





## ORDER

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 Mendoza and the subject matter of these proceedings, which is admitted, Mendoza consents to the entry of this Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions ("Order") as set forth below.<sup>2/</sup>

### III.

On the basis of Mendoza's Offer, the Board finds<sup>3/</sup> that:

#### A. Respondent

1. Henry Mendoza, age 55, of San Clemente, California, is a certified public accountant licensed under the laws of the states of California (license no. 49798) and Illinois (license no. 86835). At all relevant times, Mendoza was the managing partner of the registered public accounting firm of Mendoza, Berger & Company, LLP ("MBC" or the "Firm"), and was an associated person of a registered public accounting firm as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i). In 2012, MBC ceased its operations and filed for a liquidation bankruptcy.<sup>4/</sup> Mendoza is currently a partner of the registered public accounting firm of Link Murrel & Company, LLP.

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<sup>2/</sup> The findings herein are made pursuant to Mendoza's Offer and are not binding on any other person or entity in this or any other proceeding.

<sup>3/</sup> The sanctions that the Board is imposing on Mendoza in this Order may be imposed only if a respondent's conduct meets one of the conditions set out in Section 105(c)(5) of the Act, 15 U.S.C. § 7215(c)(5). The Board finds that Mendoza's conduct described in this Order meets the condition set out in Section 105(c)(5), which provides that certain sanctions may be imposed in the event of (A) intentional or knowing conduct, including reckless conduct, that results in a violation of the applicable statutory, regulatory, or professional standard; or (B) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

<sup>4/</sup> See *In re Mendoza Berger & Company, LLP*, No. 8:12-bk-17188 (Bankr. C.D. Cal.). On November 2, 2012, MBC filed a Form 1-WD, *Request for Withdrawal From Registration*, with the Board. The Firm's withdrawal from registration with the Board became effective on April 29, 2014.



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### B. Summary

2. This matter concerns Mendoza's: (a) failure to cooperate with a Board inspection; (b) noncooperation with a formal investigation of the Board; and (c) failure to comply with PCAOB auditing standards related to audit documentation.

3. Mendoza repeatedly violated PCAOB Rule 4006, *Duty to Cooperate with Inspectors*, when Mendoza, and others acting at his direction, improperly altered, added to, and backdated work papers in advance of a Board inspection, and provided these misleading work papers to the Board's inspectors.

4. Mendoza failed to cooperate with a Board investigation, within the meaning of PCAOB Rule 5110, *Noncooperation with an Investigation*, when Mendoza, and others acting at his direction, provided false and misleading work papers to the staff of the Board's Division of Enforcement and Investigations ("Division"). These work papers contained false material declarations, and Mendoza knowingly directed MBC to produce these documents to the Division in the course of a Board investigation.

5. Finally, Mendoza repeatedly violated AS3. The misleading work papers that were produced to the Board's inspectors and to the Division did not indicate the dates that information was added to the work papers, the names of the persons who prepared the additional documentation, and the reasons for adding the additional documentation to the work papers months after the relevant documentation completion dates.

### C. Mendoza Violated PCAOB Rules and Auditing Standards

6. PCAOB rules require that an associated person of a registered public accounting firm "shall cooperate with the Board in the performance of any Board inspection."<sup>5/</sup> This cooperation obligation includes an obligation not to provide misleading documents or information in connection with the Board's inspection processes.<sup>6/</sup> PCAOB rules also require that associated persons of registered public

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<sup>5/</sup> PCAOB Rule 4006, *Duty to Cooperate with Inspectors*.

<sup>6/</sup> See, e.g., *Dale Arnold Hotz, CPA*, PCAOB Rel. No. 105-2012-008 (Nov. 13, 2012) ¶ 7. See also *Gately & Associates, LLC*, SEC Rel. No. 34-62656 at 22-23 (Aug. 5, 2010) (sustaining Board finding that respondents failed to cooperate with inspection).

