
ORDER MAKING FINDINGS AND IMPOSING SANCTIONS)	
)	
)	PCAOB Release No. 105-2019-022
<i>In the Matter of Marcum LLP and Alfonse Gregory Giugliano, CPA,</i>)	September 10, 2019
)	
<i>Respondents.</i>)	
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By this Order, the Public Company Accounting Oversight Board ("Board" or "PCAOB") is: (1) censuring Marcum LLP ("Marcum" or "Firm") and Alfonse Gregory Giugliano, CPA ("Giugliano" and, together with Marcum, "Respondents"); (2) imposing civil money penalties of \$450,000 on Marcum and \$25,000 on Giugliano; and (3) requiring Marcum to engage an independent consultant to review and make recommendations concerning Marcum's policies, procedures, staffing, and training with respect to auditor independence.

The Board is imposing these sanctions on the basis of its findings that Marcum repeatedly violated PCAOB rules and standards over the course of four years by failing to satisfy applicable independence criteria, including as set out in U.S. Securities and Exchange Commission ("Commission") rules. Marcum's independence violations resulted from Respondents' conduct in connection with the Firm's annual Marcum MicroCap Conference ("MicroCap Conference") from 2012 through 2015. Specifically, Marcum was not independent with respect to audits and reviews of 62 issuers that participated in the MicroCap Conference. In addition, from 2012 through 2017—including after PCAOB staff brought independence concerns to the Firm's attention in 2015—Marcum failed to take sufficient steps to ensure that its system of quality control would provide reasonable assurance that the Firm would identify and appropriately address potential independence issues.

I.

The Board instituted non-public disciplinary proceedings against Respondents on April 10, 2019.¹ Pursuant to PCAOB Rule 5205, Respondents later submitted Offers of

¹ Section 105(c)(2) of the Sarbanes-Oxley Act of 2002, as amended ("Act"), provides that litigated disciplinary proceedings shall not be public, "unless otherwise ordered by the Board for good cause shown, with the consent of the parties...."

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Settlement ("Offers") that the Board accepted. Solely for purposes of these proceedings and any other proceedings brought by or on behalf of the Board, or to which the Board is a party, and without admitting or denying the findings herein, except as to the Board's jurisdiction over Respondents and the subject matter of these proceedings, which is admitted, Respondents consent to entry of this Order Making Findings and Imposing Sanctions as set forth below.²

II.

On the basis of Respondents' Offers, the Board finds that:³

A. Respondents

1. **Marcum LLP** is a limited liability partnership organized under the laws of the State of New York and headquartered in Melville, New York. The Firm is registered with the New York State Education Department (License No. 067839) and also is licensed in multiple other states. Marcum is, and at all relevant times was, registered with the Board pursuant to Section 102 of the Act and PCAOB rules. During the relevant time period, the Firm was the external auditor for the Marcum clients referenced in this Order.⁴

2. **Alfonse Gregory Giugliano**, age 57, of Dix Hills, New York, is a certified public accountant registered with the New York State Education Department (License No. 052488) and the Missouri Division of Professional Registration (CPA Provisional License No. 2016009263). He is a partner of the Firm and, at all relevant times, served as Marcum's Assurance Services Leader and the partner in charge of compliance with auditor independence requirements. Subsequent to the conduct that is the subject of

Although the Board found good cause for making the proceedings public, Respondents did not consent, as permitted by Section 105(c)(2) of the Act and PCAOB Rule 5203.

² The findings in this Order are made pursuant to Respondents' Offers and are not binding on any other persons or entities in this or any other proceeding.

³ The Board finds that Marcum's conduct described in this Order meets the conditions set out in Section 105(c)(5) of the Act, 15 U.S.C. § 7215(c)(5), which provides that certain sanctions may be imposed in the event of: (1) intentional or knowing conduct, including reckless conduct, that results in a violation of the applicable statutory, regulatory, or professional standard; or (2) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

⁴ Each Marcum audit client referenced in this Order was an issuer, as defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii), at all relevant times.

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this Order, Giugliano stepped down from his role as the member of Marcum's senior management responsible for compliance with auditor independence requirements. Giugliano is, and at all relevant times was, an associated person of a registered public accounting firm as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i).

