

**Inspection of  
Morgenstern, Svoboda & Baer CPAs P.C.**

**Issued by the  
Public Company Accounting Oversight Board**

**April 27, 2009**

**THIS IS A PUBLIC VERSION OF A PCAOB INSPECTION REPORT**

**PORTIONS OF THE COMPLETE REPORT ARE OMITTED  
FROM THIS DOCUMENT IN ORDER TO COMPLY WITH  
SECTIONS 104(g)(2) AND 105(b)(5)(A)  
OF THE SARBANES-OXLEY ACT OF 2002**



### **Notes Concerning this Report**

1. Portions of this report may describe deficiencies or potential deficiencies in the systems, policies, procedures, practices, or conduct of the firm that is the subject of this report. The express inclusion of certain deficiencies and potential deficiencies, however, should not be construed to support any negative inference that any other aspect of the firm's systems, policies, procedures, practices, or conduct is approved or condoned by the Board or judged by the Board to comply with laws, rules, and professional standards.
2. Any references in this report to violations or potential violations of law, rules, or professional standards should be understood in the supervisory context in which this report was prepared. Any such references are not a result of an adversarial adjudicative process and do not constitute conclusive findings of fact or of violations for purposes of imposing legal liability. Similarly, any description herein of a firm's cooperation in addressing issues constructively should not be construed, and is not construed by the Board, as an admission, for purposes of potential legal liability, of any violation.
3. Board inspections encompass, among other things, whether the firm has failed to identify departures from U.S. Generally Accepted Accounting Principles ("GAAP") or Securities and Exchange Commission ("SEC" or "Commission") disclosure requirements in its audits of financial statements. This report's descriptions of any such auditing failures necessarily involve descriptions of the related GAAP or disclosure departures. The Board, however, has no authority to prescribe the form or content of an issuer's financial statements. That authority, and the authority to make binding determinations concerning an issuer's compliance with GAAP or Commission disclosure requirements, rests with the Commission. Any description, in this report, of perceived departures from GAAP or Commission disclosure requirements should not be understood as an indication that the Commission has considered or made any determination regarding these issues unless otherwise expressly stated.



## INSPECTION OF MORGENSTERN, SVOBODA & BAER CPAS P.C.

The Public Company Accounting Oversight Board ("PCAOB" or "the Board") has conducted an inspection of the registered public accounting firm Morgenstern, Svoboda & Baer CPAs P.C.<sup>1/</sup> ("the Firm"). The Board is issuing this report of that inspection in accordance with the requirements of the Sarbanes-Oxley Act of 2002 ("the Act").

The Board is making portions of the report publicly available. Specifically, the Board is releasing to the public Part I of the report and portions of Part IV of the report. Part IV of the report consists of the Firm's comments, if any, on a draft of the report.<sup>2/</sup>

The Board has elsewhere described in detail its approach to making inspection-related information publicly available consistent with legal restrictions.<sup>3/</sup> A substantial portion of the Board's criticisms of a firm (specifically criticisms of the firm's quality control system), and the Board's dialogue with the firm about those criticisms, occurs out of public view, unless the firm fails to make progress to the Board's satisfaction in addressing those criticisms. In addition, the Board generally does not disclose otherwise nonpublic information, learned through inspections, about the firm or its clients. Accordingly, information in those categories generally does not appear in the publicly available portion of an inspection report.

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<sup>1/</sup> The Firm has issued audit reports under the name of Morgenstern, Svoboda & Baer CPA's P.C.

<sup>2/</sup> The Board does not make public any of a firm's comments that address a nonpublic portion of the report unless a firm specifically requests otherwise. In addition, pursuant to section 104(f) of the Act, 15 U.S.C. § 7214(f), and PCAOB Rule 4007(b), if a firm requests, and the Board grants, confidential treatment for any of the firm's comments on a draft report, the Board does not include those comments in the final report at all. The Board routinely grants confidential treatment, if requested, for any portion of a firm's response that addresses any point in the draft that the Board omits from, or any inaccurate statement in the draft that the Board corrects in, the final report.

<sup>3/</sup> See Statement Concerning the Issuance of Inspection Reports, PCAOB Release No. 104-2004-001 (August 26, 2004).

