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Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions

In the Matter of BPM LLP,

Respondent.

PCAOB Release No. 105-2023-012

July 28, 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 BPM LLP (“BPM,” the “Firm,” or “Respondent”);
- (2) imposing a civil money penalty in the amount of \$50,000 upon the Firm; and
- (3) requiring the Firm to undertake certain remedial actions as described in Section IV of this Order.

The Board is imposing these sanctions on the basis of its findings that the Firm violated PCAOB rules relating to independence in connection with the audit of GigCapital2, Inc. (“GigCapital2”).

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, BPM has submitted an Offer of Settlement (“Offer”) that the Board has determined to

accept. Solely for purposes of these proceedings and any other proceedings brought by or on behalf of the Board, or to which the Board is a party, and without admitting or denying the findings herein, except as to the Board's jurisdiction over 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:

A. Respondent

1. **BPM LLP** is a limited liability partnership formed under California law and headquartered in San Francisco, California. It is licensed with the California Board of Accountancy (license no. 7836). At all relevant times, BPM was registered with the Board pursuant to Section 102 of the Act and PCAOB rules.

B. Issuer

2. **GigCapital2, Inc.**, now known as UpHealth, Inc., was, at all relevant times, an entity incorporated in Delaware and headquartered in Palo Alto, California. It was created for the purpose of effecting a merger, share exchange, asset acquisition, stock purchase, reorganization, recapitalization or other similar business combination with one or more businesses.² At all relevant times, GigCapital2 was an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii). BPM issued audit reports that GigCapital2 included in its Form 10-Ks filed with the U.S. Securities and Exchange Commission ("Commission") for the years ended December 31, 2019 and December 31, 2020.

C. **BPM Failed to Obtain Audit Committee Pre-Approval of Tax Compliance Services, in Violation of Rule 3520 and Rule 3524**

3. PCAOB rules and standards require that a registered public accounting firm and its associated persons be independent of the firm's audit client throughout the audit and professional engagement period.³ That requirement includes an obligation to satisfy the

¹ The findings herein are made pursuant to BPM's Offer and are not binding on any other person or entity in this or any other proceeding.

² In June 2021, GigCapital2 acquired UpHealth Holdings, a company providing digital services for the healthcare industry. The resulting entity thereafter renamed itself UpHealth, Inc.

³ See PCAOB Rule 3520, *Auditor Independence*.

independence criteria set out in the rules and standards of the PCAOB and all other independence criteria set out in the Commission's rules and regulations under the federal securities laws.⁴

4. Rule 3524, *Audit Committee Pre-approval of Certain Tax Services*, provides that, in connection with seeking audit committee pre-approval to perform for an issuer audit client any permissible tax service, a registered public accounting firm describe, in writing, to the audit committee of the issuer, among other things, the scope of the service, the fee structure of the engagement, and any side letter or other amendment to the engagement letter, or any other agreement between the firm and the audit client relating to the service.

5. Rule 2-01(c)(7)(i) of Commission Regulation S-X provides that “[a]n accountant is not independent of an issuer” unless, “[b]efore the accountant is engaged by the issuer...to render audit or non-audit services, the engagement is approved by the issuer’s...audit committee.”⁵

6. BPM performed audit services for GigCapital2 in connection with that issuer’s financial statements for the years ended December 31, 2019 and December 31, 2020.

7. At the same time that BPM performed these audits, BPM also performed tax compliance services for GigCapital2.

8. BPM failed to obtain pre-approval from GigCapital2’s audit committee to provide tax compliance services.

9. Accordingly, BPM violated Rule 3520 and Rule 3524 by not fulfilling the requirements of Rule 2-01(c)(7)(i) of Commission Regulation S-X, and thus was not independent of GigCapital2.

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. Accordingly, it is hereby ORDERED that:

⁴ See PCAOB Rule 3520, note 1.

⁵ 17 C.F.R. § 210.2-01(c)(7).

- A. Pursuant to Section 105(c)(4)(E) of the Act and PCAOB Rule 5300(a)(5), the Firm 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 upon the Firm.
 - 1. 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.
 - 2. The Firm shall pay this civil money penalty within ten days of the issuance of this Order by: (1) wire transfer pursuant to instructions provided by Board staff; or (2) United States Postal Service money order, bank money order, certified check, or bank cashier's check (a) made payable to the Public Company Accounting Oversight Board, (b) delivered to the Office of Finance, Public Company Accounting Oversight Board, 1666 K Street NW, Washington, D.C. 20006, and (c) 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 NW, 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; and

5. Respondent understands that its failure to pay the civil money penalty described above may result in summary suspension of the Firm'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 Section 105(c)(4)(G) of the Act and PCAOB Rule 5300(a)(9), the Firm is required:
1. Within 90 days of the entry of this Order, to establish, revise, or supplement, as necessary, policies and procedures, including monitoring procedures, to provide the Firm with reasonable assurance that Firm personnel will communicate to audit committees all matters required by PCAOB Rules 3520 and 3524 and Rule 2-01(c)(7) of Commission Regulation S-X; and
 2. Within 120 days of the entry of this Order, to provide a certification, signed by its CEO, to the Director of the PCAOB's Division of Enforcement and Investigations, stating that the Firm has complied with paragraph IV.C.1 above. The certification shall identify the actions undertaken to satisfy the conditions specified above (including any remedial actions taken prior to the date of this Order), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Firm shall also submit such additional evidence of, and information concerning, compliance as the staff of the Division of Enforcement and Investigations may reasonably request. 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

July 28, 2023