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II.

In anticipation of institution of these proceedings, and pursuant to PCAOB Rule 5205, Respondents have each submitted an Offer of Settlement (collectively, "Offers") 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 Respondents and the subject matter of these proceedings, which is admitted, Respondents consent to entry of this Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions ("Order") as set forth below.³

III.

On the basis of Respondents' Offers, the Board finds that:⁴

A. Respondents

1. Samyn & Martin, LLC is a limited liability company organized under the laws of the State of Missouri, and is headquartered in Kansas City, Missouri. Samyn & Martin registered with the Board on October 8, 2003, pursuant to Section 102 of the Act and PCAOB rules. Samyn & Martin is licensed to practice public accountancy by the Missouri State Board of Accountancy (License No. 2014007505) and, at all relevant times, was the external auditor for each of the issuers identified below. During 2011 and 2012, the time periods in which the violations occurred, Samyn & Martin had three audit partners and one audit staff person.

2. John J. Samyn, age 45, of Overland Park, Kansas, is, and at all relevant times was, a partner in the Kansas City, Missouri office of Samyn & Martin and a certified public accountant licensed by the Missouri State Board of Accountancy (License No.

³ The findings herein are made pursuant to Respondents' Offers and are not binding on any other persons or entities in this or any other proceeding.

⁴ The Board finds that Respondents' 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.



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018897). At all relevant times, Samyn 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).

B. Other Relevant Individual

3. Suzanne M. Herring, age 49, of Las Vegas, Nevada, was, at all relevant times, an audit staff person in the Kansas City, Missouri office of Samyn & Martin. In that role, she served on the engagement team for the Firm's audit of one of the two issuers identified below and participated in one of the Firm's interim reviews of the other issuer identified below. At all relevant times, Herring 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). Herring left Samyn & Martin in December 2012 and is currently employed at an entity that is not a registered public accounting firm. On April 1, 2015, the Board issued an order instituting and settled disciplinary proceedings against Herring related to her violations of PCAOB rules and standards, as well as Section 10A(g) of the Exchange Act and Exchange Act Rule 10A-2 concerning auditor independence.⁵ That order concerned, in part, the provision of prohibited non-audit services to the two Samyn & Martin issuer audit clients as discussed in Section D below.

C. Summary

4. This matter concerns the Firm's violations of PCAOB rules and standards that require a registered public accounting firm and its associated persons to be independent of the firm's issuer audit clients throughout the relevant audit and professional engagement periods, as well as the Firm's violations of Section 10A(g) of the Exchange Act and Exchange Act Rule 10A-2 concerning auditor independence. The Firm was not independent with respect to two of its issuer audit clients because one of its staff auditors, Herring, provided the following prohibited non-audit services to its audit clients: (1) bookkeeping and financial statement preparation work for one of those issuers, Decision Diagnostics Corp. ("Decision Diagnostics"), during the audit period for which she served on the audit engagement team; and (2) derivative accounting and valuation services for the other issuer, American Petro-Hunter, Inc. ("APH"), during the

⁵ See Suzanne M. Herring, PCAOB Release No. 105-2015-008 (April 1, 2015).



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year under audit and while she was assisting with one of the Firm's interim reviews of APH's financial statements.⁶

5. In addition, this matter concerns the Firm's violation of PCAOB quality control standards. Specifically, the Firm violated PCAOB quality control standards by failing to establish and implement policies and procedures sufficient to provide it with reasonable assurance that the Firm and its personnel maintained independence in fact and appearance.⁷

6. This matter also concerns Samyn's violation of the PCAOB rule that prohibits an associated person of a registered public accounting firm from directly and substantially contributing to the firm's violation of, among other things, relevant independence requirements.⁸ Specifically, Samyn, the engagement partner on the APH audit, (a) asked Herring to assist APH by providing it with derivative accounting and valuation services, (b) acted as an intermediary between APH and Herring, and (c) at least initially, supervised Herring's performance of such services. Through his actions and omissions, Samyn directly and substantially contributed to Samyn & Martin's violation of applicable independence requirements, in violation of PCAOB Rule 3502.

