UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 79819 / January 18, 2017

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3847 / January 18, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17793

In the Matter of **BRIAN MCCOLLUM** **Respondent.**	**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING CEASE-AND-DESIST ORDERS AND REMEDIES**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Brian McCollum ("McCollum" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement ("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, which are admitted, and except as provided in Section IV.F herein, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Cease-and-Desist Orders and Remedies ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

SUMMARY

This matter concerns the role of Brian McCollum ("McCollum") in a financial restatement that occurred at Orthofix International, N.V. ("Orthofix") as a result of misconduct from at least 2011 through mid-2013 ("the relevant period"). From March 2011 to November 2012, McCollum served as the company's Chief Financial Officer ("CFO") and, beginning in November 2012, left the CFO role to become the President of Orthofix's Spine Segment.

The majority of this misconduct that caused the restatement occurred at Orthofix's then-largest segment, its Spine segment ("Spine"). In particular, Orthofix improperly recognized revenue associated with several transactions with Spine's distributors, including its largest international distributor during the relevant period. As a result of its misconduct, Orthofix restated its financial results for the first quarter of fiscal year 2013, all reporting periods in fiscal years 2012 and 2011, and its annual reporting period in fiscal year 2010.

During the relevant period, McCollum received notice indicating that Orthofix had improperly recognized revenue on a significant transaction with its largest international distributor and certain internal controls issues at the company. In response, however, McCollum failed to investigate the improperly recognized revenue and made an improper Sarbanes-Oxley Section 302 certification. Moreover, McCollum received bonuses during the 12-month periods following the filings containing financial results that Orthofix has restated as a result of misconduct and has not reimbursed Orthofix for those bonuses.

RESPONDENT

Brian McCollum, 40, served as Orthofix's Chief Financial Officer from March 2011 through November 2012 and then served as the President of Orthofix's Spine Segment from November 2012 until July 2013. McCollum is no longer employed at Orthofix.

FACTS

A. Orthofix's Business and McCollum's Responsibilities

1. Orthofix's business was primarily divided into two Global Business Segments during the relevant period – Spine and Orthopedics. Spine was Orthofix's largest segment and contributed two-thirds of the company's overall revenues.

2. Spine had several operating divisions during the relevant period including Orthofix Spinal Implants ("OSI"), which was responsible for international sales of spinal implants and related instruments.

3. During his tenure as Orthofix's CFO, McCollum was responsible for the preparation of Orthofix's public filings, including its consolidated financial results.

4. During his tenure as the Spine Segment President, McCollum was in charge of Spine's sales and overall management. In his role as Spine Segment President, several persons reported to him including the Chief Financial Officer of the Spine Segment ("Spine CFO").

5. Spine sold various products including spinal and cervical implants and related instruments. The instruments and implants were interconnected as implants could not be used in patients without functioning instrument sets.

6. Spine sold the above products through two primary methods: (i) sales of its products to U.S. and international distributors who then sold the products to hospitals and physicians and (ii) sales of its products directly to hospitals and physicians in the U.S.

B. Revenue Recognition Practices

7. With limited exceptions, Orthofix recognized revenue during the relevant period based on the "sell-in" method, which provides for revenue recognition upon shipment of products to the distributor.

8. ASC 605-10-25-1 provides that revenue may be recognized only when it is both realized or realizable and earned. Consistent with the authoritative literature, Orthofix's financial statements disclosed four criteria as its revenue recognition policy.

9. The four criteria are: (i) persuasive evidence of an arrangement exists; (ii) delivery has occurred or services have been rendered; (iii) the seller's price to the buyer is fixed and determinable; and (iv) collectability is reasonably assured.

C. Orthofix Improperly Records Revenue by Selling Implants without Instrument Sets

10. OSI had several international distributors during the relevant period, but its largest distributor of product was located in Brazil (hereinafter "the Brazilian Distributor"). In fact, for eight of the nine quarters from Q1 2011 to Q1 2013, the Brazilian Distributor was the company's second largest customer on a revenue per quarter basis.

11. Entering 2011, Orthofix had a receivable of approximately $5 million from the Brazilian Distributor from prior sales. The Brazilian Distributor forecasted that it would purchase approximately $8.5 million of Orthofix implants and instruments in FY 2011.

12. Prior to this time, Orthofix had sold implants along with used instrument sets rather than new ones to the Brazilian Distributor. As discussed above, implants and instruments were interconnected because the implants could not be used in patients without related instrument sets.

13. At this time, however, the Brazilian Distributor could no longer purchase previously used instrument sets because ANVISA (the Brazilian equivalent of the U.S. Food and Drug

Administration) imposed new regulations prohibiting the importation of used instrument sets.

14. Orthofix did not have the new instrument sets (105 in total) available to be shipped along with the implants it shipped to the Brazilian Distributor. Rather than waiting until the new instrument sets were available, Orthofix – in FY 2011 – shipped approximately $5 million in implants to the Brazilian Distributor despite the fact that these implants could not be used in patients without the new instrument sets.