B. Summary

3. This matter concerns Marcum's repeated violations of PCAOB Rule 3520, *Auditor Independence*, and AU § 220, *Independence*, which require a registered public accounting firm to be independent of the firm's audit clients throughout the audit and professional engagement period.⁵ Specifically, Marcum failed to comply with applicable independence requirements in connection with audits and interim reviews of 62 issuer clients that presented at the MicroCap Conference. The independence impairments resulted from Marcum's and Giugliano's conduct in connection with the Firm's annual MicroCap Conference from 2012 through 2015.

4. The MicroCap Conference was an investor conference at which smaller or emerging public companies ("presenting companies") made business presentations to audiences that included potential investors. Marcum created, organized, and hosted the conference to increase its visibility and brand in the microcap space. The success of the conference depended on companies perceiving it as a good forum to connect with potential investors, and on potential investors perceiving it as a good opportunity to find high-quality investment opportunities.

5. From 2012 through 2015, Marcum endeavored to establish the MicroCap Conference as an event at which the presenting companies, including dozens of Marcum's issuer audit clients, were perceived as being high-quality investment opportunities. For example, Marcum expressly touted the quality of the conference's presenting companies and told potential conference attendees, including potential investors, that the presenting companies had been selected through a vetting process.

6. Giugliano approved the MicroCap Conference from an independence perspective and was aware of Marcum's touting of the presenting companies. Yet he failed to recognize the independence implications of touting a group of companies that included audit clients, in part because he failed to conduct any substantial independence deliberations concerning the conference.

7. From 2012 through 2015, Marcum issued audit reports on the financial statements of its issuer audit clients that were among the presenting companies at the MicroCap Conference. The Firm's independence was impaired with respect to these

⁵ All references to PCAOB rules and standards are to the versions of those rules and standards in effect at the time of the relevant conduct.

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issuer audit clients because Marcum's hosting and promotion of the conference: (1) involved publicly advocating for these issuer audit clients as high-quality investment opportunities; and (2) created a mutual interest between Marcum and these issuer audit clients with respect to whether those clients' subsequent performance lived up to Marcum's billing. As a result, the Firm failed to satisfy the independence criteria set out in Rule 2-01(b) of Commission Regulation S-X,⁶ in violation of PCAOB Rule 3520 and AU § 220.

8. Because he took or omitted to take actions knowing, or recklessly not knowing, that his acts and omissions would directly and substantially contribute to the Firm's independence violations, Giugliano violated PCAOB Rule 3502, *Responsibility Not to Knowingly or Recklessly Contribute to Violations*.

9. From 2012 through 2017, Marcum also failed to comply with PCAOB quality control standards because it failed to establish policies and procedures sufficient to provide the Firm with reasonable assurance that: (1) it would maintain independence in all required circumstances;⁷ and (2) the policies and procedures the Firm had established with respect to independence were suitably designed and were being effectively applied and monitored.⁸ Indeed, even after the Firm received notice from PCAOB staff in 2015 that its conduct appeared to be inconsistent with independence requirements, the Firm responded by taking certain actions, but failed to implement, apply, and monitor policies and procedures sufficient to provide reasonable assurance that it would identify and appropriately address potential independence issues in 2016 and 2017.

C. Background

10. Marcum hosted the inaugural MicroCap Conference in New York in June 2012 ("2012 Conference"). Thereafter, Marcum hosted the conference in May 2013 ("2013 Conference"), May 2014 ("2014 Conference"), May 2015 ("2015 Conference"), June 2016 ("2016 Conference"), and June 2017 ("2017 Conference"). The conference focused on "microcap" companies, which Marcum described as public companies with a market capitalization of less than \$500 million.

11. Marcum and its personnel promoted the MicroCap Conference by distributing brochures, sending out marketing emails, issuing press releases, giving

⁶ 17 C.F.R. § 210.2-01(b).

⁷ QC § 20.09-.10, *System of Quality Control for a CPA Firm's Accounting and Auditing Practice*; see also QC § 30.02-.03, *Monitoring a CPA Firm's Accounting and Auditing Practice*.

⁸ QC §§ 20.09-.10, 30.02-.03.