D. The Firm Violated PCAOB Rules and Standards and the Exchange Act

7. PCAOB rules and standards require that a registered public accounting firm be independent of the firm's audit client throughout the audit and professional engagement period.⁹ A registered public accounting firm's independence obligation with respect to an audit client that is an issuer 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,

⁶ See *Suzanne M. Herring*, PCAOB Release No. 105-2015-008. See also Section 10A(g) of the Exchange Act; Exchange Act Rule 10A-2, *Auditor Independence*; PCAOB Rule 3520, *Auditor Independence*; and AU §§ 220.01-02, *Independence*.

⁷ See PCAOB Rule 3400T, *Interim Quality Control Standards*; QC § 20, *System of Quality Control for a CPA Firm's Accounting and Auditing Practice*.

⁸ See PCAOB Rule 3502, *Responsibility Not to Knowingly or Recklessly Contribute to Violations*.

⁹ See PCAOB Rule 3520; see also AU §§ 220.01-.02.

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including the independence criteria set out in the rules and regulations of the Securities and Exchange Commission ("Commission") under the federal securities laws.¹⁰

8. Section 10A(g) of the Exchange Act provides that it shall be unlawful for a registered public accounting firm that performs an audit for an issuer "to provide to that issuer, contemporaneously with the audit, any non-audit service, including . . . [b]ookkeeping or other services related to the accounting records or financial statements of the audit client" and "[a]ppraisal or valuation services."

9. Exchange Act Rule 10A-2 states that it shall be unlawful for an auditor not to be independent with respect to, among other requirements, the prohibited non-audit services provisions of Commission Regulation S-X. Rule 2-01 of Regulation S-X provides that an accountant is not independent if, at any point during the audit and professional engagement period, the accountant provides certain non-audit services for an audit client, including bookkeeping and financial statement preparation services and appraisal or valuation services.¹¹

10. As described below, the Firm failed to comply with PCAOB rules and auditing standards, the Exchange Act, and Exchange Act rules in connection with its audits of Decision Diagnostics 2011 financial statements and APH's 2012 financial statements.

Samyn & Martin's Audit of Decision Diagnostics' 2011 Financial Statements

11. On August 5, 2011, Decision Diagnostics engaged Samyn & Martin as its auditor for the year ended December 31, 2011. Prior to Samyn & Martin accepting that engagement, Herring had provided bookkeeping and financial statement preparation services for Decision Diagnostics, including in 2010 and in the first half of 2011.¹² In

¹⁰ See PCAOB Rule 3520, Note 1.

¹¹ 17 C.F.R. §§ 210.2-01(b), (c)(4)(i), (c)(4)(iii).

¹² At all relevant times, Decision Diagnostics (prior to February 9, 2012, known as instaCare Corp.) was a Nevada corporation headquartered in Westlake Village, California. Decision Diagnostics' public filings disclose that it is a nationwide prescription and non-prescription diagnostic and home testing products distributor. On April 22, 2015, Decision Diagnostics filed a Form 15 to deregister its common stock. At all relevant times, its common stock was registered under Section 12(g) of the Exchange Act, that stock was quoted on the OTC Bulletin Board, and the company was

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that capacity, Herring prepared journal entries, maintained Decision Diagnostics' accounting records, advised the issuer on generally accepted accounting principles ("GAAP"), and prepared the issuer's financial statements and Forms 10-Q and 10-K that were filed with the Commission. Contemporaneously, Herring worked as a staff person for Samyn & Martin on more than ten audits unrelated to Decision Diagnostics.

12. When Decision Diagnostics engaged Samyn & Martin, Herring ceased providing bookkeeping and financial statement preparation services for Decision Diagnostics and joined the 2011 audit engagement team for Samyn & Martin. During Samyn & Martin's audit of Decision Diagnostics' fiscal year 2011 financial statements, the Firm audited accounting records that Herring had previously prepared and that reflected accounting principles she had recommended. In addition, the December 31, 2011 Decision Diagnostics' financial statements that Herring assisted in auditing were based, at least in part, on the quarterly financial statements that she had previously prepared.

