

Order Making Findings and Imposing Sanctions

In the Matter of Thomas P. Donovan, CPA,

Respondent.

PCAOB Release No. 105-2021-015

September 30, 2021

By this Order Making Findings and Imposing Sanctions, the Public Company Accounting Oversight Board (“Board” or “PCAOB”) is:

- (1) censuring Thomas P. Donovan, CPA (“Donovan” or “Respondent”);
- (2) imposing a civil money penalty in the amount of \$15,000 on Donovan;
- (3) limiting Donovan’s activities in connection with any audit of an issuer, for two years from the date of this Order, by prohibiting Donovan from serving in certain capacities in any issuer audit, as described in Section III.B. herein; and
- (4) requiring that Donovan complete forty hours of continuing professional education (“CPE”) within two years from the date of this Order in addition to any CPE required in connection with any professional license.

The Board is imposing these sanctions on the basis of its findings that Respondent violated PCAOB rules and standards in connection with the audits of the financial statements of two issuers.

I.

On September 1, 2020, the Board instituted non-public disciplinary proceedings against Respondent.¹ Pursuant to PCAOB Rule 5205, Respondent has submitted an Offer of Settlement

¹ Section 105(c)(2) of the Sarbanes-Oxley Act of 2002, as amended, 15 U.S.C. § 7215 (c)(5) (“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” Although the Board found good cause

(“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 him and the subject matter of these proceedings, which is admitted, Respondent consents to entry of this Order as set forth below.²

II.

On the basis of Respondent’s Offer, the Board finds that:³

A. Respondent

1. **Thomas P. Donovan** is a certified public accountant licensed by the State of Texas (License No. 040410). Donovan 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). At all relevant times, Donovan was the engagement partner in charge of the Issuer A Audit, and he was the engagement quality review (“EQR”) reviewer for the Issuer B Audit.

B. Other Relevant Entity and Individual

2. PMB Helin Donovan, LLP was, at all relevant times, a limited liability partnership organized under the laws of the State of Texas, licensed in the State of Texas (License No. P05374), and headquartered in Austin, Texas. The Firm also was, at all relevant times, registered with the Board pursuant to Section 102 of the Act and PCAOB rules. On December 17, 2019, the Board entered an Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions against PMB Helin Donovan, LLP, Christie J. Cardwell, CPA,

for making the proceedings public, Respondent did not consent, as permitted by Section 105(c)(2) of the Act and PCAOB Rule 5203.

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

³ The Board finds that Respondent’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: (A) intentional or knowing conduct, including reckless conduct, that results in a violation of the applicable statutory, regulatory, or professional standard; or (B) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

and Donald K. McPhee, CPA (“December 2019 OIP”).⁴ In the December 2019 OIP, the Board stated that the Firm had filed a Form 1-WD seeking leave to withdraw from registration with the Board, which the Board had determined to grant as of December 17, 2019.

3. Christie J. Cardwell was, at all relevant times, a partner of the Firm. Cardwell was, at all relevant times, a certified public accountant licensed by the State of Washington 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). Cardwell served as the engagement partner for the Issuer B Audit. In the December 2019 OIP, the Board sanctioned Cardwell in connection with the audits of two issuers for which she was the engagement partner, including the Issuer B Audit.⁵

C. Issuers

4. Issuer A is, and at all relevant times was, a Bermuda corporation headquartered in Addison, Texas. Its public filings disclose that, at the time of the Issuer A Audit, it was an international oil and natural gas company engaged in acquisition, exploration, development and production. At all relevant times, its common stock was registered under Section 12(b) of the Securities Exchange Act of 1934 (“Exchange Act”). At all relevant times, Issuer A was an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

5. Issuer B was, at all relevant times, a Wyoming corporation headquartered in Folsom, California. Its public filings disclose that, at the time of the Issuer B Audit, Issuer B was a payments and banking software developer, licensor, and services provider. Its common stock was registered under Section 12(g) of the Exchange Act. At all relevant times, Issuer B was an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

D. Summary

6. This matter concerns Donovan’s failure to comply with PCAOB rules and auditing standards in connection with PMB Helin Donovan LLP’s (“PMB” or the “Firm”) audit of the financial statements of Issuer A for the fiscal year ending December 31, 2016 (“Issuer A Audit”). While serving as the engagement partner on the Issuer A Audit, Donovan failed to exercise due care and professional skepticism, failed to obtain sufficient appropriate audit evidence, and failed to properly supervise his engagement team members.

