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Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions

In the Matter of Marcum LLP,

Respondent.

PCAOB Release No. 105-2023-005

June 21, 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 Marcum LLP (“Marcum,” “Firm,” or “Respondent”);
- (2) imposing a civil money penalty in the amount of \$3 million on the Firm;
- (3) requiring Marcum to engage an independent consultant who will review and make recommendations concerning Marcum’s quality control policies and procedures;
- (4) requiring Marcum to implement all recommendations of the independent consultant;
- (5) requiring Marcum to make functional changes to its supervisory structure related to the Firm’s quality control policies and procedures; and
- (6) requiring Marcum to conduct certain training for all audit staff.

The Board is imposing these sanctions on the basis of its findings that the Firm violated PCAOB rules and quality control standards by failing to take sufficient steps to ensure that its system of quality control provided reasonable assurance that: (1) the Firm would comply with the requirements regarding the acceptance of issuer clients and engagements, and (2) its personnel would comply with applicable professional standards and regulatory requirements.

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 Sarbanes-Oxley Act of 2002, as amended (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 herein, except as to the Board’s jurisdiction over Respondent and the subject matter of these proceedings, 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 finds that:²

A. Respondent

1. **Marcum LLP** is a limited liability partnership headquartered in New York, New York. Marcum is licensed by the New York State Education Department (License No. 067839) and several other states. Marcum is, and at all relevant times was, registered with the PCAOB, pursuant to Section 102 of the Act and PCAOB rules.

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.

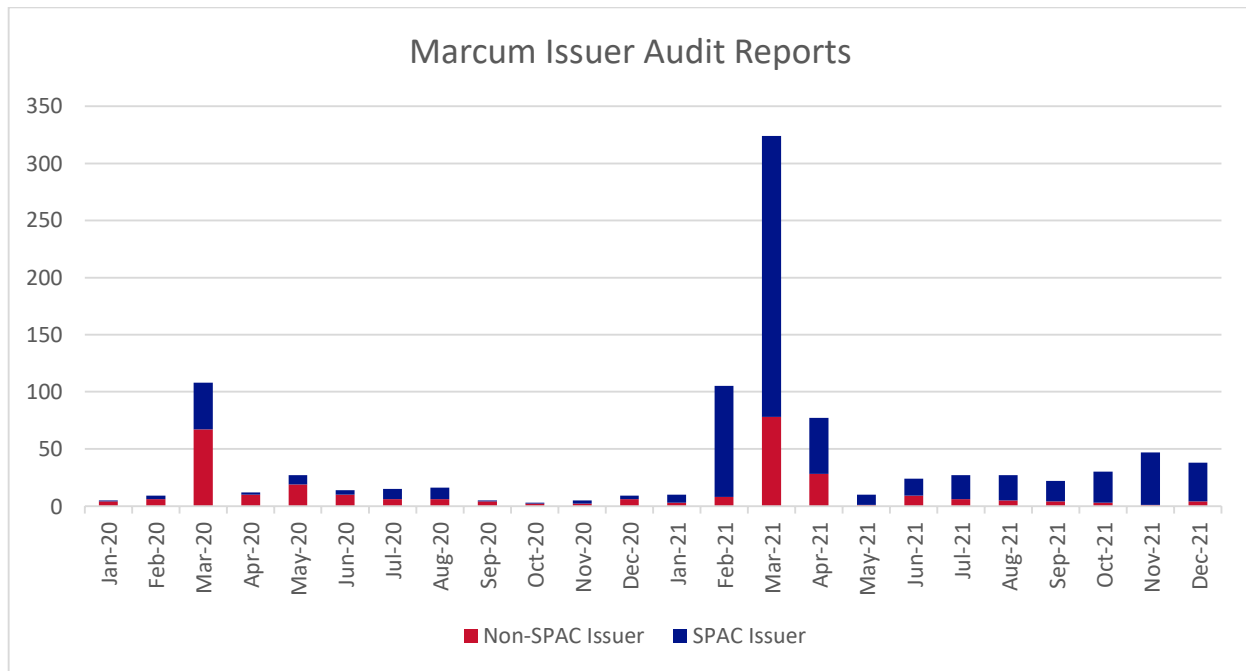
B. Summary

2. This matter concerns the Firm’s failure to comply with PCAOB rules and quality control standards during the time period starting in January 2020 through December 2021. The Firm’s system of quality control failed to provide reasonable assurance that the Firm would: (a) undertake only those issuer engagements that the Firm could reasonably expect to be completed with professional competence and appropriately consider the risks associated with providing professional services in the particular circumstances; (b) ensure that partner workloads were manageable to allow sufficient time for engagement partners and engagement quality review partners to discharge their responsibilities with professional competence and due care; (c) timely assemble complete and final sets of audit documentation; (d) timely and accurately file Form APs; (e) perform procedures to identify and assess the risks of material misstatement at the assertion level with respect to special purpose acquisition company (“SPAC”) audits; (f) ensure that personnel were consulting with individuals within or outside the Firm, when appropriate, when dealing with complex issues; (g) perform sufficient procedures to determine whether certain matters were critical audit matters (“CAMs”); and (h) make all required communications to issuer audit committees.

