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Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions

In the Matter of Warren Averett, LLC,

Respondent.

PCAOB Release No. 105-2023-022

August 29, 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 Warren Averett, LLC (“Warren Averett” or “Respondent”), a registered public accounting firm;
- (2) imposing a civil money penalty in the amount of \$200,000 on Warren Averett;
- (3) requiring Warren Averett to review and certify its auditor independence policies and procedures.

The Board is imposing these sanctions on the basis that, in connection with two audits of an issuer audit client, Warren Averett violated applicable auditor independence requirements when it audited work performed for the issuer by another accounting firm that sponsored an accounting alliance of which Warren Averett was a member.

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 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. **Warren Averett, LLC** is a limited liability company organized under the laws of the state of Alabama and headquartered in Birmingham, Alabama. Warren Averett is licensed to practice public accounting by the Alabama State Board of Public Accountancy (Firm No. F2171), among other state boards. Warren Averett 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. Issuer

2. **CytoDyn Inc.** (“CytoDyn”) is a Delaware corporation headquartered in Vancouver, Washington. According to its public filings, CytoDyn is a clinical-stage biotechnology company focused on developing medical treatments. At all relevant times, CytoDyn was an “issuer” as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

C. Summary

3. This matter concerns Warren Averett’s violations of auditor independence requirements during the fiscal year 2019 and 2020 CytoDyn audits.

4. Warren Averett is a member of BDO Alliance USA (the “BDO Alliance”), an association of accounting firms that is a wholly-owned subsidiary of BDO USA, LLP (“BDO”). As a

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.

member of the BDO Alliance, Warren Averett touted its association with BDO and the quality denoted by the BDO brand name.

5. During the 2019 fiscal year, BDO performed certain purchase price allocation valuation services for CytoDyn with respect to acquired intangible assets. During the 2020 fiscal year, BDO performed certain derivative valuation services for CytoDyn. Warren Averett audited the BDO valuation work as part of its 2019 and 2020 audits of CytoDyn.

6. CytoDyn had an interest in the accuracy of its financial statements, including with respect to the valuation work performed by BDO. Warren Averett likewise had an interest in the quality of BDO's valuation work because Warren Averett marketed itself based on its association with the BDO Alliance and the quality denoted by the BDO brand name. Based on this mutual interest, a reasonable, knowledgeable investor would conclude that Warren Averett was not capable of exercising objective and impartial judgment in auditing BDO's valuation work.

7. Accordingly, Warren Averett violated PCAOB rules and standards requiring an auditor to maintain independence from its audit client. In addition, Warren Averett violated PCAOB quality control standards by failing to implement quality control policies and procedures sufficient to provide reasonable assurance that the independence implications of its BDO Alliance membership would be given appropriate consideration.

D. Background

i. Warren Averett's Membership in the BDO Alliance

8. Warren Averett became a member of the BDO Alliance in 2015. The terms of Warren Averett's BDO Alliance membership were governed by a written agreement (the "Alliance Agreement") and the BDO Alliance USA Policies and Procedures Manual ("Alliance Manual").

9. In return for paying an annual "license fee," Warren Averett received a number of BDO Alliance membership benefits, including the right to use the BDO Alliance brand name and logo "[s]o that [member] firms may fully benefit from BDO USA's domestic presence" and so that "clients and business contacts . . . know that they have access to these resources." Warren Averett also received the right to distribute and co-brand BDO marketing materials, and access to certain other BDO resources.

10. In accordance with these provisions, Warren Averett used its connection to BDO and the BDO Alliance to market itself. For example, a Warren Averett brochure touted: "As an independent member of the BDO Alliance USA, we are able to further enhance our client

services and broaden capabilities overall BDO Alliance USA membership offers Warren Averett access to the resources of BDO USA, LLP, one of the nation’s leading professional services firms.”

11. Another marketing brochure advertised that Warren Averett “offers clients the unique resources of both an international and regional firm by utilizing the combined, vast resources made possible by our membership in the BDO Alliance USA.”

12. In addition, Warren Averett re-branded certain BDO marketing publications under Warren Averett’s own name and published other BDO marketing materials with both BDO and Warren Averett branding.

13. For example, Warren Averett posted on its website numerous articles authored by BDO personnel. At the conclusion of each such article, Warren Averett included a note that “Warren Averett is an independent member of the BDO Alliance USA. This article was borrowed with permission from BDO USA, LLP.”

