



## 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.2 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. Konyndyk, age 33, was at all relevant times a certified public accountant. Although his CPA licenses are now inactive, he was licensed to practice in the State of North Carolina from February 21, 2005 until his license lapsed on June 30, 2011. He also was licensed in the State of Georgia from June 20, 2007 until December 31, 2009. He worked in the Transactions Advisory Services group (last serving as a Manager) at Ernst & Young LLP (“E&Y”) from 2003 until his resignation on November 2, 2007.

2. On November 21, 2011, a final judgment was entered by consent against Konyndyk, permanently enjoining him from future violations of Section 14(e) of the Exchange Act and Rule 14e-3 thereunder, in the civil action entitled Securities and Exchange Commission v. Mark A. Konyndyk, (“SEC v. Konyndyk”) (Civil Action Number 11-CV-02055-GK), in the United States District Court for the District of Columbia. Konyndyk also was ordered to pay \$9,725.00 in disgorgement of ill-gotten gains from his sales of stock while participating in the fraud, and \$1,789.28 in prejudgment interest, and a \$9,725.00 civil money penalty.

3. The Commission’s complaint in SEC v. Konyndyk alleged, among other things, that Konyndyk traded in Activision Inc. call options during the last week before the public announcement that Vivendi S.A. had agreed to acquire Activision by tender offer; and that he did so despite having performed buy-side due-diligence work on the underlying acquisition talks for E&Y’s client, Vivendi, while employed at E&Y. The complaint further alleged that Konyndyk knew or had reason to know the information he possessed about the Activision acquisition talks was material and nonpublic. The complaint also alleged that at the time of Konyndyk’s Activision options trading, substantial steps had been taken in furtherance of the tender offer.

#### IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent Konyndyk's Offer.

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

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

B. After two years (or 24 months) 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