C. Background

3. Between January 2020 through October 2021, Marcum accepted a substantial number of audit clients, including hundreds of audits of SPACs, resulting in a significant increase in its issuer audit practice. The Firm added 178 new SPAC audit clients in 2020, and another 617 new SPAC audit clients through October 2021.

4. During the period from January 2021 through April 2021, there was a corresponding spike in issuer audit reports Marcum issued in comparison with the prior year. From January 2020 through April 2020, the Firm issued 47 SPAC issuer audit reports and 87 non-SPAC issuer audit reports. In the corresponding period in 2021, those numbers increased to 399 SPAC issuer audit reports and 117 non-SPAC issuer audit reports—a 285% increase in issuer audit reports. Overall, in 2021, Marcum issued 741 issuer audit reports, an increase of 513 (or 225%) over the 228 audit reports issued in 2020, as shown in the below chart.



5. Despite the significant increase in issuer clients, in Marcum’s New York City office, its largest office, overall partner headcount increased from 13 to 16, or only 23%, from January 2021 through June 2021. Although the Firm ultimately increased partner headcount more significantly beginning in July 2021, the relatively small increase in partner headcount from January 2021 through June 2021 resulted in large spikes in the number of hours worked by each partner during this period. Partner utilization³ for the period from January 2021 through June 2021 for the New York City office increased by 27%, 36%, 41%, 49%, 39%, and 63% for each month respectively over the prior year. Partner utilization for the New York City office reached a high in March 2021 of 146%.

6. The considerable increase in issuer clients also led to a large number of issuer engagements being assigned to certain partners. During 2021, there were five engagement partners and eight engagement quality reviewers who were each responsible for 30 or more issuer clients. One engagement partner, Partner A, had 75 issuer clients, and one engagement quality review partner, Partner B, had 118 issuer clients. This led to significant workloads for these partners.

³ Utilization rate measures workload and productivity, and the rate is calculated by dividing client billable hours worked in the period by the number of available work hours for the partners in the period based on a forty-hour work week.

7. During Marcum’s 2021 busy season, Partner A’s utilization from January through March 2021 was 189%, 184%, and 204%, for each month, respectively. In fact, over that time period, there were multiple weeks when Partner A worked approximately 100 hours over a five-day (Monday – Friday) period. Similarly, Partner B had utilization numbers over the January through March 2021 period of 117%, 161%, and 175% for each month, respectively.

8. Marcum also experienced staffing capacity issues below the partner level. For example, utilization for Marcum’s senior managers and managers in the New York City office during busy season from January 2021 to March 2021 was 112%, 148%, and 154%. Further, in March 2021, Marcum did not have sufficient managers to staff all of its SPAC engagements. This resulted in the engagement partner taking on the role of both engagement manager and engagement partner for certain SPAC engagements.

D. The Firm Violated PCAOB Rules and Quality Control Standards

9. PCAOB rules require a registered public accounting firm and its associated persons to comply with PCAOB quality control standards.⁴ These standards require that a registered public accounting firm have a system of quality control for its accounting and auditing practice.⁵ A firm’s system of quality control provides a critical foundation and infrastructure for a firm’s audit quality as it should “ensure that services are competently delivered and adequately supervised.”⁶ “A system of quality control is broadly defined as a process to provide the firm with reasonable assurance that its personnel comply with applicable professional standards and the firm’s standards of quality.”⁷

10. As described below, Marcum failed to establish policies and procedures sufficient to provide reasonable assurance that its personnel complied with applicable professional standards and regulatory requirements.

⁴ See PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*; PCAOB Rule 3400T, *Interim Quality Control Standards*.

⁵ See Quality Control Standard 20.01, *System of Quality Control for a CPA Firm’s Accounting and Auditing Practice*.

⁶ QC § 20.02.

⁷ QC § 20.03.

i. Marcum’s System of Quality Control Failed to Provide Reasonable Assurance with Respect to Acceptance of Issuer Clients and Partner Workload

11. PCAOB quality control standards require that a registered public accounting firm establish quality control policies and procedures for deciding whether to accept or continue a client relationship and whether to perform a specific engagement for that client.⁸ Such policies and procedures should provide reasonable assurance that the firm undertakes only those engagements that the firm can reasonably expect to be completed with professional competence and appropriately considers the risks associated with providing professional services in the particular circumstances.⁹ In addition, policies and procedures should be established to provide the firm with reasonable assurance that work is assigned to personnel having the degree of proficiency required under the circumstances.¹⁰

12. In accepting hundreds of new SPAC issuer clients, Marcum failed to properly consider whether it could complete the new engagements with professional competence, given the competing time demands on the Firm’s partners assigned to lead and execute the audits and perform the engagement quality reviews for all of its issuer clients. In fact, during the relevant time period, the Firm only rejected a new SPAC issuer client if the client acceptance process identified an independence issue. Marcum also failed to timely implement sufficient policies and procedures as to client acceptance to manage the large influx of new SPAC audit clients.

13. The Firm was aware of the large increase in issuer clients, the demands on partner and staff workloads, and the resulting impact it had on the Firm’s ability to comply with certain PCAOB rules and standards, such as audit documentation requirements. Yet, Marcum continued to accept new SPAC issuer clients without sufficiently addressing whether the Firm could reasonably expect to complete these engagements with professional competence, given the competing time demands on its partners assigned to lead audits and perform the engagement quality reviews for its issuer clients, or appropriately considering the risks associated with providing professional services in the circumstances.

