

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60076 / June 9, 2009

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2988 / June 9, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13510

In the Matter of

RICHARD MILLER (CPA),

Respondent.

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: **ORDER INSTITUTING**
: **ADMINISTRATIVE**
: **PROCEEDINGS PURSUANT TO**
: **RULE 102(e) OF THE**
: **COMMISSION'S RULES OF**
: **PRACTICE, MAKING**
: **FINDINGS, AND IMPOSING**
: **REMEDIAL SANCTIONS**
:

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Richard Miller (“Respondent” or “Miller”) pursuant to Rule 102(e)(3)(i) of the Commission’s Rules of Practice.¹

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, and the findings contained in Section III,

¹ Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, ...suspend from appearing or practicing before it any...accountant...who has been by name...permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

paragraph 3, below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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

1. Miller, age 52, is and has been a certified public accountant licensed to practice in the State of Ohio. He served as Chief Financial Officer of Cardinal Health, Inc. ("Cardinal") from 1998 until his resignation in July 2004.
2. Cardinal was, at all relevant times, an Ohio corporation with its principal place of business in Dublin, Ohio. Cardinal was, and continues to be, engaged in the business of developing and distributing health care and pharmaceutical products and services. At all relevant times, Cardinal's common stock was registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act"), and traded on the New York Stock Exchange.
3. On May 27, 2009, the Commission filed a complaint against Miller in SEC v. Richard Miller, et al., Civil Action No. 09-CV-4945, in the United States District Court for the Southern District of New York. On May 29, 2009, the court entered an order permanently enjoining Miller, by consent, from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5, 13b2-1, 13b2-2, and 13a-14 thereunder, and aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder. Miller was also ordered to pay a \$120,000 civil money penalty.
4. The Commission's complaint alleged, among other things, that, at different times from at least September 2000 through at least March 2004, Miller and other former senior accounting and finance officers of Cardinal engaged in a fraudulent earnings and revenue management scheme to inflate Cardinal's publicly reported operating revenue, earnings and growth trends. The Complaint alleged that Miller engaged in a number of improper accounting and disclosure practices that materially misrepresented Cardinal's publicly reported revenue, earnings, and growth trends. These practices included, among other things: misclassifying bulk sales as operating revenue to overstate reported operating revenue; overstating quarterly earnings by selectively accelerating the recognition of cash discount income; improperly establishing and/or using a general reserve account and directing or approving the adjustment of various reserve accounts to meet earnings projections in a departure from generally accepted accounting principles ("GAAP"); and improperly classifying expected litigation settlement proceeds to inflate earnings, in a further departure from GAAP. In addition, the Complaint alleged that Miller signed at least one materially false and misleading management representation letter to Cardinal's external auditor and signed certifications

falsely certifying the accuracy of the financial statements and disclosures in Cardinal's periodic filings.

On October 26, 2004, as described in the Complaint, Cardinal restated its financial results for fiscal years 2000 to 2003 and for the first three quarters of fiscal year 2004. In its restatement, Cardinal disclosed, among other things, that it had improperly classified \$1.2 billion of bulk revenue as operating revenue and that Cardinal had an undisclosed practice of accelerating payment of vendor invoices at the end of certain reporting periods, which improved operating results for those periods. The restatement (as subsequently corrected) also reduced Cardinal's net earnings by a cumulative total of \$65.9 million, due to Cardinal's adjustments to reserves and other accruals, which were restated as a result of misapplications of GAAP, other errors or an absence of substantiation. In addition, Cardinal reversed, reclassified and recognized in a later period the \$22 million of expected litigation settlement proceeds it had previously recognized during the second quarter of fiscal year 2001 and the first quarter of fiscal year 2002.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to accept Respondent Miller's Offer.

Accordingly, it is hereby ORDERED, effective immediately that:

A. Miller is suspended from appearing or practicing before the Commission as an accountant.

B. After five 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:

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) 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;

(b) 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;

(c) 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

(d) 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.

C. 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