

ORDER

Making Findings, and Imposing Sanctions ("Order") as set forth below.¹

III.

On the basis of Respondent's Offer, the Board finds that:

A. Respondent

1. Steven G. Hirshenson, Chartered is a registered public accounting firm located in Rockville, Maryland. At all relevant times, the Firm was licensed by the Maryland Board of Public Accountancy (license no. 519). The Firm, formed in 2005, is registered with the Board pursuant to Section 102 of the Act and Board rules.

B. Summary

2. The Firm prepared the financial statements for a broker-dealer audit client ("Broker-Dealer") for the year ended December 31, 2012. As a result, the Firm was not independent of the Broker-Dealer under auditor independence criteria established by the Commission and made applicable by Exchange Act Rule 17a-5(f)(3) to audits of brokers and dealers.² The Firm nevertheless audited the financial statements and issued an audit report that the Broker-Dealer included with the financial statements it filed with the Commission. Rule 17a-5(i) at the time required the audit report to state whether the audit was made in accordance with Generally Accepted Auditing Standards ("GAAS"). In the audit report, the Firm instead represented that the audit had been performed in accordance with the auditing standards of the Public Company Accounting

¹ The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

² Exchange Act Rule 17a-5, referenced throughout this Order as "Rule 17a-5," is found at 17 C.F.R. § 240.17a-5. The rule provisions set out herein are those in effect during, and applicable to, the relevant conduct. On July 30, 2013, the Commission adopted certain amendments to Rule 17a-5. See Broker-Dealer Reports, SEC Exchange Act Release No. 34-70073 (July 30, 2013), 78 Fed. Reg. 51910 (Aug. 21, 2013). Among other things, the amendments to Rule 17a-5 require that audits of brokers and dealers be performed in accordance with PCAOB standards, effective for audits of fiscal years ending on or after June 1, 2014. In addition, Rule 17a-5 provides that the auditor must be independent in accordance with Rule 2-01 of Commission Regulation S-X. At the time of the relevant conduct, that requirement was set out in Rule 17a-5(f)(3). It is now set out in Rule 17a-5(f)(1).



ORDER

Oversight Board ("PCAOB standards").³ That representation violated Rule 17a-5(i), because the Firm did not and—as GAAS requires independence—could not state that the audit was made in accordance with GAAS.

C. Respondent Violated a Commission Rule

3. Rule 17a-5(d)(1) requires, among other things, that "[e]very broker or dealer registered pursuant to section 15 of the [Securities Exchange] Act [of 1934] shall file annually, on a calendar or fiscal year basis, a report which shall be audited by an independent public accountant." Rule 17a-5(d)(2) states that "[t]he annual audited report" filed by a registered broker or dealer, among other things, "shall contain a Statement of Financial Condition . . . , a Statement of Income, a Statement of Cash Flows, a Statement of Changes in Stockholders' or Partners' or Sole Proprietor's Equity, and [a] Statement of Changes in Liabilities Subordinated to Claims of General Creditors."

4. Rule 17a-5(e)(1)(i) states: "An audit shall be conducted by a public accountant who shall be in fact independent as defined in paragraph (f)(3) of this section herein, and he shall give an opinion covering the statements filed pursuant to paragraph (d)" Rule 17a-5(f)(3) states: "An accountant shall be independent in accordance with the provisions of § 210.2-01(b) and (c) of this chapter."

5. Rule 17a-5(g) requires that "[t]he audit shall be made in accordance with generally accepted auditing standards." Rule 17a-5(i) requires that "[t]he accountant's report shall . . . [s]tate whether the audit was made in accordance with generally accepted auditing standards."

6. GAAS requires auditors to maintain strict independence from their audit clients.⁴ "[I]f an auditor's report states that its audit was in accordance with GAAS when the auditor was not independent, then it has violated Rule 17a-5(i)."⁵

³ GAAS, not PCAOB standards, applied to this and other broker-dealer audits of periods ending before June 1, 2014. The July 2013 amendments to Rule 17a-5 required that such audits be performed in accordance with PCAOB standards effective for audits of fiscal years ending on or after June 1, 2014. See Broker-Dealer Reports, SEC Exchange Act Release No. 34-70073 (July 30, 2013), 78 Fed. Reg. 51910 (Aug. 21, 2013).

