UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8759 / December 11, 2006

SECURITIES EXCHANGE ACT OF 1934
Release No. 54907 / December 11, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2523 / December 11, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12502

In the Matter of **MICHAEL S. JOSEPH, CPA** **Respondent.**	**ORDER INSTITUTING PUBLIC ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS 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, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Michael S. Joseph ("Joseph" or "Respondent") pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.[1]

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[1] Rule 102(e)(1)(ii) 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 engaged in unethical or improper professional conduct.

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement of Michael S. Joseph (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 Joseph 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 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, 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 Respondent's Offer, the Commission finds[2] that:

A. SUMMARY

This action concerns violations by Respondent Michael S. Joseph of certain of the antifraud, reporting, and recordkeeping provisions of the federal securities laws, as well as auditor independence standards. During 2001, Joseph was a partner in the national office of Ernst & Young LLP ("E&Y"). That year, Joseph helped develop and market an accounting product for one client, American International Group, Inc. ("AIG"), and then worked with an E&Y audit team to advise an E&Y audit client, The PNC Financial Services Group, Inc. ("PNC"), on the accounting treatment for a version of that product.[3]

AIG's product purported to enable a public company to transfer volatile financial assets to a special purpose entity ("SPE") and thereby to remove those assets from the public company's financial statements. AIG sold three of these accounting products to PNC in 2001. As a result, PNC improperly excluded certain assets from its consolidated financial statements. Joseph advised PNC that the accounting for each of these transactions conformed to GAAP, even though Joseph should have known that this advice was inaccurate. Subsequently, PNC filed with the Commission several Forms 10-Q and the registration statements for PNC securities, yet these filings were materially misleading in that they incorporated improper accounting of the SPE transactions. In January 2002, PNC announced that it would restate its financial statements for the second and third

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[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 proceeding.

[3] The Commission previously brought settled proceedings against both PNC and AIG related to their roles in these matters. PNC Financial Services Group, Inc., Securities Act Release No. 8112, Exchange Act Release No. 46225, Accounting and Auditing Enforcement Release No. 1597 (July 18, 2002); SEC v. American International Group, Inc., No. 1:04CV02070 (GK) (D.D.C. judgment entered Dec. 7, 2004).

quarters of 2001, and revise its previously announced financial results for the fourth quarter and year-end of 2001.

Joseph advised PNC, in connection with E&Y's work as PNC's auditor, on the appropriateness of the accounting treatment of the SPE product that he had helped AIG develop and market. Accordingly, Joseph compromised his and his firm's auditor independence required by generally accepted auditing standards ("GAAS") and Regulation S-X of the Commission's rules and regulations. Additionally, because Joseph should have known that the accounting treatment for the product that AIG sold to PNC did not conform with GAAP and would result in materially misleading filings by PNC, he was a cause of PNC's violation of certain antifraud, reporting and recordkeeping provisions of the federal securities laws.

B. RESPONDENT

Michael S. Joseph, age 55, was employed by E&Y from June 1972 until June 1981 and again from June 1983 until 2005. At all relevant times, he was a partner in E&Y's National Office. In 2001, he was a nationally recognized expert on the accounting for structured financial vehicles and SPEs. At that time, his duties in the National Office consisted of advising E&Y accountants on local engagement teams regarding complex accounting issues, and advising audit and non-audit clients on the accounting ramifications of financial products that they developed and planned to market. Joseph, at all relevant times was licensed to practice as a certified public accountant in both New York and Illinois.

C. RELEVANT ENTITIES

Ernst & Young LLP, is a national accounting firm with its headquarters in New York, New York. At all relevant times, E&Y provided auditing services to PNC. Specifically, E&Y was responsible for, among other things, the audit of PNC's consolidated financial statements, interim reviews of quarterly financial statements, reviews and consultations pertaining to filings with the SEC, and internal control reviews. While serving as auditor and consultant for PNC, E&Y also was employed as a consultant for AIG with responsibility for addressing GAAP compliance issues during the product design stage of an SPE accounting product ultimately used in transactions between AIG and PNC.

American International Group, Inc. is a Delaware Corporation with its principal place of business in New York, New York. Through its subsidiaries, AIG is engaged in a broad range of insurance-related and asset management activities in the United States and abroad.

The PNC Financial Services Group, Inc. is a Pennsylvania corporation with its principal place of business in Pittsburgh, Pennsylvania. PNC is a bank holding company that is regulated by the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of Cleveland (together the "Federal Reserve") and has a national bank subsidiary that is regulated by the Comptroller of the Currency.

