

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

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In the Matter of Monte C. Waldman CPA,)	PCAOB File No. 105-2015-013
)	
Respondent.)	Notice of Finality of Initial Decision
)	
_____)	August 4, 2016
)	

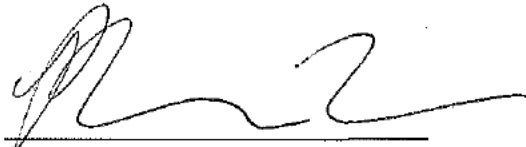
On June 10, 2016, the Chief Hearing Officer of the Public Company Accounting Oversight Board issued the attached Initial Decision pursuant to PCAOB Rule 5204(b) ordering, as sanctions, that the PCAOB registration of Monte C. Waldman CPA ("the Firm") be revoked, with a right to reapply after one year from the date the Initial Decision becomes final, that the Firm be censured, and that the Firm pay a civil money penalty in the amount of \$2,500.

There having been no petition for Board review of the Initial Decision filed by any party pursuant to PCAOB Rule 5460(a) and no action by the Board to call the matter for review pursuant to PCAOB Rule 5460(b), the Initial Decision has today become final as to the Firm pursuant to PCAOB Rule 5204(d).

The Firm shall pay the civil money penalty by (a) wire transfer pursuant to instructions provided by Board staff; or (b) United States postal money order, certified check, bank cashier's check or bank money order; (c) made payable to the Public Company Accounting Oversight Board; (d) delivered to the Controller, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington D.C. 20006; and (e) submitted under a cover letter which identifies Monte C. Waldman CPA as a respondent in these proceedings, sets forth the title and PCAOB File Number of these proceedings, and states that payment is made pursuant to this Notice, a copy of which cover letter and money order or check shall be sent to Office of the Secretary, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington, D.C. 20006.

Effective Date of Sanctions: If the Firm does not file an application for review by the Securities and Exchange Commission ("Commission") and the Commission does not order review of sanctions ordered against the Firm on its own motion, the effective date of the sanctions shall be the later of the expiration of the time period for filing an

application for Commission review or the expiration of the time period for the Commission to order review. If the Firm files an application for review by the Commission or the Commission orders review of sanctions ordered against the Firm, the effective date of the sanctions ordered against the Firm shall be the date the Commission lifts the stay imposed by Section 105(e) of the Sarbanes-Oxley Act of 2002.



Secretary

August 4, 2016

In the Matter of Monte C. Waldman CPA,

Respondent.

PCAOB No. 105-2015-013

Hearing Officer – MBD

**INITIAL DECISION
(SUMMARY DISPOSITION)**

June 10, 2016

Summary

This Initial Decision grants the Division of Enforcement and Investigations' motion for summary disposition in accordance with PCAOB Rule 5427. The undisputed evidence establishes that Respondent, a registered public accounting firm, failed to timely file annual reports and to timely pay annual fees for the years 2014 and 2015, as required by Sections 102(d) and 102(f) of the Sarbanes-Oxley Act of 2002, as amended, 15 U.S.C. § 7201 et seq. ("Sarbanes-Oxley Act"), and PCAOB Rules 2201 and 2202. Additionally, Respondent's annual reports for the years 2014 and 2015, as ultimately filed after the initiation of this proceeding, were inaccurate and misleading in violation of PCAOB Rule 2200. For these violations, pursuant to Sections 105(c)(4) and 105(c)(5) of the Sarbanes-Oxley Act and PCAOB Rule 5300(a), this Initial Decision censures Respondent, revokes Respondent's registration with the PCAOB (with a right to reapply after one year from the date this Initial Decision becomes final), and orders Respondent to pay a civil money penalty of \$2,500.

Appearances

Noah A. Berlin, Esq., Washington, D.C., for the PCAOB Division of Enforcement and Investigations.

Mr. Monte Waldman on behalf of Respondent Monte C. Waldman, CPA.