14. The Firm, therefore, violated QC § 20 by failing to have adequate policies and procedures related to: (a) client acceptance and continuance sufficient to provide reasonable assurance that it undertook only those engagements that it could reasonably expect to be completed with professional competence; (b) appropriately considering the risks associated

⁸ QC § 20.14.

⁹ QC § 20.15.

¹⁰ QC § 20.13.

with providing professional services in particular circumstances; and (c) assigning work to personnel having the requisite proficiency required in the circumstances. These failures resulted in, or contributed to, the Firm's acceptance of hundreds of new issuer audit clients without appropriate processes in place for determining whether it had sufficient capacity to accept such clients and ensuring that partner workloads were manageable so that engagement partners and engagement quality reviewers could discharge their responsibilities with professional competence.¹¹

ii. Marcum's System of Quality Control Failed to Provide Reasonable Assurance with Respect to Assembly of Audit Documentation for Retention

15. A registered public accounting firm should establish quality control policies and procedures to provide reasonable assurance that the firm complies with applicable professional standards and regulatory requirements.¹² AS 1215, *Audit Documentation*, establishes requirements for documentation the auditor should prepare and retain in connection with issuer engagements. Among other things, "[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*)."¹³

16. Throughout 2021, Marcum failed to timely assemble a complete and final set of audit documentation within 45 days of the report release date in connection with hundreds of issuer audit engagements, due to engagement teams' heavy workloads caused by the increase in issuer clients. Further, numerous audit documentation binders failed to include certain required work papers and required signoffs.

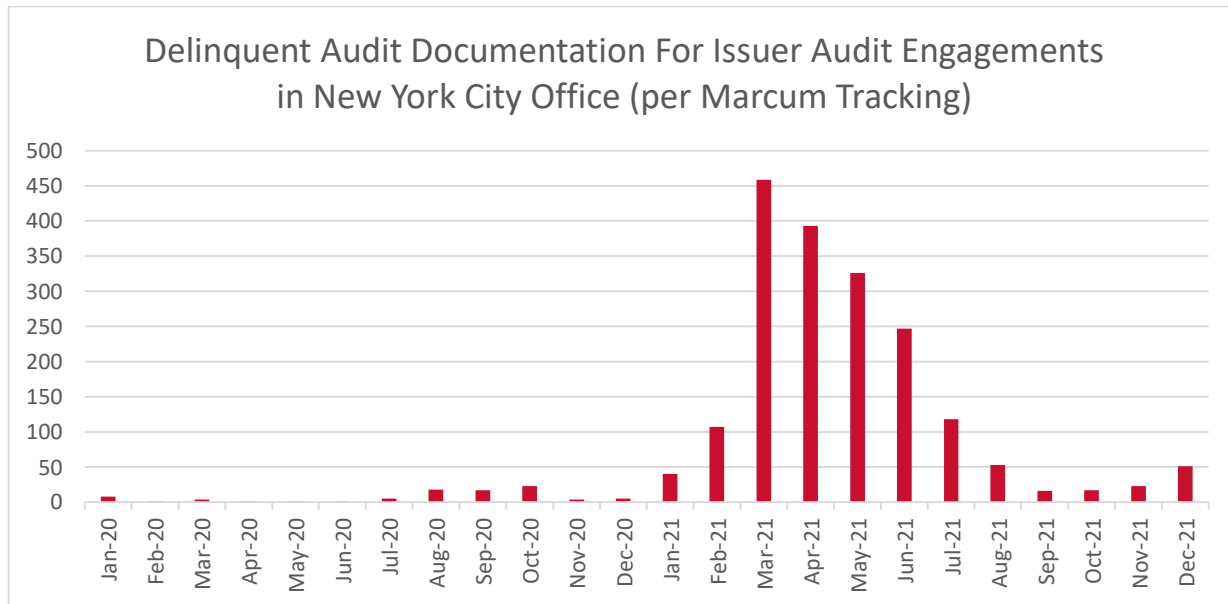
17. For example, throughout 2020 and 2021, the Firm tracked, on a weekly basis by office location, issuer audit engagements where a complete and final set of audit documentation had not, to date, been assembled for retention. The Firm identified on this list delinquent issuer audit engagements (*i.e.*, audit engagements where a complete and final set of work papers had not been assembled for retention and more than 45 days had passed since the audit report had been released). For the Firm's New York City office in the first half of 2020, based on weekly tracking, delinquent issuer audit engagements were in the single digits. However, after the significant increase in SPAC clients, the number of delinquent issuer audit engagements identified by the Firm in the New York City office spiked dramatically during the

¹¹ QC §§ 20.13-.15.

¹² QC §§ 20.03, .17.

¹³ AS 1215.15.

last week of January 2021, February 2021, and March 2021 from 40, to 107, to 459, respectively, as shown in the below chart.



18. During the peak delinquency period, Marcum reported hundreds of issuer audit engagements with work papers more than one month past due, meaning that Marcum continually failed to address most of the delinquent issuer audit engagements that had appeared on the tracking report as delinquent in the prior month. For example, during the last week of March 2021, April 2021, May 2021, and June 2021, Marcum reported 145, 293, 344, and 269 delinquent issuer audit engagements more than one month past due, respectively. In fact, as of June 30, 2021, Marcum reported 143 delinquent issuer audit engagements more than three months past due, meaning these issuer audit engagements had been identified as delinquent in March 2021 and had still not been addressed.