⁴ *In the Matter of PMB Helin Donovan, LLP, Christie J. Cardwell, CPA, and Donald K. McPhee, CPA*, PCAOB Rel. No. 105-2019-031 (Dec. 17, 2019).

⁵ *Id.*

7. Specifically, during the Issuer A Audit, Donovan improperly used the report of a specialist engaged by Issuer A to evaluate relevant financial statement assertions for oil and natural gas properties. Donovan failed to make appropriate tests of the data provided by Issuer A to the specialist. Oil and natural gas properties, net of accumulated amortization, constituted approximately one-half of the value of Issuer A's total assets.

8. Additionally, this matter concerns Donovan's failure to exercise due professional care, including professional skepticism, and to maintain objectivity, while serving as the EQR reviewer for PMB's audit of the financial statements of Issuer B for the year ending December 31, 2015 ("Issuer B Audit"). Donovan failed to maintain objectivity in performing his EQR by assuming responsibilities of the engagement team. Further, Donovan violated the EQR standard by providing his concurring approval of issuance for PMB's audit report when he was aware of a significant engagement deficiency in the Issuer B Audit.

E. Donovan Violated PCAOB Rules and Standards in Two Issuer Audits

9. 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.⁶ An auditor may express an unqualified opinion on an issuer's financial statements only when the auditor has formed such an opinion on the basis of an audit performed in accordance with PCAOB standards.⁷ Among other things, PCAOB standards require an auditor to exercise due professional care, exercise professional skepticism, and plan and perform audit procedures to obtain sufficient appropriate audit evidence to provide a reasonable basis for the auditor's opinion.⁸ PCAOB standards

⁶ See PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*; PCAOB Rule 3200, *Auditing Standards* (applicable to audits for fiscal years ending on or after December 31, 2016); PCAOB Rule 3200T, *Interim Auditing Standards* (applicable to audits for fiscal years ending before December 31, 2016). 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); see also *PCAOB Auditing Standards Reorganized and Pre-Reorganized Numbering* (Jan. 2017). The reorganization did not impose additional requirements on auditors or change substantively the requirements of PCAOB standards. While Respondent's conduct occurred both before and after the reorganization, the reorganized standards are cited herein for purposes of clarity.

⁷ See AS 3101.07, *Reports on Audited Financial Statements*.

⁸ See AS 1015, *Due Professional Care in the Performance of Work*; AS 2301.07, *The Auditor's Responses to the Risks of Material Misstatement*; AS 1105.04, *Audit Evidence*.

further require that auditors evaluate whether the financial statements are presented fairly, in all material respects, in conformity with the applicable financial reporting framework.⁹

10. PCAOB standards provide that the engagement partner is responsible for proper supervision of the work of engagement team members and for compliance with PCAOB standards, including standards regarding using the work of specialists.¹⁰ Among other things, the engagement partner should review the work of engagement team members to evaluate whether the work was performed and documented, the objectives of the procedures were achieved, and the results of the work support the conclusions reached.¹¹

11. As described below, Donovan failed to comply with PCAOB rules and standards in connection with the Issuer A Audit and the Issuer B Audit.

i. Donovan and His Engagement Team Failed to Make Appropriate Tests of Data Provided to a Specialist in the Issuer A Audit

12. The Firm served as the external auditor for the Issuer A Audit. The Firm's audit report for Issuer A's 2016 financial statements, dated March 22, 2017, was included in Issuer A's Form 10-K filed with the U.S. Securities and Exchange Commission ("Commission") on March 22, 2017. The Firm expressed an unqualified opinion that Issuer A's 2016 financial statements presented fairly, in all material respects, Issuer A's financial position, results of operations, and cash flows in conformity with U.S. generally accepted accounting principles ("GAAP"). Donovan served as the engagement partner and authorized the issuance of the Firm's audit report for the Issuer A Audit.