INITIAL DECISION

1. Factual Background

On June 10, 2015, the Public Company Accounting Oversight Board (“PCAOB” or the “Board”) issued an Order Instituting Disciplinary Proceedings (“OIP”) pursuant to Section 105(c) of the Sarbanes-Oxley Act of 2002, as amended, 15 U.S.C. § 7201 et seq. (“Sarbanes-Oxley Act”), and PCAOB Rule 5200(a)(1), alleging that Respondent Monte C. Waldman, CPA (“Waldman” or “Respondent”), a proprietorship located in Miami, Florida and registered with the Board since 2012, failed to file an annual report with the Board for the year 2014 in violation of Section 102(d) of the Sarbanes-Oxley Act and PCAOB Rule 2200, and failed to pay an annual fee to the Board for the year 2014 in violation of Section 102(f) of the Sarbanes-Oxley Act and PCAOB Rule 2202. The OIP directed that proceedings be held to determine whether the allegations were true, to afford Waldman an opportunity to establish any defenses to the allegations, and, if violations were found, to determine what sanctions were appropriate pursuant to Section 105(c)(4) of the Sarbanes-Oxley Act and PCAOB Rule 5300(a). The OIP further directed Waldman to file an Answer to the allegations contained in the OIP “within twenty (20) days after service of this Order,” and also provided

If the Respondent fails to file the directed Answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against that Respondent upon consideration of the record, including this Order, the allegations of which may be deemed to be true, as provided by PCAOB Rule 5409(a).

On August 12, 2015, the Office of the Secretary of the Board (“Secretary”) filed a Notice of Service stating that the OIP was served on June 16, 2015.

Waldman failed to file an Answer to the OIP. On August 14, 2015, the Hearing Officer issued an Order directing Respondent to show cause why it should not be deemed to be in default pursuant to PCAOB Rule 5409(a)(2) (“Show Cause Order”). The Show Cause Order directed Respondent to file a response by September 16, 2015, and advised Respondent that if it failed to respond to the Show Cause Order within the time allowed, Respondent may be deemed to be in default, and a default decision may be issued finding that Respondent committed the violations alleged in the OIP and imposing sanctions.

On August 15, 2015, Waldman responded to the Show Cause Order by email to the Hearing Office stating, “Please be advised I’ve been paying the fees. I think my balance is \$250. The [B]oard told me I was still on board. Please respond at your earliest [c]onvenience.” Following receipt of Waldman’s email, on August 17, 2015, the Hearing Office’s Case Administrator sent an email to Waldman suggesting that Waldman “contact Division attorney Noah Berlin for any questions you may have regarding disposition of this proceeding,” to which Waldman replied “Ok, I will appreciate that, but would rather not bother him about. I decided to keep paying the fees incurred, and stay with the PCAOB program. I use the association for a few clients, and been careful with issuing ver[y] few reports in past.”

On September 1, 2015, counsel for the Division of Enforcement and Investigations (“Division”) filed a motion requesting that a prehearing conference be held in this proceeding “in light of Respondent’s post-OIP actions, which may be deemed to be Respondent’s answer to the OIP’s allegations.” On September 8, 2015, the Hearing Officer issued an order vacating the Show Cause Order and scheduling an initial prehearing conference for September 25, 2015.

On September 25, 2015, an Initial Prehearing Conference (“Initial Conference”) was held by telephone conference call. At the Initial Conference, the parties discussed with the Hearing

Officer whether Waldman was delinquent in filing annual reports or paying annual fees as alleged in the OIP, whether any alleged delinquencies had been or would be cured, and whether it was likely that the parties could agree to a resolution of this matter. Based on those discussions, the Hearing Officer scheduled a Status Conference to be held by telephone with the parties for November 3, 2015, which would also serve as a pre-motion conference pursuant to PCAOB Rule 5427(c) for both the Division to file a motion for summary disposition regarding any alleged violations and proposed sanctions and for Waldman to file a motion for summary disposition seeking to dismiss the OIP.

