

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8855 / September 28, 2007

SECURITIES EXCHANGE ACT OF 1934
Release No. 56576 / September 28, 2007

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2736 / September 28, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12857

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	:	
In the Matter of	:	ORDER INSTITUTING PUBLIC
	:	ADMINISTRATIVE AND CEASE-AND-
ROBERT D. DOTY, JR.,	:	DESIST PROCEEDINGS, MAKING
	:	FINDINGS, AND IMPOSING
	:	REMEDIAL SANCTIONS AND A
	:	CEASE-AND-DESIST ORDER
	:	PURSUANT TO SECTION 8A
	:	OF THE SECURITIES ACT OF 1933,
Respondent	:	SECTION 21C OF THE SECURITIES
	:	EXCHANGE ACT OF 1934, AND RULE
	:	102(e) OF THE COMMISSION'S RULES
	:	OF PRACTICE
	:	

I.

The Securities and Exchange Commission (“SEC” or “Commission”) deems it appropriate that (i) cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (the “Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (the “Exchange Act”) against Robert D. Doty, Jr. (“Doty”) (“Respondent”), and (ii) public administrative proceedings be, and hereby are, instituted against Doty pursuant to Rule 102(e)(1)(iii) of the Commission’s Rules of Practice.¹

¹ Rule 102(e)(1)(iii) provides, in pertinent part, that: The 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.

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 Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission’s Rules of Practice (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds² that:

A. RESPONDENT

Robert D. Doty, Jr., 49, of Houston, Texas, was Dynegy Inc.’s (“Dynegy”) Executive Vice-President and Chief Financial Officer during the relevant period. Doty joined Dynegy in 1991 after ten years as a tax practitioner in a public accounting firm and advanced through Dynegy’s tax and finance departments before ascending to CFO in 2000. Doty permitted his CPA license to lapse after joining Dynegy and is no longer a CPA. Doty resigned from Dynegy in August 2002 and is now employed by a private company.

B. OTHER RELEVANT ENTITY

Dynegy is an Illinois corporation headquartered in Houston, Texas. Dynegy’s shares are registered with the Commission under Section 12(b) of the Exchange Act and trade on the New York Stock Exchange under the symbol DYN. During the relevant period, Dynegy’s business consisted of production and delivery of energy, including natural gas, electricity, natural gas liquids and coal, to customers in North America, the United Kingdom and Continental Europe. In addition to energy production and delivery, energy trading was a key component of Dynegy’s business during the relevant period.

C. FACTS

1. Summary

These proceedings arise out of Respondent’s role in Dynegy’s materially misleading use of a structured-finance transaction called Project Alpha (“Alpha”). In 2001, Dynegy

² The findings herein are made pursuant to Respondent’s Offer and are not binding on any other person or entity in this or any other proceedings.

implemented Alpha to enhance cash flow from operations by approximately \$300 million and to realize an associated tax benefit of \$79 million. Over approximately six months, Dynegey's accounting and tax adviser worked closely with the Respondent and other members of the Dynegey deal team to structure Alpha in a manner consistent with generally accepted accounting principles ("GAAP"). In particular, the accounting and tax adviser warned Dynegey that certain forms of risk-hedging in the transaction would undermine Dynegey's intended accounting for Alpha and require Dynegey to record the cash flow from Alpha as a financing activity, rather than as cash from operations. Dynegey's failure to follow this advice would also eliminate the tax benefit.

In April 2002, it became clear that Alpha did not conform to the explicit guidelines that Dynegey's accounting and tax adviser had established. As a result, Dynegey's accounting and tax adviser withdrew its opinion letters previously issued regarding Alpha, and in November 2002, Dynegey restated its 2001 financial statements to eliminate \$290 million, or 37%, of operating cash flow, and to eliminate the previously reported tax savings of \$79 million, reducing Dynegey's net income by 12%.

2. Project Alpha Overview

Alpha was essentially a \$300 million loan to Dynegey, disguised as cash from operations through the purchase and sale of natural gas. Dynegey received loan proceeds in 2001 in the form of contractually assured natural gas trading profits. The loan was to be repaid over Alpha's remaining term through contractually assured trading losses.³ While structured as a complex sale of natural gas, Alpha had no business purpose aside from minimizing Dynegey's taxes and narrowing the gap between Dynegey's net income and operating cash flow.

