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Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions

*In the Matter of Barzily & Co. Certified Public
Accountants,*

Respondent.

PCAOB Release No. 105-2023-004

June 5, 2023

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

- (1) censuring Barzily & Co. Certified Public Accountants (“Respondent,” “Barzily & Co.,” or “Firm”);
- (2) imposing a civil money penalty in the amount of \$50,000 on Respondent;
- (3) requiring the Firm to undertake certain remedial actions as described in Section IV of this Order; and
- (4) requiring the Firm to retain an independent consultant to review and make recommendations concerning the firm’s system of quality control policies and procedures.

The Board is imposing these sanctions on the basis of its findings that: (a) Respondent violated PCAOB rules and quality control standards by failing to establish quality control policies and procedures to provide reasonable assurance that the work performed by its associated persons complied with applicable PCAOB standards and regulatory requirements; and (b) Respondent violated PCAOB rules and standards in connection with audits for two issuers.

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 against Respondent pursuant to Section 105(c) of the Act and PCAOB Rule 5200(a)(1).

II.

In anticipation of the institution of these proceedings, and pursuant to PCAOB Rule 5205, Respondent has submitted an Offer of Settlement (the "Offer") that the Board has determined to accept. Solely for the purpose of these proceedings and any other proceeding brought by or on behalf of the Board, or to which the Board is a party, and without admitting or denying the findings contained herein, except as to the Board's jurisdiction over Respondent and the subject matter of this proceeding, which is admitted, Respondent consents to the entry of this Order as set forth below.¹

III.

On the basis of Respondent's Offer, the Board finds² that:

A. Respondent

1. Barzily & Co. is a partnership headquartered in Jerusalem, Israel. Barzily & Co. is a member of the MSI Global Alliance. The Firm is, and at all relevant times was, registered with the Board, and is a registered public accounting firm as that term is defined in Section 2(a)(12) of the Act and PCAOB rules.

B. Issuers

2. Creations, Inc. ("Creations") is a Delaware corporation. Barzily & Co. has served as Creations' auditor since 2019. Creations' Form 10-K for the fiscal year ended ("FYE") December 31, 2020, disclosed that it operates as a portfolio manager, licensed by the Israel Securities Authority, offering and managing ten mutual funds. Creations filed a Form S-1 registration statement with the U.S. Securities and Exchange Commission ("Commission") on July 29, 2020, which contained Barzily & Co.'s audit report on Creations' FYE 2018 and 2019 financial statements (dated May 4, 2020) and a consent from Barzily (dated July 29, 2020) for that audit report to be included in the Form S-1 registration statement. With Barzily & Co.'s

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 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: (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.

consent, Creations also included the audit report in an amended Form S-1 filed on August 17, 2020. From the time that it filed its Form S-1, and at all relevant times thereafter, Creations was an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

3. Metalink Ltd. (“Metalink”) is an Israel corporation. Barzily & Co. has served as Metalink’s auditor since 2017. Metalink’s Form 20-F for FYE December 31, 2020, disclosed that it was a shell company. At all relevant times, Metalink’s common shares were registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934. At all relevant times, Metalink was an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

C. Summary

4. This matter concerns the Firm’s failure to comply with PCAOB rules and quality control standards. The Firm failed to establish quality control policies and procedures to provide reasonable assurance that the work performed by its associated persons would meet the applicable PCAOB standards and regulatory requirements.

5. As a result of the Firm’s inadequate system of quality control, the Firm violated several PCAOB rules and standards in its audits of Creations and Metalink. For example, even though the Firm filed a Form AP³ for Metalink in 2018, the Firm subsequently failed to file or timely file five Form APs between 2019 and 2021 because it failed to establish policies and procedures to provide reasonable assurance that it would continue to file Form APs in the future. Similarly, because the Firm failed to establish quality control policies and procedures to specifically address PCAOB requirements pertaining to audit committee pre-approval of tax services⁴ and critical audit matters,⁵ the Firm violated PCAOB Rule 3524 in three audits and AS 3101 in one audit. The Firm’s audit documentation was also incomplete and/or lacked sufficient detail in two audits, in violation of various PCAOB rules and audit standards.

³ See PCAOB Rule 3211, *Auditor Reporting of Certain Audit Participants*.