On November 3, 2015, a Status Conference was held by telephone conference call. At the Status Conference, counsel for the Division confirmed that several months after the filing of the OIP, Waldman filed its 2014 and 2015 annual reports and paid its 2014 and 2015 annual fees. Counsel for the Division also stated that while Waldman may have filed its annual reports and paid its annual fees, the Division believed that Waldman had not timely complied with its obligations under the Sarbanes-Oxley Act and the PCAOB's Rules prior to service of the OIP. Counsel for the Division also stated that the Division believed that Waldman's annual reports for both 2014 and 2015 were inaccurate in violation of PCAOB Rule 2200. The Hearing Officer directed the Division to advise the Hearing Office by November 10, 2015, whether the Division wished to continue to proceed to a resolution of this matter under the OIP as issued on June 10, 2015, or whether the Division wished to seek the Board's authorization to amend the OIP to include new matters of fact or law.

By letter dated November 3, 2015, and received by the Hearing Office on November 9, 2015, Waldman stated that as of November 3 it was "in full compliance with PCAOB Rules 2200 and 2202 regarding the payment of annual fees and filing the annual report..." and

requested that this proceeding be dismissed. A copy of Waldman's November 3, 2015 letter was also sent to counsel for the Division.

On November 10, 2015, the Division filed a motion to stay this proceeding, including all deadlines, until February 10, 2016, or such earlier date as an amended OIP was served, stating that the Division intended to file a motion with the Board pursuant to PCAOB Rule 5201(d)(1) seeking an amendment to the OIP "to include new matters of fact and/or law that are outside the scope of the original OIP, including initiating new charges against Waldman for conduct that occurred after the filing of the OIP."

On November 12, 2015, the Hearing Officer issued an order staying this proceeding until December 30, 2015, and directing the Division to promptly file its motion to amend the OIP with the Board and to notify the Hearing Office of the results of the Board's consideration of the Division's motion to amend the OIP.

On December 16, 2015, the Board issued an Amended OIP alleging that Waldman failed to timely file its 2014 and 2015 annual reports in violation of PCAOB Rule 2201, failed to timely pay its 2014 and 2015 annual fees in violation of PCAOB Rule 2202, and that Waldman's 2014 and 2015 annual reports as filed were inaccurate, confusing, and contradictory, in violation of PCAOB Rule 2200. On December 22, 2015, the Secretary filed a Notice of Service stating that the Amended OIP was served on Waldman on December 17, 2015.

By letter to the Secretary dated December 23, 2015, Waldman denied the allegations contained in the Amended OIP and reiterated Waldman's request that this proceeding be dismissed. A copy of Waldman's December 23, 2015 letter was also sent to counsel for the Division.

On December 23, 2015, the Hearing Officer issued an order scheduling a prehearing conference for January 22, 2016, and directing the parties to confer and attempt to agree upon a proposed schedule for the completion of this proceeding.

On January 12, 2016, the parties filed a Joint Proposed Schedule indicating that the parties had agreed that this proceeding could be resolved through the summary disposition process without the need for a hearing or testimony of live witnesses. The parties proposed deadlines of February 26, 2016, for the Division to file its motion for summary disposition and March 18, 2016, for Waldman to file a response. On January 13, 2016, the Hearing Officer issued an order adopting the parties' Joint Proposed Schedule and cancelling the prehearing conference scheduled for January 22, 2016.

On February 26, 2016, the Division filed a Motion for Summary Disposition (the "Division's Motion"), together with supporting evidentiary materials, seeking the censure of Waldman, the revocation of Waldman's registration (with a right to reapply after at least one year), and the imposition of a civil money penalty of at least \$2,500.

On February 29, 2016, the Division filed a motion to supplement the record to include three emails that the Division had received from Waldman. On March 8, 2016, the Division filed a second motion to supplement the record to include the Annual Report on Form 10-K for an issuer for which Waldman had issued an audit report in October 2015. Waldman did not file a response to either of the Division's motions to supplement the record. Accordingly, the Division's motions to supplement the record are **GRANTED**.

Waldman's response to the Division's Motion was due on March 18, 2016. To date, Waldman has not filed any response to the Division's Motion.

For the reasons set forth below, the Division's Motion is **GRANTED**. Waldman is censured, Waldman's registration with the PCAOB is revoked (with a right to reapply after one year from the date this Initial Decision becomes final), and Waldman is ordered to pay a civil money penalty of \$2,500.