## PART I

### INSPECTION PROCEDURES AND CERTAIN OBSERVATIONS

Members of the Board's inspection staff ("the inspection team") conducted primary procedures for the inspection from August 20, 2007 to August 24, 2007. These procedures were tailored to the nature of the Firm, certain aspects of which the inspection team understood at the outset of the inspection to be as follows:

Number of offices	1 (New York, New York)
Ownership structure	Professional corporation
Number of partners	5
Number of professional staff <sup>4/</sup>	7
Number of issuer audit clients <sup>5/</sup>	8

Board inspections are designed to identify and address weaknesses and deficiencies related to how a firm conducts audits.<sup>6/</sup> To achieve that goal, Board

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<sup>4/</sup> "Professional staff" includes all personnel of the Firm, except partners or shareholders and administrative support personnel. The number of partners and professional staff is provided here as an indication of the size of the Firm, and does not necessarily represent the number of the Firm's professionals who participate in audits of issuers or are "associated persons" (as defined in the Act) of the Firm.

<sup>5/</sup> The number of issuer audit clients shown here is based on the Firm's self-reporting and the inspection team's review of certain information for inspection planning purposes. It does not reflect any Board determination concerning which, or how many, of the Firm's audit clients are "issuers" as defined in the Act. In some circumstances, a Board inspection may include a review of a firm's audit of financial statements of an issuer that ceased to be an audit client before the inspection, and any such former clients are not included in the number shown here.

<sup>6/</sup> This focus necessarily carries through to reports on inspections and, accordingly, Board inspection reports are not intended to serve as balanced report cards or overall rating tools.

inspections include reviews of certain aspects of selected audits performed by the firm and reviews of other matters related to the firm's quality control system.

In the course of reviewing aspects of selected audits, an inspection may identify ways in which a particular audit is deficient, including failures by the firm to identify, or to address appropriately, respects in which an issuer's financial statements do not present fairly the financial position, results of operations, or cash flows of the issuer in conformity with GAAP.<sup>7/</sup> It is not the purpose of an inspection, however, to review all of a firm's audits or to identify every respect in which a reviewed audit is deficient. Accordingly, a Board inspection report should not be understood to provide any assurance that the firm's audits, or its issuer clients' financial statements, are free of any deficiencies not specifically described in an inspection report.

#### A. Review of Audit Engagements

The inspection procedures included a review of aspects of the Firm's auditing of financial statements of two issuers. The scope of this review was determined according to the Board's criteria, and the Firm was not allowed an opportunity to limit or influence the scope.

The inspection team identified what it considered to be audit deficiencies.<sup>8/</sup> The deficiencies identified in both of the audits reviewed included deficiencies of such significance that it appeared to the inspection team that the Firm did not obtain sufficient

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<sup>7/</sup> When it comes to the Board's attention that an issuer's financial statements appear not to present fairly, in a material respect, the financial position, results of operations, or cash flows of the issuer in conformity with GAAP, the Board's practice is to report that information to the SEC, which has jurisdiction to determine proper accounting in issuers' financial statements.

<sup>8/</sup> PCAOB standards require a firm to take appropriate actions to assess the importance of audit deficiencies identified after the date of the audit report to the firm's present ability to support its previously expressed opinions. See AU 390, *Consideration of Omitted Procedures After the Report Date*, and AU 561, *Subsequent Discovery of Facts Existing at the Date of the Auditor's Report* (both included among the PCAOB's interim auditing standards, pursuant to PCAOB Rule 3200T). Failure to comply with these PCAOB standards could be a basis for Board disciplinary sanctions.

competent evidential matter to support its opinion on the issuer's financial statements.<sup>9/</sup>  
Those deficiencies were –

- (1) the failure to perform audit procedures to determine whether stock-compensation expense was recorded properly; and
- (2) the failure to perform sufficient audit procedures to determine whether the assets acquired and liabilities assumed in a business combination were recorded properly.

**B. Review of Quality Control System**

In addition to evaluating the quality of the audit work performed on specific audits, the inspection included review of certain of the Firm's practices, policies, and procedures related to audit quality. This review addressed practices, policies, and procedures concerning audit performance, training, compliance with independence standards, client acceptance and retention, and the establishment of policies and procedures. As described above, any defects in, or criticisms of, the Firm's quality control system are discussed in the nonpublic portion of this report and will remain nonpublic unless the Firm fails to address them to the Board's satisfaction within 12 months of the date of this report.