For Dynegey to report Alpha's cash flow as deriving from operating activity, rather than a loan, Dynegey's outside accounting and tax adviser required that Alpha exhibit characteristics of a commercial transaction. For instance, Dynegey and ABG Supply (the parties to the gas supply contract) were required to bear some amount of risk. To assure that such risk was present, the purchase price under the gas contract was partly fixed, exposing the buyer and seller to fluctuations in the market price of natural gas.⁴

³ More specifically, in the initial nine months of Alpha's five-year term, a Dynegey affiliate purchased gas from a Dynegey-sponsored SPE, ABG Supply, at below-market prices and then sold the gas in the market for a \$300 million profit. Dynegey is repaying the loan, with interest, over the remaining four years and three months, by purchasing gas from ABG Supply at above-market prices. The losses generated by this non-commercial pricing structure were the source of Alpha's tax benefit; Dynegey used the losses in 2001 as an offset against its taxable income, giving rise to a \$79 million increase in Dynegey's net income.

⁴ The purchase price is 86% variable and 14% fixed. In Alpha's first nine months, the 86% variable component was at market price, minus a pre-determined discount (i.e., NYMEX settlement price less a Base Period Price Adjustment). Over Alpha's remaining 51 months, the 86% variable component was at market prices, plus a pre-determined premium (i.e., NYMEX settlement price plus a Term Period Price Adjustment). For all 60 months, the remaining 14% was at a fixed price.

The parties to the gas contract planned to hedge this commodity price risk by entering into certain derivatives – fixed-for-floating swaps – to substitute the market price of natural gas for the fixed price. Similarly, the parties planned to hedge against fluctuating interest rates by executing interest rate swaps. Such hedging was necessary to guarantee the lenders’ return. Although the reduction of risk was acceptable to a point, Dynegey’s accounting and tax adviser warned that certain hedging activities would invalidate Alpha’s accounting benefits.

3. Issues Relating to Hedging

Dynegey’s accounting and tax adviser notified Dynegey that, for Alpha to qualify for the desired accounting treatment, Alpha’s commodity price swaps and interest rate swaps (and other derivatives) would have to be conducted in the ordinary course of business. Specifically, the swaps could not be linked to the gas contract or to each other. Any provision in one swap, such as a default provision, that would also have an effect on another swap, such as triggering an automatic termination or a right of termination, would require Dynegey to treat Alpha as a financing.⁵ Contrary to this advice, Dynegey entered into commodity price and interest rate swaps with contractual linkage in the form of cross-termination or “tear-up” provisions.⁶ Moreover, the impermissible tear-up provisions were documented in amendments to the swap confirmations, executed simultaneously with the confirmations they purported to amend.

The equity investors in ABG Supply and the other Alpha SPEs were required to be independent of Dynegey and contribute at least 3% (approximately \$10 million) of the SPE’s total capitalization. The 3% equity investment had to remain at risk throughout Alpha’s term, including exposure to the most significant risk in a gas purchase arrangement: commodity price risk.

On or about April 6, 2001, Dynegey’s accounting and tax adviser issued Dynegey a letter

⁵ As articulated in the technical memorandum in support of the April 6, 2001 tax opinion by Dynegey’s outside tax adviser (signed in conjunction with Alpha’s closing): “ABG (i) will not hedge its entire risk under the Natural Gas Purchase Agreement and (ii) to the extent its risks are hedged, they will not be directly hedged with [Dynegey], an affiliate of [Dynegey], or any other entities that are a party to the transaction other than in the ordinary course of business as a typical counterparty.”

⁶ Hedging of fixed-price exposure with Dynegey and ABG Supply as direct swap counter-parties was clearly prohibited. Instead, Dynegey and ABG Supply entered into back-to-back swaps with Citigroup Inc., placing Citigroup in the middle of mirror-image swaps. The tear-up provisions protected Citigroup by granting it the right to terminate one swap if the back-to-back swap was terminated. For example, were Dynegey to default on its swap, Citigroup would have the right to terminate (or “tear up”) its swap with ABG Supply, thereby relieving it of its obligation to make a swap payment. The tear-up provisions rendered the back-to-back swaps economically indistinguishable from direct hedges between Dynegey and ABG Supply and impermissibly linked the swaps together. On July 28, 2003, the Commission issued a settled cease-and-desist order against Citigroup, *In the Matter of Citigroup, Inc.*, Securities Exchange Act of 1934, Rel. No. 48230, and filed a settled civil suit against Citigroup in the Southern District of Texas, Houston Division, *SEC v. Dynegey Inc.* (H-02-3623). The Commission made findings in the cease-and-desist order (and alleged in the civil complaint) that Citigroup caused violations of Section 10(b) and Exchange Act Rule 10b-5, relating to its involvement in Project Alpha. Citigroup, without admitting or denying the Commission’s findings, agreed to the issuance of the cease-and-desist order and paid a civil penalty in the related civil suit.

