

## Press Release

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# SEC Charges Four Public Companies With Longstanding ICFR Failures

### FOR IMMEDIATE RELEASE

2019-6

Washington D.C., Jan. 29, 2019 — The Securities and Exchange Commission today announced settled charges against four public companies for failing to maintain internal control over financial reporting (ICFR) for seven to 10 consecutive annual reporting periods. Two of the charged companies also failed to complete the required evaluation of the effectiveness of ICFR for two consecutive annual reporting periods.

According to the SEC's orders, year after year, the four companies disclosed material weaknesses in ICFR involving certain high-risk areas of their financial statement presentation. As discussed in the SEC orders, each of the four companies took months, or years, to remediate their material weaknesses after being contacted by the SEC staff. One of the companies is still in the process of remediating its material weaknesses.

"Adequate internal controls are the first line of defense in detecting and preventing material errors or fraud in financial reporting," said SEC Chief Accountant Wesley Bricker. "When internal control deficiencies are left unaddressed, financial reporting quality can suffer."

Melissa Hodgman, an Associate Director in the SEC's Enforcement Division, added, "Companies cannot hide behind disclosures as a way to meet their ICFR obligations. Disclosure of material weaknesses is not enough without meaningful remediation. We are committed to holding corporations accountable for failing to timely remediate material weaknesses."

Without admitting or denying the findings, each of the four companies agreed to a cease and desist order making certain findings, requiring payment of civil penalties, and requiring an undertaking for one of the companies as detailed below:

- **Grupo Simec S.A.B de C.V.** disclosed material weaknesses in its annual filings for 10 consecutive years, from 2008 to 2017. In both 2015 and 2016, its management failed to complete the required ICFR evaluation. The company did not make significant progress in devising a control structure and remediating material weaknesses until after the SEC staff contacted it. The company continues to have material weaknesses that are being addressed through remediation. The Commission's [settled order](#) includes violations of Exchange Act Section 13(b)(2)(B) and Rules 13a-15(a) and 13a-15(c), thereunder, payment of a \$200,000 civil penalty, and an undertaking requiring retention of an independent consultant to ensure remediation of material weaknesses, including those involving related party transactions.
- **Lifeway Foods Inc.** disclosed material weaknesses in each of its Forms 10-K for a period of nine years, from 2007 through 2015, and significant deficiencies that in the aggregate constituted a material weakness in 2016. In both 2013 and 2014, company management failed to complete the required ICFR evaluation. Lifeway did not fully remediate its material weaknesses and conclude that ICFR was effective until its fiscal year ended December 31, 2017. Lifeway's failure to address its material weaknesses was compounded by three announced restatements since fiscal 2012, including two restatements announced during fiscal 2016. The Commission's [settled order](#) includes violations of Exchange Act Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and Rules 13a-1, 13a-15(a) and 13a-15(c), thereunder, and payment of a \$100,000 civil penalty.

- **Digital Turbine Inc.** disclosed material weaknesses in each of its Forms 10-K over a period of seven years, from fiscal year 2011 through fiscal year 2017. The company did not fully remediate its material weaknesses until the end of fiscal year 2018, as disclosed in its Form 10-K for the year ended March 31, 2018. The Commission's [settled order](#) includes violations of Exchange Act Section 13(b)(2)(B) and Rule 13a-15(a), thereunder, and payment of a \$100,000 civil penalty.
- **CytoDyn Inc.** disclosed material weaknesses in each of its Forms 10-K over a period of nine years, from 2008 through 2016. CytoDyn included in its public filings the same, nearly boilerplate, disclosure of material weaknesses for nine consecutive years. CytoDyn remediated its material weaknesses and determined that ICFR was effective as of May 31, 2017. The Commission's [settled order](#) includes violations of Exchange Act Section 13(b)(2)(B) and Rule 13a-15(a), thereunder, and payment of a \$35,000 civil penalty.

The SEC's investigation was conducted by members of the Division of Enforcement's Financial Reporting and Audit Group (FRAud Group) including John Archfield, Yolanda Lavery, Tonya Tullis, and Juan Migone, and supervised by Margaret McGuire, Chief of the FRAud Group, and Ms. Hodgman.

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## Related Materials

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- [SEC Order - Grupo Simec](#)
- [SEC Order - Lifeway Foods](#)
- [SEC Order - Digital Turbine](#)
- [SEC Order - CytoDyn](#)