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interviews, and posting news articles and announcements on a Marcum website dedicated to promoting the conference. In addition, Marcum sent out thousands of conference invitations to potential attendees, including fund managers and private equity investors, banks, law firms, and other service providers for microcap companies. The MicroCap Conference was well attended and grew in size between 2012 and 2017. For example, the conference had approximately 800 attendees in 2012 and more than 2,000 attendees by 2016.

12. The format and agenda for each of the MicroCap Conferences were substantially similar. For each conference, Marcum prepared promotional books that were distributed to conference attendees. The conference books included written introductory statements from Marcum's Managing Partner ("Managing Partner") and the Partner-in-Charge of Marcum's SEC Services Practice and its New York office ("SEC Services Leader"). The conferences began with live opening remarks by the SEC Services Leader. Conference attendees could then attend pre-scheduled business presentations by representatives of various microcap companies, "expert panel" discussions, and one-on-one meetings with the management of the presenting companies.⁹

13. The MicroCap Conference was an important marketing event for Marcum. The Firm used the event to increase its visibility in the microcap marketplace and to develop relationships with potential clients. The conference also provided a marketing opportunity for the microcap companies that presented at the conference and the firms that sponsored the conference.

14. The success of the MicroCap Conference depended on providing value for the participants in the conference—*i.e.*, Marcum, presenting companies, sponsors, and potential investors. Marcum understood that it could attract more conference participants, including investors, and thereby make its MicroCap Conference more attractive to presenting companies and sponsors, by building a public perception that the conference had high-quality presenting companies.

Giugliano Approved the MicroCap Conference

15. The SEC Services Leader conceived of the MicroCap Conference, which he modeled on similar investor conferences that had been held by investment banking firms, shortly before the initial MicroCap Conference in June 2012. The Managing Partner granted the SEC Services Leader approval to hold the conference following a discussion of the potential costs and benefits of the conference. During that discussion, the Managing Partner indicated that the SEC Services Leader should consult with Giugliano regarding the potential independence implications of the conference.

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Marcum personnel did not attend any one-on-one meetings.

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16. After his discussion with the Managing Partner and prior to the 2012 Conference, the SEC Services Leader had a telephone call with Giugliano to discuss whether the conference would have any independence implications. The SEC Services Leader described the structure of the conference and informed Giugliano that he expected some of Marcum's issuer audit clients to attend. Giugliano recognized that the conference would be different than other networking events the Firm had held because companies would be presenting to and meeting one-on-one with potential investors.

17. During the telephone call, Giugliano gave the SEC Services Leader some limited advice. Giugliano said that Marcum should not be involved in specific company presentations or one-on-one meetings with investors. He also advised that Marcum should not make positive statements about individual presenting companies.

18. The SEC Services Leader informed Giugliano that Marcum would be partnering with an investor relations firm to market the conference. Giugliano, however, failed to consider how the Firm would market the conference or whether the Firm would tout the investment potential of the presenting companies as a group.

19. At the conclusion of their telephone call, Giugliano advised the SEC Services Leader that he did not believe the MicroCap Conference would impair Marcum's independence. Giugliano subsequently reviewed certain independence rules, which did not change his view with respect to the conference. Giugliano did not document his call with the SEC Services Leader, or his conclusion that the conference would not impair Marcum's independence, because he did not believe that the matter required any substantial deliberation.

20. Giugliano subsequently attended each of Marcum's annual MicroCap Conferences and became aware of the manner in which the conferences were promoted to the public. However, until PCAOB staff raised the issue in 2015, neither Giugliano nor anyone else at Marcum undertook any further review or consultation to assess whether the MicroCap Conference had any implications for the Firm's independence with respect to audit clients of the Firm who might present at, sponsor, or otherwise participate in the conference.

The 2012 Through 2015 MicroCap Conferences

21. In connection with the 2012 Conference, Marcum offered complimentary Presenting Company Packages that provided microcap companies with a presentation slot at the 2012 Conference, as well as certain marketing services such as inclusion of the company's logo or profile in Marcum's newsletters, on the conference website, and in the conference guidebook.