D. FACTS

1. Development and Marketing of the C-GAITS Product

In early 2001, AIG engaged Joseph to help develop a financial product, known as a Contributed Guaranteed Alternative Investment Trust Security ("C-GAITS"). The C-GAITS product purported to enable a public company to reduce the earnings impact of potentially volatile assets by transferring those assets from the public company's balance sheet to an SPE established by AIG. Under the C-GAITS structure, the SPE was to be consolidated onto AIG's balance sheet, but the public company still would hold a substantial interest in the SPE. Under GAAP, this transfer of assets and consolidation onto AIG's balance sheet required that AIG make a substantive capital investment into the SPE[4] constituting at least 3% of the total assets in the SPE.[5] GAAP further provided that a fee for structuring the transaction (*i.e.*, a "structuring" fee), would be treated as a return of AIG's initial capital investment and correspondingly reduce that investment.[6] Thus, if AIG invested only 3% in the SPE, any structuring fee that AIG received would be counted against AIG's investment, reducing it below the required 3% minimum required by GAAP to achieve the desired nonconsolidation accounting.

To assist AIG in its marketing of the C-GAITS product, Joseph caused E&Y to issue reports pursuant to Statement on Auditing Standards No. 50, *Reports on the Application of Accounting Principles* ("SAS 50 letters").[7] The SAS 50 letters represented that the favorable nonconsolidation accounting treatment for the assets transferred to the SPE established in a proposed C-GAITS transaction was an appropriate application of GAAP. As intended, AIG used the E&Y SAS 50 letters to promote the C-GAITS product. AIG also relied extensively on Joseph's advice as it attempted to sell the product. For example, AIG referred to E&Y's advice in its marketing materials and referred potential buyers directly to Joseph to answer accounting-related questions. Joseph reviewed and edited term sheets for at least two proposed C-GAITS deals. On several occasions, Joseph also participated in conference calls with AIG when it was marketing the C-GAITS product.

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4 Emerging Issues Task Force, Topic D-14, *Transactions Involving Special Purpose Entities*.

5 Emerging Issues Task Force, Issue No. 90-15, *Impact of Nonsubstantive Lessors, Residual Value Guarantees, and Other Provisions in Leasing Transactions*, Response to Question No. 3.

6 Emerging Issues Task Force Issue No. 96-21, Response to Question No. 6.

7 A "SAS 50" letter is a report issued by an accounting firm that provides accounting guidance to a non-audit client. A SAS 50 letter could provide accounting guidance on the audit opinion on a specific entity's financial statements, new transactions, or hypothetical transactions. These letters frequently were used for marketing purposes by non-audit clients. SAS No. 50 was amended in June 2002 by Statement on Auditing Standards No. 97, *Amendment to Statement on Auditing Standards No. 50, Reports on the Application of Accounting Principles*. Accountants are now prohibited from providing a report on accounting principles concerning hypothetical transactions.

From March 2001 through January 2002, AIG marketed the C-GAITS product, with the assistance of Joseph, to several public companies. Despite its marketing effort, though, AIG sold the product only to PNC. AIG ultimately closed three C-GAITS deals with PNC.[8]

2. PNC's Second Quarter 2001

Around the beginning of June 2001, AIG marketed a C-GAITS product to PNC, known as PAGIC I, using a SAS 50 letter written by Joseph. Throughout its negotiations with AIG that month, PNC management consulted with the E&Y audit engagement team, which, in turn, consulted with Joseph to determine the proper accounting treatment for PAGIC I. In fact, when PNC began considering PAGIC I, PNC senior management contacted the E&Y engagement team and requested formal written guidance on the accounting treatment for the transaction. The engagement team then contacted Joseph.

Joseph provided the engagement team with the SAS 50 letter he previously had written for AIG, for use as a template for the PNC accounting guidance letter. Joseph also discussed accounting issues with the team. Joseph billed his time for this work to PNC's audit account. Without performing any meaningful separate analysis, the E&Y engagement team incorporated virtually verbatim into the guidance letter the accounting analysis and conclusions that Joseph had included in his earlier SAS 50 letter.[9] Joseph reviewed drafts of the guidance letter and approved issuance of the final letter. The guidance letter provided PNC with a written opinion memorializing E&Y's view that PNC's nonconsolidation of the SPE conformed with GAAP.