19. Despite being aware of the increasing number of audit engagements for which the Firm had failed to assemble a complete and final set of audit documentation within 45 days of the report release date, the Firm continued to accept new issuer clients and did not sufficiently address the issue of its noncompliance with AS 1215.15.

20. As a result, the Firm violated QC § 20 by failing to have policies and procedures related to audit documentation sufficient to provide it with reasonable assurance that it would comply with the requirements of AS 1215.15.

iii. Marcum’s System of Quality Control Failed to Provide Reasonable Assurance with Respect to Auditor Reporting of Certain Audit Participants

21. A registered public accounting firm should establish quality control policies and procedures to provide reasonable assurance that the work performed by engagement personnel complies with applicable professional standards and regulatory requirements.¹⁴ PCAOB Rule 3211, *Auditor Reporting of Certain Audit Participants*, requires registered public accounting firms to report information about engagement partners and other accounting firms that participated in the audits of issuers by filing a Form AP 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 (“Commission”),¹⁵ subject to a shorter filing deadline that applies when the audit report is first included in a registration statement under the Securities Act filed with the Commission.¹⁶

22. Due to the enormous increase in issuer clients in late 2020 and early 2021, and the expected increase in the number of audit reports that would be issued in that period, Marcum’s policies and procedures related to Form AP were insufficient to manage the increased volume of Form AP reporting obligations.

23. From January 1, 2021 through October 15, 2021, the Firm failed to timely file Form APs with respect to 63 audit reports for 59 issuers and filed inaccurate Form APs with respect to at least two issuer audits.

24. As a result, the Firm violated QC § 20 by failing to maintain effective policies and procedures to provide it with reasonable assurance that it would comply with the requirements of PCAOB Rule 3211.

iv. Marcum’s System of Quality Control Failed to Provide Reasonable Assurance with Respect to Risk Assessment

25. A registered public accounting firm should establish quality control policies and procedures to provide reasonable assurance that the firm complies with applicable professional standards and regulatory requirements.¹⁷ AS 2110, *Identifying and Assessing the Risks of*

¹⁴ QC §§ 20.03, .17.

¹⁵ PCAOB Rule 3211(b)(1).

¹⁶ 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. PCAOB Rule 3211(b)(2).

¹⁷ QC §§ 20.03, .17.

Material Misstatement, requires an auditor to “identify and assess the risks of material misstatement at the financial statement level and the assertion level.”¹⁸

26. For each SPAC audit engagement, the engagement team included a chart in its planning memorandum assessing risk by audit area and/or financial statement line item (*e.g.*, cash, prepaid expenses), but not at the assertion level (*e.g.*, valuation, existence). Standard language in the planning memoranda stated: “We [or Marcum] assessed risk by audit area. We [or Marcum] deemed no audit area to be of significant risk and therefore deemed it appropriate to assess the inherent risk by audit area.”

27. In SPAC audits from January 2020 through approximately September 2021, the Firm failed to perform risk assessment procedures to identify and assess the risks of material misstatement at the assertion level.

28. As a result, the Firm violated QC § 20 by failing to establish policies and procedures sufficient to provide it with reasonable assurance that the work performed by Firm personnel with respect to assessing risks on SPAC audits met the requirements of AS 2110.59.

v. Marcum’s System of Quality Control Failed to Provide Reasonable Assurance that Personnel Would Consult When Dealing with Complex Issues

29. A registered public accounting firm should establish quality control policies and procedures to provide reasonable assurance that the firm complies with applicable professional standards and regulatory requirements.¹⁹

30. A registered public accounting firm should also establish quality control policies and procedures to provide reasonable assurance that personnel refer to authoritative literature or other sources and consult, on a timely basis, with individuals within or outside the firm, when appropriate (for example, when dealing with complex, unusual, or unfamiliar issues).²⁰

31. During the relevant time period, 164 of Marcum’s SPAC and former SPAC audit clients restated their financial statements for incorrect accounting related to the classification of warrants in accordance with ASC Topic 815, *Derivatives and Hedging*, and the classification of redeemable shares in accordance with ASC 480, *Distinguishing Liabilities from Equity*. Marcum’s

¹⁸ AS 2110.59.

¹⁹ QC §§ 20.03, .17.

²⁰ QC § 20.19.

engagement teams did not consult with individuals within or outside the Firm in connection with the audits of most SPAC restatements.

32. As a result, the Firm violated QC § 20.

vi. Marcum’s System of Quality Control Failed to Provide Reasonable Assurance with Respect to Determining Critical Audit Matters

33. A registered public accounting firm should establish quality control policies and procedures to provide reasonable assurance that the firm would comply with applicable professional standards and regulatory requirements.²¹ AS 3101, *The Auditor’s Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion*, “establishes requirements regarding the content of the auditor’s written report when the auditor expresses an unqualified opinion on the financial statements.”²² Among other things, “[t]he auditor must determine whether there are any critical audit matters in the audit of the current period’s financial statements.”²³ A critical audit matter is “any matter arising from the audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved especially challenging, subjective, or complex auditor judgment.”²⁴ The requirement to evaluate CAMs took effect for audits of large accelerated filers for fiscal years ending on or after June 30, 2019, and on or after December 15, 2020, for all other required companies.

