

Appendix to PCAOB Release No. 2004-004



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In re Registration Application)
of James C. Marshall, CPA, P.C.)
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NOTICE OF HEARING

PCAOB No. 102-2004-001

Background

1. The Public Company Accounting Oversight Board (“the Board”) has received an application for registration with the Board from James C. Marshall, CPA, P.C. (“Marshall”).

2. Section 102(c)(1) of the Sarbanes-Oxley Act of 2002 (“the Act”) provides that the Board shall

approve a completed application for registration not later than 45 days after the date of receipt of the application, in accordance with the rules of the Board, unless the Board, prior to such date, issues a written notice of disapproval to, or requests more information from, the prospective registrant.

Pursuant to the Act, the Board has adopted rules (“PCAOB Rules”) related to the registration process, and the Securities and Exchange Commission (“the Commission”) has approved those rules.

3. Under PCAOB Rule 2102, the date of receipt of Marshall’s application was October 7, 2003.

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4. The Board's rules provide that the Board will, with respect to an application,

determine whether approval of the application for registration is consistent with the Board's responsibilities under the Act to protect the interests of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors.

PCAOB Rule 2106(a).

5. If, after reviewing the application, the Board is unable to make the determination described in paragraph 4 above within 45 days of receipt of the application, the Board may request additional information from the applicant or the Board may provide the applicant with a written notice of a hearing to determine whether to approve or disapprove the application. PCAOB Rule 2106(b)(2).

6. The Board requested additional information from Marshall on November 13, 2003. The Board received the requested additional information from Marshall on December 8, 2003.

7. When an applicant submits additional information in response to a Board request, the Board will treat the application as if it were a new application for purposes of PCAOB Rule 2106(b). PCAOB Rule 2106(c). Accordingly, not later than 45 days after receipt of the requested information the Board will approve the application, request more information from the applicant, or provide the applicant with a notice of hearing. PCAOB Rule 2106(b).

Notice of Hearing Procedure

8. Pursuant to PCAOB Rule 2106(b)(2)(ii), the Board has determined to provide Marshall an opportunity for a hearing under PCAOB Rule 5500T to determine whether to approve or disapprove Marshall's application for registration. Under the Act and those Board rules, Marshall has the following two options with respect to this notice –
 - a. Marshall may elect to have a hearing before a Board hearing officer pursuant to the Board's rules; or
 - b. Marshall may decline to have a hearing and may instead elect to treat this notice as a written notice of disapproval of Marshall's application for purposes of Section 102(c) of the Act.
9. If Marshall elects a hearing –
 - a. Marshall will be deemed to have waived any right to have a Board determination on its application within the time period provided in Section 102(c)(1) of the Act, and
 - b. the Board shall appoint a hearing officer to hear evidence concerning the proposed grounds for disapproval described in paragraph 15 below, to hear other relevant evidence offered by Marshall or the Board staff, and to prepare an initial decision. PCAOB Rules 5200T(b), 5204T(b).
10. To elect a hearing, Marshall must, on or before February 3, 2004, file with the Board's Secretary a written request for a hearing date and a notice of appearance. PCAOB Rules 5500T, 5401T(c). Marshall must include with the request –
 - a. a statement that Marshall has elected not to treat this notice as a written notice of disapproval for purposes of Section 102(c) of the Act; and
 - b. a statement describing with specificity why Marshall believes that the Board should not issue a written notice of disapproval.

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11. If Marshall elects to forego a hearing and instead chooses to treat this notice as a notice of disapproval for purposes of Section 102(c) of the Act, Marshall should notify the Board's Secretary of its election by February 3, 2004.

12. If Marshall fails to take the steps described in paragraph 10 above and fails to take the step described in paragraph 11 above, Marshall will be deemed to have elected to treat this notice as a notice of disapproval for purposes of Section 102(c) of the Act.

13. If this notice is treated as a notice of disapproval, whether by Marshall's election or by Marshall's failure to make an election by February 3, 2004 –

a. the date of this notice shall constitute the date of the Board's disapproval, and the proposed grounds described in paragraph 15 below shall constitute the final grounds of the Board's disapproval;

b. as provided by Section 102(c)(2) of the Act, this notice of disapproval shall be treated as a disciplinary sanction for purposes of sections 105(d) and 107(c) of the Act;

c. as provided by Section 105(d) of the Act, the Board shall report this sanction to –

(1) The Commission;

(2) any appropriate state regulatory authority or any foreign accountancy licensing board with which Marshall is licensed or certified; and

(3) the public (once any stay on the imposition of such sanction has been lifted); and

d. as provided by Section 107(c) of the Act, Marshall may, in accordance with the Commission's rules governing time limitations and procedural matters, petition the Commission to review the disapproval determination.

