

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58544 / September 15, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2878 / September 15, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13194

In the Matter of

Mark A. Peterson (CPA),

Respondent.

**ORDER INSTITUTING CEASE-AND-DESIST
PROCEEDINGS PURSUANT TO SECTION
21C OF THE SECURITIES EXCHANGE ACT
OF 1934, MAKING FINDINGS, AND
IMPOSING 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 pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Mark A. Peterson (“Peterson” or “Respondent”).

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 Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

1. Peterson, age 44, of Kansas City, Missouri, was vice president of accounting and finance at American Italian Pasta Company ("AIPC") from October 2000 until June 2004, when he resigned from the company. Peterson reported directly to AIPC's chief financial officer. Many of Peterson's duties related to budgeting and forecasting, but he also oversaw AIPC's corporate accounting department which, along with other departments of the company, had responsibilities with respect to AIPC's internal controls. Peterson was licensed as a CPA in Missouri, but his license lapsed in 2000.

2. AIPC is a Delaware corporation with its principal place of business in Kansas City, Missouri. The company produces and markets dry pasta. At all relevant times, AIPC's common stock was registered pursuant to Section 12(b) of the Exchange Act. The company filed annual, quarterly, and current reports with the Commission on Forms 10-K, 10-Q, and 8-K, respectively. AIPC stock was traded on the New York Stock Exchange ("NYSE") until December 20, 2006, when the NYSE suspended trading based on AIPC's failure to keep current its Commission filings. On April 23, 2007, the NYSE filed a Form 25 with the Commission and, as a result, AIPC's common stock was deregistered from Section 12(b) effective April 23, 2007.

3. During its fiscal years ended September 27, 2002 and October 3, 2003, and the first and second quarters of its fiscal year ended October 1, 2004, AIPC inflated its reported income and earnings per share ("EPS") through a scheme orchestrated by senior executives above Peterson's level in AIPC's corporate hierarchy. Peterson failed to take actions to ensure that AIPC's accounting complied with generally accepted accounting principles ("GAAP").

4. From AIPC's fiscal year 2002 through the second quarter of fiscal 2004, senior AIPC executives above Peterson emphasized that the company had consistently met EPS targets and predicted AIPC would continue to generate exceptional income and EPS growth. During this time period, however, AIPC failed to achieve its income and EPS growth targets. In response, the senior executives engaged in a variety of fraudulent accounting manipulations to increase AIPC's reported income and EPS.

5. As a result, in its quarterly and annual financial statements for its 2002 and 2003 fiscal years, and for the first and second quarters of its 2004 fiscal year, AIPC reported materially misstated income and EPS. AIPC included these misleading financial results in Forms 10-K and 10-Q filed with the Commission, and in earnings releases attached to Forms 8-K filed with the Commission. In October 2005, AIPC announced that it would restate financial results for these periods, and in June 2008 AIPC filed the restated results with the Commission.

¹ 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.

6. Peterson knew or should have known that certain of AIPC's accounting was contrary to GAAP including in the following areas: (a) the capitalization of internal pasta manufacturing costs to long-lived manufacturing assets; (b) the capitalization of internal management information systems ("MIS") labor costs to long-lived information technology assets; (c) the use of an acquisition reserve to reduce AIPC's cost of goods sold; (d) the failure to write off a receivable related to a claim against a supplier; (e) the failure to write down overstated wheat inventory; (f) the improper recognition of revenue related to AIPC supply agreements; (g) the improper elimination of a compensated absences liability; and (h) the failure to recognize expenses related to the company's production of pasta for an AIPC customer.

7. During its 2002 and 2003 fiscal years, and the first and second quarters of its 2004 fiscal year, AIPC capitalized more than \$10 million of internal pasta manufacturing costs to long-lived manufacturing assets contrary to GAAP. AIPC recorded capitalization of internal costs to manufacturing assets based on monthly instructions from AIPC's operations department which did not report directly or indirectly to Peterson. Peterson, however, attended meetings at which senior AIPC executives above him frequently agreed to increase the capitalization of internal costs to manufacturing assets based on rationales that Peterson knew or should have known were questionable or insufficient. Peterson also knew or should have known (a) that the additional capitalization was part of an effort by the senior AIPC executives to ensure that the company would meet EPS targets, and (b) that the operations department generally instructed that the additional capitalization should be booked even if it could not be adequately justified. Peterson failed to implement accounting controls designed to prevent and generally failed to otherwise prevent AIPC from booking capitalization based on such instructions. Peterson expressed concerns about the level of internal cost capitalization to manufacturing assets to the senior AIPC executives that directed or otherwise were aware of the additional capitalization, but he failed to express similar concerns to AIPC's audit committee or to AIPC's independent auditors.

8. During its 2002 and 2003 fiscal years, and the first and second quarters of its 2004 fiscal year, AIPC improperly capitalized approximately \$1.4 million of internal MIS labor costs. AIPC did not calculate capitalized internal MIS labor based on specific tasks, time, and compensation rates. Rather, AIPC's budgeted capitalized internal MIS labor was, in general, simply a percentage of total budgeted MIS labor, and the company generally booked capitalization based on its budget. AIPC's MIS department did not report, directly or indirectly, to Peterson. Peterson, however, was informed in fiscal 2004 that capitalized MIS labor was excessive. While Peterson expressed concerns to senior management regarding the level of capitalization, he failed to take action to prevent or implement accounting controls designed to prevent AIPC from capitalizing excessive amounts of MIS labor.