15. Orthofix recognized the approximately $5 million revenue upon shipment of the above implants. Orthofix's recognition of revenue in this regard was improper as delivery of the interconnected product – the instruments – had not yet occurred. Orthofix knew that the implants could not be used in patients without the instruments. As such, payment timing and terms were contingent upon the instrument sets being made available and therefore, revenue recognition was inconsistent with Orthofix's accounting policy because it did not meet the fixed or determinable criteria or the collectability criteria.

16. This improper recognition of revenue caused Orthofix's financial statements to be materially misstated in its Forms 10-Q for the second and third quarters of FY 2011 and its year-end Form 10-K for FY 2011 and corresponding earnings releases.

D. <u>McCollum is Put on Notice of Issues with Implant Without Instruments Transactions</u>

17. McCollum – soon after becoming Orthofix's CFO in early 2011 – implemented a general unwritten bad debt policy applicable to both Spine and Orthopedics. The policy required that any accounts receivable that had been outstanding at least 360 days from the invoice date of a shipment had to be fully reserved as bad debt. McCollum, along with the Corporate Controller and Segment CFOs, were responsible for the calculation of the bad debt reserve.

18. On August 1, 2012 – two days after Orthofix had filed its Form 10-Q for the second quarter of FY 2012 and as part of the process for handling Orthofix's bad debt calculation – the Corporate Controller emailed the Spine CFO an aging schedule identifying that as of June 30, 2012 approximately $4 million of amounts owed to OSI was over one year old.

19. The aging schedule contained in this email, however, demonstrated that the allowance for doubtful accounts as of the second quarter of FY 2012 was only $1.6 million (or 40% of accounts receivable over 360 days old). The Corporate Controller then wrote "what doesn't make sense is that our policy is to reserve all amounts in the [over one year old bucket]."

20. The Corporate Controller then forwarded the email to McCollum and wrote the following:

> I spoke with [the Spine CFO] on this. The rationale for not reserving all of the 360+ bucket for [Spine] is that technically the receivable balance from [the Brazilian Distributor] is not >360 days old since they have extended terms in their contract. The aging schedule is based on days past the invoice date for all [accounts receivable]. To further exacerbate the situation, [the Brazilian Distributor] could not sell the Implants inventory that we sold to them in 2011 since we were delayed in sending them the instrument sets (that they needed to sell the Implants). This one-year delay was caused by [ANVISA] who required us to send new instruments (as opposed to our original plan to move used instruments).

21. The Corporate Controller further noted in the email that – based on discussions he had with the Spine CFO – the Brazilian Distributor planned to make a $4 million payment in December 2012 that would significantly reduce the 360+ day bucket in the year-end aging presentation.

22. Through this email, McCollum was on notice that Orthofix had a significant outstanding receivable associated with implants for which there had been an at least one year delay in sending the corresponding instrument sets.

23. McCollum, however, did not take steps to investigate the circumstances of the original transaction and to determine whether the revenue associated with the original transaction had been properly recognized. As noted earlier, Orthofix improperly recognized $5 million of revenue because the implants could not be used in patients without the instruments. As such, payment timing and terms were contingent upon the instrument sets being made available and, therefore, revenue recognition was inconsistent with Orthofix's accounting policy because it did not meet the fixed or determinable criteria or the collectability criteria.

24. Moreover, McCollum subsequently made an improper Sarbanes-Oxley Section 302 certification in Orthofix's Form 10-Q for the third quarter of 2012.

E. <u>McCollum is Put on Notice of Issues Concerning Brazilian Distributor</u>

25. In December 2012, the Spine CFO learned that the Brazilian Distributor's President had – in June 2012 – informed the then Spine President and Vice President of Global Sales and Development for the international portion of the Spine Segment ("Spine Sales VP") that it would not pay $4 million of its amounts payable by the end of December 2012. Rather, the Brazilian Distributor's President informed the then Spine President and Spine Sales VP that it would only pay $1.6 million of its amounts payable by December 2012 and the remainder by February 2013.

26. At this time, McCollum was no longer Orthofix's CFO and now served as the President of Orthofix's Spine Segment.

27. On December 1, 2012, the Spine CFO informed McCollum of the above information he learned, writing:

> [The Brazilian Distributor's President] says below they made a payment agreement with [the then Spine President] . . . I have no idea what may have been promised. I do know that I fought pricing and terms concessions, but those were ultimately given at some point despite my denials. This was commonplace. I was told that I was the decision maker on pricing and terms and then secretly overridden. [The Spine Sales VP] did it all of the time – don't know how much [the Spine Sales President] was involved.

28. On December 7, 2012, the Brazilian Distributor's President travelled to the U.S. to meet with the Spine CFO and Spine Sales VP. At that meeting, the Brazilian Distributor's President provided a Power Point presentation to the Spine CFO and Spine Sales VP with a detailed chronology of events on several transactions involving the Brazilian Distributor, including the implants-without-instruments transactions.