22. For the 2013 Conference, Marcum no longer offered presentation slots and related marketing services on a complimentary basis. Instead, Marcum offered a \$1,000 Standard Presenting Company Package that added optional webcasting and

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inclusion in all conference media coverage to the marketing services that had been included in the Presenting Company Packages for the 2012 Conference. Marcum also created a second category of presenting companies by offering a \$5,000 Sponsoring Presenting Company Package. For the 2014 and 2015 Conferences, Marcum offered substantially the same Standard and Sponsoring Presenting Company Packages, but increased the price of the former to \$1,950 in 2014 and \$2,450 in 2015.

23. Marcum issuer audit clients constituted a significant percentage of the presenting companies at each MicroCap Conference between 2012 and 2015. They represented 18 of 64 presenting companies (28%) at the 2012 Conference, 21 of 122 (17%) at the 2013 Conference, 30 of 128 (23%) at the 2014 Conference, and 36 of 152 (24%) at the 2015 Conference. Across the four conferences, 62 separate Marcum issuer audit clients were presenting companies.

24. From 2012 through 2015, Marcum promoted the MicroCap Conference as an exclusive, annual showcase for microcap presenting companies that Marcum publicly described as being "highly vetted," "high quality" investment opportunities. Many such statements were directly attributed to the Managing Partner and SEC Services Leader. For example:

- In 2012, Marcum described the conference as an "invitation-only" event with "the very best," "promising high growth companies, the top picks by some of the most astute analysts." The Firm stated that the conference would be "a unique opportunity for investors to uncover 'hidden gem' investment opportunities." The Managing Partner characterized the presenting companies as having "high quality management teams." The SEC Services Leader called the presenting companies "exceptionally well managed," with "sound business practices," and predicted that the presenting companies "will be recognized by the investment community both for their business management success and for their investment potential."
- In 2013, Marcum continued to describe the conference as an "invitation-only" event with "the very best" companies that were "top picks." A posting on the conference website described an application process by which "a panel of experts . . . choose the top companies from the pool of applicants." The Managing Partner stated that the conference brought "investors seeking the highest quality opportunities together with best-of-the-best microcap companies." The SEC Services Leader stated that the conference was "earmarked exclusively for the highest quality opportunities."
- In 2014, Marcum again described the conference as an "invitation-only" event with "the very best" companies that were "top picks." The Firm called the conference "a showcase for best-of-the-best, up-and-coming microcap companies." The Managing Partner stated

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that the presenting companies were "the very best, underfollowed companies." The SEC Services Leader stated that the conference "brings together both sides of the market under very stringent criteria" and reiterated that the presenting companies were "highly vetted."

- In 2015, Marcum described the conference as an "invitation-only" event with "superior" companies that were "top picks." The Firm wrote that the conference had become "a cornerstone event for the microcap market, featuring presentations by CEOs and CFOs from breakthrough high-growth companies." The SEC Services Leader stated that the conference would "showcase some of the most promising emerging growth companies out there today."

25. Giugliano knew that Marcum, the Managing Partner, and the SEC Services Leader made these types of public statements about the presenting companies, but he failed to consider the potential independence implications of their touting.

26. Each year, Marcum arranged for an investor relations firm to create profiles of the presenting companies. These profiles were included in the 2012 through 2015 conference books that were distributed to potential investors. The profiles included often laudatory descriptions of the presenting companies; for example, multiple Marcum audit clients were described as "leading" and "innovative" companies in the Firm's 2015 conference book.

27. Marcum's touting and marketing of the presenting companies extended beyond its own public statements. In 2013, for example, the SEC Services Leader directed Marcum personnel to remind presenting companies of the importance of issuing press releases concerning their participation in the conference. In 2014, Marcum provided the presenting companies with a template press release that promoted the companies, promoted the conference as "a signature showcase for superior quality, under-followed public companies," and promoted Marcum as "Ranked #15 nationally."

The Board's 2015 Inspection and Marcum's Subsequent Conduct

28. In early 2015, Board staff notified Marcum that the Board's Division of Registration and Inspections ("Inspections") would inspect the firm that year. In April 2015, the Board's Inspections staff issued a comment advising Marcum that it appeared the Firm had failed to maintain its independence with respect to its issuer audit clients that participated in the MicroCap Conference.