14. Warren Averett also included the BDO Alliance logo on its business cards.

ii. The 2019 and 2020 CytoDyn Audits

15. In November 2018, during CytoDyn’s 2019 fiscal year, CytoDyn acquired certain assets, including an algorithm and other intangible assets, from another biotechnology company. CytoDyn engaged BDO to perform a valuation of the acquired intangible assets. As part of its 2019 audit of CytoDyn, Warren Averett performed audit procedures over BDO’s valuation by evaluating the methods and assumptions used and concluding that the valuation was reasonable.

16. On August 14, 2019, Warren Averett issued unqualified audit reports on CytoDyn’s fiscal year 2019 financial statements and internal control over financial reporting, with an explanatory paragraph describing substantial doubt about the company’s ability to continue as a going concern.

17. During CytoDyn’s 2020 fiscal year, BDO provided non-audit services to CytoDyn concerning the accounting for and valuation of a derivative. Warren Averett performed audit procedures over the derivative accounting and valuation work during its 2020 audit of CytoDyn.

18. On August 14, 2020, Warren Averett issued an unqualified audit report on CytoDyn’s fiscal year 2020 financial statements, with an explanatory paragraph describing substantial doubt about the company’s ability to continue as a going concern.

E. Warren Averett Violated PCAOB Rules and Standards

19. 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.² PCAOB rules further require registered public accounting firms to comply with the Board’s quality control standards.³

i. Warren Averett Failed to Maintain Its Independence

20. PCAOB rules and standards require that a registered public accounting firm and its associated persons be independent of the firm’s audit clients throughout the audit and professional engagement period.⁴ A registered public accounting firm’s or associated person’s independence obligation with respect to an issuer audit client encompasses not only an obligation to satisfy the independence criteria set out in the rules and standards of the PCAOB, but also an obligation to satisfy all other independence criteria applicable to the engagement, including the independence criteria set out in U.S. Securities and Exchange Commission (“Commission”) rules and regulations.⁵

21. Rule 2-01(b) of the Commission’s Regulation S-X provides that an accountant is not independent of an audit client if, at any point during the audit and professional engagement period, “the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant’s engagement.”⁶ In applying this standard, it is appropriate to “look[] in the first instance to whether a relationship or the provision of a service: [c]reates a mutual or conflicting interest between the accountant and the audit client.”⁷

22. A reasonable investor would conclude that Warren Averett was not capable of exercising objective and impartial judgment because there was a mutual interest “between the

² PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*; PCAOB Rule 3200, *Auditing Standards*.

³ See PCAOB Rule 3400T, *Interim Quality Control Standards*.

⁴ PCAOB Rule 3520, *Auditor Independence*; AS 1005, *Independence*.

⁵ PCAOB Rule 3520, Note 1.

⁶ 17 C.F.R. § 210.2-01(b).

⁷ 17 C.F.R. § 210.2-01.

accountant [Warren Averett] and the audit client [CytoDyn]” with respect to the reasonableness of BDO’s valuation services during the 2019 and 2020 CytoDyn audits.

23. CytoDyn had an interest in the reasonableness of its financial statements, including with respect to the valuation work performed by BDO. Based on its extensive marketing efforts tying itself to the quality denoted by the BDO brand name, Warren Averett also had an interest in the reasonableness of BDO’s valuation work.

24. As discussed above, Warren Averett used its membership in the BDO Alliance—and the quality denoted by the BDO brand—to market itself, including by specifically touting its “access to the resources of BDO USA, LLP, one of the nation’s leading professional services firms.” If Warren Averett had uncovered deficiencies in the quality of BDO’s valuation services, that could have raised questions about the quality of BDO’s work and undermined the value Warren Averett sought to derive from tying itself to the BDO brand name.

25. Because the mutual interest that CytoDyn and Warren Averett shared with respect to the reasonableness of BDO’s valuation services impaired Warren Averett’s independence, Warren Averett violated PCAOB Rule 3520 and AS 1005 during the 2019 and 2020 CytoDyn audits.

ii. Warren Averett Violated PCAOB Quality Control Standards

26. PCAOB quality control standards provide that each registered public accounting firm should establish policies and procedures to provide the firm with reasonable assurance that “personnel maintain independence (in fact and in appearance) in all required circumstances” and “that the work performed by engagement personnel meets applicable professional standards, regulatory requirements, and the firm’s standards of quality.”⁸

27. PCAOB quality control standards also provide that policies and procedures for monitoring “should be established to provide the firm with reasonable assurance that the policies and procedures established by the firm for each of the other elements of quality control . . . are suitably designed and are being effectively applied,”⁹ and that “its system of

⁸ QC §§ 20.09, .17, *System of Quality Control for a CPA Firm’s Accounting and Auditing Practice*.