While E&Y was analyzing the contemplated accounting for the transaction, questions about the nature of the fee paid to AIG were raised. Joseph knew that the desired nonconsolidation of the assets transferred to the SPE would not conform with GAAP unless the fees paid to AIG in the deal were for actual services that AIG provided to the SPE, rather than merely for setting up the deal – also known as a "structuring" fee. In fact, the fees paid to AIG in the PAGIC transactions were intended by AIG to compensate AIG for structuring the transactions and not for providing management services.

Joseph should have known that AIG's fee – characterized as a "Fee to the Managing Member" – was not for management services. At a minimum, there were numerous red flags highlighting the true nature of the fee. Among other things, the deal documents showed that even though AIG was nominally responsible for managing the affairs of the SPE, it did not have many duties to perform as managing member. The major responsibility in managing the SPE

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8 The transactions were referred to respectively as PAGIC I, PAGIC II, and PAGIC III. The C-GAITS transactions initially contemplated the transfer of equity assets to the SPE, while PAGIC I and PAGIC II transferred troubled loan assets. The applicable accounting principles relevant to this action are the same for the PAGIC and C-GAITS transactions.

9 Each guidance letter for each of the three PAGIC transactions included a factual description of the particular transaction for which the guidance letter was written and a discussion of accounting issues. The factual descriptions in the letters differed, but the discussion of the accounting issues was virtually identical to the corresponding discussion in the SAS 50 letter.

was processing the loans that PNC had sold to the SPE. However, PNC had a side agreement with the SPE providing that PNC would service the loans, subject to AIG's review and approval. For this service, PNC was paid 50 basis points (i.e., .005) of the value of the assets in the SPE. Moreover, PNC's fee for servicing the loans was paid directly by the SPE, not out of AIG's 75-basis-point fee. In addition, the transaction documents stated that AIG's fee, subject to some minor conditions, would be paid for five years, even in the event of early termination. Thus, if PNC decided to terminate the SPE after two years, AIG would still receive the present value of the remaining three years of fees. The funding mechanism for paying this fee also provided that the fee would always be paid out first before virtually all other expenses of the SPE. Finally, AIG's five-year fee added up to a little more than its 3% initial capital investment in the SPE, suggesting a round-trip of AIG's initial 3% investment in the SPE.

The written guidance letter provided to PNC did not discuss AIG's fee and on June 28, 2001, PNC closed PAGIC I with AIG.

On August 14, 2001, PNC filed a Form 10-Q for the second quarter of 2001 with the Commission.[10] The Form 10-Q included the second quarter financial statements that E&Y had reviewed. In those financial statements, PNC excluded from its balance sheet the assets it had transferred to the SPE in the PAGIC I transaction. The financial statements reflected that PNC had $374 million in nonperforming loan assets and $16 million in other nonperforming assets. These figures did not include $84 million in nonperforming assets among the $257 million of loan assets that PNC had transferred to the SPE. PNC's second quarter Form 10-Q did not provide any disclosure concerning the PAGIC I transaction.

3. PNC's Third Quarter 2001

During the third quarter of 2001, Joseph continued to assist AIG in marketing the C-GAITS product to other public companies. In September 2001, Joseph and another partner from E&Y's National Office accompanied an AIG marketing team to pitch the C-GAITS product to another public company that was not an E&Y audit client. Also in September 2001, E&Y's engagement team and Joseph advised PNC on a second PAGIC transaction with AIG, which closed on September 27, 2001. PNC again relied on E&Y's and Joseph's advice. Once again, E&Y agreed to provide PNC with a written guidance letter memorializing E&Y's opinion that nonconsolidation was the appropriate accounting treatment for PAGIC II. As before, E&Y incorporated virtually verbatim into the guidance letter the accounting analysis and conclusions that Joseph had included in his earlier SAS 50 letter. Joseph once again reviewed and approved the issuance of the guidance letter.

10 E&Y performed a review of PNC's financial statements for the second quarter of 2001 and subsequently for the third quarter of 2001. The E&Y engagement team did not perform a separate analysis of PNC's accounting for the PAGIC transactions. In evaluating the accounting for the transactions, the E&Y team instead incorporated and relied on Joseph's analysis, including the written guidance letter issued to PNC, which mirrored the SAS 50 letters he provided to AIG. As a result, E&Y's conclusion on the appropriateness of PNC's accounting essentially was based on work performed by Joseph for AIG during the design of the product.