2. Applicable Standard for Summary Disposition

PCAOB Rule 5427(d) provides that summary disposition is appropriate in Board disciplinary proceedings "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a disposition as a matter of law." As both the Board and the SEC have explained, Rule 5427, in substance, parallels Rule 56 of the Federal Rules of Civil Procedure, under which the ultimate question is whether the record as a whole demonstrates the existence of any factual disputes that must be resolved through a hearing. *See Gately & Assocs.*, Exch. Act Rel. No. 62656 (Aug. 5, 2010), 99 SEC Docket 31023; PCAOB File No. 105-2008-001 (June 4, 2009).

A party seeking summary disposition must make a preliminary showing that no genuine issue of material fact exists. The burden then shifts to the nonmovant. To avoid summary disposition, the nonmovant "must contradict the showing by pointing to specific facts demonstrating that there is, indeed, a trialworthy issue." *Gately* at *20, *citing Nat'l Amusements, Inc. v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir. 1995). In determining whether there is a genuine dispute as to a material fact, the record "'should be viewed most favorably to the non-moving party,' but the hearing officer 'need not credit purely conclusory allegations, indulge in rank speculation, or draw improbable inferences.'" *Id.*

Here the parties agreed that this matter should be resolved using the summary disposition process. Additionally, the Division's Motion is unopposed. While Waldman had previously submitted a letter denying that it committed the violations alleged in the Amended OIP and asking that this proceeding be dismissed, Waldman's "purely conclusory" statements are not sufficient to create a genuine issue of material fact. *See Gately* at *20.

The findings and conclusions in this Initial Decision are based on the record. Preponderance of the evidence was applied as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 97-104 (1981).

3. Violations

The evidentiary materials submitted by the Division in support of the Division's Motion establish that there is no genuine issue of material fact that Waldman violated Sections 102(d) and 102(f) of the Sarbanes-Oxley Act and PCAOB Rules 2201 and 2202 by failing to timely file annual reports and timely pay annual fees, as alleged in the Amended OIP:

- a) Waldman is a proprietorship located in Florida, and is licensed to engage in the practice of public accounting by the Florida Board of Accountancy. *See* Exhibit E-1 attached to the Declaration of Marques Q. Jenkins ("Jenkins Decl.") filed February 26, 2016, in support of the Division's Motion at PCAOB-WALDMAN-0006. Waldman became registered with the Board on June 12, 2012, pursuant to Section 102 of the Sarbanes-Oxley Act and Board Rules. *See* Exhibit E-6 to the Jenkins Decl. at PCAOB-WALDMAN-0043.
- b) Pursuant to Section 102(d) of the Sarbanes-Oxley Act and PCAOB Rules 2200 and 2201, each registered public accounting firm is required to

submit an annual report to the Board on Form 2 by June 30 of each year.

In addition, pursuant to Section 102(f) of the Sarbanes-Oxley Act and PCAOB Rule 2202, each registered public accounting firm must pay an annual fee to the Board by July 31 of any year in which the firm is required to file an annual report.

- c) According to the PCAOB's electronic registration database, Waldman failed to timely file an annual report in 2014 and 2015. *See* Exhibit E-13 to the Jenkins Decl. at PCAOB-WALDMAN-0086 and Exhibit E-14 to the Jenkins Decl. at PCAOB-WALDMAN-0107.
- d) Waldman failed to timely pay an annual fee in 2014 and 2015. *See* Exhibit E-7 to the Jenkins Decl. at PCAOB-WALDMAN-0043a and Exhibit E-8 to the Jenkins Decl. at PCAOB-WALDMAN-0043b.
- e) The Board instituted these proceedings on June 10, 2015.
- f) On September 11, 2015, Waldman paid the remaining \$250 of its 2014 annual fee. *See* Exhibit E-8 to the Jenkins Decl. at PCAOB-WALDMAN-0043b.
- g) Waldman filed its 2015 Form 2 annual report for reporting period April 1, 2014 to March 31, 2015, on September 11, 2015. *See* Exhibit E-14 to the Jenkins Decl. at PCAOB-WALDMAN-0088-0108.
- h) Waldman paid its 2015 annual fee on September 25, 2015. *See* Exhibit E-8 to the Jenkins Decl. at PCAOB-WALDMAN-0043b.