34. In developing its audit programs for the evaluation of CAMs, Marcum failed to develop sufficient guidance to reasonably assure that engagement teams properly evaluated the complete population of potential CAMs. As a result, Marcum failed to properly evaluate in certain issuer audits whether one or more matters were CAMs. Although such matters were required to be communicated to audit committees under AS 1301, *Communications with Audit Committees*, and related to accounts or disclosures that were material to the financial statements, Marcum failed to properly evaluate whether the matters involved especially challenging, subjective, or complex auditor judgment.

²¹ QC §§ 20.03, .17.

²² AS 3101.01.

²³ AS 3101.11.

²⁴ *Id.*

35. As a result, Marcum violated QC § 20 by failing to establish policies and procedures sufficient to provide it with reasonable assurance that it would comply with AS 3101.11.

vii. Marcum’s System of Quality Control Failed to Provide Reasonable Assurance with Respect to Audit Committee Communications

36. A registered public accounting firm should establish quality control policies and procedures to provide reasonable assurance that the firm complies with applicable professional standards and regulatory requirements.²⁵ AS 1301 requires the auditor to communicate certain matters related to the conduct of an audit to an issuer’s audit committee. These matters include, among other things, the terms of the audit arrangement; the audit strategy; significant and critical accounting policies and practices; critical accounting estimates; the names, locations, and planned responsibilities of other independent public accounting firms or other persons, who are not employed by the auditor, that perform audit procedures in the current period audit; the auditor’s evaluation of the company’s ability to continue as a going concern; and a schedule of any uncorrected misstatements related to accounts and disclosures that the auditor presented to management.²⁶

37. AS 1301 also requires the auditor to communicate to the audit committee significant changes to the planned audit strategy or the significant risks initially identified and the reasons for such changes.²⁷

38. In several instances across multiple issuer audits in 2021, Marcum failed to make certain required audit committee communications in accordance with AS 1301. In certain audits, Marcum failed to communicate some or all of the issuer’s critical accounting policies and practices and/or critical accounting estimates.²⁸ For certain SPAC audits that had equity restatements, Marcum elevated equity to a significant risk area in connection with the restatement audit, but failed to communicate the change to the audit committee.²⁹ In other

²⁵ QC §§ 20.03, .17.

²⁶ AS 1301.

²⁷ AS 1301.11.

²⁸ AS 1301.12.

²⁹ AS 1301.11.

audits, Marcum identified uncorrected misstatements during the audit, but failed to communicate the misstatements to the audit committee.³⁰

39. In addition, in audits where Marcum used a third-party firm to assist with audit procedures, for example, in approximately 483 SPAC audits in 2021, Marcum failed to communicate the names, locations, and planned responsibilities of the third-party firm to the audit committee.³¹

40. As a result, Marcum violated QC § 20 by failing to establish policies and procedures sufficient to provide it with reasonable assurance that it would comply with 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 Respondent's Offer. In ordering sanctions, the Board took into consideration certain remedial steps Marcum has undertaken, including revisions to certain quality control policies and procedures.

Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 105(c)(4)(E) of the Act and PCAOB Rule 5300(a)(5), Marcum is hereby censured.
- B. Pursuant to Section 105(c)(4)(D) of the Act and PCAOB Rule 5300(a)(4), the Board imposes a civil money penalty in the amount of \$3 million on Marcum.
 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. The Firm 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,

³⁰ AS 1301.18.

³¹ AS 1301.10(d).

(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 the Firm as a respondent in these proceedings, sets forth the title and PCAOB release number of these proceedings, and states that payment is made pursuant to this Order, a copy of which cover letter and money order or check shall be sent to Office of the Secretary, Attention: Phoebe W. Brown, Secretary, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington, D.C. 20006.

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 105(c)(4)(G) of the Act and PCAOB Rules 5300(a)(3) and (9), the Board orders Marcum to make functional changes to its supervisory structure by requiring the Firm to create a new role and hire an individual, not unacceptable to the PCAOB staff, to serve as head of the Firm's quality control system ("Chief Quality Officer"), who will, among other things, be tasked with implementing and overseeing the Firm's compliance with the

independent consultant's recommendations pursuant to this Order. Within ninety (90) days after entry of this Order, Marcum shall submit to the PCAOB staff a proposal setting forth the identity and qualifications of one or more possible Chief Quality Officer candidates. Marcum may not hire as the Chief Quality Officer any individual who has provided legal, auditing, or other services to, or has had any affiliation with, Marcum during the two years prior to entry of this Order. The Chief Quality Officer should have the experience, competence, authority, and capacity to carry out the assigned responsibilities. The Chief Quality Officer's duties and responsibilities shall include supervising the design, implementation, and operation of Marcum's quality control system in accordance with applicable professional and regulatory requirements and the Firm's policies and procedures. The PCAOB Staff shall have ten (10) business days to communicate whether the Chief Quality Officer candidate(s) is/are not unacceptable to the PCAOB Staff.