13. As a result of the bookkeeping and financial statement preparation services provided by Herring, the Firm was not independent of Decision Diagnostics during its audit of the issuer's December 31, 2011 financial statements, in violation of PCAOB rules and auditing standards, the Exchange Act, and Exchange Act rules.¹³

14. In addition, on March 13, 2012, the Firm issued a letter to Decision Diagnostics pursuant to PCAOB Rule 3526, *Communication with Audit Committees Concerning Independence*. In violation of Rule 3526, however, that letter failed to disclose the bookkeeping and financial statement preparation services provided by Herring. Also in violation of Rule 3526, the Firm failed to discuss with the Decision Diagnostics' audit committee the potential impact of those services on the Firm's independence.

an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

¹³ See Section 10A(g) of the Exchange Act; Exchange Act Rule 10A-2; PCAOB Rule 3520; and AU §§ 220.01-.02.



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Samyn & Martin's Audit of APH's 2012 Financial Statements

15. Samyn & Martin was engaged as APH's external auditor in March 2009.¹⁴ Beginning in March 2012, at the request of Samyn, the engagement partner for the APH audit, Herring provided accounting and valuation services to APH related to a derivative liability that APH recorded. As of the end of the third quarter of 2012, the derivative liability was the largest liability on APH's balance sheet, representing more than 68% of APH's total reported liabilities. As part of Herring's services for APH, she calculated the value of the derivative liability and related amounts, prepared source data and documents that supported the amounts reflected in the accounting records and financial statements of APH, prepared the journal entries for APH to record in its accounting records, and assisted in the preparation of APH's financial statements and notes thereto.

16. At the time Herring performed those prohibited non-audit services for APH, she was also an audit staff person for Samyn & Martin. Notwithstanding her performance of accounting and valuation services for APH during 2012, Herring also assisted with Samyn & Martin's quarterly review of APH's September 30, 2012 financial statements. Furthermore, Samyn and the Firm relied upon her accounting and valuation work in performing their quarterly review and their year-end 2012 audit.

17. As a result of the accounting and valuation services provided by Herring, the Firm was not independent of APH during its review of the issuer's September 30, 2012 financial statements and during its audit of the issuer's December 31, 2012 financial statements. The Firm thereby violated PCAOB rules and standards, the Exchange Act, and Exchange Act rules.¹⁵

18. In addition, on January 7, 2013, the Firm issued a letter to APH pursuant to PCAOB Rule 3526. In violation of Rule 3526, however, that letter failed to disclose the derivative accounting and valuation services provided by Herring. Also in violation

¹⁴ At all relevant times, APH was a Nevada corporation headquartered in Scottsdale, Arizona. APH's public filings disclose that it is an oil and gas exploration and production company. Its common stock is registered under Section 12(g) of the Exchange Act and is quoted on the OTC Bulletin Board. At all relevant times, APH was an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

¹⁵ See Section 10A(g) of the Exchange Act; Exchange Act Rule 10A-2; PCAOB Rule 3520; and AU §§ 220.01-.02.

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of Rule 3526, the Firm failed to discuss with the APH's audit committee the potential impact of those services on the Firm's independence.

E. Samyn Directly and Substantially Contributed to Samyn & Martin's Violation of PCAOB Rules and Standards and the Exchange Act

19. PCAOB rules prohibit an associated person of a registered public accounting firm from taking or omitting to take an action knowing, or recklessly not knowing, that the act or omission would directly and substantially contribute to violations by that firm of the Act, rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards.¹⁶

20. As described above, Samyn & Martin failed to comply with Section 10A(g) of the Exchange Act, Exchange Act Rule 10A-2, and PCAOB rules and standards in connection with the third quarter review and the year-end audit of APH's 2012 financial statements. Samyn directly and substantially contributed to those APH-related violations because, in his role as the engagement partner on the APH audit, Samyn requested that Herring provide derivative accounting and valuation services for APH, acted as an intermediary between APH management and Herring, and, at least initially, supervised Herring's performance of such services. Despite doing so, Samyn failed to properly communicate with the audit committee regarding the impact of Herring's services on the independence of the Firm, signed off on the quarterly review of APH's September 30, 2012 financial statements, and approved the issuance of an audit opinion on APH's December 31, 2012 financial statements. Accordingly, Samyn violated PCAOB Rule 3502 by taking or omitting to take actions, knowing, or recklessly not knowing, that such actions or omissions would directly and substantially contribute to the Firm's APH-related independence violations.