29. After receiving the inspection comment in 2015, Marcum took certain steps to address the comment, including removing certain language touting the presenting companies from future promotional materials for the conference, adding a

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disclaimer to portions of the MicroCap Conference website, and, in 2017, adding the following provisions to its quality control policies:

vi. Any public statement about a client, or any group of companies which includes a client, is prohibited without the approval and consent of the [Assurance Services Leader, Giugliano] and the Firm's General Counsel's office. Public statements would include those statements included in marketing materials, email blasts or statements on websites about any Issuer audit clients or prospects, with respect to any Firm-hosted or Firm-sponsored conference, including the Marcum MicroCap Conference. No public statement should be made without careful consideration of the general standard of independence set out in Rule 2-01(b) of Regulation S-X, including consideration of the four principles in the preliminary note to Rule 2-01. In all cases, public statements about issuer audit clients must avoid creating any appearance that we are advocating for the clients and must avoid putting us in a position of appearing to have a mutual interest with the client, as could occur with, for example, statements intended to create an impression that the securities of an issuer audit client are a good investment.

vii. The Firm must not engage with issuer audit clients in business relationships as described in Rule 2-01(b)(3) of Regulation S-X. This means, among other things, that an issuer audit client may not be a sponsor of any Firm-hosted conference, including the Marcum Microcap Conference.

viii. For purposes of (vi) and (vii), "Issuer audit client" includes (1) issuer audit clients of the Firm, (2) issuer audit clients of any associated entity of the Firm, and (3) all of those issuers' affiliates, as defined in Rule 2-01(f) of Regulation S-X.

30. After taking these steps with respect to its public touting of the presenting companies, including those that were Marcum issuer audit clients, the Firm held its 2016 and 2017 Conferences without adequately considering other potential independence issues in relation to Marcum issuer audit clients that presented at the conference.¹⁰ Indeed, Marcum failed even to verify the effectiveness of the steps it took

¹⁰ Marcum issuer audit clients represented 31 of 109 presenting companies (28%) at the 2016 Conference and 24 of 138 presenting companies (17%) at the 2017 Conference. After holding the 2017 Conference, Marcum decided to stop holding the MicroCap Conference. Accordingly, there was no 2018 MicroCap Conference.

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to limit its touting of presenting companies. As a result, Marcum failed to identify, evaluate, or appropriately address a number of issues concerning the 2016 and 2017 Conferences that, at the very least, raised questions about the Firm's independence.

31. First, although Giugliano had conversations with other Marcum personnel about removing from the conference website past press releases that included language touting the presenting companies, neither he nor anyone else at Marcum did anything to verify whether the press releases were actually removed from the website. In fact, the press releases were not removed. As of 2017, Marcum's MicroCap Conference website continued to showcase at least ten Marcum press releases from 2014 and 2015 that referred to presenting companies for those conferences as "some of the country's most promising," "superior quality," and "highly qualified" companies that were selected "under very stringent criteria."

32. Second, Marcum adopted a restrictive reading of its new policy requiring Giugliano to review public statements about audit clients. Marcum read this policy as applicable only to documents drafted by Marcum; the Firm did not apply the policy to public statements that might be attributable to Marcum but that were contained in documents drafted by third parties. For example, the policy was not applied to interviews with Marcum personnel or to third party publications that Marcum posted on its website—and Giugliano therefore did not review such documents—even though, in connection with the 2012 through 2015 Conferences, Marcum had posted on its website interviews and third party publications touting the presenting companies.

33. Third, Marcum sold one of its issuer audit clients a "Sponsoring" presenting company designation in 2016 and a "Premium" presenting company designation in 2017, without performing any independence review to determine whether giving an issuer audit client such designations in connection with the Firm's investor conference was consistent with independence requirements and, for 2017, its new quality control policies.

34. Fourth, in advance of the 2016 and 2017 Conferences, Marcum again provided the presenting companies with template press releases. In 2016, for example, Marcum provided the presenting companies with a template press release that described the conference as "a signature showcase for superior quality, under-followed public companies." In 2017, Marcum provided the presenting companies with a template press release announcing their participation in the 2017 Conference, touting the conference as "a nationally recognized forum," and touting Marcum as "a top national accounting and advisory firm." A number of Marcum's issuer audit clients issued press releases that included Marcum's suggested language, thereby using the conference's reputation and association with their auditor to promote themselves to investors. Marcum did not perform any independence review to determine whether its conduct in providing such press releases to its issuer audit clients was consistent with independence requirements.

