fiscal year ended September 30, 2003.

## **B. FACTS**

1. The Flamemaster Corporation (“Flamemaster”) is a corporation with its headquarters in Sun Valley, California. Flamemaster’s common stock traded on the pink sheets and was registered with the Commission pursuant to Section 12(g) of the Exchange Act until May 26, 2005, when the company filed a Form 15 with the Commission to terminate the registration of its stock. For its fiscal year ended September 30, 2003, Flamemaster reported revenues of \$5.1 million and total assets of \$7.4 million.

2. Flamemaster has at all relevant times been an issuer as defined by the Sarbanes-Oxley Act of 2002 (the “Act”).

3. The Firm audited Flamemaster’s 2003 financial statements included in Flamemaster’s annual report for fiscal year 2003 on Form 10-KSB, filed with the Commission on December 19, 2003. As part of that audit, the Firm prepared and issued an audit report dated December 8, 2003 (the “Flamemaster audit report”), which the company included in its 2003 Form 10-KSB. Flamemaster paid the Firm \$25,800 for the audit work.<sup>4</sup>

4. At the time the Firm issued the Flamemaster audit report, it was not registered with the Public Company Accounting Oversight Board (the “Board”), as required by Section 102(a) of the Act.

5. Kirkland was the engagement partner on the Firm’s audit of Flamemaster’s 2003 financial statements, and Whitney was the reviewing partner on the audit. Kirkland and Whitney participated in the preparation and issuance of the Flamemaster audit report.

6. By order dated June 8, 2005, the Board accepted an offer of settlement made by the Firm and disapproved an application for registration it had submitted based in part on the Firm’s violation of Section 102(a) of the Act in issuing the Flamemaster audit report.<sup>5</sup> The order effectively prevented the Firm from becoming registered with the Board until after October 1, 2005.<sup>6</sup> Kirkland and Whitney have only worked as accountants through the Firm since before

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<sup>4</sup> During the course of the Commission’s investigation, the Firm voluntarily reimbursed Flamemaster \$25,800 in audit fees. In view of the Firm’s reimbursement, the Commission is not ordering disgorgement in this matter.

<sup>5</sup> PCAOB Release No. 2005-012 (June 8, 2005). The order also found that the Firm’s issuance of the Flamemaster audit report violated Board Rule 2100, which implemented Section 102(a) of the Act. Id.

<sup>6</sup> The order states that with respect to any new registration application the Firm submits after October 1, 2005, the Board will not issue a notice of hearing to determine whether to approve or disapprove such application based solely on the violations subject to the Board’s order. Id. The Board noted in its order that it had received a registration application from the Firm on December 30, 2003. The Board issued a Notice of Hearing on that application dated

the Board's order and have not otherwise been associated with a public accounting firm registered with the Board.

### **C. VIOLATIONS**

1. Section 102(a) of the Act provides that "it shall be unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer."<sup>7</sup>

2. The provisions of Section 102(a) of the Act became effective on October 22, 2003.<sup>8</sup>

3. Based on the conduct described above, the Firm willfully<sup>9</sup> violated Section 102(a) of the Act.

4. Based on the conduct described above, Kirkland and Whitney caused the Firm's violation of Section 102(a) of the Act.

### **D. FINDINGS**

Based on the foregoing, the Commission finds that the Firm willfully violated Section 102(a) of the Sarbanes-Oxley Act of 2002, and that Kirkland and Whitney caused the Firm's violation of Section 102(a) of the Act.

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February 2, 2004. In response, the Firm requested a hearing but then, withdrew its application before a determination by the Board. Id.

<sup>7</sup> A violation of the Act or any rule that the Board issues under the Act is treated for all purposes in the same manner as a violation of the Exchange Act, including with respect to penalties. Sarbanes-Oxley Act of 2002, 15 U.S.C.A. § 7202(b)(1) (West 2002).

<sup>8</sup> Section 102(a) became effective "[b]eginning 180 days after the date of the determination of the Commission under Section 101(d)" of the Act that the Board was prepared to undertake its statutory responsibilities. The Commission made the required determination on April 25, 2003. See Order Regarding Section 101(d) of the Sarbanes-Oxley Act of 2002, Securities Act Release No. 8223, Exchange Act Release No. 47746, 2003 WL 1956164 (Apr. 25, 2003).

<sup>9</sup> "Willfully" as used in this Offer means intentionally committing the act that constitutes the violation. There is no requirement that the actor also be aware that he is violating a rule or statute. See Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000); Tager v. SEC, 344 F.2d 5, 8 (2d Cir. 1965).

## **E. UNDERTAKING**

Respondents undertake not to request, demand, or accept, directly or indirectly, any compensation from Flamemaster in connection with the audit work associated with the Flamemaster report. In determining whether to accept the Offer, the Commission has considered this undertaking.

## **IV.**

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

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

### **1. Beckman Kirkland & Whitney**

A. The Firm shall cease and desist from committing or causing any violations and any future violations of Section 102(a) of the Act.

B. The Firm is censured.

C. The Firm may practice before the Commission as an independent accountant provided that:

1. It is registered with the Board in accordance with the Act, and such registration continues to be effective; and

2. It has submitted to the Commission staff (attention: Office of the Chief Accountant) the Board's letter notifying the Firm that its registration application has been approved.

### **2. James M. Kirkland, CPA**

A. Kirkland shall cease and desist from committing or causing any violations and any future violations of Section 102(a) of the Act.

B. Kirkland may practice before the Commission as an independent accountant provided that:

1. The public accounting firm with which he is associated is registered with the Board in accordance with the Act, and such registration continues to be effective; and

2. He has submitted to the Commission staff (attention: Office of the Chief Accountant) the Board's letter notifying the public accounting firm with which he is associated that its registration application has been approved.

**3. Robert J. Whitney, CPA**

A. Whitney shall cease and desist from committing or causing any violations and any future violations of Section 102(a) of the Act.

B. Whitney may practice before the Commission as an independent accountant provided that:

1. The public accounting firm with which he is associated is registered with the Board in accordance with the Act, and such registration continues to be effective; and

2. He has submitted to the Commission staff (attention: Office of the Chief Accountant) the Board's letter notifying the public accounting firm with which he is associated that its registration application has been approved.

By the Commission.

Nancy M. Morris  
Secretary