- i) Waldman filed its 2014 Form 2 annual report for reporting period April 1, 2013 to March 31, 2014, on September 25, 2015. *See* Exhibit E-13 to the Jenkins Decl. at PCAOB-WALDMAN-0071-0087.

The materials submitted by the Division also establish that there is no genuine issue of material fact that Waldman filed annual reports for the 2014 and 2015 reporting periods that were inaccurate, misleading, or contradictory in violation of PCAOB Rule 2200, as alleged in the Amended OIP:

- j) The Form 2 annual report Waldman filed for reporting period April 1, 2013 to March 31, 2014 (“2014 Form 2”), includes one company, Seamless Technologies, Inc. (“Seamless Technologies”), as an “issuer” under Item 4.1, “AUDIT REPORTS ISSUED BY THE FIRM.” *See* Exhibit E-13 to the Jenkins Decl. at PCAOB-WALDMAN-0076.
- k) The Form 2 annual report Waldman filed for reporting period April 1, 2014 to March 31, 2015 (“2015 Form 2”), includes four companies as “issuers” under Item 4.1, “AUDIT REPORTS ISSUED BY THE FIRM”: Seamless Technologies, Tao Minerals Ltd. (“Tao Minerals”), Amazonas Florestal Ltd. (“Amazonas”), and The Movie Studio, Inc. (“Movie Studio”). *See* Exhibit E-14 to the Jenkins Decl. at PCAOB-WALDMAN-0094.
- l) Seamless Technologies was not an issuer during the 2014 or 2015 reporting periods as it was not required to file reports under Section 15(d) of the Securities Exchange Act of 1934 (“Exchange Act”), and had not registered its common stock under Section 12 of the Exchange Act.

Seamless Technologies was acquired in July 2013 by Avnet, Inc. *See* Avnet, Inc., Annual Report on Form 10-K for the fiscal year ending June 27, 2015 at 23, available at:

<https://www.sec.gov/Archives/edgar/data/8858/000155837015001540/avt-20150627x10k.htm>.

- m) The audit report dated January 31, 2012, for Tao Minerals listed in Item 4.1(a)(3) of Waldman's 2015 Form 2 does not fall within the reporting period. Additionally, while Tao Minerals was an issuer during the 2015 reporting period, the SEC revoked the registration of Tao Minerals' securities for failure to timely file required periodic reports on May 13, 2015, as Tao Minerals last filed a Quarterly Report on Form 10-Q for the period ended October 31, 2011, and did not file year-end financial statements for the fiscal year ended January 31, 2012. *See In the Matter of Revonergy Inc., Siberian Energy Group Inc., Tao Minerals Ltd. (N/K/A Canam Gold Corp.), and Today's Alternative Energy Corp.*, Exch. Act Rel. No. 74943 (May 13, 2015).
- n) Movie Studio was not an issuer during the 2014 or 2015 reporting periods as it no longer met the definition of an issuer after filing a Form 15 to deregister its common stock as of February 12, 2012. *See* Movie Studio (f/k/a/ Destination Television) Form 15-12G (dated Feb. 12, 2010, filed Feb. 12, 2012), available at:
- <https://www.sec.gov/Archives/edgar/data/1109067/000116768710000003/dstvform15.htm>. Movie Studio did voluntarily file an Annual Report on

Form 10-K for the fiscal year ended October 31, 2014 with the SEC, including an audit report by Terry L. Johnson CPA, a former PCAOB registrant who recently was permanently barred by the SEC from appearing or practicing before the SEC.¹ See Movie Studio Annual Report on Form 10-K for the fiscal year ended October 31, 2014, available at: https://www.sec.gov/Archives/edgar/data/1109067/000157093115000009/mves_10-koct2014iiv1.htm; Exch. Act Rel. No. 75944, *In the Matter of Terry L. Johnson, CPA* (Sept. 17, 2015).

- o) Amazonas was not an issuer during the 2015 reporting period as it was not required to file reports under Section 15(d) of the Exchange Act, and had not registered its common stock under Section 12 of the Exchange Act. Amazonas is a subsidiary of Peartrack Security Systems, Inc., which has reported that as of December 31, 2015, Amazonas was in default of an agreement pursuant to which Amazonas was to register its shares with the SEC by January 31, 2013. See Peartrack Security Systems, Inc., Annual Report on Form 10-K for the fiscal year ended December 31, 2015, available at: <https://www.sec.gov/Archives/edgar/data/1379245/000137924516000039/f20151231ptss10kfinalclean.htm>.