F. The Firm Violated PCAOB Rules and Quality Control Standards

21. PCAOB Rules require that a registered accounting firm comply with the Board's quality control standards.¹⁷ PCAOB quality control standards require that a

¹⁶ PCAOB Rule 3502.

¹⁷ PCAOB Rules 3100, *Compliance with Auditing and Related Professional Practice Standards*, and 3400T, *Interim Quality Control Standards*.



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registered public accounting firm "shall have a system of quality control for its accounting and auditing practice."¹⁸

22. Policies and procedures "should be established to 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."¹⁹ Among other things, a firm's policies and procedures should provide reasonable assurance that personnel maintain independence in fact and appearance.²⁰ Furthermore, a "firm should communicate its quality control policies and procedures to its personnel in a manner that provides reasonable assurance that those policies and procedures are understood and complied with."²¹ As detailed below, the Firm failed to comply with PCAOB rules and quality control standards.

23. The Firm failed to adopt, implement, and communicate, in writing or through the actions of its partners, appropriate quality control policies and procedures governing the Firm's independence with respect to its issuer audit clients. For example, the Firm's quality control policies and procedures related to independence failed to include a prohibition on providing prohibited non-audit services to issuer audit clients and were also silent as to partner rotation requirements. Indeed, past and present Samyn & Martin personnel have acknowledged that they had an inadequate understanding of the prohibitions on providing non-audit services to issuer audit clients, which contributed to the independence violations of the Firm.

24. In addition, although the firm obtained annual independence confirmations from partners and staff members from 2011-2014, those confirmations required a statement that each individual complied with AICPA standards but not PCAOB rules and standards. Moreover, the Firm failed to confirm compliance with PCAOB independence rules and standards in any other manner during those four years.

25. The Firm also failed to design and implement an appropriate process for confirming the Firm's independence with respect to potential new issuer audit clients. Although the Firm's partners confirmed their independence prior to accepting a new

¹⁸ QC § 20.01.

¹⁹ QC § 20.17.

²⁰ QC § 20.09.

²¹ QC § 20.23.

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issuer audit engagement, no process was implemented to confirm the independence of audit staff prior to accepting a new issuer audit engagement. Accordingly, there was no process in place to determine whether the Firm's audit staff, including Herring, were independent of an issuer before the Firm accepted an audit engagement with that issuer.

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 the Firm and Samyn's Offers. Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 105(c)(4)(E) of the Act and PCAOB Rule 5300(a)(5), Samyn & Martin, LLC and John J. Samyn are hereby censured;
- B. Pursuant to Section 105(c)(4)(A) of the Act and PCAOB Rule 5300(a)(1), the registration Samyn & Martin, LLC, is revoked;
- C. After one (1) year from the date of the Order, Samyn & Martin, LLC may reapply for registration by filing an application pursuant to PCAOB Rule 2101;
- D. Pursuant to Section 105(c)(4)(B) of the Act and PCAOB Rule 5300(a)(2), John J. Samyn 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);²²
- E. After one (1) year from the date of this Order, John J. Samyn may file a petition, pursuant to PCAOB Rule 5302(b), for Board consent to associate with a registered public accounting firm; and

²² As a consequence of the bar, the provisions of Section 105(c)(7)(B) of the Act will apply with respect to Samyn. Section 105(c)(7)(B) provides: "It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any issuer, broker, or dealer in an accountancy or a financial management capacity, and for any issuer, broker, or dealer that knew, or in the exercise of reasonable care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission."

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- F. Pursuant to Section 105(c)(4)(D) of the Act and PCAOB Rule 5300(a)(4), a civil money penalty is imposed in the amount of \$10,000 upon Samyn & Martin, LLC. 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. Samyn & Martin, LLC shall pay the \$10,000 civil money penalty within ten (10) 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 Controller, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington, D.C. 20006, and (c) submitted under a cover letter which identifies the payor 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 the Office of the Secretary, Attention: Phoebe W. Brown, Secretary, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington, D.C. 20006.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

July 9, 2015