END OF PART I

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<sup>9/</sup> In some cases, an inspection team's observation that a firm failed to perform a procedure may be based on the absence of documentation and the absence of persuasive other evidence, even if a firm claims to have performed the procedure. PCAOB Auditing Standard No. 3, *Audit Documentation* ("AS No. 3"), provides that, in various circumstances including PCAOB inspections, a firm that has not adequately documented that it performed a procedure, obtained evidence, or reached an appropriate conclusion must demonstrate with persuasive other evidence that it did so, and that oral assertions and explanations alone do not constitute persuasive other evidence. See AS No. 3, paragraph 9; Appendix A to AS No. 3, paragraph A28. For purposes of the inspection, an observation that the Firm did not perform a procedure, obtain evidence, or reach an appropriate conclusion may be based on the absence of such documentation and the absence of persuasive other evidence.



PCAOB Release No. 104-2009-059A  
Inspection of Morgenstern, Svoboda &  
Baer CPAs P.C.  
April 27, 2009  
Page 5

PORTIONS OF THE REST OF THIS REPORT ARE NONPUBLIC AND ARE OMITTED  
FROM THIS PUBLIC DOCUMENT

## PART II

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### B. Issues Related to Quality Controls

The inspection of the Firm included consideration of aspects of the Firm's system of quality control. Assessment of a firm's quality control system rests both on review of a firm's stated quality control policies and procedures and on inferences that can be drawn from respects in which a firm's system has failed to assure quality in the actual performance of engagements.<sup>10/</sup> On the basis of the information reported by the inspection team, the Board has the following concerns about aspects of the Firm's system of quality control.

#### 1. Audit Performance

A firm's system of quality control should provide reasonable assurance that the work performed on an audit engagement will meet applicable professional standards and regulatory requirements. On the basis of the information reported by the inspection team, including the audit performance deficiencies described in Part II.A and any other deficiencies identified below, the Board has concerns that the Firm's system of quality control fails to provide such reasonable assurance in at least the following respects<sup>11/</sup> –

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<sup>10/</sup> A firm's failure to comply with the requirements of PCAOB standards when performing an audit may be an indication of a potentially significant defect in a firm's quality control system even if that failure did not result in an insufficiently supported audit opinion.

<sup>11/</sup> In addition to the points described in the text, the Board notes that the concurring partner review procedure used by the Firm for the issuers inspected did not result in the identification of the deficiencies noted by the inspection team. Because the Firm was not a member of the SEC Practice Section of the American Institute of Certified Public Accountants and therefore is not subject to the concurring partner review requirement in the Board's interim standards, the Board is not here addressing the concurring partner review in terms of a criticism of, or a potential defect in, the Firm's quality control systems for purposes of PCAOB Rule 4009 (discussed in Part III below). Nevertheless, the Board notes the important role that an effective concurring partner review can play in ensuring that an audit is performed in compliance with

a. Technical Competence, Due Care, and Professional Skepticism

The Firm's system of quality control appears not to do enough to ensure technical competence and the exercise of due care or professional skepticism.

b. Fraud Procedures

The Firm's system of quality control appears not to provide sufficient assurance that the Firm will perform all required procedures in accordance with the provisions of AU 316, *Consideration of Fraud in a Financial Statement Audit*. Specifically, the Firm did not perform audit procedures to test journal entries and other adjustments for evidence of possible material misstatements due to fraud [Issuers A and B], and other than sign offs on an audit program and notations on a fraud risk information form, there was no evidence in the audit documentation, and no persuasive other evidence, that the Firm inquired of management and the audit committee, or others with equivalent authority and responsibility, as to their views about the risk of material misstatement due to fraud [Issuers A and B], or conducted a brainstorming session with members of the engagement team. [Issuer A]

c. Auditor Communications

The Firm's system of quality control appears not to provide sufficient assurance that the Firm will provide to the audit committee, or equivalent, the independence confirmations required by Independence Standards Board Standard No. 1, *Independence Discussions with Audit Committees*. [Issuers A and B]

2. Independence

The Firm's system of quality control appears not to provide sufficient assurance that the Firm will comply with independence requirements. As described in Part II.C below, the inspection team reported information indicating that the Firm may not have