⁴ See PCAOB Rule 3524, *Audit Committee Pre-approval of Certain Tax Services*.

⁵ See AS 3101.11-.17, *The Auditor’s Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion*.

D. The Firm Violated PCAOB Rules and Standards

6. PCAOB rules and standards require that registered firms establish and maintain an adequate system of quality control.⁶ “A firm's system of quality control encompasses the firm's organizational structure and the policies adopted and procedures established to provide the firm with reasonable assurance of complying with professional standards.”⁷

7. A firm’s system of quality control should, among other things, include policies and procedures for engagement performance.⁸ A firm should establish policies and procedures to provide it with reasonable assurance that the work performed by engagement personnel meets applicable professional standards, regulatory requirements, and the firm's standards of quality.⁹ A firm should also establish policies and procedures to provide the firm with reasonable assurance that its quality control policies and procedures are suitably designed and are being effectively applied.¹⁰

8. During the relevant period, Barzily & Co. developed a significant portion of the audit programs and other policies and procedures that it used to perform its audits, including audits that were subject to PCAOB standards. However, those audit programs and other policies and procedures failed to provide reasonable assurance that: (1) Firm personnel complied with PCAOB rules and standards, (2) the audit programs were timely updated for new requirements, and (3) that the firm’s policies and procedures for complying with PCAOB requirements were suitably designed and being effectively applied. As a result, the Firm violated PCAOB quality control standards and, as illustrated below, also failed to comply with various PCAOB rules and standards in connection with its Metalink and Creations audits.

i. Respondent Failed to Timely File Form APs in Violation of PCAOB Rule 3211

9. PCAOB Rule 3211 provides that each registered public accounting firm must provide information about engagement partners and other accounting firms that participate in

⁶ See Rule 3400T, *Interim Quality Control Standards*; Quality Control Standard 20, *System of Quality Control for a CPA Firm’s Accounting and Auditing Practice* (“QC § 20”).

⁷ QC § 20.04.

⁸ See QC § 20.07.

⁹ See QC § 20.17.

¹⁰ See QC § 20.20; Quality Control Standard 30.02, *Monitoring a CPA Firm’s Accounting and Auditing Practice*.

audits of issuers by filing a Form AP, *Auditor Reporting of Certain Audit Participants*, for each audit report issued by the firm for an issuer. Form APs must be filed by the 35th day after the date the audit report is first included in a document filed with the U.S. Securities and Exchange Commission (SEC),¹¹ subject to a shorter filing deadline that applies when the audit report is first included in a registration statement filed under the Securities Act of 1933, as amended.¹²

10. In 2018, Barzily & Co. filed a Form AP for its audit of Metalink's FYE 2017 financial statements, but failed to adopt quality control policies and procedures to provide reasonable assurance that the Firm would file Form APs as required in future audits. Subsequently, the Firm issued audit reports on Metalink's FYE 2018 and FYE 2019 financial statements, which Metalink included in Form 20-F filings with the Commission on April 30, 2019 and April 29, 2020, respectively. However, the Firm did not file a Form AP for either audit report. The Firm issued an audit report on Metalink's FYE 2020 financial statements, which Metalink included in a Form 20-F filing with the Commission on April 29, 2021. However, the Firm did not file a Form AP for that audit report until 118 days later, on August 25, 2021.

11. Barzily & Co. issued an audit report on Creations' FYE 2019 financial statements, which Creations included, with the consent of the Firm, in a Form S-1 filing and an amended Form S-1/A filing with the Commission on July 29, 2020 and August 17, 2020, respectively. However, the Firm did not file a Form AP for that audit report. The Firm issued an audit report on Creations' FYE 2020 financial statements, which Creations included in a Form 10-K filing with the Commission on March 30, 2021. However, the Firm did not file a Form AP for that audit report until 148 days later, on August 25, 2021.

12. As reflected above, after becoming aware of the Form AP requirement by no later than 2018, Barzily & Co. failed to file three required Forms AP—for the audit reports on Metalink's FYE 2018 and FYE 2019 financial statements and on Creations' FYE 2019 financial statements—in violation of PCAOB Rule 3211. The Firm belatedly filed these Form APs in April 2023, only after receiving notice of deficiencies from the Division of Enforcement and Investigations ("DEI").