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35. Fifth, in 2016 and 2017, Marcum continued to advertise the presenting companies in its conference marketing materials. In doing so, Marcum displayed the presenting companies' logos on the Firm's conference website, in the conference app, and in emails it sent to promote the conference. Marcum did not perform any independence review to determine whether this advertising was consistent with independence requirements.

36. Finally, as discussed above, from 2012 through 2015, Marcum had repeatedly vouched that the MicroCap Conference's presenting companies were, in Marcum's view, "highly vetted," "high quality" investment opportunities. Yet, in 2016 and 2017, Marcum failed to consider whether its past touting had branded the Firm's annual conference as an event with respect to which Marcum held—and could be expected to continue to hold—a positive view of the presenting companies.

D. Marcum and Giugliano Violated PCAOB Rules and Standards

37. In connection with the preparation or issuance of an audit report, PCAOB rules require that a registered public accounting firm and its associated persons comply with the Board's auditing and related professional practice standards.¹¹

Marcum Violated Auditor Independence Requirements

38. PCAOB rules require that a registered public accounting firm and its associated persons be independent of the firm's audit clients throughout the audit and professional engagement period.¹²

39. A registered public accounting firm's independence obligation with respect to an issuer audit client encompasses not only an obligation to satisfy the independence criteria set out in PCAOB rules and standards, but also an obligation to satisfy all other independence criteria applicable to the engagement, including the independence criteria set out in Commission rules and regulations.¹³

40. Rule 2-01(b) of Regulation S-X provides that an accountant is not independent of an audit client if, at any point during the audit and professional engagement period, "the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the

¹¹ PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*; PCAOB Rule 3200T, *Interim Auditing Standards*.

¹² PCAOB Rule 3520; see also AU § 220.

¹³ PCAOB Rule 3520, Note 1.

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accountant's engagement."¹⁴ In applying this standard, it is appropriate to "look[] in the first instance to whether a relationship or the provision of a service: creates a mutual or conflicting interest between the accountant and the audit client . . . or places the accountant in a position of being an advocate for the audit client."¹⁵

41. With respect to the 62 issuer audit clients that were presenting companies at the MicroCap Conference from 2012 through 2015, Marcum's conduct described above: (1) involved publicly advocating for these issuer audit clients as high-quality investment opportunities; and (2) created a mutual interest between Marcum and these issuer audit clients with respect to whether those clients' subsequent performance lived up to Marcum's touting. This conduct was inconsistent with the independence criteria set out in Rule 2-01(b) of Regulation S-X and impaired the Firm's independence with respect to these issuer audit clients. As a result, Marcum violated PCAOB Rule 3520 and AU § 220.

Giugliano Substantially Contributed to Marcum's Independence Violations

42. PCAOB rules prohibit an associated person of a registered public accounting firm from taking or omitting to take an action knowing, or recklessly not knowing, that the act or omission would directly and substantially contribute to the firm's violation of PCAOB rules or professional standards.¹⁶

43. Giugliano was the member of senior management responsible for Marcum's compliance with auditor independence requirements and approved the MicroCap Conference from an independence perspective. Accordingly, Giugliano had primary responsibility for ensuring that the MicroCap Conference did not impair Marcum's independence.

44. Nonetheless, during his initial 2012 telephone call with the SEC Service Leader concerning the MicroCap Conference, Giugliano did not address the implications of touting the investment potential of the conference's presenting companies. Subsequently, and in every year from 2012 through 2015, Giugliano became aware of the Firm's public statements touting the quality of the presenting companies, a significant percentage of which were Marcum issuer audit clients. Yet

¹⁴ 17 C.F.R. § 210.2-01(b). Rule 2-01(b) further provides that "[i]n determining whether an accountant is independent, the Commission will consider all relevant circumstances, including all relationships between the accountant and the audit client, and not just those relating to reports filed with the Commission."

¹⁵ 17 C.F.R. § 210.2-01, Preliminary Note 2.

¹⁶ PCAOB Rule 3502.

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Giugliano failed to consider whether such statements were consistent with independence requirements.

45. Giugliano knew, or was reckless in not knowing, that this conduct would directly and substantially contribute to Marcum's violations of the independence rules and standards. Therefore, he violated PCAOB Rule 3502.

