

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 51442 / March 29, 2005

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2220 / March 29, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-11875

In the Matter of

MARK M. IWAN, CPA

Respondent.

**ORDER INSTITUTING PUBLIC
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 that public administrative proceedings be, and hereby are, instituted against Mark M. Iwan, ("Respondent" or "Iwan") pursuant to Rule 102(e)(1)(ii) 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, Respondent consents to the entry of this Order Instituting Public Administrative

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.

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 finds² that:

A. RESPONDENT

Mark M. Iwan, 47, of Denver, Colorado, was the Global Managing Partner at Arthur Andersen ("Andersen") LLP, the outside auditor for Qwest Communications International Inc. ("Qwest"), from 1999 to 2002. Iwan worked for Andersen between May 1979 and December 2002. As Global Managing Partner, Iwan supervised the services Andersen performed for Qwest. Iwan was one of several Andersen partners providing auditing and accounting services to Qwest, and was the audit engagement partner from June 1999 through and including the filing of Qwest's Form 10-Q for the quarter ended March 31, 2000, and from March 2001 to May 2002. Andersen issued audit reports, each signed by Iwan, with unqualified opinions on Qwest's 1999, 2000, and 2001 financial statements and reviewed Qwest's quarterly financial statements for the same period. Iwan is a certified public accountant in Colorado, but his license expired in May 2004.

B. OTHER ENTITY

Qwest is a Delaware corporation with its principal place of business in Denver, Colorado. Qwest's common stock is registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 and trades on the New York Stock Exchange. Qwest files annual, quarterly, and current reports with the Commission on Forms 10-K, 10-Q, and 8-K, respectively, and its fiscal year end is December 31. Qwest's financial statements were audited by Andersen for Qwest's fiscal years ended December 31, 1999, 2000, and 2001.

C. FACTS

1. From at least the second quarter ended June 30, 1999, and continuing through the first quarter ended March 30, 2002, Qwest emphasized its projected revenues and earnings growth in Commission filings and in public statements, and issued aggressive growth and revenue targets to the investment community. In turn, Qwest senior executives placed extraordinary pressure throughout the company to meet or exceed the publicly announced revenue targets. Qwest could not, however, meet its targets through recurring revenue-generating transactions. The lack of recurring revenue created a gap between Qwest's publicly stated revenue targets and actual revenue.

² 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.

2. To make up for the shortfall between Qwest's actual revenue and its projected revenue targets, Qwest relied on one-time sales of portions of its network in the form of IRUs.³ Qwest accounted for IRUs as sales-type leases, and recognized revenue immediately upon purported delivery and acceptance of the capacity. Qwest also sold capital equipment with immediate revenue recognition. Qwest failed adequately to make required disclosures under generally accepted accounting principles ("GAAP") in its 1999 and 2000 Forms 10-K and 10-Qs regarding one-time IRU and equipment sale transactions. Specifically, in Qwest's 1999 and 2000 Forms 10-K, Qwest failed to disclose its revenue recognition policies for IRUs and equipment sales; the dollar amount of IRUs and equipment sales; the amount of IRU inventory available for sale; its nonmonetary exchange accounting for transactions where Qwest sold IRUs and purchased equal amounts of IRUs at the same time from the same customer ("IRU swaps"); and its capital lease treatment for IRUs.

3. Generally accepted auditing standards ("GAAS") provide that if a company omits from its financial statements information that is required under GAAP, the auditor should express a qualified or adverse audit opinion and should provide the information in the auditors' report. Although Iwan required Qwest to increase disclosures and recommended still additional disclosures concerning IRUs, he unreasonably failed to ensure that Qwest's management included all required disclosures under GAAP concerning Qwest's IRU and capital equipment sales in Qwest's 1999 and 2000 financial statements.⁴ Iwan, therefore, failed to conduct his audit of Qwest in accordance with GAAS when he signed the audit reports for inclusion in the 1999 and 2000 Forms 10-K.

4. In addition, Qwest's IRU revenue recognition policy as applied by it failed to meet several criteria under GAAP. Among other things, Qwest's immediate revenue recognition was fundamentally flawed because Qwest gave IRU customers the right to return the assets purchased in exchange for different assets ("porting"), and Qwest never established that title could transfer and did not transfer the usual risks and rewards of ownership to the buyer.

