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Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions

In the Matter of MaloneBailey, LLP,

Respondent.

PCAOB Release No. 105-2024-032

May 21, 2024

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

- (1) censuring MaloneBailey, LLP (“MaloneBailey,” “Firm,” or “Respondent”);
- (2) imposing a \$400,000 civil money penalty on the Firm;
- (3) requiring MaloneBailey to engage an independent consultant to review and make recommendations concerning MaloneBailey’s system of quality control as specified in Section IV of this Order; and
- (4) requiring MaloneBailey 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 from 2018 through 2021 to ensure that its system of quality control provided reasonable assurance that its personnel complied with applicable professional standards and the Firm’s standards of quality, despite repeated notifications of auditing and quality control concerns brought to the Firm’s attention through several PCAOB inspections.

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. **MaloneBailey, LLP** is a public accounting firm headquartered in Houston, Texas. MaloneBailey is licensed to practice public accounting by the Texas State Board of Public Accountancy (License No. P05522), among other states, and is a member of the Nexia International network of firms. MaloneBailey is, and at all relevant times, was registered with the Board pursuant to Section 102 of the Act and PCAOB rules.

B. Summary

2. This matter concerns the Firm’s failure to comply with PCAOB rules and quality control standards during the time period 2018 through 2021. The Firm’s system of quality control failed to provide reasonable assurance that the Firm would establish engagement performance and monitoring policies and procedures sufficient to provide it with reasonable assurance that its policies and procedures were suitably designed and effectively applied. During the period from 2018 through 2021, PCAOB inspectors repeatedly brought concerns to the Firm’s attention related to significant deficiencies in various audit areas, including auditing

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.

accounting estimates and testing revenue, and raised concerns that MaloneBailey’s system of quality control failed to provide reasonable assurance of complying with the related professional standards. Despite the Firm’s awareness of these deficiencies and concerns, the Firm failed to make effective changes to improve its system of quality control, as indicated by the repeated significant engagement deficiencies identified in the 2018, 2019, and 2021 inspections.

C. The Firm Violated PCAOB Rules and Quality Control Standards

3. PCAOB rules require a registered public accounting firm and its associated persons to comply with PCAOB quality control standards.³ These standards require that a registered public accounting firm have a system of quality control for its accounting and auditing practice.⁴ 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.⁵

4. A firm’s system of quality control should, among other things, include policies and procedures for engagement performance.⁶ These quality control policies and procedures should provide the firm with reasonable assurance that the work performed by engagement personnel meets applicable professional standards, regulatory requirements, and the firm’s standards of quality.⁷ Quality control policies and procedures for engagement performance encompass all phases of the design and execution of an engagement.⁸ To the extent appropriate and as required by applicable professional standards, these policies and procedures should cover planning, performing, supervising, reviewing, documenting, and communicating

³ See PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*; PCAOB Rule 3400T, *Interim Quality Control Standards*.

⁴ See Quality Control Standard 20.01, *System of Quality Control for a CPA Firm’s Accounting and Auditing Practice* (“QC § 20”).

⁵ QC § 20.04.

⁶ QC § 20.07

⁷ QC § 20.17

⁸ QC § 20.18

the results of each engagement.⁹ These policies and procedures also should address engagement quality reviews (“EQRs”).¹⁰

5. 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.¹¹ Monitoring procedures taken as a whole should enable the firm to obtain reasonable assurance that its system of quality control is effective.¹² Procedures that provide the firm with a means of identifying and communicating circumstances that may necessitate changes to or the need to improve compliance with the firm’s policies and procedures contribute to the monitoring element.¹³ Among other things, a firm’s monitoring procedures may include inspection procedures, preissuance or postissuance review of selected engagements, determination of any corrective actions to be taken and improvements to be made in the quality control system, communication to appropriate firm personnel of any weaknesses identified, and follow-up to ensure that any necessary modifications are made to the quality control system on a timely basis.¹⁴

6. Inspection procedures, as a part of a firm’s system of quality control, evaluate the adequacy of a firm’s policies and procedures, its personnel’s understanding of those policies and procedures, and the extent of the firm’s compliance with its quality control policies and procedures.¹⁵ Inspection procedures contribute to the monitoring function because findings are evaluated and changes in, or clarifications of, quality control policies and procedures are considered.¹⁶

7. To provide reasonable assurance that the firm’s quality control system achieves its objectives, appropriate consideration should be given to the assignment of quality control responsibilities within the firm, the means by which quality control policies and procedures are

⁹ *Id.*

¹⁰ *Id.*

¹¹ See QC § 20.20; Quality Control Standard 30, *Monitoring a CPA Firm’s Accounting and Auditing Practice* (“QC § 30”), .02.