under Statement on Auditing Standards 50 (the “SAS 50 letter”). The SAS 50 letter instructed that any hedging of commodity price risk could not extend to the minimum 3% equity investment in the SPE ABG Supply. The SAS 50 letter also rested on representations that, aside from certain specified derivative transactions, there would be “no residual insurance, residual guarantee, or any other type of investment or instrument . . . that would ensure ABG’s equity investors’ recovery of their portion of the ABG required minimum equity investment.” The SAS 50 opinion also was based on an assumption that the “equity contributed will be . . . at risk for the life of ABG [Supply]” and “will not be guaranteed in recovery or return through financial hedges or other mechanisms.” The 97% debt capitalization could, however, be hedged, and face no commodity price risk.⁷

Contrary to these principles, Dynegy and certain of its employees facilitated the equity investors’ hedging of all price and interest rate risk – at Dynegy expense – and even funded a swap that ensured the equity investors would have a claim functionally equivalent to Dynegy senior unsecured credit. In particular, the equity investors established a holding company – ABG Holdings LLC – as ABG Supply’s parent. ABG Holdings housed the equity investments and executed the hedges that protected the equity. Because of the ABG Holdings hedges, the equity was not at risk under GAAP.

Further, according to the April 6, 2001 opinion issued by Dynegy’s accounting and tax adviser, the Internal Revenue Service requires that structured tax transactions, at a minimum, have some non-tax business justification. According to the tax opinion, Dynegy’s desired *accounting treatment* of the Alpha cash flow – as flowing from operations, as opposed to financing – constituted the primary non-tax business justification for Alpha. Consequently, when Dynegy publicly disclosed that it would restate its 2001 cash flow statement to reflect the Alpha cash flow as financing, rather than operating cash flow, the accounting and tax adviser withdrew the tax opinion.

4. The Restatement

On April 3, 2002, the Wall Street Journal published an article reporting that Dynegy used Alpha to enhance its financial presentation and minimize its tax liabilities. The SEC then contacted Dynegy to inquire about the transaction. After learning of the equity investors’ hedging and the contractual linkage among the swaps and underlying gas contract, Dynegy’s tax and accounting adviser withdrew the tax opinion and SAS 50 opinion in April 2002.

On September 24, 2002, the Commission entered a settled cease-and-desist order against Dynegy making findings that Dynegy engaged in securities fraud in connection with its disclosures and accounting for Alpha. The Commission ordered Dynegy to cease and desist from violating, committing or causing violations of Sections 17(a) of the Securities Act, and Sections 10(b), 13(a)

⁷ Under GAAP, were the equity not at risk, ABG Supply would have to be consolidated in Dynegy’s financial statements. If ABG Supply were consolidated, its borrowing from the lending syndicate to cover its losses in making the below-market sales of gas to Dynegy in Alpha’s initial nine months (i.e., the \$300 million loan to Dynegy) would appear on Dynegy’s Statement of Cash Flow as cash flow from financing (i.e., debt), rather than operating, activities.

and 13(b)(2) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-13 and 13b2-1 thereunder. On September 30, 2002, the U.S. District Court for the Southern District of Texas entered a Final Judgment by consent in which Dynegy was ordered to pay a \$3 million civil penalty for its violations of the federal securities laws described above.

On November 15, 2002, Dynegy filed a Form 8-K restating its 2001 financial results by reporting approximately \$290 million of Alpha-related cash flow as deriving from a financing activity rather than operations; eliminating the \$79 million Alpha-related income tax benefit; and consolidating the assets, liabilities and results of operations of the SPE ABG Gas Supply into Dynegy's financial statements, increasing Dynegy's reported indebtedness by approximately \$280 million. The increased debt reflects ABG Supply's borrowing to cover the losses it sustained during the first year of Alpha.

5. Doty's Role

Doty, Dynegy's then-CFO, was involved in the decision to proceed with Alpha in order to minimize the gap between Dynegy's reported net income and operating cash flow, and to realize a related tax benefit. In addition, Doty was involved in the decision not to make any separate disclosure of Alpha's unique, non-commercial pricing characteristics, or that 37% of Dynegy's 2001 operating cash flow originated from a syndicate of off-balance-sheet lenders, or that 12% of Dynegy's net income derived from a tax shelter that had never been tested in court or approved by the IRS. Doty knew or was reckless in not knowing that these and other characteristics of Alpha rendered Dynegy's financial presentation inaccurate and required separate disclosure of Alpha.