⁹ QC § 20.20.

quality control is effective.”¹⁰ “Monitoring involves an ongoing consideration and evaluation of the . . . [r]elevance and adequacy of the firm’s policies and procedures.”¹¹

28. As demonstrated by Warren Averett’s violations of auditor independence requirements, Warren Averett failed to implement, effectively apply, and appropriately monitor quality control policies and procedures sufficient to provide reasonable assurance that its personnel would maintain independence in fact and in appearance where non-audit services performed by BDO would be subject to audit procedures by Warren Averett.

29. Indeed, Warren Averett lacked any policies or procedures designed to detect or prevent auditor independence violations that might arise in connection with its membership in the BDO Alliance or any similar alliance of public accounting firms. Nor did Warren Averett perform any analysis of the independence implications of auditing work performed by BDO for an issuer audit client given Warren Averett’s membership in the BDO Alliance.

30. Warren Averett likewise failed to establish monitoring procedures that would have identified that its auditor independence policies and procedures were not sufficiently relevant or adequate to ensure compliance with applicable independence requirements where non-audit services performed by BDO would be subject to audit procedures by Warren Averett.

31. These quality control failures contributed to Warren Averett’s violations of PCAOB rules and standards related to auditor independence. As a result, Warren Averett violated QC § 20 and QC § 30.

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:

- A. Pursuant to Section 105(c)(4)(E) of the Act and PCAOB Rule 5300(a)(5), Warren Averett 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 \$200,000 is imposed on Warren Averett.

¹⁰ QC § 30.03, *Monitoring a CPA Firm’s Accounting and Auditing Practice*.

¹¹ *Id.* at .02.

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. Warren Averett shall pay this civil money penalty within ten (10) 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 the entity or person 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, 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 interest.
4. With respect to any civil money penalty amounts that Warren Averett shall pay pursuant to this Order, Warren Averett 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 Warren Averett's payment of the civil money penalty pursuant to this Order, in any private action brought against Warren Averett based on substantially the same facts as set out in the findings in this Order.

5. Warren Averett understands that failure to pay the civil money penalty described above may result in summary suspension of its registration, pursuant to PCAOB Rule 5304(a), following written notice to it 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 Board orders that:
1. Review by Warren Averett. Within 90 days of the date of this Order, Warren Averett shall review and evaluate its quality control or other policies and procedures intended to provide the firm with reasonable assurance that its personnel and other associated persons comply with auditor independence requirements applicable to audits and reviews conducted pursuant to PCAOB standards.
 2. Reporting. Within 120 days of the date of this Order, Warren Averett shall submit a written report to the Director of the Division of Enforcement and Investigations summarizing the review and evaluation of the area specified in paragraph C.1 above (“Report”). The Report shall describe any modified or additional policies or procedures adopted or to be adopted by Warren Averett or, if Warren Averett concludes no such modifications or additions should be adopted, a detailed and satisfactory explanation of why the firm believes changes are not warranted. In addition, Warren Averett shall submit any additional information and evidence concerning the Report, the information in the Report, and Warren Averett’s compliance with this Order as the staff of the Division of Enforcement and Investigations may reasonably request.
 3. Certificate of Implementation. Within 150 days of the date of this Order, Warren Averett’s head of quality assurance shall certify in writing (“Certificate of Implementation”) to the Director of the Division of Enforcement and Investigations that Warren Averett has implemented all of the modifications and additions to its policies and procedures, if any, that were described in the Report. The Certificate of Implementation shall provide written evidence of Warren Averett’s adoption of such modifications and additions in narrative form, identify the actions taken to implement such modifications and additions, and be supported by exhibits sufficient to demonstrate implementation.

Warren Averett shall also submit such additional evidence of, and information concerning, implementation as the staff of the Division of Enforcement and Investigations may reasonably request.

4. Noncompliance. Warren Averett understands that a failure to satisfy these undertakings may constitute a violation of PCAOB Rule 5000 and 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

August 29, 2023