¹² QC § 30.03.

¹³ *Id.*

¹⁴ QC § 30.03; *see also* QC §§ 30.04 - .08.

¹⁵ QC § 30.04.

¹⁶ *Id.*

communicated, and the extent to which the policies and procedures and compliance should be documented.¹⁷

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

i. MaloneBailey Received Notice of Significant Audit Deficiencies in the Firm's Audits through Repeat Notifications in Multiple PCAOB Inspections

9. During the time period from 2018 through 2021, PCAOB inspection staff conducted three inspections of the Firm and, during each inspection, notified the Firm of repeated significant audit deficiencies that raised concerns about the Firm's engagement performance. The initial notifications of these deficiencies provided the Firm with notice of engagement performance issues. Subsequent findings of deficiencies provided continuing notice and indicated the Firm's system of quality control had failed to adequately address the deficiencies noted in previous inspections.

10. In 2018, PCAOB inspection staff conducted an inspection of the Firm. In connection with the inspection, between September 2018 and October 2018, PCAOB inspection staff informed the Firm of its findings regarding significant audit deficiencies in MaloneBailey issuer audits related to revenue testing, auditing accounting estimates, including fair value measurements, and audit committee communications.

11. In 2019, PCAOB inspection staff conducted another inspection of the Firm. In connection with the inspection, between November 2019 and December 2019, PCAOB inspection staff informed the Firm of its findings regarding significant audit deficiencies in numerous MaloneBailey issuer audits related again to revenue testing, auditing accounting estimates, including fair value measurements, and audit committee communications. In addition, the inspection staff also identified audit deficiencies related to EQRs. With respect to the EQR deficiencies, in several audits inspected, the EQR partner did not identify a deficiency in an area identified by the engagement team as a significant risk, including in some cases a fraud risk.¹⁸ Inspection staff also identified deficiencies related to the Firm's internal inspection program and state practice qualification requirements.

12. In 2021, PCAOB inspection staff conducted an inspection of the Firm. In connection with the inspection, between September 2021 and December 2021, PCAOB

¹⁷ QC § 20.21.

¹⁸ See AS 1220.10, *Engagement Quality Review*.

inspection staff informed the Firm regarding significant audit deficiencies in numerous MaloneBailey issuer audits related again to revenue testing, auditing accounting estimates, including fair value measurements, audit committee communications, and EQRs. With respect to the EQR deficiencies, PCAOB inspection staff identified one or more deficiencies in areas that the EQR partners were required to evaluate, such as the engagement teams' assessment of, and audit responses to, areas of significant risk, including in some cases a fraud risk. Inspection staff also identified deficiencies related to state practice qualification requirements.

ii. Despite the Repeat, Significant Audit Deficiencies, the Firm's Quality Control Policies and Procedures Failed to Provide Reasonable Assurance That They Were Suitably Designed and Being Effectively Applied from 2018 through 2021

13. From 2018 through 2021, the engagement performance element of the Firm's system of quality control failed to provide the Firm with reasonable assurance that the work performed by its engagement personnel met applicable professional standards, regulatory requirements, and the firm's standards of quality.¹⁹ In addition, the Firm's monitoring procedures related to inspections ("Internal Inspections") were deficient and failed to provide the Firm with a means of identifying and communicating circumstances that may necessitate changes to or the need to improve compliance with the Firm's policies and procedures that contribute to the monitoring element.²⁰

14. To address requirements that a firm's monitoring element provide it with reasonable assurance that its policies and procedures for each of the other elements of its system of quality control are suitably designed and were being effectively applied,²¹ the Firm's policies indicated that Internal Inspections were to be performed on all elements of the Firm's quality control system at least annually.

15. The Firm conducted an internal inspection for the year-ended June 30, 2019, and identified a large number of engagement-specific deficiencies, yet the Firm failed to take sufficient or timely corrective action to improve compliance with the Firm's quality control policies and procedures.

16. Additionally, the Firm's Internal Inspections included the inspection of two issuer audits that the 2019 PCAOB inspection team subsequently inspected. However, the Firm's Internal Inspections failed to identify significant engagement deficiencies in the engagement

¹⁹ QC § 20.17.