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accounting firms comply with the Board's auditing standards.<sup>7/</sup> Among other things, PCAOB auditing standards require that an auditor make certain written disclosures if the auditor adds information to the work papers after the documentation completion date.<sup>8/</sup> As described below, Mendoza violated PCAOB rules and auditing standards in connection with the Board's inspection of MBC's audits of the 2008 financial statements of Issuers A and B, as defined below in paragraphs 8 and 9, respectively.

7. Additionally, the Act authorizes the Board to impose disciplinary sanctions for noncooperation with a Board investigation.<sup>9/</sup> PCAOB rules include procedures for implementing that authority.<sup>10/</sup> Noncooperation with a Board investigation includes knowingly making any false material declaration or making or using any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration.<sup>11/</sup> As described below, Mendoza failed to cooperate with a Board investigation by submitting work papers to the Division that Mendoza knew to contain false material declarations.

Background Regarding the Audits

8. Issuer A is an issuer as that term is defined in Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii). MBC audited the December 31, 2008 and 2009 financial statements of Issuer A (the "Issuer A audits"). Mendoza was the engagement partner for the Issuer A audits. MBC's audit reports for the Issuer A audits expressed unqualified opinions, and stated that the audits were conducted in accordance with PCAOB standards. Each audit report stated that Issuer A's financial statements presented fairly, in all material respects, the company's financial position, results of operations, and cash flows in conformity with U.S. Generally Accepted Accounting

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<sup>7/</sup> See PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*.

<sup>8/</sup> See AS3 ¶ 16.

<sup>9/</sup> See Act § 105(b)(3).

<sup>10/</sup> See PCAOB Rules 5110 and 5200(a)(3).

<sup>11/</sup> See Rule 5110(a)(2). See also *Labrozzi & Co., P.A. and Douglas A. Labrozzi, CPA*, PCAOB Rel. No. 105-2014-001 (Feb. 13, 2014) ¶ 5; *The Blackwing Group, LLC and Sara L. Jenkins, CPA*, PCAOB Rel. No. 105-2009-007 (Dec. 22, 2009) ¶ 24.



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Principles ("GAAP"). The audit reports were included in Issuer A's annual reports filed with the U.S. Securities and Exchange Commission ("Commission").

9. Issuer B is an issuer as that term is defined in Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii). MBC audited the December 31, 2008 financial statements of Issuer B (the "Issuer B audit"). MBC's audit report for the Issuer B audit expressed an unqualified opinion, and stated that the audit was conducted in accordance with PCAOB standards. The audit report stated that Issuer B's financial statements presented fairly, in all material respects, the company's financial position, results of operations, and cash flows in conformity with GAAP. The audit report was included in Issuer B's annual report filed with the Commission.

10. The report release dates for the 2008 audit of Issuer A, and the 2008 audit of Issuer B, were prior to April 1, 2009.<sup>12/</sup> Therefore, the documentation completion dates for the 2008 audits of Issuers A and B were prior to May 16, 2009.<sup>13/</sup> While information may be added to the work papers after the documentation completion date, the new documentation must disclose the date the information was added, the person preparing the additional documentation, and the reason for adding the information to the work papers after the documentation completion date.<sup>14/</sup>

11. The report release date for the 2009 audit of Issuer A was prior to April 1, 2010. The documentation completion date for that audit was prior to May 16, 2010.

### The Board's Inspection

12. On May 22, 2009, the Board notified Mendoza that MBC was going to be inspected. Inspection fieldwork was scheduled to begin on September 21, 2009.

13. On September 11, 2009, the Board notified Mendoza that the 2008 audits of the financial statements of Issuers A and B had been selected for inspection.

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<sup>12/</sup> See AS3 ¶ 14 (defining report release date as "date the auditor grants permission to use the auditor's report in connection with the issuance of the company's financial statements").

<sup>13/</sup> See *id.* ¶ 15 (defining documentation completion date as "a date not more than 45 days after the report release date").

<sup>14/</sup> *Id.* ¶ 16.

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14. After receiving notice of the inspection, Mendoza announced in a Firm-wide meeting that the work papers for the Firm's issuer audits needed to be "cleaned up" prior to the arrival of the Board's inspectors. Mendoza met with the engagement team for the 2008 audit of Issuer A, and directed the staff to make several changes to the audit documentation. Among other things, Mendoza directed the staff to fill out several audit programs that had not been completed at the time of the audit. Mendoza sat beside one engagement team member while that person made several changes to the work papers at Mendoza's direction. Mendoza also directed a staff member to backdate changes to the work papers to the time of the audit.