- D. Pursuant to Sections 105(c)(4)(C) and 105(c)(4)(G) of the Act and PCAOB Rules 5300(a)(3) and (9), Marcum is required to incorporate in its governance structure a committee responsible for the oversight function for the audit practice (the "Audit Oversight Committee") that includes at least one person who is not a partner, shareholder, member, other principal, or employee of the Firm and who does not otherwise have a commercial, familial, or other relationship with the Firm that would interfere with the person's exercise of independent judgment with regard to matters related to the quality control system. The Chief Quality Officer shall report to the Audit Oversight Committee.
- E. Pursuant to Sections 105(c)(4)(C) and 105(c)(4)(G) of the Act and PCAOB Rule 5300(a)(3), (8):
 - 1. Marcum shall retain, within sixty (60) days after the entry of this Order, an independent consultant ("Independent Consultant"), not unacceptable to the PCAOB Staff and Commission Staff in the Division of Enforcement. Marcum shall provide the PCAOB Staff and Commission Staff with notice of possible Independent Consultant candidates no later than thirty (30) days following the entry of this Order. The PCAOB Staff and Commission Staff shall have ten (10) business days to communicate whether the Independent Consultant candidates are not unacceptable to the PCAOB Staff and Commission Staff. Marcum shall, upon request by the PCAOB Staff and Commission Staff, provide information about the Independent Consultant's work plan to the PCAOB Staff and Commission

Staff including the Independent Consultant's experience, ability to staff the engagement, and expertise in auditing and audit firm quality controls. Marcum shall provide to the PCAOB Staff and Commission Staff a copy of the engagement letter detailing the scope of the Independent Consultant's responsibilities within three (3) months after the entry of this Order. If requested by PCAOB Staff and Commission Staff, Marcum shall make the Independent Consultant available to PCAOB Staff and Commission Staff to make presentations, provide updates, and explain the work, progress, and conclusions. The Independent Consultant's compensation and reasonable expenses shall be borne exclusively by Marcum.

Independence

2. To ensure the independence of the Independent Consultant, Marcum 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 Commission Staff; and 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.
3. Marcum will require the Independent Consultant to enter into an agreement that provides that, for the period of engagement and for a period of two (2) years after the issuance of the Independent Consultant's final report (as defined in Paragraph IV.E.11), the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Marcum, or any of its present or former affiliates, directors, officers, partners, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in the performance of his/her duties under this Order shall not, without prior written consent of the PCAOB Staff and Commission Staff, enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Marcum, or any of its present or former affiliates, directors, officers, partners, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two (2) years after the

issuance of the Independent Consultant's final report (as defined by Paragraph IV.E.11).

4. With respect to PCAOB Staff, Marcum will not assert any legal privilege over communications with or work product prepared by the Independent Consultant.

Scope of Independent Consultant's Review

5. Within the time periods specified below, the Independent Consultant will review and evaluate Marcum's audit, review, and quality control policies and procedures as to, among other aspects, their sufficiency, adequacy, design, implementation, operation, and effectiveness, applicable to an Audit of an Issuer, as that term is defined in PCAOB Rule 1001, regarding the subjects set forth below. The Independent Consultant's purpose for this review and evaluation will be to make recommendations for improvements to policies and procedures that:
 - a. Provide reasonable assurance that personnel comply with applicable professional standards, regulatory requirements, and the Firm's standards of quality (*see* QC § 20.03, QC § 20.17, and QC § 20.20) including:
 - i. That due professional care is exercised in the planning and performance of the audit and the preparation of the report. *See* AS 1015.
 - ii. That auditors are documenting the procedures performed, evidence obtained, and conclusions reached with respect to relevant financial statement assertions, and that audit documentation contains sufficient information for an experienced auditor, having no previous connection with the engagement to (a) understand the nature, timing, extent, and results of the procedures performed, evidence obtained, and conclusions reached, and (b) determine who performed the work and the date such work was completed as well as the person who reviewed the work and the date of such review. *See* AS 1215.06.

- iii. That audit documentation and other documents, including emails that contain audit documentation, are being retained for the length of time required by PCAOB standards and Commission rules or SEC regulations, unless a longer period of time is otherwise required by law. *See AS 1215.14.*
- iv. That prior to the audit report release date, the auditor completed all necessary auditing procedures and obtained sufficient evidence to support the representations in the auditor's report. *See AS 1215.15.*
- v. That a complete and final set of audit documentation is assembled for retention as of a date not more than 45 days after the report release date ("documentation completion date") and that documentation requirements are also met for unfinished or incomplete engagements. *See AS 1215.15.*
- vi. That audit documentation is not deleted or discarded after the documentation completion date and that any information and documentation added after the documentation completion date must indicate the date the information was added, the name of the person who prepared the additional documentation, and the reason for adding it. *See AS 1215.16.*
- vii. That the auditor is communicating to the audit committee significant risks identified and any changes throughout the course of the engagement. *See AS 1301.09 and .11.*
- viii. That the auditor is communicating to the audit committee the matters required to be communicated by AS 1301, either orally or in writing, unless otherwise specified in AS 1301, and is documenting those communications in the work papers, including whether such communications took place orally or in writing. *See AS 1301.25.*