²⁰ QC § 30.03.

²¹ QC § 20.20.

performance of one of the audits where the same areas were reviewed by the PCAOB, and significant engagement deficiencies were found.

17. Despite the Firm's awareness that PCAOB inspectors had found repeated engagement performance deficiencies in specific audits, including deficiencies that the Firm failed to identify during its Internal Inspections, the Firm did not consider and evaluate the adequacy of its monitoring policies and procedures in light of these findings.²² The Firm failed to make changes to, or sufficiently improve, its policies and procedures to address the failures of its procedures to identify these deficiencies.

18. As a result, the Firm violated PCAOB rules and quality control standards by failing to have monitoring policies and procedures, taken as a whole, that enabled the Firm to obtain reasonable assurance that its system of quality control was effective, such that the policies and procedures for each of the elements of its system of quality control were suitably designed and being effectively applied, including engagement performance.

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), MaloneBailey 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 \$400,000 on MaloneBailey.
 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:

²² QC § 30.04.

- (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 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, 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. Independent Consultant

- a. MaloneBailey shall retain and pay for an independent consultant (“Independent Consultant”), not unacceptable to the PCAOB staff, to review and make recommendations regarding MaloneBailey’s quality control policies and procedures applicable to audits and reviews conducted pursuant to PCAOB standards. The Independent Consultant must have experience with, and be knowledgeable concerning, PCAOB quality control and auditing standards. Within thirty days after the entry of this Order, MaloneBailey shall submit to the PCAOB staff a proposal setting forth the identity, qualifications, and proposed terms of retention of the Independent Consultant. MaloneBailey may not hire as the Independent Consultant any individual who has provided legal, auditing, or other services to, or has had any affiliation with, MaloneBailey during the two years prior to entry of this Order.
- b. To ensure the independence of the Independent Consultant, MaloneBailey: (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 PCAOB staff; and (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. MaloneBailey 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.
- d. If MaloneBailey, 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 PCAOB staff of alternative candidates or alternative terms that MaloneBailey believes to be otherwise suitable.
- e. Within 90 days of this Order, MaloneBailey will review, evaluate, and implement, under the supervision of the Independent Consultant, any necessary enhancements to MaloneBailey’s quality control policies

and procedures applicable to audits and reviews conducted pursuant to PCAOB standards. If, as a result of that review and evaluation, it appears to the Independent Consultant that any further enhancements to the system of quality control are necessary, it shall recommend such enhancements to MaloneBailey.

- f. Within 120 days of this Order, MaloneBailey shall (1) implement any recommendations received from the Independent Consultant, pursuant to Paragraph IV.C.1.e, and (2) require the Independent Consultant to review a sample of the Firm's most recent public company audits to ensure those audits comply with PCAOB auditing standards and that those integrated audits were conducted in accordance with PCAOB quality control standards and the Firm's revised Quality Control Manual. If MaloneBailey does not implement recommendations received from the Independent Consultant pursuant to Paragraph IV.C.1.e, it shall communicate to the Director of the Division of Enforcement and Investigations the recommendations of the Independent Consultant it did not implement and the reasons for not doing so.

2. Firm Certification

- a. Within 270 days of the date of this Order, MaloneBailey shall certify in writing to the Director of the Division of Enforcement and Investigations, PCAOB, 1666 K Street N.W., Washington, DC 20006, the Firm's compliance with the above paragraphs ("Final Certification"). 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 certification shall include a description of the specific enhancements implemented to MaloneBailey's system of quality control from the time of the conduct described in this Order. MaloneBailey shall also submit such additional evidence of and information concerning as the staff of the Division of Enforcement and Investigations may reasonably request.
- b. 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.

- c. MaloneBailey 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.
- D. Pursuant to Section 105(c)(4)(F), (G) of the Act and PCAOB Rule 5300(a)(6), (9), MaloneBailey is required:
1. As of the date of the Final Certification, to have conducted training for all audit personnel of the Firm related to changes to the Firm's policies and procedures that resulted from the Independent Consultant's recommendations relating to, among other areas:
 - a. Testing Accounting Estimates, Including Fair Value Measurements, and Using the Work of a Company's Specialist
 - b. Testing of Revenue
 - c. EQRs
 - d. Audit Committee Pre-Approval and Independence
 - e. Audit Committee Communications
 - f. Internal Inspections
 - g. State Practice Qualification Requirements
- E. 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

May 21, 2024