Marcum Violated PCAOB Quality Control Standards

46. PCAOB rules require that a registered public accounting firm comply with the Board's quality control standards,¹⁷ which provide that a registered public accounting firm "shall have a system of quality control for its accounting and auditing practice."¹⁸ PCAOB quality control standards further state that policies and procedures should be established to provide the firm with reasonable assurance that "personnel maintain independence (in fact and in appearance) in all required circumstances" and "that the work performed by engagement personnel meets applicable professional standards, regulatory requirements, and the firm's standards of quality."¹⁹ Additionally, PCAOB quality control standards provide that policies and procedures for monitoring "should be established to provide the firm with reasonable assurance that the policies and procedures established by the firm for each of the other elements of quality control . . . are suitably designed and are being effectively applied," and that "its system of quality control is effective."²⁰

47. In light of Marcum's conduct in connection with the 2012 through 2017 MicroCap Conferences—which involved advocating for and creating a mutual interest with numerous issuer audit clients from 2012 through 2015, conduct of which senior partners in the Firm were aware, and certain conduct that continued in 2016 and 2017 without being subjected to a sufficient independence review even though the Firm had received notice that the MicroCap Conference could impair the Firm's independence—Marcum failed to suitably design, effectively apply, and appropriately monitor quality control policies and procedures to provide reasonable assurance concerning the Firm's independence. Those failures resulted in, or contributed to, Marcum repeatedly violating PCAOB rules and standards related to independence from 2012 through 2015, including by failing to satisfy applicable Commission independence criteria as described above.

¹⁷ PCAOB Rule 3100; PCAOB Rule 3400T, *Interim Quality Control Standards*.

¹⁸ QC § 20.01.

¹⁹ QC § 20.09-.10, .17.

²⁰ QC §§ 20.20, 30.03.

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48. As a result, Marcum violated QC § 20 and QC § 30 from 2012 through 2017.

III.

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 Respondents' Offers. Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 105(c)(4)(E) of the Act and PCAOB Rule 5300(a)(5), Marcum and Giugliano are hereby 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 \$450,000 is imposed upon Marcum and a civil money penalty in the amount of \$25,000 is imposed upon Giugliano. All funds collected by the Board as a result of the assessment of these civil money penalties will be used in accordance with Section 109(c)(2) of the Act. Marcum and Giugliano shall each pay their respective 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 Marcum or Giugliano, as applicable, 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 Sections 105(c)(4)(C), (F), and (G) of the Act and PCAOB Rules 5300(a)(3), (6), (8), and (9), the Board orders that:
 1. Independent Consultant.
 - a. Marcum shall retain and pay for an independent consultant not unacceptable to the PCAOB staff who has experience with, and is knowledgeable concerning, auditor independence requirements applicable to audits and reviews conducted pursuant to PCAOB standards ("Independent Consultant"). Within sixty days after the entry of this Order, Marcum shall submit to the PCAOB staff a proposal setting

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forth the identity, qualifications, and proposed terms of retention of the Independent Consultant. Marcum may not retain as the Independent Consultant any individual or entity that has provided legal, auditing, or other services to, or has had any affiliation with, Marcum or any member of the Marcum Group during the prior two years.

- b. To ensure the independence of the Independent Consultant, Marcum: (i) shall not have the authority to terminate the Independent Consultant or substitute another independent consultant for the initial Independent Consultant, without the prior written approval of the PCAOB staff; and (ii) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.
- c. Marcum will enter into an agreement with the Independent Consultant that provides that, for the period of the engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Marcum or any member of the Marcum Group, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement also will provide that the Independent Consultant will require that any firm with which the Independent Consultant is affiliated or of which the Independent Consultant is a member, and any person engaged to assist the Independent Consultant in performance of the Independent Consultant's duties under this Order, shall not, without prior written consent of the PCAOB staff, enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Marcum or any member of the Marcum Group, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such, for the period of the engagement and for a period of two years after the engagement.
- d. Marcum shall cooperate fully with the Independent Consultant and shall provide reasonable access to its personnel, information, and records as the Independent Consultant may reasonably request for the Independent

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Consultant's review, evaluation, and reports described in Paragraphs III.C.2 and III.C.3 below.