- ix. That all audit committee communications required by AS 1301 are made in a timely manner and prior to the issuance of the auditor's report. *See* AS 1301.26.
 - x. That the auditor is identifying and assessing the risks of material misstatement at the financial statement level and the assertion level. *See* AS 2110.59.
 - xi. That the auditor is identifying and assessing significant risks consistent with AS 2110.69, 70, and .71.
 - xii. That the auditor performs and documents procedures to determine whether matters which were communicated, or required to be communicated, to the audit committee and related to accounts or disclosures that were material to the financial statements, were critical audit matters. *See* AS 3101.11, 12, and 17.
 - xiii. That, with respect to each audit report that Marcum issues for an issuer and that is included in a document filed with the Commission, Marcum files a timely and accurate report on Form AP in accordance with the instructions to that form by the 35th day after the date the audit report is first included in a document filed with the Commission or in the case of a registration statement under the Securities Act, 10 days after the date the audit report is first included in a document filed with the Commission. *See* PCAOB Rule 3211.
- b. Provide the Firm with reasonable assurance that the policies and procedures established by the Firm for each of the elements of quality control described in QC § 20 are suitably designed and are being effectively applied, as applicable to the audit standards and PCAOB rules cited in this Order. *See* QC §20.20.
 - c. Provide the Firm with reasonable assurance that work is assigned to personnel having the degree of technical training and proficiency required in the circumstances and that personnel participate in general and industry-specific continuing professional education and other professional development

- activities that enable them to fulfill responsibilities assigned. *See* QC §§ 20.13(b) and (c).
- d. Provide the Firm with reasonable assurance that the likelihood of association with a client whose management lacks integrity is minimized. *See* QC § 20.14.
 - e. Provide the Firm with reasonable assurance that the Firm undertakes only those engagements that the Firm can reasonably expect to be completed with professional competence, including, but not limited to, policies and procedures related to the client acceptance process and staffing capacity as related to client acceptance. *See* QC §§ 20.15(a) and (b).
 - f. Provide the Firm with reasonable assurance that personnel refer to authoritative literature or other sources and consult, on a timely basis, with individuals within or outside the Firm, when appropriate and that the individuals consulted should have appropriate levels of knowledge, competence, judgment, and authority. *See* QC § 20.19.
 - g. Provide the Firm with reasonable assurance that quality control policies and procedures are being communicated to personnel and that they are understood and complied with, and that the Firm has established a means of communicating its established quality control policies and procedures, and the changes thereto, to appropriate personnel on a timely basis. *See* QC § 20.23.
6. Marcum shall cooperate fully with the Independent Consultant and shall provide reasonable and timely access to any Firm personnel, information, and records (including audit and consultation documents) as the Independent Consultant may reasonably request for the Independent Consultant's review and evaluation described in Paragraph IV.E.5 and the reports specified in Paragraphs IV.E.7 through IV.E.13 below.

Independent Consultant Reports and Certifications

7. Within eight (8) months after the entry of this Order, Marcum shall require the Independent Consultant to issue a detailed written report ("**Initial Report**") to Marcum: (i) summarizing the Independent

Consultant's review and evaluation of the areas identified in Paragraph IV.E.5 and its subsections above; and (ii) making recommendations, where appropriate, reasonably designed to ensure that audits conducted by Marcum comply with PCAOB standards and rules and any applicable federal securities laws. Marcum shall require the Independent Consultant to provide a copy of the Initial Report to the PCAOB Staff and Commission Staff when the Initial Report is issued. Marcum shall also make the Independent Consultant available to PCAOB Staff and Commission Staff to discuss its work both periodically and after issuance of the report.

8. Marcum will adopt and implement, as soon as practicably possible, but in any event no later than two (2) years after the entry of this Order, and in compliance with the requirements set forth in Paragraphs IV.E.9-15 below, all recommendations of the Independent Consultant in the Initial Report. However, within thirty (30) days of issuance of the Initial Report, Marcum may advise the Independent Consultant in writing of any recommendation that it considers to be unnecessary, unjust, outside the scope of this Order, unduly burdensome, or impractical. Marcum need not adopt any such unnecessary, unjust, outside the scope of this Order, unduly burdensome, or impractical recommendation at that time, but instead may propose in writing to the Independent Consultant an alternative recommendation (an "Alternative Recommendation") designed to achieve the same objective or purpose. Marcum will provide any such Alternative Recommendation(s) to the PCAOB Staff and Commission Staff at the same time that Marcum submits such Alternative Recommendation(s) to the Independent Consultant. Marcum and the Independent Consultant shall engage in good faith negotiations in an effort to reach agreement on any recommendations objected to by Marcum.
9. In the event that the Independent Consultant and Marcum are unable to agree on any Alternative Recommendation(s) within sixty (60) days of the issuance of the Initial Report, Marcum shall abide by the determinations of the Independent Consultant.
10. Within sixty (60) days of issuance of the Initial Report, Marcum will certify to the PCAOB Staff and Commission Staff in writing that (i) Marcum has adopted and has implemented or will implement all recommendations of the Independent Consultant; and (ii) the Independent Consultant agrees

that Marcum has adopted, implemented, and/or has a plan for implementation (the “**Certification of Agreement to Adopt Recommendations**”). Marcum will provide a copy of the Certification of Agreement to Adopt Recommendations to the PCAOB Staff and Commission Staff. To the extent that Marcum has not implemented all recommendations contained in the Initial Report by that time, Marcum will certify to the PCAOB Staff and Commission Staff in writing, no later than thirty (30) days after their implementation, that (i) Marcum has adopted and has implemented all recommendations contained in the Initial Report; and (ii) the Independent Consultant agrees that the recommendations have been adequately adopted and implemented by Marcum (“**Implementation Certification**”).