13. When using the findings of a specialist, PCAOB standards require an auditor, among other things, to make appropriate tests of data provided to the specialist, taking into account the auditor's assessment of control risk.¹²

14. During the Issuer A Audit, Donovan understood that oil and natural gas properties, net of accumulated amortization, constituted approximately one-half of Issuer A's total assets. The work papers Donovan reviewed included a report on reserves and revenues that was prepared by a specialist engaged by Issuer A (the "Specialist Report"). This report provided estimates, as of December 31, 2016, of the extent and value of the proved, probable,

⁹ See AS 2810.30, *Evaluating Audit Results*.

¹⁰ See AS 1201.03, *Supervision of the Audit Engagement*.

¹¹ *Id.* at .05.c.

¹² AS 1210.12, *Using the Work of a Specialist*.

and possible oil, condensate, and sales gas reserves of certain properties in which Issuer A represented that it owned an interest.

15. The Specialist Report states that the specialist relied, without independent verification, on information furnished by Issuer A with respect to its property interests, production from such properties, current costs of operation and development, current prices for production, agreements relating to current and future operations and sale of production, estimation of taxes, and various other information and data that the specialist accepted as represented.

16. Donovan relied on the Specialist Report as audit evidence to support his evaluation of components of Issuer A's depletion expense and any required impairment of Issuer A's oil and gas properties at year-end.¹³ However, despite relying on these findings, Donovan and the engagement team failed to perform any audit procedures to test the data Issuer A provided to the specialist. Accordingly, Donovan failed to "make appropriate tests of data provided to the specialist," and failed to direct the engagement team to make such tests, when he used the specialist's findings in the audit.¹⁴

17. In addition, Donovan failed to review with due care the work of engagement team members regarding the use of the Specialist Report, and failed to evaluate whether the work was performed and documented, the objectives of the procedures were achieved, and the results of the work supported the conclusions reached.¹⁵

ii. Donovan Violated PCAOB Standards in Conducting His Engagement Quality Review for the Issuer B Audit

18. An EQR is required for all audits conducted pursuant to PCAOB standards.¹⁶ An EQR reviewer must be independent of the company, the EQR must be performed with integrity, and the EQR reviewer must maintain objectivity in performing the review.¹⁷ In order to maintain objectivity, the EQR reviewer and others who assist the reviewer should not make

¹³ Issuer A recognized \$4.5 million in impairment to oil and gas properties in 2016. In 2015, Issuer A had recognized \$16 million in impairment.

¹⁴ See AS 1210.12.

¹⁵ See AS 1201.05.c; AS 1210.12.

¹⁶ See AS 1220.01, *Engagement Quality Review*.

¹⁷ *Id.* at .06.

decisions on behalf of the engagement team or assume any of the responsibilities of the engagement team.¹⁸

19. The standards provide that a firm may grant permission to an audit client to use the firm's audit report only after an EQR reviewer provides concurring approval of issuance of the report.¹⁹ The EQR reviewer may provide concurring approval of issuance for an audit report only if, after performing with due professional care the review required, he or she is not aware of a significant engagement deficiency.²⁰

20. An EQR reviewer should evaluate whether the engagement documentation reviewed indicates that the engagement team responded appropriately to the significant risks and supports the conclusions reached with respect to the matters reviewed.²¹ Furthermore, documentation of an EQR, which is required to be included in the engagement documentation, should contain sufficient information to enable an experienced auditor, having no previous connection with the engagement, to understand the procedures performed by the reviewer.²²

21. The Firm served as the external auditor for the Issuer B Audit. The Firm's audit report, dated June 3, 2016, for Issuer B's financial statements for the year ended December 31, 2015, was included in Issuer B's Form 10-K filed with the Commission on June 6, 2016.