- e. If Marcum, despite its best, good faith efforts, is unable to identify an Independent Consultant candidate that meets all of the above-listed criteria, Marcum may seek approval from the PCAOB staff of alternative candidates or alternative terms that Marcum believes to be otherwise suitable.
2. Areas Independent Consultant Is To Review. Within the periods specified in Paragraph III.C.3 below, the Independent Consultant will review and evaluate the following:
 - a. Marcum's quality control policies and procedures as they relate to auditor independence requirements applicable to audits and reviews conducted pursuant to PCAOB standards;
 - b. The resources Marcum is devoting to provide reasonable assurance of compliance with auditor independence requirements applicable to audits and reviews conducted pursuant to PCAOB standards, including (i) the expertise, experience, and staffing of Marcum's quality control personnel relating to auditor independence requirements applicable to audits and reviews conducted pursuant to PCAOB standards, and (ii) whether Marcum should hire a partner-level professional with experience and expertise in auditor independence to assume primary responsibility for overseeing the adequate functioning of its independence policies and independence consultation process; and
 - c. Marcum's professional education and training policies and materials relating to auditor independence requirements applicable to audits and reviews conducted pursuant to PCAOB standards.
 3. Independent Consultant Reports and Certifications.
 - a. Within five months of the Independent Consultant being retained, Marcum shall require the Independent Consultant to issue a detailed written report ("Report") to Marcum: (i) summarizing the Independent Consultant's review and evaluation of the areas identified in Paragraph III.C.2 above, and (ii) making recommendations, where appropriate, reasonably designed to ensure that Marcum complies with all auditor independence requirements applicable to audits

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and reviews conducted pursuant to PCAOB standards and that its system of quality control provides reasonable assurance of such compliance. Marcum shall require the Independent Consultant to provide a copy of the Report to the PCAOB staff when the Report is issued.

- b. Marcum will adopt, as soon as practicable, all recommendations of the Independent Consultant in the Report; provided, however, that within thirty days of the issuance of the Report, Marcum may advise the Independent Consultant and the PCAOB staff in writing of any recommendation that it considers to be unnecessary, unduly burdensome, or impractical. Marcum need not adopt any such recommendation at that time, but instead may propose in writing to the Independent Consultant and the PCAOB staff an alternative proposal designed to achieve the same objective or purpose. Marcum and the Independent Consultant will engage in good faith negotiations in an effort to reach agreement on any recommendations objected to by Marcum.
- c. In the event that the Independent Consultant and Marcum are unable to agree on an alternative proposal within forty-five days, Marcum either will abide by the determinations of the Independent Consultant or will seek approval from the PCAOB staff to engage, at Marcum's expense, a qualified third party not unacceptable to the PCAOB staff to promptly resolve the issue(s).
- d. Within seventy-five days of the issuance of the Report and the resolution of any issues that are the subject of disagreement between Marcum and the Independent Consultant, Marcum will certify to the PCAOB staff in writing that it has adopted and has implemented or will implement all recommendations of the Independent Consultant ("Certification of Compliance"). Marcum will provide a copy of the Certification of Compliance to the PCAOB staff.
- e. Within six months of the issuance of the Report, Marcum shall require the Independent Consultant to test whether Marcum has implemented and enforced the Independent Consultant's recommendations and to assess the effectiveness of those implemented recommendations. Marcum shall require the Independent Consultant to issue a written final report summarizing the results of the Independent Consultant's test and assessment ("Final

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Report") and to provide a copy of the Final Report to the PCAOB staff. At this time, if the Independent Consultant determines that the undertakings discussed herein have been completed to the satisfaction of the Independent Consultant, Marcum shall require the Independent Consultant to certify in writing that the undertakings have been so completed ("Independent Consultant Certification") and to provide a copy of this certification to the PCAOB staff.

- f. The Report, Final Report, Certification of Compliance, and Independent Consultant Certification shall be submitted to the Director of the Division of Enforcement and Investigations.
- g. For good cause shown, the PCAOB staff may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.
- h. Marcum agrees that the Division of Enforcement and Investigations may petition the Board to reopen this matter to determine whether additional sanctions or findings are appropriate if it believes that Marcum has not satisfied these undertakings.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

September 10, 2019