On September 18, 2001, PNC filed with the Commission a registration statement on Form S-3 (the "September 18, 2001 registration statement") that would allow it to offer and sell approximately $4 billion of common stock, preferred stock, warrants, guarantees, depositary shares and debt securities. This filing was for a shelf registration of these securities, such that PNC could offer and sell the registered securities from time to time pursuant to applicable rules of the Commission. The September 18, 2001 registration statement incorporated by reference, among other things, the Form 10-Q filed with the Commission by PNC for the second quarter of 2001.

On October 1, 2001, a few days after PAGIC II closed, Joseph sent to AIG a revised term sheet with his edits for a C-GAITS deal that AIG was pitching to another public company. The term sheet featured an AIG initial capital investment of approximately 5%, and described AIG's fee as a "structuring" fee. The provisions surrounding the "structuring" fee virtually mirrored the terms surrounding what had previously been named the "fee" in previous drafts of the term sheet. This similarity should have been another significant red flag to Joseph that the "Fee to the Managing Member" in all of the PAGIC deals was in fact a structuring fee. Only days earlier, however, PAGIC II, which relied on the advice of Joseph, closed with deal documents that provided for only a 3% investment by AIG, and labeled AIG's fee a "Fee to the Managing Member."

In an October 18, 2001 press release, PNC announced that its earnings per share for the third quarter of 2001 were $1.02. The press release noted, "Loans declined $8.5 billion from December 31, 2000 to $42.1 billion at September 30, 2001 as a result of ongoing efforts to reduce lending leverage." The press release later noted, "Total assets were $71.9 billion at September 30, 2001 compared with $69.9 billion at September 30, 2000. Average interest-earning assets were $57.9 billion for the third quarter of 2001 compared with $59.7 billion for the third quarter of 2000. The decrease was primarily due to a $2.5 billion decrease in commercial loans related to initiatives to downsize certain higher-risk, non-strategic portfolios."

The October 18, 2001 press release further stated that PNC had $361 million in nonperforming loans and $13 million in other nonperforming assets. These figures did not include a total of $207 million in nonperforming assets among the assets that PNC had transferred to the SPEs in the two PAGIC transactions. Significantly, this release made no mention of the two PAGIC transactions into which PNC had entered by October 18, 2001.

Certain financial results set forth in the October 18, 2001 press release were also set forth in a prospectus relating to an offering made pursuant to the September 18, 2001 registration statement, which prospectus was filed with the Commission on October 25, 2001 and utilized in the offer and sale of approximately $1 billion of debt securities on or about October 29, 2001. In particular, the prospectus announced that PNC's earnings per share for the third quarter of 2001 were $1.02.

On November 14, 2001, PNC filed a Form 10-Q for the third quarter of 2001 with the Commission. The Form 10-Q included the third quarter financial statements that E&Y had reviewed. In those financial statements, PNC excluded from its balance sheet the assets it transferred in the two PAGIC transactions, and reported that PNC's earnings per share for that quarter were $1.02 per share. The financial statements reflected that PNC had $361 million in nonperforming loan assets and $13 million in other nonperforming assets. These figures did not include a total of $207 million in nonperforming assets among the $592 million of loan assets that PNC had transferred to the SPEs in the PAGIC transactions. PNC's third quarter Form 10-Q did not provide any disclosure concerning the completed PAGIC transactions.

4. PNC's Fourth Quarter 2001

Throughout October and November 2001, Joseph continued his marketing efforts on behalf of AIG, and on November 29, 2001, Joseph caused E&Y to issue another SAS 50 letter for AIG's negotiations with yet another public company. Joseph's new SAS 50 letter identified the fee to AIG as a "structuring" fee and mentioned that a structuring fee could reduce the amount of AIG's initial capital investment in the SPE. The structuring fee issue was included in the SAS 50 letter at the insistence of the counterparty public company. Also at about the same time, Joseph conferred with another E&Y audit client regarding a potential C-GAITS transaction with AIG.

On October 23, 2001, the Federal Reserve sent a letter to PNC expressing concern about PNC's accounting for the assets transferred in the first PAGIC transaction. Joseph worked at PNC's behest to address the Federal Reserve's concerns and to defend the accounting. During the same October-to-November period, Joseph, through E&Y's engagement team advised PNC on the accounting treatment for a third PAGIC transaction with AIG, which closed on November 29, 2001.[11] Again, Joseph reviewed and approved the issuance of a formal guidance letter to PNC memorializing E&Y's opinion concerning the accounting treatment for PAGIC III. As before, the guidance letter incorporated virtually verbatim the accounting analysis and conclusions that Joseph had included in the SAS 50 letter.