29. The Spine CFO subsequently forwarded the Power Point presentation to McCollum. McCollum, however, failed to confirm that this Power Point presentation had been brought to the attention of the then Orthofix CFO nor did he separately confirm that the transactions outlined in the Power Point presentation had been discussed with the then Orthofix CFO.

30. Moreover, McCollum failed to evaluate the impact that the information contained in the Power Point had on the revenue that the company had previously recognized and disclosed in its financial statements when he served as Orthofix's CFO.

31. Ultimately, Orthofix filed its FY 2012 Form 10-K in March 2013 and took no steps to correct the revenue that it had previously improperly recognized on the implants-without instruments and other transactions with the Brazilian Distributor.

F. Orthofix's Restatement

32. Orthofix materially misstated several of its annual and quarterly filings and corresponding earnings releases, failed to make and keep books and records which, in reasonable detail, accurately and fairly reflected the transactions and dispositions of the assets of the issuer, and failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that transactions are recorded as necessary to permit the preparation of financial statements in conformity with generally accepted accounting principles.

33. Accordingly – in late March 2014 – Orthofix restated its financial statements for the first quarter of fiscal year 2013, all quarterly and annual periods in fiscal years 2012 and 2011, and the annual period for fiscal year 2010 as a result of misconduct. Orthofix also acknowledged certain material weaknesses in its internal control over financial reporting.

G. McCollum's Compensation

34. During the 12-month periods that followed the filing of the periodic reports requiring restatement, McCollum received bonuses and has not reimbursed those amounts to Orthofix.

VIOLATIONS

35. Exchange Act Section 13(a) and Rules 13a-1, 13a-11, and 13a-13 thereunder require issuers to file such periodic and other reports as the Commission may prescribe and in conformity with such rules as the Commission may promulgate. Exchange Act Rules 13a-1, 13a-11, and 13a-13 require the filing of annual, current, and quarterly reports, respectively. Rule 12b-20 of the Exchange Act requires issuers to add such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading.

36. Exchange Act Section 13(b)(2)(A) 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." Exchange Act Section 13(b)(2)(B) requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit the preparation of financial statements in conformity with generally accepted accounting principles.

37. Exchange Act Rule 13b2-1 prohibits any person from, directly or indirectly, falsifying or causing to be falsified, any book, record, or account subject to Exchange Act Section 13(b)(2)(A).

38. Exchange Act Rule 13a-14, among other things, requires each principal executive, and principal financial officer to certify in each quarterly and annual report filed under Section 13(a) of the Exchange Act that such officer and the issuer's other certifying officer have designed internal control over financial reporting, or caused such internal controls over financial reporting to be designed under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP.

39. Section 304 of the Sarbanes-Oxley Act of 2002 requires the chief executive officer or chief financial officer of any issuer required to prepare an accounting restatement due to material noncompliance with the securities laws as a result of misconduct to reimburse the issuer for: (i) any bonus or incentive-based or equity-based compensation received by that person from the issuer during the 12-month periods following the false filings; and (ii) any profits realized from the sale of securities of the issuer during that 12-month periods. Section 304 does not require that a chief executive officer or chief financial officer engage in misconduct to trigger the reimbursement requirement.

40. As a result of the conduct described above, McCollum violated Exchange Act Rules 13a-14 and 13b2-1, Sarbanes-Oxley Act Section 304(a) and was a cause of Orthofix's violations of Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

IV.

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

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED effective immediately that McCollum cease and desist from committing or causing any violations and any future violations of Exchange Act Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and Rules 12b-20, 13a-1, 13a-11, 13a-13, 13a-14, and 13b2-1 thereunder and Section 304(a) of the Sarbanes-Oxley Act.

A. Within 30 days of the entry of this order, McCollum shall pay a civil money penalty of $35,000.

B. Moreover, McCollum shall, within 30 days of the entry of this order, reimburse Orthofix for a total of $40,885 in Orthofix bonuses, other incentive-based or equity-based Orthofix compensation pursuant to Section 304(a) of Sarbanes-Oxley Act.

C. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

D. Payment must be made in one of the following three ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofin.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying the Respondent in these proceedings, and the file number of these proceedings; a copy of the cover

letter and check or money order must be sent to Antonia Chion, Division of Enforcement, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5720.

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the penalties referenced in paragraph IV.A above. This Fair Fund may be added to or combined with the fair fund established in *In the Matter of Orthofix International, N.V.*, (AP File No. 3-17791; Release No. 10281, January 18, 2017) and/or may be added to or combined with fair funds established for the civil penalties paid by other Respondents for conduct arising in relation to the violative conduct at issue in this proceeding or the Orthofix proceeding, in order for the combined fair funds to be distributed to harmed investors affected by the same violative conduct. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

F. It is further ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

By the Commission.

Brent J. Fields
Secretary