22. Christie Cardwell, as engagement partner, authorized the issuance of the Firm's audit report for the Issuer B Audit. Donovan served as the EQR reviewer for the audit and, prior to the start of his EQR, was aware that Cardwell had recent negative internal inspection results, including findings of poor audit documentation. At the time he started working on the Issuer B Audit, Donovan was also aware that Cardwell might leave the Firm. And before the conclusion of the audit, he further learned she was in the process of leaving the Firm. Knowing these facts, Donovan, throughout the audit, reviewed the work papers for all significant accounts.

¹⁸ *Id.* at .07.

¹⁹ *Id.* at .13.

²⁰ See *id.* at Note to .12 ("A *significant engagement deficiency* in an audit exists when (1) the engagement team failed to obtain sufficient appropriate evidence in accordance with the standards of the PCAOB, (2) the engagement team reached an inappropriate overall conclusion on the subject matter of the engagement, (3) the engagement report is not appropriate in the circumstances, or (4) the firm is not independent of its client.").

²¹ *Id.* at .11.

²² *Id.* at .19 and .20.

a. Donovan Failed to Maintain His Objectivity in Conducting His EQR of Issuer B

23. As part of the acquisition of an overseas company in 2015, Issuer B obtained, among other things, a computer application developed by that company that purportedly enabled customers to complete banking transactions on mobile telephones (the “Mobile App IP”). As a result, the engagement team needed to audit Issuer B’s measurement of the fair value of the assets and liabilities of the acquired company as of the acquisition date, including the Mobile App IP intangible asset, which would comprise almost all of Issuer B’s post-acquisition assets.

24. Although he served as the EQR reviewer on the audit, Donovan performed audit procedures and prepared two work papers for the engagement team in connection with the Firm’s evaluation of Issuer B’s measurement of the fair value, at acquisition, of the Mobile App IP intangible asset.²³ These work papers documented his tests of Issuer B’s significant assumptions, the valuation model, and underlying data used in its measurement of the acquisition date fair value.²⁴ Donovan also communicated directly with Issuer B’s CEO about the revenue projections drafted by the CEO that were used to determine year-end impairment of the intangible asset, and suggested revisions thereto.

25. As a result of these actions, Donovan assumed responsibilities of the engagement team with regard to the assessment of management’s determination of the fair value of the Mobile App IP intangible asset as of the acquisition date. Because Donovan failed to maintain his objectivity in performing his EQR for the Issuer B Audit, he violated AS 1220.06 and .07.

b. Donovan Failed to Exercise Due Care and Provided His Concurring Approval of Issuance in the Issuer B Audit While Aware of a Significant Engagement Deficiency

26. The Mobile App IP intangible asset constituted over 90% of Issuer B’s total assets. Notwithstanding that this asset had been acquired during the year, Donovan knew that the engagement team had identified a significant risk of material misstatement from the identification and recording of impairment to the value of this intangible asset. As of year-end, Issuer B had noted events or changes in circumstances indicating that the carrying amount of the Mobile App IP may not have been recoverable. Accordingly, the engagement team needed to evaluate the reasonableness of Issuer B’s estimate of any potential year-end impairment of

²³ See AS 2502.23, *Auditing Fair Value Measurements and Disclosures*.

²⁴ See *id.* at .26.

the Mobile App IP intangible asset,²⁵ and Donovan was required to evaluate, with due professional care, the engagement team's assessment of, and audit responses to, this significant risk.²⁶

27. Donovan understood that the determination of whether or not the Mobile App IP intangible asset was impaired was a significant accounting estimate. Yet, based on his review of the audit documentation, he was aware that the engagement team had failed to evaluate the reasonableness of Issuer B's estimate indicating there was no impairment of the Mobile App IP intangible asset, because, among other things, the engagement team failed to: (a) adequately review and test the process used by management to develop the estimate and/or develop an independent expectation of the estimate, (b) perform the necessary procedures to resolve inconsistencies and contradictions in the audit evidence obtained, and (c) evaluate the estimate for bias and whether the effect of that bias resulted in a material misstatement.²⁷ As a result, Donovan was aware that the engagement team failed to obtain sufficient appropriate audit evidence, which constituted a significant engagement deficiency.²⁸

