

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 94300 / February 23, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-16729

In the Matter of	:	
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MILLER ENERGY RESOURCES,	:	ORDER ESTABLISHING A FAIR
INC., PAUL W. BOYD, CPA, DAVID	:	FUND
M. HALL, AND CARLTON W	:	
VOGT, III, CPA	:	
	:	
	:	
Respondents.	:	

ADMINISTRATIVE PROCEEDING
File No. 3-18110

In the Matter of	:
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KPMG LLP AND JOHN RIORDAN,	:
CPA	:
	:
	:
Respondents.	:

On August 6, 2015, the Commission instituted public administrative and cease-and-desist proceedings against Miller Energy, two former officers, Boyd and Hall, and Vogt, the engagement partner at a now defunct independent audit firm who audited the company’s fiscal 2010 financial statements (the “Miller Energy AP”).¹ The proceedings were later resolved by

¹ See Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 4C and 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission’s Rules of Practice, Securities Act Rel. No. 9881 (Aug. 6, 2015).

separate settled orders (collectively, the “Orders”), as to Miller Energy² on January 12, 2016 and as to Boyd,³ Hall,⁴ and Vogt⁵ on June 7, 2016.

In the Orders, the Commission found financial accounting and reporting fraud, as well as audit failures, related to the valuation of certain oil and gas assets in Alaska (the “Alaska Assets”) acquired by Miller Energy. Miller Energy, an oil and gas company headquartered in Houston, Texas, purchased these assets for \$2.25 million in cash – along with the assumption of certain liabilities it valued at approximately \$2 million – during a competitive bid in a bankruptcy proceeding in December 2009. Miller Energy subsequently reported those assets at an overstated value of \$480 million, and recognized a one-time “bargain purchase” gain of \$277 million for its fiscal third quarter ended January 2010 and fiscal year ended April 2010.

The Commission ordered Miller Energy to pay a \$5,000,000 civil money penalty to the Commission, which would be held pending a decision whether the Commission, in its discretion, will seek to distribute the funds or transfer them to the general fund of the U.S. Treasury. Hall and Boyd were each ordered pay a \$125,000 civil penalty to the Commission for transfer to the U.S. Treasury.⁶ To date, the Commission has collected \$54,000 from Hall, \$31,076.15 from Boyd,⁷ and \$778,829.77 from Miller Energy through a bankruptcy claim.

² Order Making Findings and Imposing a Cease-and-Desist Order and Penalties Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934 as to Miller Energy Resources, Inc., Securities Act Rel. No. 10002 (Jan. 12, 2016).

³ Order Making Findings and Imposing Remedial Sanctions Pursuant to Section 8A of the Securities Act of 1933, Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice as to Paul W. Boyd, CPA, Securities Act Rel. No. 10089 (June 7, 2016).

⁴ Order Making Findings and Imposing Remedial Sanctions Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934 as to David M. Hall, Securities Act Rel. No. 10090 (June 7, 2016).

⁵ Order Making Findings and Imposing Remedial Sanctions Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice as to Carlton W. Vogt, III, CPA, Securities Act Rel. No. 10091 (June 7, 2016).

⁶ No monetary sanctions were ordered against Vogt.

⁷ The amounts collected from Hall and Boyd includes a total of \$1,454.87 in post-judgment interest that is ineligible for recovery, resulting in a net amount of \$83,621.28.

On August 15, 2017, in a related matter (the “KPMG AP”), the Commission issued the KPMG Order⁸ against Miller Energy’s successor auditor, KPMG LLP (“KPMG”), and engagement partner, John Riordan, CPA (“Riordan”) in connection improper professional conduct and securities violations related to an audit of Miller Energy’s financial statements.

In the KPMG Order, KPMG was ordered to pay disgorgement of \$4,675,680, prejudgment interest of \$558,319, and a \$1,000,000 civil money penalty and Riordan was ordered to pay a \$25,000 civil penalty to the Commission, which would be held pending a decision whether the Commission, in its discretion, will seek to distribute the funds or transfer them to the general fund of the U.S. Treasury. KPMG and Riordan have paid in full, and the Commission holds a total of \$6,258,999 in the KPMG AP.

The Miller Energy AP and KPMG AP relate to the same underlying conduct. The Commission staff has concluded that a distribution is feasible and appropriate based on the harm suffered by shareholders as a result of the overstated value of the Alaska Assets and KPMG and Riordan’s audit failures.

The Division of Enforcement now recommends that a single Fair Fund be established pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley Act”), so the disgorgement, prejudgment interest, and civil money penalties collected in the KPMG AP can be combined with the civil money penalties collected, and any future civil money penalties collected in the Miller Energy AP, for purposes of distribution to harmed investors. The Commission staff believes the harm exceeds the amount available for distribution, and requests

⁸ Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 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, Exchange Act Rel. No. 81396 (Aug. 15, 2017).

authorization for the recovery from the U.S. Treasury of \$83,621.28 collected from Hall and Boyd, so those funds can be included in the distribution to harmed investors.

Accordingly, IT IS HEREBY ORDERED, that:

- (A) pursuant to Section 308(a) of the Sarbanes-Oxley Act, a single Fair Fund (the “Fair Fund”) is established for the funds collected in the KPMG AP and Miller Energy AP, including any future funds collected in the Miller Energy AP, for the purposes of distribution to harmed investors; and
- (B) the \$83,621.28 in civil money penalties collected from Hall and Boyd shall be recovered from the U.S. Treasury and added to the Fair Fund.

By the Commission.

Vanessa A. Countryman
Secretary