Further, Doty took no steps to prohibit or monitor hedging of risks by the sophisticated financial institutions serving as equity investors. Finally, Doty knew that Alpha's primary business purposes were minimizing taxes and manufacturing operating cash flow. Nonetheless, when Alpha's existence was exposed in an April 3, 2002 newspaper article, Doty emphasized the "substantial source of physical gas supply" provided by Alpha, while downplaying Alpha's cash-flow effects.

D. LEGAL ANALYSIS

Section 17(a) of the Securities Act prohibits employing a fraudulent scheme or making material misrepresentations and omissions in the offer or sale of a security. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit the same conduct, if committed in connection with the purchase or sale of securities. To violate these provisions, the alleged misrepresentations or omitted facts must be material. Information is deemed material upon a showing of a substantial likelihood that the omitted facts would have assumed significance in the investment deliberations of a reasonable investor. *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988). Establishing violations of Section 17(a)(1) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder requires a showing of *scienter*. *Aaron v. SEC*, 446 U.S. 680 (1980). However, actions pursuant to Sections 17(a)(2) and 17(a)(3) of the Securities Act do not require such a showing. *Id.* *Scienter* is the "mental state embracing intent to deceive, manipulate or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976). *Scienter* is established by a showing that the defendants

acted intentionally or with severe recklessness. *See Broad v. Rockwell International Corp.*, 642 F.2d 929 (5th Cir.) (*en banc*), *cert. denied*, 454 U.S. 965 (1981).

Respondent willfully violated the antifraud provisions of the Securities Act and the Exchange Act.⁸ Respondent was one of Dynegy's senior reporting officials. Alpha was an undisclosed, highly complex transaction that incorrectly reported the source of Dynegy's cash flow and dramatically overstated Dynegy's cash flow from operations. Doty signed Dynegy's 2001 Form 10-K, which misstated Alpha's impact on Dynegy's financial statements. Because of Respondent's failure to ensure appropriate accounting treatment and failure to disclose the financing transactions underlying Alpha, Dynegy's financial performance was materially misstated. There is a substantial likelihood that these false representations and associated omissions would have assumed actual significance in the investment deliberations of a reasonable investor. As a result of the conduct stated herein, Respondent violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Section 13(a) of the Exchange Act requires issuers such as Dynegy to file periodic reports with the Commission containing such information as the Commission prescribes by rule. Exchange Act Rule 13a-1 requires issuers to file annual reports, and Exchange Act Rule 13a-13 requires issuers to file quarterly reports. Under Exchange Act Rule 12b-20, the reports must contain, in addition to disclosures expressly required by statute and rules, such other information as is necessary to ensure that the statements made are not, under the circumstances, materially misleading. The obligation to file reports includes the requirement that the reports be true and correct. *United States v. Bilzerian*, 926 F.2d 1285, 1298 (2d Cir.), *cert. denied*, 502 U.S. 813 (1991). The reporting provisions are violated if false and misleading reports are filed. *SEC v. Falstaff Brewing Corp.*, 629 F.2d 62, 67 (D.C. Cir. 1980). *Scienter* is not an element of a violation of Section 13(a) or Rules 13a-1, 13a-13 or 12b-20 of the Exchange Act. *See SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1167 (D.C. Cir. 1978).

Dynegy violated these provisions by filing second and third quarter 2001 Forms 10-Q and a 2001 Form 10-K that were false and misleading. Dynegy's false accounting treatment of Alpha, and the absence of any clarifying disclosure of Alpha's true purpose and effect, caused the violations. Dynegy should have treated the cash flow from Alpha as a loan and ABG Supply should have been consolidated in Dynegy's financial statements, which would have had numerous material effects on Dynegy's financial statements. If consolidated, ABG Supply's \$300 million borrowing to fund the losses during the first nine months of the Gas Contract would have been reflected as cash flow from financing activities, rather than operations, on Dynegy's Statement of Cash Flow; the liability associated with Alpha would have appeared as debt on Dynegy's Balance Sheet, rather than risk-

⁸ Respondent's misrepresentations and omissions relating to Alpha were committed in connection with purchases and sales of Dynegy securities on the secondary market, and violated, therefore, Section 10(b) of the Exchange Act and Rule 10b-5, thereunder. Because Dynegy's Alpha-related misrepresentations and omissions were contained in Dynegy's second and third quarter 2001 Forms 10-Q and its 2001 Form 10-K, which are incorporated by reference in the registered securities offerings Dynegy was conducting during the period, and in the Dynegy financial statements distributed in connection with those offerings, those Alpha-related misrepresentations and omissions also violated Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act.

management liability; and the tax benefit would not have been available to Dynegy, meaning that Dynegy's net income would have been reduced by \$79 million on Dynegy's Income Statement. By the conduct described herein, Respondent aided and abetted or caused Dynegy's violations of Exchange Act Section 13(a) and Rules 13a-1, 13a-13 and 12b-20 thereunder.