Also in November 2001, another of E&Y's banking audit clients discussed with the Federal Reserve the accounting for a C-GAITS transaction that the audit client was contemplating. On or about December 4, 2001, the Federal Reserve informed E&Y's client of its view that the proposed accounting was not in conformity with GAAP. Joseph worked at AIG's request to defend the proposed accounting for the transaction.

On December 6, 2001, PNC filed with the Commission a registration statement on Form S-8, in order to register the offer and sale of certain shares of common stock. This registration statement incorporated by reference the Forms 10-Q filed by PNC with the Commission for the second and third quarters of 2001.

On January 11, 2002, the Federal Reserve directed PNC to consolidate the assets of the three PAGIC SPEs in its bank holding company regulatory reports for 2001. Thereafter, on January 29, 2002, PNC announced it would reverse the accounting for all three PAGIC transactions, restate its financial statements for the second and third quarters of 2001, and revise

[11] The assets to be transferred to the PAGIC III SPE were equity assets, including venture capital investments. The accounting principles at issue in this matter were the same for all three PAGIC transactions.

its previously announced fourth quarter and full-year 2001 financial results. After the consolidation, PNC reflected a $155 million charge to PNC's earnings, a $0.53 per share drop (equivalent to 38%) in PNC's previously reported earnings per share for 2001, and an $0.18 per share drop (approximately 18%) in PNC's earnings per share as reported in the company's original Form 10-Q for the third quarter of 2001.

E. LEGAL ANALYSIS

1. Joseph Caused PNC to Violate Reporting and Recording-Keeping Provisions

Section 13(a) of the Exchange Act requires issuers of registered securities to file periodic reports with the Commission containing information prescribed by Commission rules and regulations. Exchange Act Rule 13a-13 requires the filing of quarterly reports on Form 10-Q, and Exchange Act Rule 12b-20 requires that, in addition to the information required by Commission rules to be included in periodic reports, such further material information as may be necessary to make the required statements not misleading also must be included. Periodic reports must be complete and accurate.

Section 13(b)(2)(A) of the Exchange Act requires issuers to "make and keep books, records, and accounts, which in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer." "A company's 'books and records' include not only general ledgers and accounting entries, but also memoranda and internal corporate reports." In the Matter of Gibson Greetings, Inc., Ward A. Cavanaugh, and James H. Johnsen, Admin. Proc. File No. 3-8866, Release No. 34-36357, 60 SEC Docket 1401 (Oct. 11, 1995).

PNC's accounting for the three PAGIC transactions did not conform with GAAP because, in each, AIG received a structuring fee which consequently reduced AIG's initial capital investment in the SPE below the 3% minimum required for nonconsolidation. Because the PAGIC transactions did not satisfy the criteria for nonconsolidation of SPEs, PNC should have consolidated the PAGIC entities in PNC's financial statements. PNC improperly excluded the PAGIC entities' assets from PNC's balance sheet included in its Forms 10-Q for the quarters ended June 30 and September 30, 2001, and materially overstated its earnings for the third quarter of 2001. In addition, the amounts of nonperforming assets were also materially understated in these filings. Accordingly, PNC violated Section 13(a) of the Exchange Act and Exchange Act Rules 13a-13 and 12b-20. Similarly, because PNC improperly accounted for the PAGIC transactions, PNC failed to maintain accurate books and records and consequently violated Section 13(b)(2)(A). Because Joseph should have known that PNC's accounting for the PAGIC transactions was not in conformity with GAAP, and by his conduct described above, Joseph was a cause of PNC's violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Exchange Act Rules 13a-13 and 12b-20.

2. Joseph Caused PNC to Violate Antifraud Provisions

Sections 17(a)(2) and 17(a)(3) of the Securities Act make it unlawful, in the offer or sale of securities, by the use of any means or instruments of transportation or communication in interstate commerce, or the mails, to obtain money or property by means of an untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

In its Forms S-3 and S-8 filed in September and December 2001, respectively, PNC offered its securities for sale. Those filings incorporated by reference PNC's Form 10-Q for the second quarter of 2001. The December filing also incorporated PNC's Form 10-Q for the third quarter of 2001. Because both Forms 10-Q materially misstated PNC's financial results through omitting the first two PAGIC transactions, PNC's offers of securities were materially misleading, and it engaged in a practice that would operate as a fraud upon purchasers of PNC securities.