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PCAOB standards, and encourages the Firm to obtain a meaningful concurring partner review by a qualified reviewer in connection with audits of issuers. A meaningful concurring partner review procedure would likely have identified the deficiencies described in this report before the Firm issued the reports.

been independent of certain of its issuer audit clients within the meaning of the Commission's independence requirements. [Issuers A and B]

3. Monitoring

The Firm's system of quality control appears not to provide sufficient assurance that the Firm effectively monitors whether other elements of quality control are suitably designed and are being effectively applied. The Firm's 2007 internal inspection included review of the two issuer audit engagements that were also selected for inspection by the PCAOB inspection team. The PCAOB inspection team noted deficiencies on both of these audit engagements that were not identified by the Firm's inspection team and in areas that were significant to the engagements. The failure of the Firm to identify these deficiencies raises questions about the effectiveness of the Firm's internal inspection procedures. [Issuers A and B]

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**PART IV**

**RESPONSE OF THE FIRM TO DRAFT INSPECTION REPORT**

Pursuant to section 104(f) of the Act, 15 U.S.C. § 7214(f), and PCAOB Rule 4007(a), the Firm provided a written response to a draft of this report. Pursuant to section 104(f) of the Act and PCAOB Rule 4007(b), the Firm's response, minus any portion granted confidential treatment, is attached hereto and made part of this final inspection report.<sup>12/</sup>

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<sup>12/</sup> In any version of an inspection report that the Board makes publicly available, any portions of a firm's response that address nonpublic portions of the report are omitted. In some cases, the result may be that none of a firm's response is made publicly available.

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March 3, 2009

Mr. George Diacont  
Director  
Division of Registration and Inspections  
Public Company Accounting Oversight Board  
1666 K Street, N.W.  
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Response to Report on Inspection of  
Morgenstern, Svoboda & Baer CPAs P.C.

Dear Mr. Diacont:

We are pleased to provide our response to the Public Company Accounting Oversight Board regarding the Report on Inspection of Morgenstern, Svoboda & Baer CPAs P.C. ("the "Report").

Our objective in this process is to make certain that all aspects of our auditing and quality control processes are of the highest standards. The inspection process is a fundamental component of the PCAOB's mission and we recognize the constructive intent. We made every effort to cooperate with the inspection staff and have thoroughly evaluated the matters described in Part I – Inspection Procedures and Certain Observation of the Report and have taken actions where appropriate.

Although we do not always agree with the finding in the Report of the work we performed or the related audit documentation, we did perform certain additional procedures or improve our documentation in response to the inspection. In no instance did these actions change our original audit conclusions or affect our reports on the issuers' financial statements.

We have the following additional comments regarding the matters described in the Report.

**Issuer A** – Actions taken in response to the inspection were:

- a) We are obtaining signature copies of all stock award agreements.
- b) We are obtaining employment status documentation for our work-papers
- c) Grant date was 1/23/2007, as evidenced by S-8 filing
- d) We have evaluated the effect of revaluing the expense at 12/31/2006 and have added the 17% to our pass journal entry sheet. The effect is that all pass entries are still below our assessed materiality.

**Issuer B** – Actions taken in response to the inspection were:

Morgenstern, Svoboda & Baer CPA's P.C. performed the acquisition audits of the acquired companies and concluded that each company had been in existence for only a short and at the time of the acquisition no identifiable intangibles assets existed under the contractual-legal or the separability criterion as required under SFAS 141. We have

supplemented the work-papers of the issuer with the appropriate work-papers from these audits in order to document those procedures performed.

**Quality Control**

In response to issues relating to quality control we have revised our Internal Quality Control Document to more effectively address issues relating to Audit Performance, Fraud Procedures, including provisions of AU 316, Auditor communications, pursuant to Independence Standard Board Statement No. 1, Independence, and Monitoring. Our revisions also include standards that encompass the elements of QC Sections 20, 30, and 40 of the PCAOB Interim Standards.

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Comments on Non-public Aspects of Report

We appreciate the opportunity to provide our responses to the Report and look forward to continuing cooperation with the PCAOB on matters of interest to our public company auditing practice.

Respectfully submitted,

Morgenstern, Svoboda & Baer CPA's P.C.