¹ Waldman's 2014 Form 2 stated in Item 4.2, "AUDIT REPORTS WITH RESPECT TO WHICH THE FIRM PLAYED A SUBSTANTIAL ROLE DURING THE REPORTING PERIOD," that Waldman played a substantial role in the preparation of audit reports dated October 31, 2012, 2013 and 2014 for Movie Studio that were issued by Terry Johnson CPA and Patrick Rogers CPA. See Exhibit E-13 to the Jenkins Decl. at PCAOB-WALDMAN-0077. Waldman's filings do not explain the discrepancy between what Waldman's 2014 Form 2 states in Item 4.2 with respect to Movie Studio as opposed to what Waldman's 2015 Form 2 states in Item 4.1.

- p) On December 23, 2015, Waldman submitted a letter to the Secretary, copying Division counsel, in which he requested dismissal of the proceeding, and asserted, among other things, that he had “filed the form 2 as accurately as possible,” and that “there was nothing reported inaccurately or confusing in my annual reports.”
- q) On January 20, 2016, Waldman filed a Form 2/A amending Waldman’s 2015 Form 2. Waldman indicated in the Form 2/A that the 2015 Form 2 was amended to indicate, in Item 3.1, that Waldman did not audit issuers, but Waldman did not amend the 2015 Form 2’s Item 4.1 list of four “issuers” for whom Waldman purported to issue audit reports. Investors reviewing Waldman’s filings would have a difficult time determining whether Waldman had, or had not, conducted issuer audits subject to Board oversight during the 2015 reporting period.
- r) As noted by the Division in its March 8, 2016 motion to supplement the record, Waldman has apparently conducted at least one issuer audit during the 2016 reporting period. *See Summit Networks Inc., Annual Report on Form 10-K for the fiscal year ended July 31, 2015, attached as Exh. A to the Division’s March 8, 2016 motion to supplement the record, at p. 33 of 52.*

It is self-evident that the distinction between “issuer” audits and audits of companies who are not “issuers” is significant to investors as well as to issuers and auditors. Issuer audits are subject to Board inspection and oversight, but audits of non-issuers are not. *See PCAOB Rule*

2100(i)(iii); Board Registration FAQ, PCAOB Release 2003-011E (Feb. 4, 2015) at 5 (“...[R]egistration alone, however, does not subject a firm’s audits to Board oversight. The Board’s standard-setting, inspections, and enforcement authority, relate only to a firm’s practice in connection with audits of issuers, brokers, or dealers.”).

The Division has also submitted evidence that Mr. Waldman was disciplined on May 11, 2015, by the Florida Board of Accountancy for failing to return client documents and information to a client, failing to file that client’s tax returns for three consecutive years, and offering accounting services through an unlicensed CPA firm known as “Monte C. Waldman, CPA.” See Exhibit E-18 to the Jenkins Decl. at PCAOB-WALDMAN-0152-0163 (Final Order of the Dept. of Business and Professional Regulation, State of Florida Board of Accountancy, Case No. 2013-040119, License No. AC44382 (May 7, 2015)). Pursuant to a settlement, the Florida Board of Accountancy ordered that Mr. Waldman be reprimanded and pay a fine of \$500 and costs totaling \$1,252.32. *Id.*

4. Sanctions

As the Division’s Motion acknowledges, the so-called “*Steadman* factors” should be taken into account in determining whether any sanctions at all are in the public interest, and the factors listed in Section 21B(c) of the Exchange Act provide guidance in considering whether to impose civil money penalties. See Division’s Motion at 7-10. The *Steadman* factors are “the egregiousness of the defendant’s actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant’s assurances against future violations, the defendant’s recognition of the wrongful nature of his conduct, and the likelihood that the defendant’s occupation will present opportunities for future violations.” *Steadman v. SEC*, 603

F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). The Exchange Act

Section 21(B)(c) factors include:

(1) whether the conduct for which a penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) harm to other persons resulting directly or indirectly from the conduct; (3) the extent to which any person was unjustly enriched; (4) whether the person against whom a penalty is assessed has previously been found by the Commission, another appropriate regulatory agency, or self-regulatory organization (“SRO”) to have violated federal securities laws, state securities laws, or SRO rules, or has been enjoined from such violations or convicted of certain offenses; (5) the need to deter such person and other persons from such conduct; and (6) such other matters as justice may require.