13. When it filed Form APs for its audit reports on Metalink's FYE 2020 financial statements and Creations' FYE 2020 financial statements, those forms were 118 and 148 days late, respectively, which also violated PCAOB Rule 3211.

¹¹ See Rule 3211(b)(1).

¹² In that instance, a firm is required to file the Form AP by the tenth day after the date the audit report is first included in a document filed with the Commission. See Rule 3211(b)(2).

**ii. Respondent Failed to Comply with Requirements in PCAOB Rule 3524
Relating to Pre-Approval of Tax Services**

14. PCAOB Rule 3524 provides that, in connection with seeking audit committee pre-approval to perform for an issuer audit client any permissible tax service, a registered firm shall, among other things: (a) describe in writing to the audit committee the nature and scope of the service and the fee structure for the engagement, (b) discuss with the audit committee of the issuer the potential effects of the services on the independence of the firm, and (c) document the substance of its discussion with the audit committee of the issuer.¹³

15. Barzily & Co. failed to adopt quality control policies and procedures to provide reasonable assurance that the Firm complied with the foregoing requirements of PCAOB Rule 3524. In 2018, the Firm described in its engagement letter for the FYE 2017 audit that it would assist Metalink in filing its FYE 2017 tax return, as part of the overall fixed-fee engagement. For FYE 2018 and FYE 2019, Barzily & Co. again assisted Metalink with its tax return filings, but failed to describe the scope of those services in writing to the audit committee. At no point did Barzily & Co. discuss with the audit committee the potential effects of the FYE 2017 through FYE 2019 tax services on the Firm's independence.¹⁴ As a result, the Firm violated PCAOB Rule 3524.

**iii. Respondent Failed to Discuss the Absence of Critical Audit Matters for
the FYE 2020 Metalink Audit in the Audit Report**

16. For the audit of Metalink's FYE 2020 financial statements, PCAOB standards required the Firm to determine whether there were any critical audit matters in the audit of the current period's financial statements.¹⁵ PCAOB standards also required the Firm to disclose any identified critical audit matters relating to the audit in the auditor's report or, if the Firm determined that there were no critical audit matters, to disclose in the audit report that there were none.¹⁶

17. For Metalink, the FYE 2020 audit was the first audit in which these requirements regarding critical audit matters applied. However, at the time of the audit, the Firm had not

¹³ See Rule 3524.

¹⁴ The Firm expected that the tax filings in each year would be a relatively minor service, given Metalink's status as a shell company, and believed that the tax service would not impair its independence. However, the Firm did not discuss that view with the issuer's audit committee.

¹⁵ See AS 3101.11-.12.

¹⁶ See AS 3101.13-.16.

adopted quality control policies and procedures to provide reasonable assurance that it would comply with the new requirements for critical audit matters in AS 3101. While Barzily & Co. determined that there were no critical audit matters for the FYE 2020 Metalink audit, the Firm failed to disclose the absence of critical audit matters in the audit report. As a result, the Firm violated AS 3101.16.

iv. Respondent Failed to Prepare Adequate Audit Documentation

18. PCAOB standards provide that a complete and final set of audit documentation should be assembled for retention as of a date not more than 45 days after the report release date (documentation completion date).¹⁷ Communications with audit committees required by AS 1301, *Communications with Audit Committees*, are among the items that must be documented.¹⁸ Audit documentation must also contain sufficient information to enable an experienced auditor, having no previous connection with the engagement, to understand the nature, timing, extent, and results of the procedures performed, evidence obtained, and conclusions reached.¹⁹ Among other things, the audit documentation should also include documentation of the work performed by any auditor-employed specialists, so that it can be evaluated by the members of the engagement team who are supervising that specialist.²⁰

19. Barzily & Co. failed to adopt quality control policies and procedures to provide reasonable assurance that it would comply with all PCAOB documentation requirements prior to completing the FYE 2020 Creations audit and FYE 2020 Metalink audit. As a result, the Firm violated QC § 20.