5. Iwan relied unreasonably on management's false representations that certain revenue recognition criteria for immediate revenue recognition on IRUs were met. For example, Andersen allowed revenue recognition despite mounting evidence that Qwest's IRU earnings process was not complete because Qwest allowed customers to port capacity. Iwan learned in mid-2001, that Qwest's porting of capacity had risen to approximately ten percent of capacity sold. Upon learning this, Iwan required Qwest to stop porting. Iwan, however, failed to evaluate whether Qwest's prior revenue recognition was in conformity with GAAP because he relied unreasonably on management's false representations that Qwest had made no commitments to allow its customers to port capacity, that it was never Qwest's intention to allow customers to port capacity, and that Qwest would not honor any future request to port capacity.

³ An IRU is an irrevocable right to use a specific amount of fiber optic cable or fiber capacity for a specified time period.

⁴ Certain of the required disclosures appeared in the financial statements in the Annual Report which included an audit report signed by Iwan, but not in the Form 10-K filed by Qwest.

6. Additionally, Iwan was aware of significant uncertainty regarding Qwest's ability to transfer title on IRUs. Qwest's management and legal counsel continually represented to Andersen that title transferred on IRUs. Iwan, however, failed adequately to consider evidence to the contrary. Iwan knew by early 2000 that "[p]rior to EITF 00-11," Qwest senior tax personnel believed there were "significant uncertainties as to whether title transfer would occur," and thus Qwest would treat IRUs as operating leases for tax purposes. Andersen rejected this tax treatment and continued to rely on senior management representations that title would be transferred. Iwan failed to reconcile Qwest's position on title transfer for IRUs for income tax reporting purposes with its contrary position for accounting purposes. In 2001, Iwan required Qwest to obtain an outside legal opinion that Qwest had the ability to transfer title to the IRUs it sold over the past three years. Qwest provided to Iwan an abridged summary of the legal opinion which contained significant assumptions, qualifications, ambiguities, and limitations that were critical to evaluating whether Qwest met the ownership transfer requirements. Notwithstanding the significant uncertainty that continued to surround Qwest's ability to transfer title on IRU sales transactions, Iwan failed to consider adequately evidence to the contrary, and continued to rely unreasonably on management's and counsel's earlier false representations that Qwest had the ability to transfer title, and continued false representations that Qwest met the ownership transfer requirements and satisfied the conditions in the legal opinion.

7. Although Iwan advised Qwest management regarding the requirements under GAAP for proper revenue recognition on IRUs, Iwan failed to supervise others on the engagement and to ensure that Andersen had obtained sufficient competent evidential matter to afford a reasonable basis, pursuant to the requirements he set forth, for an unqualified audit report regarding Qwest's IRU revenue recognition policy. Specifically, Andersen failed to obtain sufficient evidentiary material to support management's false representations that Qwest's accounting for IRUs was in accordance with GAAP. Andersen unreasonably relied on management's false representations that Qwest's accounting for IRUs was in accordance with GAAP, ultimately resulting in Qwest improperly recognizing approximately \$4 billion in IRU revenue during fiscal years 1999 through 2001. Iwan, therefore, failed to exercise due professional care and skepticism prior to signing the audit reports. Had Andersen independently obtained and sought corroborating evidence supporting management's representations as required by GAAS, it would have concluded that Qwest's IRU revenue recognition was improper and that Qwest management had falsely represented facts critical to its conclusion that Qwest's IRU revenue recognition was consistent with GAAP.

8. GAAS provides that an auditor can issue an audit report containing an unqualified opinion only if he has conducted his audit in accordance with GAAS. Because Iwan failed to conduct the 1999 through 2001 audits of Qwest in accordance with GAAS by failing to ensure that the audit team obtained sufficient competent evidential matter, he acted unreasonably in issuing audit reports with unqualified opinions.

D. FINDINGS

Based on the foregoing, the Commission finds that Iwan engaged in improper professional conduct within the meaning of Rule 102(e)(1)(ii) of the Commission's Rules of Practice by

engaging in repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.

Respondent's Cooperation

In determining to accept his Offer, the Commission considered Respondent's cooperation afforded the Commission staff.

Undertakings

In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Respondent undertakes to cooperate with the Commission staff and: (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Respondent's attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Respondent's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Respondent in any United States District Court for purposes of enforcing any such subpoena.

In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

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

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

A. Mark M. Iwan is denied the privilege of 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 or, if the Board has not conducted an inspection, has received an unqualified report relating to his, or the firm’s, most recent peer review conducted in accordance with the guidelines adopted by the former SEC Practice Section of the American Institute of Certified Public Accountants Division for CPA Firms or an organization providing equivalent oversight and quality control functions;

(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 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 Respondent’s character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Jonathan G. Katz
Secretary