Section 21B does not require that all of these factors be present as a condition to imposing a penalty, but sets them out as factors to be considered.

Larry O'Donnell, CPA, P.C. and Larry O'Donnell, CPA, PCAOB File No. 105-2010-002 (Oct. 19, 2010), at 9-10. The SEC has confirmed that “[a]n analysis based on Section 21B is ... sufficiently flexible to be used in this context.” *R.E. Bassie & Co., Accounting and Auditing Enforcement Rel. No. 3354*, 2012 SEC LEXIS 89 at *47 (Jan. 10, 2012).

Based on an analysis of these factors, the Division requests that Waldman be censured, that Waldman’s registration be revoked (with the right to reapply after at least one year), and that a civil money penalty of at least \$2,500 be imposed upon Waldman. *See* Division’s Motion at 1, 3, and 7.

A. An Analysis of the *Steadman* Factors Supports Censure and Revocation of Waldman’s Registration (with a Right to Reapply After One Year)

The Division has submitted ample evidence to establish that Waldman should be censured and that Waldman’s registration should be revoked, with a right to reapply after one year, pursuant to Sections 105(c)(4)(A) and 105(c)(5) of the Sarbanes-Oxley Act. The undisputed facts demonstrate that Waldman violated Rules 2201 and 2202 for the 2014 and 2015

reporting periods. Waldman filed its 2014 annual report on September 25, 2015—more than a year after it was due. Waldman filed its 2015 annual report nearly three months after it was due. Waldman did not file either report until after the Board instituted these disciplinary proceedings.

Similarly, Waldman did not pay its 2014 annual fee in full until September 11, 2015, more than a year after it was due. Waldman did not pay its 2015 annual fee until September 25, 2015, nearly two months after it was due. Additionally, Waldman did not pay its 2014 or 2015 annual fees until after the Board instituted these disciplinary proceedings.

When Waldman voluntarily registered with the Board, it accepted the responsibility of every registered accounting firm to file annual reports and pay annual fees, and to do so by the required deadlines, without the need for the Board to initiate disciplinary proceedings.

Waldman's failure to file an annual report by the required deadline and to timely pay an annual fee for two consecutive years reflects, at a minimum, repeated instances of negligent conduct, each of which constitutes a violation of the Sarbanes-Oxley Act and the Board's Rules. The record also reflects that the 2014 and 2015 annual reports Waldman finally did file with the Board contained misleading and inaccurate representations suggesting falsely that Waldman had audited a number of issuers at various times when Waldman had not in fact done so.

Waldman's communications with the Hearing Office, the Division and the Secretary since these proceedings were initiated also indicate that Waldman does not accept any responsibility for its failure to file accurate and timely annual reports and pay its annual fees on time and, indeed, does not recognize that it has done anything wrong. Additionally, Waldman has not provided the Board with adequate assurances that it will comply with the Sarbanes-Oxley Act and the Board's Rules in the future.

In light of these facts, a censure and the revocation of Waldman's registration, with a right to reapply after one year, are appropriate.