15. Mendoza also directed the engagement team for the 2008 audit of Issuer B to ensure that the audit documentation for that audit was complete. During the week leading up to the arrival of the Board's inspectors at MBC, members of the 2008 Issuer B engagement team modified the work papers for that audit. Among other things, the engagement team altered and added information to MBC's written analyses in several of the work papers. The engagement team backdated these changes to the work papers to the time of the audit. Before the Board's inspectors arrived at MBC, Mendoza confirmed with one of the staff that the alterations to the documentation for the 2008 audit of Issuer B were complete.

16. These changes and additions to the work papers for the 2008 audits of Issuers A and B were made after the relevant documentation completion dates. The work papers did not indicate the dates of the changes and additions, the identity of the persons making the changes and additions, or the reasons for making the changes and additions.

17. Field work for the Board's inspection began on September 21, 2009. During field work, Mendoza made available to the Board's inspectors the misleading work papers for the 2008 audits of Issuers A and B. At no time did Mendoza advise the inspectors that the work papers had been altered after the relevant documentation completion dates, and in anticipation of the Board's inspection. In fact, Mendoza expressly instructed MBC staff to conceal from the Board's inspectors that changes had been made to the audit documentation.

18. As a result of the conduct described above, Mendoza violated PCAOB Rule 4006 and AS3.

### The Board's Investigation

19. On November 18, 2010, as part of an informal inquiry, the Division requested that MBC produce the work papers for the 2008 audits of Issuers A and B, and the 2009 audit of Issuer A (the "Document Request").





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20. After receipt of the Document Request, Mendoza met with two members of the engagement team for the 2009 audit of Issuer A. At Mendoza's direction, a member of the engagement team modified and added to the work papers for the 2009 audit of Issuer A. Among other things, this engagement team member completed several audit programs that were not completed during the audit. The engagement team member backdated these changes and additions to the work papers, pursuant to Mendoza's instructions.

21. The changes and additions to the work papers for the 2009 audit of Issuer A were made after the documentation completion date. The work papers did not indicate the dates of the changes and additions, the identity of the person making the changes and additions, or the reasons for making these changes and additions.

22. At Mendoza's direction, on or about December 26, 2010 MBC produced to the Division the work papers for the 2008 audits of Issuers A and B, and the 2009 Audit of Issuer A. Mendoza knew that the production included the misleading work papers for the 2008 audits of Issuers A and B. As stated above, Mendoza was aware that MBC staff had altered those documents in advance of a Board inspection. Mendoza also knew that the production to the Division included the misleading work papers for the 2009 audit of Issuer A, which Mendoza directed to be altered after receiving the Document Request. At no time did Mendoza advise the Division of the misleading nature of the work papers produced in response to the Document Request.

23. On February 9, 2011, as part of a formal investigation of the Board, the Division issued an Accounting Board Demand (the "Demand") to MBC for, among other things, the same work papers that were previously sought pursuant to the Document Request. In response to the Demand, and at Mendoza's direction, MBC produced to the Division the same misleading work papers that MBC had produced to the Division in response to the Document Request. At no time did Mendoza advise the Division of the misleading nature of the work papers produced in response to the Demand.

24. As a result of the conduct described above, Mendoza failed to cooperate with a Board investigation, within the meaning of PCAOB Rule 5110, and failed to comply with AS3.

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**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 Mendoza'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), Henry Mendoza, CPA is hereby censured;
- B. Pursuant to Section 105(c)(4)(B) of the Act and PCAOB Rule 5300(a)(2), Henry Mendoza, CPA is barred from being an associated person of a registered public accounting firm, as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i); and
- C. After five (5) years from the date of this Order, Henry Mendoza, CPA may file a petition, pursuant to PCAOB Rule 5302(b), for Board consent to associate with a registered public accounting firm.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

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Phoebe W. Brown  
Secretary

May 6, 2014