

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 62260 / June 10, 2010

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3143 / June 10, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13933

In the Matter of

HARRY O. NICODEMUS IV,
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 Harry O. Nicodemus IV, CPA (“Nicodemus” 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:

RESPONDENT

1. **Nicodemus** resides in Katy, Texas and was the chief financial officer of Equus Total Return, Inc. ("Equus"), a business development company ("BDC"), from November 2003 to November 2006. He is a CPA licensed in Texas.

OTHER RELEVANT ENTITY

2. **Equus**, a Delaware corporation based in Houston, Texas, became a BDC on September 6, 1991. Equus trades as a closed-end fund on the New York Stock Exchange, under the symbol "EQS." Its securities are registered under Section 12(b) of the Exchange Act.

FACTS

3. On June 30, 2005, Equus's shareholders approved a new fund adviser and a new fund administrator. Equus's board ratified the shareholder vote at a meeting later that day.

4. On August 9, 2005, Equus's board agreed to pay the new fund administrator a one-time supplemental fee of \$535,000 to reimburse "extraordinary costs that were incurred by [the fund administrator] above what had been anticipated" with respect to the change in administrators.

5. Nicodemus thereafter prepared (or assigned someone to prepare) a spreadsheet outlining the components of the supplemental fee: \$400,000 for a consulting agreement with an Equus officer ("Fund officer"); \$60,000 for the Fund officer's retention bonus; and \$75,000 of retention bonuses for other personnel. The spreadsheet was prepared in connection with finalizing Equus's second quarter 2005 Form 10-Q.

6. Equus filed its second quarter 2005 Form 10-Q on August 15, 2005. Nicodemus certified this filing, which disclosed that the Fund had reimbursed the new administrator \$535,000 for unexpected costs and expenses associated with the change in administrators. The Form 10-Q, however, failed to disclose that the true purpose of the special administrative fee was to compensate the Fund officer.

7. On March 31, 2006, Equus filed its 2005 Form 10-K, which Nicodemus certified. This filing also disclosed that the special administrative fee was associated with the change in administrators, but failed to disclose that the true purpose of the special administrative fee was to compensate the Fund officer.

8. On April 24, 2006, Equus filed its annual proxy statement providing information about officer and director compensation in 2005. The proxy statement represented that the Fund

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.

officer received compensation of \$136,620 in 2005, consisting of realized earnings from the company's acquisition of his 198,000 stock options. This figure was materially understated because the Fund officer in fact received more than \$430,000 from the transaction.

VIOLATIONS

9. As a result of conduct described above, Nicodemus violated Rule 13a-14 under the Exchange Act. In addition, Nicodemus caused Equus's violations of Section 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 13a-1, 13a-13 and 12b-20 thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Nicodemus's Offer. Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

Respondent cease and desist from committing or causing any violations and any future violations of Exchange Act Rule 13a-14 and from causing any violations and any future violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 13a-1, 13a-13 and 12b-20 thereunder.

By the Commission.

Elizabeth M. Murphy
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the 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"), on the Respondent and his legal agents.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray
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