9. During its 2003 fiscal year, AIPC acquired another pasta company and used a \$500,000 acquisition reserve to improperly reduce its cost of goods sold. AIPC closed the acquisition and booked the reserve at the beginning of fiscal year 2003. AIPC then budgeted for the reserve to be amortized ratably during the fiscal year such that AIPC's cost of goods sold would be reduced by \$125,000 per quarter. Peterson calculated the \$500,000 reserve based on an estimate of the excess price AIPC expected to pay for additional wheat it would use during the

fiscal year as a result of the acquisition. Although the actual wheat prices AIPC paid were substantially lower than estimated, Peterson and others permitted the reserve to be amortized as budgeted instead of adjusting the reserve to reflect AIPC's actual wheat costs as required by GAAP.

10. During the first quarter of its 2004 fiscal year, AIPC failed improperly to write-off a receivable in the amount of \$332,000. AIPC had booked a \$632,000 receivable based on a lawsuit filed by the company alleging that a supplier sold defective packaging materials to AIPC. The parties reached a settlement under which the supplier paid \$300,000 in cash to AIPC and provided AIPC the right to make future purchases of packaging materials from the supplier at a discount. AIPC maintained improperly \$332,000 of the receivable on its books based on the right to make discounted purchases. During the closing process for the first quarter of its 2004 fiscal year, Peterson knew or should have known that AIPC had determined not to purchase additional packaging materials from the supplier. AIPC amortized the receivable, but Peterson and others knew or should have known that the company was required by GAAP to write-off the receivable immediately.

11. In fiscal year 2003, AIPC paid less for durum wheat than was budgeted in its standard manufacturing costs, such that the company's fiscal year 2003 year-end inventory balance (which was valued at standard costs) was overstated by approximately \$1 million. Senior AIPC executives directed accounting personnel not to reduce the value of its fiscal year-end inventory to the lower actual cost, and thereby overstated pretax income, contrary to GAAP. Peterson prepared a summary schedule for senior AIPC executives that included this issue and Peterson knew or should have known it was contrary to GAAP.

12. During the third and fourth quarters of its 2002 fiscal year, AIPC managers determined that one of the company's customers might fail to purchase the minimum amount of pasta required under its supply agreement with AIPC. Under the supply agreement, if such a shortfall materialized, the customer would have had to pay AIPC, as a penalty for the shortfall, a higher price for its pasta purchases during fiscal year 2003. Based on the estimated price increase, AIPC improperly booked a total of approximately \$383,000 of revenue for the third and fourth quarters of fiscal year 2002 rather than defer the revenue to fiscal 2003. Peterson was informed of this accounting and knew or should have known that it was contrary to GAAP. During fiscal year 2003, another AIPC customer failed to purchase the minimum amount of pasta set forth in its supply agreement with AIPC and, as a result, agreed to a price increase to make up the shortfall, of up to \$320,000 on future purchases of pasta beginning in fiscal year 2004. AIPC improperly booked the \$320,000 as fiscal year 2003 revenue rather than fiscal year 2004 revenue. Peterson was informed of the price increase and knew or should have known that AIPC's accounting was contrary to GAAP.

13. For fiscal year 2004, AIPC budgeted the elimination of its \$670,000 compensated absences liability based on a plan to adopt a "use-or-lose" compensated absence policy that did not permit employees to carry over unused time-off from one year to the next. In the first quarter of 2004, AIPC eliminated the full amount of the liability and thereby reduced expenses by \$670,000. Instead of fully implementing the use-or-lose policy as budgeted, AIPC only modified the policy and permitted employees to carry over up to 40 hours of unused compensated absences into fiscal

2005, with no hours to be carried over beyond fiscal 2005. Peterson learned of the modification indicating that the "use-or-lose" policy was not implemented fully in fiscal 2004. Thus, Peterson knew or should have known that AIPC's accounting in fiscal 2004 was contrary to GAAP.

14. At the end of fiscal year 2003, AIPC negotiated an agreement to produce new low-carbohydrate pasta products for a customer. During the first quarter of fiscal year 2004, AIPC executives learned that the expenses in the plant where the new products were being manufactured were higher than the amounts that AIPC had budgeted. AIPC determined that the excess costs with respect to the new products related to research and development. Instead of recognizing the excess costs as a period expense, senior AIPC executives directed accounting personnel improperly to book a \$1 million receivable on the grounds that the customer would reimburse AIPC for the costs. Recording the \$1 million receivable was contrary to GAAP because the customer had not agreed to reimburse AIPC for research and development costs and never did so. Peterson reviewed an agreement between AIPC and the customer that stated the customer was not obligated to reimburse AIPC for research and development costs, and thus he knew or should have known that AIPC's accounting was contrary to GAAP.

15. Section 13(a) of the Exchange Act requires all issuers with securities registered under Section 12 of the Exchange Act to file periodic and other reports with the Commission containing such information as the Commission's rules prescribe. Pursuant to Section 13(a), the Commission promulgated Rules 13a-1, 13a-11 and 13a-13 that require issuers to file annual, current, and quarterly reports, respectively. The reporting requirements necessarily include the requirement that the issuer supply accurate information. In addition, Rule 12b-20 requires that reports contain such further material information as may be necessary to make the required statements, in light of the circumstances under which they were made, not misleading. As a result of the conduct described herein, Peterson was a cause of AIPC's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder.

16. Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act require reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets, and to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles. As a result of the conduct described herein, Peterson was a cause of AIPC's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

IV.

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

Accordingly, it is hereby ORDERED that:

Pursuant to Section 21C of the Exchange Act, Respondent Peterson cease and desist from causing any violations and any future violations of Sections 13(a) and 13(b)(2)(A) and (B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

By the Commission.

Florence E. Harmon
Acting Secretary