20. In both audits, Respondent failed to adequately document certain communications required under AS 1301 to the issuers' audit committees.²¹ For the Metalink audit, the firm did not document that the management representation letter for the audit had been provided to the audit committee. For the Creations audit, the Firm failed to document in sufficient detail that it had communicated an overview of the audit strategy to the audit committee, or all of the required aspects of the Firm's evaluation of the quality of the issuers' financial reporting. In addition, for the FYE 2020 Creations audit, the Firm failed to include in its final set of audit documentation (a) adequate documentation of the journal entry testing that it

¹⁷ See AS 1215.15, *Audit Documentation*.

¹⁸ See AS 1301.25.

¹⁹ See AS 1215.06.

²⁰ *Id.*; see also AS 1201.C3, .C6-.C7, *Supervision of the Audit Engagement*.

²¹ See AS 1301.25.

performed, or (b) a report or equivalent documentation from a Firm-employed specialist that performed work related to the fair value of certain intangible assets. As a result, the Firm violated AS 1215 and AS 1301.

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 Barzily & Co. Certified Public Accountants' Offer. Accordingly, it is hereby ORDERED, effective immediately, that:

- A. Pursuant to Section 105(c)(4)(E) of the Act and PCAOB Rule 5300(a)(5), Barzily & Co. Certified Public Accountants is 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 \$50,000 is imposed on Barzily & Co. Certified Public Accountants.
 - 1. All funds collected by the PCAOB as a result of the assessment of this civil money penalty will be used in accordance with Section 109(c)(2) of the Act.
 - 2. Respondent shall pay the civil money penalty within ten days of the issuance of this Order by (a) wire transfer in accordance with instructions furnished by PCAOB staff; or (b) United States Postal Service money order, bank money order, certified check, or bank cashier's check (i) made payable to the Public Company Accounting Oversight Board, (ii) delivered to the Office of Finance, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington D.C. 20006, and (iii) submitted under a cover letter, which identifies Barzily & Co. Certified Public Accountants 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.

3. If timely payment is not made, additional interest shall accrue at the federal debt collection rate set for the current quarter pursuant to 31 U.S.C. § 3717. Payments shall be applied first to post-Order interest.
 4. With respect to any civil money penalty amounts that Respondent shall pay pursuant to this Order, Respondent shall not, directly or indirectly, (a) seek or accept reimbursement or indemnification from any source including, but not limited to, any current or former affiliated firm or professional or any payment made pursuant to any insurance policy; (b) claim, assert, or apply for a tax deduction or tax credit in connection with any federal, state, local, or foreign tax; nor (c) seek or benefit by any offset or reduction of any award of compensatory damages, by the amount of any part of Respondent's payment of the civil money penalty pursuant to this Order, in any private action brought against Respondent based on substantially the same facts as set out in the findings in this Order.
 5. Respondent understands that failure to pay the civil money penalty described above may result in summary suspension of Respondent's registration, pursuant to PCAOB Rule 5304(a), following written notice to Respondent at the address on file with the PCAOB at the time of the issuance of this Order.
- C. Pursuant to Sections 105(c)(4)(C) and (G) of the Act and PCAOB Rules 5300(a)(3), (8) and (9), the Board orders that:
1. Filing of Delinquent Forms AP. Within 30 days after the entry of this Order, Barzily & Co. will file with the PCAOB all past-due Form AP filings for the years 2018 to the present.
 2. Training. Within 120 days after entry of this Order, Barzily & Co. shall ensure that training on the following topics is provided to each of its associated persons who participates in the planning or performing of any audit services (as defined in PCAOB Rule 1001(a)(vii)) that are required to be performed under PCAOB standards:
 - a. the filing of Form AP, pursuant to PCAOB Rule 3211, *Auditor Reporting of Certain Audit Participants*;
 - b. PCAOB audit documentation requirements, including AS 1215, *Audit Documentation*; and

- c. Required procedures concerning critical audit matters under AS 3101, *The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion*.