11. Within six (6) months of the issuance of the Initial Report or the Implementation Certification, whichever is later, Marcum shall require the Independent Consultant to complete testing to assess (i) whether Marcum has implemented the written policies and procedures concerning the areas specified in Paragraph IV.E.5 and its subsections above and (ii) the effectiveness of the design and implementation of those policies and procedures. At least thirty (30) days prior to beginning the testing, Marcum shall provide to the PCAOB Staff and Commission Staff a copy of the scope and parameters for testing. The PCAOB Staff and Commission Staff shall have ten (10) days to provide comments. Within thirty (30) days of the completion of this testing, Marcum shall require the Independent Consultant to issue a written report summarizing the results of the Independent Consultant’s testing and assessment, and if applicable, any recommendations (“**Final Report**”) and to provide a copy of the Final Report to the PCAOB Staff and Commission Staff. At this time, if the Independent Consultant determines that Marcum has adopted and implemented all recommendations set forth in the Initial Report and that Marcum’s quality control policies addressing those recommendations and the policies specified in paragraph IV.E.5 and its subsections are functioning effectively, Marcum shall require the Independent Consultant to certify in writing that Marcum has satisfied such undertakings (“**Independent Consultant Certification**”) and provide a copy of this certification to the PCAOB Staff and Commission Staff. In all events, Marcum must complete all undertakings concerning the implementation of the recommendations set forth in the Independent Consultant’s Initial Report, and any amended recommendations, and provide the

Independent Consultant Certification to the PCAOB Staff and Commission Staff no later than two (2) years after the entry of this Order.

12. To the extent that the Final Report has additional recommendations that Marcum has not implemented, within thirty (30) days of issuance of the Final Report, Marcum will certify to the PCAOB Staff and Commission Staff in writing that it has adopted and has implemented or will implement all additional recommendations of the Independent Consultant (“**Final Certification of Agreement to Adopt Recommendations**”). Marcum will provide a copy of the Final Certification of Agreement to Adopt Recommendations to the PCAOB Staff and Commission Staff. To the extent that Marcum has not implemented all additional recommendations contained in the Final Report by that time, Marcum will certify to the PCAOB Staff and Commission Staff in writing, by thirty (30) days after their implementation, that Marcum has adopted and has implemented all recommendations contained in the Final Report (“**Final Implementation Certification**”). In all events, Marcum must complete all undertakings concerning the implementation of the recommendations set forth in the Independent Consultant’s Final Report no later than four (4) months after the issuance of the Final Report.
13. The Initial Report, Final Report, Certification of Agreement to Adopt Recommendations, Implementation Certification, Independent Consultant Certification, Final Certification of Agreement to Adopt Recommendations, and Final Implementation Certification, and any related correspondence or other documents shall be submitted to the Director of the PCAOB’s Division of Enforcement and Investigations, 1666 K Street, N.W., Washington, DC, 20006, with a copy to Laura B. Josephs, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC, 20549.
14. The Initial Report and Final Report by the Independent Consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of these reports could discourage cooperation, impede pending or potential government investigations, or undermine the objectives of the reporting requirement. For these reasons, among others, these reports and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant

to court order, (2) as agreed to by the parties in writing, (3) to the extent that the PCAOB determines in its sole discretion that disclosure would be in furtherance of the PCAOB's discharge of its duties and responsibilities and in compliance with Section 105(b)(5) of the Act, or (4) if such disclosure is otherwise required by law.

15. No later than sixty (60) days from the date that Marcum signs the Final Implementation Certification, Marcum's CEO and Marcum's Chief Quality Officer shall both certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The PCAOB Staff and Commission Staff may make reasonable requests for further evidence of compliance, and Marcum agrees to provide such evidence. This certification and supporting material shall be submitted to the Director of the PCAOB's Division of Enforcement and Investigations, 1666 K Street, N.W., Washington, DC, 20006, with a copy to Laura B. Josephs, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC, 20549, no later than sixty (60) days from the date of the completion of the undertakings.
 16. For good cause shown, and solely at the discretion of the PCAOB Staff and Commission Staff, the PCAOB Staff and Commission Staff may extend any of the procedural dates relating to the 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.
 17. If the PCAOB Staff believes that Marcum has not satisfied these undertakings, the PCAOB Staff may petition the Board to reopen the matter to determine whether additional sanctions are appropriate.
- F. Pursuant to Section 105(c)(4)(F), (G) of the Act and PCAOB Rule 5300(a)(6), (9), Marcum is required:
1. As of the date of the Final Implementation Certification, to have conducted training related to changes to the Firm's policies and procedures that resulted from the Independent Consultant's Initial Report and Final Report in, among other areas:

- a. Audit Documentation;
 - b. PCAOB reporting requirements (including Forms AP);
 - c. Risk Assessments;
 - d. Critical Audit Matters; and
 - e. Audit Committee Communications.
- G. The Firm understands that the failure to satisfy these conditions 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 21, 2023