⁴ AU-C Section 200.15-.16, *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance With Generally Accepted Auditing Standards*. References herein to GAAS are to the versions of the auditing standards



ORDER

7. Pursuant to Rule 17a-5(f)(3), certain of the Commission's auditor independence criteria described in Rules 2-01(b) and (c) of Regulation S-X⁶ apply to audits of brokers and dealers.⁷ The applicable provisions include Rule 2-01(c)(4), which states in part:

An accountant is not independent if, at any point during the audit and professional engagement period, the accountant provides the following non-audit services to an audit client:

(i) *Bookkeeping or other services related to the accounting records or financial statements of the audit client.* Any service, unless it is reasonable to conclude that the results of these services will not be subject to audit procedures during an audit of the audit client's financial statements, including:

...

(B) Preparing the audit client's financial statements that are filed with the Commission or that form the basis of financial statements filed with the Commission

that were applicable to audits of brokers and dealers at the time of the audit at issue here.

⁵ *Rosenberg Rich Baker Berman & Company*, Exchange Act Release No. 69765, 2013 WL 2898032, at *4 (June 14, 2013). PCAOB standards, applicable to broker-dealer audits of periods ending on or after June 1, 2014, also require auditor independence—including an obligation to satisfy the independence criteria set out in the rules and regulations of the Commission under the federal securities laws. See PCAOB Rule 3520, *Auditor Independence*; AU 220, *Independence*.

⁶ 17 C.F.R. Part 210.

⁷ Not all independence criteria described in Rule 2-01(c) apply to audits of brokers and dealers. As the Commission has explained, those audits "are not subject to the partner rotation requirements or the compensation requirements of the Commission's independence rules [Rules 2-01(c)(6) and (c)(8)] because the statute mandating those requirements is limited to issuers," and they "are not subject to the audit committee pre-approval requirements or the cooling-off period requirements for employment [Rules 2-01(c)(7) and (c)(2)(iii)(B)] because those requirements only reference issuers." See Exchange Act Release No. 34-70073 at II.E.

ORDER

8. The Firm served as the auditor of the Broker-Dealer's December 31, 2012 financial statements. At all relevant times, the Broker-Dealer was a "broker" and "dealer," as defined in Section 110 of the Act and PCAOB Rules 1001(b)(iii) and 1001(d)(iii), and was not an "issuer," as defined in Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

9. In February 2013, the Broker-Dealer filed with the Commission a Form X-17A-5 Part III for the year ended December 31, 2012. Included in that filing was an audit report signed by the Firm dated February 4, 2013. That report did not state that the audit was performed in accordance with GAAS, and instead stated, among other things, that the audit was conducted in accordance with PCAOB standards.

10. The engagement letter for the audit of the Broker-Dealer's December 31, 2012 financial statements ("Audit") stated in part (emphasis added): "We will advise you about appropriate accounting principles and their application and will assist in the preparation of your financial statements"

11. Firm staff obtained from the Broker-Dealer in December 2012 and January 2013 various documents including a "Statement of Condition" and trial balances as of December 31, 2012; a schedule of capital transactions; and a Form X-17A-5 Part IIA that Firm staff understood had been filed by the Broker-Dealer with the Financial Industry Regulatory Authority ("FINRA") and that bore the header "FOCUS Report (Financial and Operational Combined Uniform Single Report)." That Form X-17A-5 Part IIA contained, among other things, three financial statements: a Statement of Financial Condition as of December 31, 2012, a Statement of Income (Loss) for the period October 1, 2012 to December 31, 2012, and a Statement of Changes in Ownership Equity for the period October 1, 2012 to December 31, 2012.

12. Firm staff used the above documents obtained from the Broker-Dealer to prepare the "Statement of Financial Position" as of December 31, 2012, as well as the Statement of Operations and Statement of Changes in Stockholders' Equity, filed by the Broker-Dealer with the Commission in February 2013.

13. In preparing those financial statements, Firm staff added line items and columns, aggregated and disaggregated line items, and changed line item descriptions and amounts, as compared to corresponding information in the documents obtained from the Broker-Dealer.

14. Firm staff also prepared the Statement of Cash Flows for the year ended December 31, 2012, as well as the notes to the Broker-Dealer's financial statements, all of which were filed by the Broker-Dealer with the Commission in February 2013.

ORDER

15. On February 12, 2013, Firm staff sent a set of draft financial statements to a partner at another registered public accounting firm for review and suggestions. After receiving back comments, Firm staff revised the notes to the financial statements. On February 17, 2013, Firm staff provided the Broker-Dealer with the revised set of draft financial statements for management approval.

