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Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions

In the Matter of Donald R. Burke, CPA,

Respondent.

PCAOB Release No. 105-2021-012

September 29, 2021

By this Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions ("Order"), the Public Company Accounting Oversight Board ("Board" or "PCAOB") is:

(1) suspending Donald R. Burke, CPA ("Burke") from being an associated person of a registered public accounting firm for a period of one year; and

(2) imposing a $10,000 civil money penalty upon Burke.

The Board is imposing these sanctions on the basis of its findings that Burke violated PCAOB rules and standards in connection with Rehmann Robson LLP's audits of the financial statements of Issuer A, for the years ended December 31, 2014 ("FY 2014"), and December 31, 2015 ("FY 2015") (each an "Audit" and, collectively, the "Audits").[1]

I.

The Board deems it necessary and appropriate, for the protection of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports, that disciplinary proceedings be, and hereby are, instituted pursuant to Section 105(c) of the Sarbanes-Oxley Act of 2002, as amended (the "Act"), and PCAOB Rule 5200(a)(1) against Burke.

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[1] All references to PCAOB rules and standards in this Order are to the versions of those rules and standards, and to their organization and numbering, in effect at the time of the audits discussed herein. As of December 31, 2016, the PCAOB reorganized its auditing standards using a topical structure and a single, integrated numbering system. *See Reorganization of PCAOB Auditing Standards and Related Amendments to PCAOB Standards and Rules*, PCAOB Release No. 2015-002 (Mar. 31, 2015).

II.

In anticipation of institution of these proceedings, and pursuant to PCAOB Rule 5205, Burke has submitted an Offer of Settlement ("Offer") that the Board has determined to accept. 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 Burke and the subject matter of these proceedings, which is admitted, Burke consents to the entry of this Order as set forth below.[2]

III.

On the basis of Burke's Offer, the Board finds[3] that:

A. Respondent

1. **Donald R. Burke** was, at all relevant times, a certified public accountant licensed by the Michigan Department of Licensing and Regulatory Affairs (License No. 1101011461) and by Florida's Department of Business and Professional Regulation, Division of Certified Public Accounting (License No. AC45199). He served as the engagement quality review ("EQR") partner on both Audits. At all relevant times, Burke was a principal at Rehmann Robson LLC (the "Firm") and 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. Issuer

2. Issuer A was, at all relevant times, a Nevada corporation headquartered in Grand Rapids, Michigan, and Golden, Colorado. Issuer A's public filings indicate that it was in the business of marketing and distributing vaping products and e-cigarettes. Its common stock was registered, at all relevant times, under Section 12(g) of the Securities Exchange Act of 1934. It

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[2] The findings herein are made pursuant to the Offer and are not binding on any other person or entity in this or any other proceeding.

[3] The Board finds that Burke'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.

was, at all relevant times, an issuer as that term is defined in Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii). Issuer A filed for bankruptcy on March 16, 2017.

C. Summary

3. This matter concerns Burke's violations of PCAOB rules and standards in connection with the Audits.[4] As detailed below, Burke, in performing EQRs for both Audits, failed to comply with Auditing Standard ("AS") No. 7, *Engagement Quality Review* ("AS No. 7"), and failed to exercise due professional care, including professional skepticism.

4. Specifically, Burke failed to evaluate properly the significant judgments made by the engagement teams relating to engagement planning concerning revenue. In addition, Burke failed to evaluate properly the engagement teams' assessment of, and audit responses to, significant risks identified by the engagement team, including fraud risks. As a result of his failure to perform the EQRs with due professional care and in conformity with PCAOB standards, Burke lacked an appropriate basis to provide his concurring approvals of issuance of the Firm's audit reports regarding Issuer A's financial statements in each of the Audits.

D. Burke Violated PCAOB Rules and Standards in Connection with the Audits

5. 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.[5] AS No. 7 requires that an EQR be performed on all audit engagements conducted pursuant to PCAOB standards.[6]

6. In conducting the EQR, the EQR reviewer should evaluate the significant judgments made by the engagement team and the related conclusions reached in forming the overall conclusion on the engagement and in preparing the engagement report.[7] To evaluate those judgments and conclusions, the EQR reviewer should evaluate the engagement team's significant judgments that relate to engagement planning, including consideration of the company's business, and related financial reporting issues and risks.[8] In addition, the EQR

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4 *See In the Matter of Glenn Alan Zubryd, CPA*, PCAOB Release No. 105-2021-013 (September 29, 2021).

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

6 *See* AS No. 7 ¶ 1.

7 *See id*. ¶ 9.

8 *See id*. ¶ 10.a.

reviewer should evaluate, among other things, the engagement team's assessment of, and audit responses to, significant risks identified by the engagement team, including fraud risks.[9] In connection with an audit, the EQR reviewer should evaluate whether the engagement documentation that he or she reviewed indicates that the engagement team responded appropriately to significant risks and supports the conclusions reached by the engagement team with respect to the matters reviewed.[10] The EQR reviewer may provide concurring approval of issuance of an audit report only if, after performing his or her responsibilities with due professional care, he or she is not aware of a significant engagement deficiency.[11] To perform an EQR with due professional care, the EQR reviewer must exercise professional skepticism, which is an attitude that includes a questioning mind and a critical assessment of audit evidence.[12]

i. Background

7. The Firm served as Issuer A's external auditor for the 2014 and 2015 financial statements. It issued an audit report containing an unqualified opinion, dated March 31, 2015, on Issuer A's FY 2014 financial statements. The Firm also issued an audit report containing an unqualified opinion, dated March 28, 2016, on Issuer A's FY 2015 financial statements. These reports were included with Issuer A's Forms 10-K filed with the Securities and Exchange Commission on April 1, 2015, and March 28, 2016, respectively.