B. An Analysis of the Exchange Act Section 21B(c) Factors Supports Imposition of a Civil Monetary Penalty of \$2,500

Sections 105(c)(4)(D)(ii) and 105(c)(5) of the Sarbanes-Oxley Act specify maximum civil monetary penalty amounts, and these specified amounts are subject to periodic penalty inflation adjustments as published in the Code of Federal Regulations as required by the Debt Collection Improvement Act of 1996. For conduct occurring after March 3, 2009, the Sarbanes-Oxley Act penalty provisions, as adjusted, authorize the Board to impose a civil money penalty of up to \$900,000 for a natural person and up to \$17,800,000 for other persons if a violation was committed intentionally or knowingly, including recklessly, or included repeated acts of negligent conduct. *See* 17 C.F.R. § 201.1004 Table IV; *Larry O'Donnell, CPA, P.C.*, PCAOB File No. 105-2010-002 (Oct. 19, 2010), at 14. For violations after March 5, 2013, the comparable maximum adjusted amounts are \$950,000 for a natural person and \$18,925,000 for other persons. *See* 17 C.F.R. § 201.1005 Table V. For violations after March 3, 2009, that do not involve intentional or knowing (including reckless) conduct or repeated instances of negligence, the Board may impose a maximum civil money penalty of \$120,000 for a natural person and \$2,375,000 for other persons (*see* 17 C.F.R. § 201.1004 Table IV); for violations after March 5, 2013, the comparable maximum adjusted amounts are \$130,000 for a natural person and \$2,525,000 for other persons. *See* 17 C.F.R. § 201.1005 Table V; *see also Stan Jeong-Ha Lee*, PCAOB No. 105-2012-001, at 21 (May 9, 2013) (“[A] civil money penalty may be imposed without such a finding [of intentional or knowing conduct, including reckless conduct, or multiple acts of negligence], so long as the penalty does not exceed the amount set forth in Section 105(c)(4)(D)(i) of the Act, as adjusted”).

In determining whether a civil money penalty is an appropriate sanction and, if so, the amount of the penalty, the Board has stated that it is “guided by the statutorily prescribed objectives of any exercise of [its] sanctioning authority: the protection of investors and the public interest.” *Larry O’Donnell, CPA, P.C.*, at 9 (citations omitted). The Board has also stated that it will consider the factors set forth in Exchange Act Section 21B(c).

In this case, the Division seeks a monetary penalty of \$2,500. In support, the Division argues that the proposed sanction is consistent with prior delinquent filer litigation but also recognizes that “each matter presents unique facts and [the Division] has, to date, eschewed a formulaic approach to determining the sanctions it seeks in delinquent filer matters.” Division’s Motion at 15-16.

Taking all of the relevant circumstances into consideration, including the prior disciplinary history of Mr. Waldman in the State of Florida, the \$2,500 civil money penalty sought by the Division is appropriate to accomplish the Board’s remedial objectives in this proceeding. While this is well below the maximum penalty that could be imposed, it nonetheless reflects the seriousness of the violations and will send a sufficiently strong message to Waldman and to other firms of the importance of complying with the Board’s Rules.

5. Record Certification

Pursuant to Rule 5202(d), I certify that the record includes the items set forth in the Index to the Record issued by the Secretary and served on the parties on May 9, 2016.

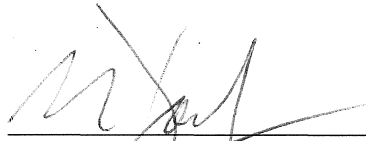
6. Order

For the foregoing reasons, **IT IS ORDERED**, pursuant to Sections 105(c)(4) and 105(c)(5) of the Sarbanes-Oxley Act and Rule 5300(a), that for violating Section 102(d) of the Sarbanes-Oxley Act and PCAOB Rule 2200 by failing to timely file annual reports for 2014 and

2015, for violating Section 102(f) of the Sarbanes-Oxley Act and PCAOB Rule 2202 by failing to timely pay annual fees for 2014 and 2015, and for violating PCAOB Rule 2200 by filing misleading or inaccurate annual reports for 2014 and 2015, Respondent Monte C. Waldman, CPA is censured, and the registration of Respondent Monte C. Waldman, CPA is revoked with the right to reapply after one (1) year from the date that this Initial Decision becomes final. Additionally, Respondent Monte C. Waldman, CPA shall pay a civil money penalty in the amount of \$2,500.

This Initial Decision will become final in accordance with PCAOB Rule 5204(d)(1) upon issuance of a notice of finality by the Secretary. Any party may obtain Board review of this Initial Decision by filing a petition for review in accordance with PCAOB Rule 5460(a), or the Board may, on its own initiative, order review, in which case this Initial Decision will not become final.

Dated: June 10, 2016



Marc B. Dorfman
Chief Hearing Officer