3. Independent Consultant.

- a. Barzily & Co. shall retain and pay for an independent consultant not unacceptable to the DEI staff who has experience with, and is knowledgeable concerning, PCAOB auditing standards and quality control standards ("Independent Consultant"). Within 30 days after the entry of this Order, Barzily & Co. shall submit to the DEI staff a proposal setting forth the identity, qualifications, and proposed terms of retention of the Independent Consultant. Barzily & Co. may not retain as the Independent Consultant any individual or entity that has provided legal, auditing, or other services to, or has any affiliation with, Barzily & Co. during the prior year (except that, if acceptable to the Director of DEI, Barzily & Co. may retain an independent consultant that has provided services to Barzily & Co. during 2023, in anticipation of this Order, provided that consultant did not provide legal, auditing, or other services to, or have any affiliation with, Barzily & Co. during 2022).
- b. To ensure the independence of the Independent Consultant, Barzily & Co.: (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 DEI staff; (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. If Barzily & Co., despite its best, good faith efforts, is unable to identify an Independent Consultant candidate that meets all of the above-listed criteria, it may seek approval from the DEI staff of alternative candidates or alternative terms that Barzily & Co. believes to be otherwise suitable.
- d. Barzily & Co. shall retain the Independent Consultant within 60 days after entry of this Order.

- e. Barzily & Co. 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 Consultant's review, evaluation, and reports.
4. Areas Independent Consultant Is To Review. Within the periods specified in Paragraph IV.C.5 below, the Independent Consultant will review and evaluate the following:
- a. Barzily & Co.'s quality control policies and procedures as they relate to "Engagement Performance," as that term is described in QC Section 20.17;
 - b. Barzily & Co.'s quality control policies and procedures as they relate to "Monitoring," as that term is described in QC Section 20.20 and as further discussed in QC Section 30; and
 - c. Barzily & Co.'s quality control policies, procedures, and staff training as they relate to the performance of an "Engagement Quality Review" as that term is used in AS 1220, *Engagement Quality Review*.
5. Independent Consultant Report and Certifications
- a. Within five months of the Independent Consultant being retained, Barzily & Co. shall require the Independent Consultant to issue a written report ("IC Report") to Barzily & Co.: (i) summarizing the Independent Consultant's review and evaluation of the areas identified in Paragraph IV.C.4 above, and (ii) making recommendations, where appropriate, reasonably designed to ensure that Barzily & Co. maintains a system of quality control sufficient to give the Firm reasonable assurance that its engagement teams comply with applicable PCAOB auditing standards and regulatory requirements. Barzily & Co. shall require the Independent Consultant to provide a copy of the IC Report to the DEI staff when issued.
 - b. Barzily & Co. will adopt, as soon as practicable, all recommendations of the Independent Consultant in the IC Report; provided, however, that within thirty days of the issuance

of the IC Report, Barzily & Co. may advise the Independent Consultant and the DEI staff in writing of any recommendation that it considers to be unnecessary, unduly burdensome, or impractical. Barzily & Co. need not adopt any such recommendation at that time, but instead may propose in writing to the Independent Consultant and the DEI staff an alternative proposal designed to achieve the same objective or purpose. Barzily & Co. and the Independent Consultant will engage in good faith negotiations in an effort to reach agreement on any recommendations objected to by Barzily & Co.

- c. In the event that the Independent Consultant and Barzily & Co. are unable to agree on an alternative proposal within forty-five days, Barzily & Co. either will abide by the determinations of the Independent Consultant or will seek approval from the DEI staff to engage, at Barzily & Co.'s expense, a qualified third party acceptable to the DEI staff to promptly resolve the issue(s).
 - d. Within seventy-five days of the issuance of the IC Report and the resolution of any issues that are the subject of disagreement between Barzily & Co. and the Independent Consultant, Barzily & Co. will certify to the DEI staff in writing that it has adopted and has implemented or will implement all recommendations of the Independent Consultant ("Certification"). Barzily & Co. will provide a copy of the Certification to the DEI staff.
 - e. Twelve months after the issuance of the IC Report, Barzily & Co. shall require the Independent Consultant to verify the implementation of the recommended changes to Barzily & Co.'s system of quality control and to assess their effectiveness. Within eighteen months of the issuance of the IC Report, Barzily & Co. shall require the Independent Consultant to issue a written report ("Supplemental Review Report") summarizing the results of the Independent Consultant's verification and assessment of Barzily & Co.'s changes to its system of quality control. Barzily & Co. shall require the Independent Consultant to provide a copy of the Supplemental Review Report to the DEI staff when issued.
6. 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 the last day.

7. Barzily & Co. understands that the failure to satisfy these undertakings may constitute a violation of PCAOB Rule 5000 that could provide a basis for the imposition of additional sanctions in a subsequent disciplinary proceeding.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

June 5, 2023