Basis of Disapproval

14. The Board has considered the following information, which includes information obtained by the Board in connection with Marshall's application as well as the requirements of the Board's rules –

a. In November 2001, while a member of the American Institute of Certified Public Accountants ("AICPA"), Marshall received its second consecutive adverse peer review. The peer reviewer based its adverse opinion on findings that Marshall had recorded inappropriate answers in its review and disclosure checklists for engagements, and had inadequate documentation of procedures regarding audit planning, trial balance reconciliation, interim reviews of financial statements, communication with audit committees, and testing of various areas (including accounts receivable, inventory, payables and equity). The peer reviewer also found deficiencies due to failure to consult where needed, (which the peer reviewer found led to Commission staff review of the financial statements and subsequent restatement by one of Marshall's clients), and failure to use a concurring partner reviewer. The peer reviewer noted that each of these deficiencies had been noted in a prior peer review of the firm. The peer reviewer also found, among other things, that the firm failed to confirm discontinuance of engagements with the Commission.

b. In July 2002, the Peer Review Committee of the AICPA's SEC Practice Section ("SECPS") accepted the peer review report and the firm's response with the understanding that, and Marshall's agreement that, Marshall would comply with certain conditions, including (i) that Marshall would notify the SECPS of the name of its concurring reviewer and have that person perform pre-issuance and post-issuance reviews of all of Marshall's SEC engagements and report the results of its reviews to the committee quarterly and (ii) that Marshall would hire an outside party to perform its 2002 inspection and report the results of the inspection to the committee.

c. Marshall did not comply with the conditions described in paragraph b above. Marshall issued seven audit reports between September 1, 2002 and September 15, 2003, without having reviews performed by a concurring reviewer in accordance with Marshall's agreement with the AICPA. The audit reports that Marshall issued in that period include reports on the financial statements of American Soil Technologies, Inc.

(audit reports dated September 15, 2003 and September 27, 2002); Orderpro Logistics, Inc. (audit report dated May 12, 2003); Silverado Financial, Inc. (audit report dated April 14, 2003); Blue Moon Group, Inc. (audit report dated April 14, 2003); Quiet Tiger, Inc. (audit report dated April 14, 2003); and CSI Technologies, Inc. (audit report dated February 7, 2003). In addition, Marshall failed to obtain an outside individual to conduct a 2002 internal inspection of Marshall in accordance with Marshall's agreement with the AICPA.

d. On September 15, 2003, the AICPA issued a notice of hearing to Marshall, charging Marshall with failure to comply with membership requirements regarding concurring partner reviews for SEC engagements and failure to satisfy the conditions to which Marshall had agreed after receiving its 2001 adverse peer review.

e. On October 22, 2003, an AICPA hearing panel voted unanimously to expel Marshall from membership in the SECPS on the grounds that Marshall was guilty of a failure to comply with SECPS membership requirements and guilty of a failure to cooperate with the SECPS Peer Review Committee. The hearing panel based its decision on its findings that Marshall failed to comply with the conditions described in paragraph b above. Marshall appealed from that decision, and his appeal was denied on December 22, 2003. Marshall was expelled from the SECPS, and his membership in the AICPA was terminated, effective January 2, 2004.

f. PCAOB Rule 2101 requires an applicant for registration with the Board to complete and file an application on Form 1 by following the instructions to that form. The instructions to Item 5.1 of Form 1 require the applicant to indicate, among other things, whether the applicant is a respondent in any pending administrative or disciplinary proceeding arising out of the applicant's conduct in connection with an audit report. The instructions to Item 5.1 specify that the relevant administrative or disciplinary proceedings include, among others, those of any professional association or body.

g. At the time that Marshall submitted its Form 1, Marshall was a respondent in the AICPA disciplinary proceeding described in paragraphs d and e above. Pursuant to PCAOB Rule 2101 and the instructions to Item 5.1 of Form 1, Marshall was required to disclose in its Form 1 the existence of the AICPA disciplinary proceedings.

h. Marshall failed to disclose in its Form 1 the AICPA disciplinary proceedings described in paragraphs d and e above.

15. As provided by PCAOB Rules 2106(b)(2)(ii) and 5201T(c), and on the basis of the information described in paragraph 14, the Board identifies the following proposed grounds for disapproving Marshall's registration application –

a. Marshall has failed to respond adequately and appropriately to identified deficiencies in its audit work. Specifically --

(1) Marshall, in the three years preceding its application for registration, has performed audit work that has been determined, by a professional body responsible for reviewing that work, to be deficient in significant respects; and

(2) Marshall has failed to respond adequately to findings by that professional body concerning those deficiencies;

b. Marshall has demonstrated an unwillingness or inability to comply with reasonable requirements, imposed by a professional body responsible for reviewing Marshall's audit work, to take corrective steps concerning deficiencies in Marshall's audit work;

c. Marshall has violated PCAOB Rule 2101 by failing to disclose to the Board, in Marshall's registration application on Form 1, information concerning disciplinary proceedings instituted by a professional body to expel Marshall from that professional body on the basis of failures related to deficiencies in Marshall's audit work; and

d. By failing to disclose to the Board significant information required by the Board's rules, Marshall has demonstrated a lack of candor with the Board and a failure to give sufficient attention or care to fundamental requirements of the Board's rules.

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16. On the basis of the grounds described in paragraph 15, the Board is unable to determine that approval of the application would be consistent with the Board's responsibilities under the Sarbanes-Oxley Act of 2002 to protect the interests of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors.

ISSUED BY THE BOARD

/s/

J. Gordon Seymour
Acting Secretary

January 20, 2004