28. Donovan reviewed work papers and other documents containing audit evidence that was inconsistent and contradicted Issuer B's ultimate conclusion not to impair the Mobile App IP intangible asset. In an Impairment Analysis Memo shared with the engagement team, Issuer B's Controller indicated that, "[u]ntil the Company has contracts in place[,] it is hard to justify the current balance of the intangible asset . . . , and therefore [the Company] must impair the entire balance of the intangible asset related to the [Mobile App IP]." Although he did not know the exact source of this impairment determination, Donovan understood that Issuer B's Controller had initially proposed to fully impair the intangible asset. And he reviewed an audit work paper about Issuer B's significant estimates that indicated there was no significant revenue from the Mobile App IP to support the carrying value, and noted agreement with management's assessment that this IP was fully impaired. The Mobile App IP value, however, remained unchanged on Issuer B's books, while the CEO, contradicting his Controller's proposed impairment adjustment, drafted a revenue forecast to support no impairment as of year-end. Donovan was aware that, at the time the CEO was drafting his projections, Issuer B was in default of certain loan covenants and under threat of being delisted, which increased the risk for management bias in that estimate, yet the work papers do not evaluate this potential

²⁵ See ASC 350-30-35 and 360-10-35.

²⁶ See AS 1220.09, .10b, and .12; AS 1015.

²⁷ See AS 2501.10, *Auditing Accounting Estimates*; AS 1105.29; AS 2810.03 and .24 – .27.

²⁸ AS 1105.04-.06; AS 2501.07; AS 1220.12.

management bias.²⁹ Finally, Donovan reviewed the engagement team's inadequate evaluation of the reasonableness of Issuer B's ultimate conclusion of no impairment, which used the CEO's projections.³⁰

29. Donovan provided his concurring approval of issuance in the Issuer B Audit engagement, despite being aware of a significant engagement deficiency related to the audit testing for impairment of the Mobile App IP. Further, he failed to evaluate with due care whether the audit documentation indicated that the engagement team responded appropriately to significant risks and supported the conclusions reached by the engagement team. As a result, Donovan failed to perform the engagement quality review with due professional care in violation of AS 1220.

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 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), Thomas P. Donovan is hereby censured;
- B. Pursuant to Section 105(c)(4)(C) of the Act and PCAOB Rule 5300(a)(3), for a period of two years from the date of this Order, Thomas P. Donovan's role in any audit of an "issuer," as that term is defined in Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii), shall be restricted as follows: Thomas P. Donovan shall not (1) serve, or supervise the work of another person serving, as an "engagement partner," as that term is used in AS 1201, *Supervision of the Audit Engagement*; (2) serve, or supervise the work of another person serving, as an "engagement quality reviewer," as that term is used in AS 1220, *Engagement Quality Review*; (3) serve, or supervise the work of another person serving, in any role that is equivalent to engagement partner or engagement quality reviewer, but differently denominated (such as "lead partner," "practitioner-in-charge," or "concurring partner"); (4) exercise authority, or supervise the work of another person exercising authority, either to sign a registered public accounting firm's name to an audit report, or to consent to the use of a previously issued audit

²⁹ See AS 2810.24-.27.

³⁰ See AS 2501.09 and .10.

report; or (5) serve, or supervise the work of another person serving, as the “other auditor,” or “another auditor,” as those terms are used in AS 1205, *Part of the Audit Performed by Other Independent Auditors*;

- C. Pursuant to Section 105(c)(4)(D) of the Act and PCAOB Rule 5300(a)(4), a civil money penalty in the amount of \$15,000 is imposed upon Thomas P. Donovan. 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. Thomas P. Donovan shall pay this civil money penalty within ten 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 Thomas P. Donovan 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; and
- D. Pursuant to Section 105(c)(4)(F) of the Act and PCAOB Rule 5300(a)(6), Thomas P. Donovan is required to complete, within two years from the date of this Order, forty hours of CPE in subjects that are directly related to the audits of issuer financial statements under PCAOB standards, including audits of ICFR (such hours shall be in addition to, and shall not be counted in, the CPE that he is required to obtain in connection with any professional license).

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

September 30, 2021