Consequently, PNC violated Sections 17(a)(2) and 17(a)(3) of the Securities Act. As described above, Joseph should have known that the PAGIC transactions did not conform to GAAP. By his conduct described above, Joseph was a cause of PNC's violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.

3. Applicable Professional Standards

Standards relating to the independence of public accounting firms are contained in GAAS and Rule 2-01(b) of Regulation S-X. Throughout the relevant time, GAAS required that "[i]n all matters relating to the assignment, an independence in mental attitude is to be maintained by the auditor or auditors."[12] This requirement is necessary because of the importance in having the public maintain confidence in the independence of auditors.[13] Auditors, accordingly, are required not only to be independent in fact, but also to avoid the appearance of a lack of independence.[14]

Rule 2-01(b) of Regulation S-X, in pertinent part, states:

> The Commission will not recognize an accountant as independent, with respect to an audit client, if the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement. In determining whether an accountant is independent, the Commission will consider all relevant circumstances, including all relationships between the accountant and the audit client, and not just those relating to reports filed with the Commission.

4. Joseph Violated Independence Standards

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12 Codification of Statements on Auditing Standards, Statement on Auditing Standards No. 1, § 150.02 (Am. Inst. of Certified Pub. Accountants 1972).

13 See id. § 220.03.

14 Id.

As discussed above, Joseph was involved in the development and marketing of AIG's C-GAITS accounting product. He advised AIG on the structure, he prepared several SAS 50 letters used in marketing the product, he participated in conference calls with potential purchasers of the product and, on at least one occasion, accompanied AIG salespersons on a trip to market the product to a potential customer. Consequently, Joseph was invested both financially and reputationally in the success of the C-GAITS product and therefore had a conflict of interest when he later evaluated the accounting for the product by E&Y's audit client, PNC.

While working on the development and marketing of the C-GAITS product, Joseph also evaluated the accounting for transactions involving the PAGIC transaction pursued by E&Y's audit client, PNC. Joseph's advice and analysis of the accounting for the PAGIC transactions were relied upon during the drafting and issuance of the guidance letters to PNC, and during the E&Y engagement team's interim reviews of PNC's Form 10-Qs. At those times, the E&Y engagement team performed no separate, meaningful analysis of the accounting, but relied instead on that of Joseph. Because of the role that Joseph had played in the development and marketing of the C-GAITS product, and because of the role Joseph also had played in evaluating and advising PNC on PAGIC I, II and III in connection with E&Y's audit assignment for PNC, a reasonable investor with knowledge of all relevant facts and circumstances would conclude that Joseph was on both sides of the PNC transactions and that Joseph was not impartial and lacked the requisite independence with respect to his work in connection with E&Y's engagement for PNC.

The departures from GAAS and failure to comply with Rule 2-01 of Regulation S-X described above constitute improper professional conduct within the meaning of Rule 102(e)(1)(ii). Regarding accountants, the term "improper professional conduct" is defined by Rule 102(e)(1)(iv)(A) to include a "single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted."[15] Inasmuch as a reasonable investor would have concluded that Joseph was operating on both sides of several transactions which led to auditor independence violations, Joseph engaged in highly unreasonable conduct under circumstances which he should have known warranted heightened scrutiny. As the Commission has stated, "Because of the importance of an accountant's independence to the integrity of the financial reporting system, the Commission has concluded that circumstances that raise questions about an accountant's independence *always* merit heightened scrutiny."[16]

F. FINDINGS

A. Based on the foregoing, the Commission finds that Joseph engaged in improper professional conduct pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

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[15] 17 CFR § 201.102(e)(1)(iv).

[16] Amendment to Rule 102(e) of the Commission's Rules of Practice, Release No. 33-7593 (October 19, 1998) (emphasis added).

B. Based on the foregoing, the Commission finds that Joseph was a cause of PNC's violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act, Exchange Act Rules 13a-13 and 12b-20, and Sections 17(a)(2) and 17(a)(3) of the Securities Act.

IV.

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

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

A. Joseph shall cease and desist from (i) causing any violations and any future violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act, Exchange Act Rules 13a-13 and 12b-20, and (ii) committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.

B. Joseph is denied the privilege of appearing or practicing before the Commission as an accountant.

C. After three (3) 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.

D. 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.

Nancy M. Morris
Secretary