16. As a result of the Firm's conduct in preparing the financial statements, the Firm was not independent of the Broker-Dealer under the independence criteria established by the Commission in Rule 2-01(c)(4) of Regulation S-X, which Rule 17a-5 made applicable to the audit of the Broker-Dealer's financial statements. As the Commission explained in adopting Rule 2-01(c)(4), providing such services for an audit client "impairs the auditor's independence because the auditor will be placed in the position of auditing the firm's work when auditing the client's financial statements. . . . In addition, keeping the books is a management function, the performance of which leads to an inappropriate mutuality of interests between the auditor and the audit client."⁸

17. The Firm violated Rule 17a-5(i) because it did not and could not state in its audit report that it had performed the audit of the Broker-Dealer's December 31, 2012 financial statements in accordance with GAAS. In fact, because of the independence impairment described above, the audit had not and could not have been performed in accordance with GAAS. That violation constituted a violation of the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto.

IV.

In view of the foregoing, and to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports, the Board determines it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 105(c)(4)(E) of the Act and PCAOB Rule 5300(a)(5), the Firm is censured.
- B. Pursuant to Section 105(c)(4)(D) of the Act and PCAOB Rule 5300(a)(4), a civil money penalty in the amount of \$2,500 is imposed upon the Firm.

⁸ *Revision of the Commission's Auditor Independence Requirements*, Exchange Act Release No. 43602 (November 21, 2000) at IV.D.4.b(i).

ORDER

All funds collected by the Board as a result of the assessment of this civil money penalty will be used in accordance with Section 109(c)(2) of the Act. The Firm shall pay this civil money penalty within ten (10) days of the issuance of this Order by (1) wire transfer pursuant to instructions provided by Board staff; or (2) United States Postal Service money order, bank money order, certified check, or bank cashier's check (a) made payable to the Public Company Accounting Oversight Board, (b) delivered to the Controller, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington D.C. 20006, and (c) submitted under a cover letter, which identifies the Firm as a respondent in these proceedings, sets forth the title and PCAOB release number of these proceedings, and states that payment is made pursuant to this Order, a copy of which cover letter and money order or check shall be sent to Office of the Secretary, Attention: Phoebe W. Brown, Secretary, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington D.C. 20006.

C. Pursuant to Section 105(c)(4)(G) of the Act and PCAOB Rule 5300(a)(9), the Firm is required:

1. within ninety (90) days from the date of this Order, to establish policies and procedures, or revise and/or supplement existing policies and procedures, for the purpose of providing the Firm with reasonable assurance of compliance with applicable independence requirements, including those requirements of Rule 2-01 of Regulation S-X applicable to an SEC Registered Broker-Dealer Engagement (defined to mean an engagement to provide a report—whether an audit report, an examination report, or a review report—required under paragraph (d)(1)(i)(C) of Rule 17a-5, as amended);

2. within ninety (90) days from the date of this Order, to establish a policy of ensuring training, whether internal or external, on an annual or more frequent regular basis, concerning applicable independence requirements, including those requirements of Rule 2-01 of Regulation S-X applicable to an SEC Registered Broker-Dealer Engagement, of any Firm audit personnel who participate in any way in the planning or performing of any SEC Registered Broker-Dealer Engagement;

3. within ninety (90) days from the date of this Order and before the Firm's commencement of any SEC Registered Broker-Dealer Engagement (or, where the Firm by the date of this Order has already commenced but not completed such an engagement, before the Firm's

ORDER

release of its report), to ensure training pursuant to the policy described in paragraph C(2) above on at least one occasion;

4. to provide a copy of this Order—

a. within thirty (30) days from the date of this Order, to all audit personnel employed by, or associated with (as defined in PCAOB Rule 1001(p)(i)), the Firm as of the date of this Order,

b. within thirty (30) days from the date of this Order, to any client of the Firm as of the date of this Order for which the Firm has performed or has been engaged to perform an SEC Registered Broker-Dealer Engagement,

c. before the commencement of any SEC Registered Broker-Dealer Engagement, to any future client for which the Firm is engaged within three (3) years of the date of this Order to perform such an engagement; and

5. to certify in writing to the Director of the Division of Enforcement and Investigations, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington D.C. 20006, the Firm's compliance with paragraphs C(1) through C(4)(b) above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Firm shall submit such certification within one hundred twenty (120) days from the date of this Order. The Firm shall also submit such additional evidence of and information concerning compliance as the staff of the Division of Enforcement and Investigations may reasonably request.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

March 15, 2016