Section 13(b)(2)(A) of the Exchange Act requires all issuers to make and keep books, records, and accounts that, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets. Section 13(b)(2)(B) of the Exchange Act requires issuers to devise and maintain an adequate system of internal accounting controls. *Scienter* and materiality are not elements of a violation of these provisions. *SEC v. World-Wide Coin Inv., Ltd.*, 567 F. Supp. 724, 749-50 (N.D. Ga. 1983). Section 13(b)(5) of the Exchange Act provides that "no person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record, or account described [in Section 13(b)(2)]."

Dynegy, through its treatment of Alpha, violated Section 13(b)(2)(A) by failing to keep books, records and accounts that accurately and fairly reflected its assets and financial results. Dynegy violated Section 13(b)(2)(B) by failing to devise and maintain a system of internal controls sufficient to provide reasonable assurances that structured transactions involving special purpose entities are recorded as necessary to permit preparation of financial statements in conformity with GAAP. Respondent aided and abetted or caused these violations by the conduct described herein. Through the same conduct, Doty also violated Section 13(b)(5) of the Exchange Act.

Exchange Act Rule 13b2-1 (promulgated under Section 13(b)(2) of the Exchange Act) prohibits any person from falsifying or causing to be falsified any accounting books and records of reporting public companies. *Scienter* is not an element of a violation of Rule 13b2-1. *SEC v. McNulty*, 137 F.3d 732 (2d Cir. 1998). Respondent's falsification of Dynegy's books in connection with Alpha effectively disguised a loan as operating cash flow in violation of Exchange Act Rule 13b2-1.

IV.

Based on the foregoing, the Commission finds that:

Doty willfully violated Section 17(a) of the Securities Act, Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5 and 13b2-1 thereunder; and willfully aided and abetted and caused Dynegy's violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20, 13a-1 and 13a-13 promulgated thereunder.

V.

In determining whether to accept the Offer, the Commission has considered the following undertakings:

A. Doty undertakes and agrees to pay a civil penalty of \$120,000, which shall be available for allocation in accordance with Section 308 of the Sarbanes-Oxley Act of 2002. Doty consents to pay the civil penalty in a separately filed civil action.

B. Doty undertakes and agrees that, for a period of five years, he will not act as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78(l)] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)]. Doty consents to the imposition of the officer and director bar in a separately filed civil action.

C. Doty undertakes and agrees to cooperate with the Commission and its staff in any further investigation of this matter.

VI.

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

Accordingly, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, and Rule 102(e)(1)(iii) of the Commission's Rules of Practice, it is hereby ORDERED, effective immediately, that:

A. Respondent Doty shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5 and 13b2-1 thereunder, and cease and desist from aiding and abetting or causing violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13 thereunder.

B. Within thirty days of the entry of this Order, Doty shall pay disgorgement of \$200,000, plus prejudgment interest of \$56,560, which shall be delivered into the Registry of the Court for the United States District Court for the Southern District of Texas by wire transfer or certified check made payable to Clerk, United States District Court. Such funds shall thereafter be distributed in the course of litigation pending in the United States District Court for the Southern District of Texas, captioned *Securities and Exchange Commission v. Dynegy Inc.*, Civil Action No. H-02-3623 (S.D. Tex. 2002). Simultaneously, Respondent shall transmit by facsimile or hand delivery to Andy Gould, Clerk's Office, United States District Court for the Southern District of Texas, a letter that describes the fact and purpose of the wire transfer or certified check, identifies the Respondent, and identifies the case name and number of the Dynegy litigation. A copy documentary proof of the wire transfer or certified check and a copy of the letter to the Clerk shall be simultaneously transmitted by facsimile to Rose L. Romero, Fort Worth Regional Director, Securities and Exchange Commission, 801 Cherry Street, 19th Floor, Fort Worth, Texas 76102, (817) 978-2700 (facsimile).

C. Doty is denied the privilege of appearing or practicing before the Commission as an accountant.

D. After five years from the date of this Order, Doty 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 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

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

(a) Doty, 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) Doty, 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 adequate supervision;

(c) Doty 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) Doty acknowledges his responsibility, as long as he appears or practice 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.

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

F. There shall be, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund established for the funds described in this Order.

By the Commission.

Nancy M. Morris
Secretary