8. Issuer A's public filings reported total revenue for FY 2014 of approximately $43.5 million. In its FY 2015 financial statements, Issuer A reported total revenue for FY 2015 of approximately $54.2 million. In each of the Audits, the engagement teams identified improper revenue recognition as a significant risk and a fraud risk. Notwithstanding these risks, the engagement teams failed to perform sufficient procedures to obtain sufficient appropriate audit evidence regarding revenue in connection with Issuer A's Audits.

9. For significant risks, including fraud risks, PCAOB standards require an auditor to perform substantive procedures, including tests of details, that are specifically responsive to

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9 *See id*. ¶ 10.b.

10 *See id*. ¶ 11.

11 *See* AU §§ 230.07-.09, *Due Professional Care in the Performance of Work* ("AU § 230"). *See also* AS No. 7 ¶ 12.

12 *See* AU § 230.07.

the assessed risk.[13] In addition, for significant risks of material misstatement, it is unlikely that substantive analytical procedures alone will be sufficient.[14]

10. In both Audits, Issuer A's revenue controls were not operating effectively. During the FY 2014 Audit, management identified 37 revenue key controls. The Firm concluded that 34, or 92%, of the key controls related to revenue were not operating effectively.[15] In both Audits, the engagement teams concluded that it was necessary to increase substantive testing since it was determined that the revenue controls could not be relied upon in the audit.

11. Despite this conclusion and awareness of these control issues, the engagement teams failed to perform substantive audit procedures, including testing of details, relating to revenue in both Audits.[16] In addition, the engagement teams did not design and implement responses to appropriately identify and address the risks of material misstatement relating to revenue in both Audits.[17] In both Audits, the engagement teams' procedures regarding revenue were limited to analytical procedures and were not substantive analytical procedures.[18] The engagement teams failed to perform any audit procedures to test revenue beyond a year-over-year comparison of revenue and inquiry of management. In performing these comparisons, the engagement teams failed to comply with PCAOB standards because they failed to: (1) develop an expectation precise enough to provide the desired level of assurance that differences that may be potential material misstatements, individually or when aggregated with other misstatements, would be identified for investigation;[19] (2) consider the amount of difference from the expectation that could be accepted without further investigation;[20] and (3) evaluate significant unexpected differences.[21] As a result, the year-over-year revenue comparisons were not substantive analytical procedures and the engagement teams failed to obtain sufficient

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13 *See* AS No. 13 ¶¶ 11 and 13, *The Auditor's Responses to the Risks of Material Misstatement* ("AS No. 13").

14 *See* AU § 329.09, *Substantive Analytical Procedures* ("AU § 329").

15 The Firm did not audit the internal control over financial reporting of Issuer A as of December 31, 2015.

16 *See* AS No. 13 ¶ 36.

17 *See id*. ¶¶ 3, 11, and 13.

18 *See* AU § 329.09.

19 *See* AU § 329.17.

20 *See* AU § 329.20.

21 *See* AU § 329.21.

appropriate audit evidence to determine whether revenue was recorded in the proper period and was properly valued in each of the Audits.[22]

ii. Burke Failed to Perform an Adequate EQR in Relation to Revenue in Both Audits

12. During the Audits, Burke failed to evaluate properly the significant judgments made by the engagement teams relating to planning, including consideration of the company's business and related financial reporting issues and risks. Prior to the Audits, Burke knew that Issuer A was in a troubled financial condition, including that it had depleted its cash reserves and owed money to its service providers. Despite his knowledge of Issuer A's financial issues, Burke failed to evaluate properly the fact that the engagement teams' planned procedures related to revenue did not include substantive procedures.[23]

13. In addition, during the Audits, Burke failed to evaluate properly the significant judgments made, and the related conclusions reached, by the engagement teams with respect to revenue.[24] Specifically, Burke failed to evaluate properly the engagement teams' assessment of, and audit responses to, significant risks identified by the engagement teams, including fraud risks, related to revenue.[25] During the Audits, Burke, who knew the engagement teams had identified revenue as a significant risk and a fraud risk, failed to obtain an understanding of what, if any, procedures had been performed regarding revenue. Finally, he failed to review properly the engagement teams' work performed and documentation related to revenue testing in both Audits.[26]

14. As a result of the failures described above, Burke provided his concurring approvals of issuance without performing his reviews with the requisite due professional care.[27]

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

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22 *See* AS No. 15, *Audit Evidence*.

23 *See* AS No. 7 ¶ 10.a.

24 *See id*. ¶ 9.

25 *See id*. ¶ 10.b.

26 *See id*. ¶ 11.

27 *See* AU § 230; AS No. 7 ¶ 12.

determines it appropriate to impose the sanctions agreed to in Burke's Offer. Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 105(c)(4)(B) of the Act and PCAOB Rule 5300(a)(2), Donald R. Burke, CPA, is suspended for one year from the date of this Order from being 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);[28] and

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 $10,000 is imposed upon Burke. 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. Burke shall pay this civil money penalty within 10 days of the issuance of this Order by: (1) wire transfer in accordance with instructions furnished 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 Office of Finance, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington, D.C. 20006, and (c) submitted under a cover letter which identifies Burke 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 the Office of the Secretary, Attention: Phoebe Brown, Secretary, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington, D.C. 20006.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

September 29, 2021

[28] As a consequence of the suspension, the provisions of Section 105(c)(7)(B) of the Act will apply with respect to Burke. Section 105(c)(7)(B) provides: "It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any issuer, broker, or dealer in an accountancy or a financial management capacity, and for any issuer, broker, or dealer that knew, or in the exercise of reasonable care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission."