SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 80201 / March 10, 2017

Admin. Proc. File No. 3-16518

In the Matter of the Application of

KABANI & COMPANY, INC., HAMID KABANI, CPA, MICHAEL DEUTCHMAN, CPA, and KARIM KHAN MUHAMMAD, CPA

For Review of Disciplinary Action Taken by the

PCAOB

OPINION OF THE COMMISSION

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD -- REVIEW OF DISCIPLINARY PROCEEDINGS

Violation of PCAOB Rules

Improper Professional Conduct

Failure to Cooperate with Inspection

Registered public accounting firm and three persons associated with the firm violated PCAOB rules by altering audit files in anticipation of a PCAOB inspection and then producing those audit files to the PCAOB without informing PCAOB staff of the alterations. *Held*, findings of violations and sanction imposed are *sustained*.

APPEARANCES:

John R. Armstrong and *Matthew S. Henderson*, of *Horowitz + Armstrong LLP*, for Applicants.

J. Gordon Seymour, *Luis de la Torre*, and *Jodie J. Young* for the PCAOB.

Appeal filed: April 28, 2015

Last brief received: August 19, 2015

I. Introduction

Applicants Kabani & Company, Inc. ("K&C"), a firm registered with the Public Company Accounting Oversight Board ("PCAOB" or "Board"), and Hamid Kabani, CPA, Michael Deutchman, CPA, and Karim Khan Muhammad, CPA, all persons associated with K&C, appeal from PCAOB disciplinary action. The PCAOB found that Applicants violated PCAOB rules by engaging in a "wide-spread and resource-intensive effort" to conceal documentation deficiencies in three issuer audit files from PCAOB inspectors. For these violations, the Board censured Applicants; permanently revoked K&C's registration; barred Kabani, Deutchman, and Khan from associating with a registered public accounting firm (with leave for Deutchman and Khan to petition the PCAOB to terminate their bars in two years and 18 months, respectively); and ordered Kabani, Deutchman, and Khan to pay civil penalties.[1]

We base our findings on our independent review of the record. That record shows that Applicants added or falsified hundreds of audit documents; intentionally reset internal computer clocks to conceal that the alterations were made before applicable deadlines; and backdated their signatures on relevant work papers. We agree with the PCAOB that this evidence demonstrates a course of misconduct that is troubling on its face and that Applicants' changing, conflicting, and patently unbelievable testimony "accentuates the gravity of the misconduct." As the PCAOB held, this "[m]isconduct is especially troubling and deserving of serious sanctions," because Applicants "went to considerable lengths to conceal their actions." Substantial evidence thus establishes that Applicants intentionally and knowingly violated the PCAOB's rules and that the PCAOB's imposition of sanctions for those violations was an appropriate remedy.[2]

II. Facts

At issue here are K&C's files for the 2007 audit of Issuers "A," "B," and "C"—three Delaware corporations headquartered in China, Hong Kong, and California, respectively. Kabani, who is K&C's founder, president, and sole shareholder and was responsible for K&C's overall management, was the engagement partner on these three audits. Deutchman, who was K&C's director of audit and accounting and participated in monitoring K&C's quality control and staff training, was the concurring partner on the three audits. Khan, who was a K&C auditor with responsibilities for overseeing general audit work and supervising audit staff, worked as an "In-Charge" on the Issuer A audit acting as an audit supervisor or manager. Kabani, Deutchman, and Khan all worked in K&C's Los Angeles office.

This case stems from Applicants' failure to comply, for the three audits at issue, with two requirements under the PCAOB's Auditing Standard No. 3 ("AS No. 3"): (1) that complete and final audit documentation be assembled for retention within 45 days of the auditor's report

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[1] Final Decision, *Kabani & Co.*, No. 105-2012-002, slip op. at 19 (PCAOB Jan. 22, 2015).

[2] Under Section 105(e)(1) of the Sarbanes-Oxley Act, Applicants' application for review triggered an automatic stay of the sanctions. On September 3, 2015, the PCAOB filed a motion with the Commission to terminate the stay. Applicants opposed the motion and moved to strike it as an improper sur-reply. Because we sustain the sanctions, we lift the automatic stay without relying on the PCAOB's motion. We dismiss the PCAOB's and Applicants' motions as moot.

release date (the "documentation completion date"); and (2) that any documentation added after the documentation completion date must indicate the date the information was added, the name of the person who prepared the additional documentation, and the reason for adding it.[3] AS No. 3 required Applicants to assemble a complete and final audit file for the Issuer A audit by July 27, 2008; the Issuer B audit by May 12, 2008; and the Issuer C audit by May 30, 2008.[4]

A. Applicants engaged in a "cleanup" of K&C's audit files in anticipation of a PCAOB inspection.

On June 2, 2008, the PCAOB's Division of Registration and Inspections ("Division of Inspections") told Kabani that it intended to inspect K&C's audit records. After receiving this notice, Kabani held a meeting with Firm personnel. Rehan Saeed, a concurring reviewer for K&C, testified that at the meeting Kabani stated that a PCAOB inspection was coming; that the PCAOB had noted deficiencies at the Firm during a previous inspection; that PCAOB rules permitted firms to correct certain deficiencies in work paper files; that Kabani wanted audit files reviewed to determine whether certain documents were missing; and that a new, junior staffer would be "driving the project." After the initial meeting, Kabani gave Saeed a list of audit files to review and explained that he should "report back what documents are missing" from the files. Although he disputed this at the hearing, Kabani admitted in investigative testimony that he "want[ed] [Saeed] to look at the final version of the files."

Contemporaneous emails, on which Kabani, Deutchman, and Khan were copied, described K&C's efforts as "PCAOB Cleanup" or "Rehan's PCAOB Cleaning-up." Indeed, there were at least 11 references to a "PCAOB Cleanup" or "PCAOB Cleaning-up" during the relevant period. Applicants identify no evidence, and we can find none, that they ever questioned or expressed concern about the use of these terms.

K&C's "PCAOB Cleanup" consumed so much of the staff's time in the two months before the PCAOB's inspection that, according to Saeed, K&C "could not do much billing" on any paying projects. Saeed testified that "it looked like a huge project where everyone was working on it, they were working overtime, they were working against the deadlines." Deutchman similarly testified that "[e]verybody was afraid of the inspection. Everybody was terrified of the PCAOB, almost paranoid of the PCAOB." And Kabani testified that, when he instituted the internal inspection, the Firm was "going through [an] extremely busy period" because it "had 60 filings within [the] next three months and [that he and Firm personnel] were overwhelm[ed]." K&C's time records show that staff spent hundreds of hours on the Issuer A, B, and C audits after the documentation deadlines but before the PCAOB's inspection.

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[3] *See* AS No. 3 ¶15, ¶16.

[4] Applicants argue that, because Issuer A filed an amended annual report on July 3, 2008, the documentation deadline for Issuer A should be August 17, 2008. But AS No. 3 ties the 45-day documentation deadline to the audit report release date, not to the date of the company's filings. *See, e.g.*, AS No. 3, App'x A. Regardless, most (if not all) of the alterations and additions to the Issuer A files occurred after August 17, 2008.

On or around September 14, 2008, for example, a senior auditor emailed Saeed that, "[f]ollowing a discussion with Karim [Kahn]," she was attaching for Saeed's review a file containing the work papers for the Issuer A audit and listing the work that she had already done on the file. Approximately a week after receiving the Issuer A work papers, Saeed emailed the senior auditor and Khan a list of deficient and missing audit documents. Khan emailed back, "Rehan, Thanks for your comments. We will update the files and get back to you." The following week, Saeed was provided with files containing work papers relating to the Issuer B and C audits. During Saeed's review of those files, the junior staffer in charge kept Kabani, Deutchman, and Khan apprised of Saeed's progress by emailing them an "updated list" of "Rehan's PCAOB Cleaning-up as of today." The email also indicated that Deutchman was reviewing or had reviewed 18 different audit files, including those for Issuers B and C.

On Sunday, October 12, 2008, the Division of Inspections confirmed that PCAOB staff would arrive at K&C's office, on Monday, October 20 and emailed Kabani a list of the audits that it would be inspecting (which included audits for Issuers A, B, and C). Within minutes, Kabani forwarded the email to K&C staff with the following message: "Please note below the clients selected by the PCAOB. We will be working 12 hrs per day, next week, including Saturday and possibly Sunday. Everybody is expected to make arrangement[s] and resolve the[ir] personal matters. No exceptions." The following day, Kabani emailed Saeed directly, writing that "[s]ince we have been informed by the PCAOB about which clients they will inspect, let's review those clients now." Deutchman also emailed Saeed about his review of the audit files, writing: "Thanks, Rehan[.] We look forward to your thoughtful comments. They are always good and as you know we really need them now."

Later that week, Saeed emailed his comments on the Issuer B file to, among others, Kabani, Deutchman, and Khan. The junior staffer in charge replied (copying Kabani and Khan): "Thanks for your hard work on [Issuer B]. We are updating it based on your comments now." A few days later, Saeed completed his review of the Issuer C file and emailed comments to Kabani, Deutchman, and Khan. Saeed labeled his comments as "Internal Inspection PCAOB Cleanup" and concluded that, among numerous other deficiencies, neither the Issuer B nor C audit files had been assembled within 45 days of the release of the audit report as required by AS No.3.

Three days later, on Monday, October 20, 2008, PCAOB inspectors visited K&C's office and reviewed, among other things, the Issuer A, B, and C audit files. At Kabani's direction, staff provided the inspectors with the work papers. No one informed the inspectors that work papers had been supplemented or altered after the respective documentation completion dates.

B. The PCAOB learned of K&C's "cleanup" after Saeed left the firm and contacted its staff.

Saeed left K&C approximately a year after the PCAOB's inspection. Around that time, he contacted PCAOB staff about "concerns that [he] developed over time relating to seeing deficiencies and relating to work paper reviews in advance of a PCAOB inspection" of K&C. Saeed also provided the PCAOB with a thumb drive containing copies of the audit files he reviewed for the Issuer A and B audits and emails related to all three audits at issue.

In April 2010, the PCAOB's Division of Enforcement and Investigations ("Division of Enforcement") opened an investigation and requested that K&C produce a copy of "all working papers and other documents concerning the audit, review or other services" performed by K&C

for certain audit clients from April 2007 through April 2010, including Issuers A, B, and C. K&C provided the PCAOB with the requested materials in June 2010. Kabani testified at the disciplinary hearing that the documents he provided were "the final set of work papers" and that he "d[id] not believe [he] sent any non-final" versions of the work papers to the PCAOB.

On February 8, 2011, the Division of Enforcement informed K&C that the Issuer A audit file was corrupt and unreadable. Later the same day, Kabani sent the PCAOB a disk containing a substitute file with the Issuer A work papers and represented that "[t]he files were copied in the same format as they were stored on the firm's computer server." Kabani did not suggest that the substitute file was different from the audit file made available to PCAOB inspectors during their onsite visit or from the audit file initially produced to the Division of Enforcement; indeed, Applicants stipulated that the Issuer B and C audit files that they provided to the Division of Enforcement were the same ones made available to PCAOB staff during their inspection.

C. PCAOB staff identified numerous examples of documents that K&C added or altered to address deficiencies Saeed recognized during K&C's "cleanup."

The Division of Enforcement compared the audit files Saeed provided with those Applicants provided and discovered numerous examples of documents that K&C added or altered before the PCAOB inspectors arrived. The metadata in the audit files that Applicants provided also showed numerous other changes after the applicable documentation deadlines. None of these changes was accompanied by an indication of when, why, or by whom they were made.

1. The files that Saeed provided and the files that Applicants provided differed substantially.

The Issuer A audit file that Saeed provided to the PCAOB (which he reviewed in mid-September 2008, well after the documentation completion date) contained 158 documents, four work paper folders, and no supporting work papers for 13 of 38 subsidiaries. The file that Applicants produced to the Division of Enforcement, however, contained 1,104 work papers, two additional work paper folders (titled "Checklists" and "Wrap up"), and 446 supporting work papers for the 13 subsidiaries that did not have supporting work papers in Saeed's file. There were also more than 100 differences in 13 trial balances and 28 supporting work papers that corresponded to the "disparities" identified by the senior auditor, including removing and revising supporting work papers and adding and altering work paper references.

There were also discrepancies between the Issuer B audit file that Saeed reviewed and the file Applicants provided to the PCAOB. Saeed's review of the Issuer B audit file noted that it lacked a Risk Assessment Summary Form, and minutes of two K&C staff meetings held in October 2008 similarly noted the need to "create memo for Risk Assessment." The audit file that Applicants provided to the PCAOB, however, contained the Risk Assessment form. Saeed also noted that a Supervision, Review, and Approval Form lacked handwritten signatures; the final audit file contained a signed form. Saeed commented further that the management representation letter dated January 25, 2008 in the file he reviewed did not match the March 10, 2008 report release date. The file Applicants provided to the PCAOB contained a letter with the correct March 10, 2008 date. Saeed also noted that the dollar amounts in a liability lead schedule

should have been the same as corresponding figures in the supporting schedule and working trial balance. The work papers provided to the PCAOB contained corrected figures.

With respect to the Issuer C audit file, Saeed's review identified two missing documents: (1) a "Certificate of Approval by FIE (Foreign Investment)" and (2) a "Risk Assessment Summary Form" work paper. K&C, Kabani, and Deutchman stipulated below that K&C personnel scanned and added both documents to the final work papers on October 16, 2008—after the documentation completion date—and both documents were included in the file that Applicants produced to the PCAOB. Saeed also noted that the management representation letter in the Issuer C audit file was dated March 31, 2008 (a month after the February 28, 2008 audit report date). The audit file that Applicants provided to the PCAOB contained a management representation letter dated February 28, 2008. Saeed noted further that the Supervision, Review, and Approval Form was not signed. The Supervision, Review, and Approval Form in the audit file that Applicants provided to the PCAOB had handwritten signatures.

2. The files' metadata showed that work papers were added late or were backdated.

The Division of Enforcement examined the audit work papers' "metadata," which is stored information about a document's properties, including when and by whom it was created and last modified. The metadata showed that 156 documents were added after the applicable documentation completion deadlines for the three issuers. Specifically, the Issuer A file contained 54 documents created and/or modified after July 27, 2008; the Issuer B file contained 39 documents created and/or modified after May 12, 2008; and the Issuer C file contained 63 documents created and/or modified after May 30, 2008.

Of those documents, the Issuer A work papers contained 18 documents in which the modification timestamps predated the creation timestamps (despite the impossibility of modifying documents before they were created) and the Issuer B and Issuer C work papers each contained 37 similarly anomalous documents. A cursory review of these documents would suggest that they were last modified just before applicable deadlines, but the PCAOB's expert testified that the anomalies in the metadata actually showed that the documents had been opened on a computer where the internal clock had been intentionally set backward. In other words, the pattern with which these anomalous documents were backdated indicated that they were not the result of innocent or accidental file operations but rather of an intentional scheme to deceive and mislead.

Specifically, the Division's expert explained, users logging in as "Hamid," "Kabani," "Hamid Kabani," "Karim," or "Mohammed" opened documents, made minor, non-substantive changes (like adding a carriage return after the last line of text), and then saved the file to give it a modified date that matched the computer's clock at the time the file was saved. In each case, the new modified dates predated the applicable documentation deadlines—suggesting that the changes were done to make it appear that the audit files complied with AS No. 3. Indeed, the PCAOB's expert observed that the "consistency of [the] intervening period" between the created and modified dates, combined with the pattern of "content-neutral changes" to the anomalous documents, makes it "probable that the Anomalous Documents were modified on intentionally backdated machines (rather than modified on inadvertently or randomly backdated machines)."

3. K&C's work papers showed that the Issuer A and B audit files contained inaccurate and misleading auditor sign-offs.

K&C's work papers also showed that Applicants backdated or otherwise altered its auditors' "sign-off" date—the date that the auditors manually entered in the files of the individual work papers when conducting their final review of an audit file. These new sign-off dates were attempts to conceal the fact that some audit work had not been done before K&C released its audit reports.

The sign-offs in the Issuer A audit file that Kabani provided to the PCAOB indicated that, for every work paper in that file, Khan completed his audit work (and Kabani and Deutchman completed their review of that work) on June 10, 2008—two days before K&C released its audit report. But that same audit file contained 13 spreadsheets showing that K&C did not actually receive the underlying documents (*e.g.*, letters from financial institutions confirming account balances) until sometime between June 16 and June 20, 2008—after the audit work for these documents was supposedly completed and reviewed. In fact, for 10 of those confirmations, the underlying documents themselves (that had supposedly been reviewed on June 10) bear facsimile marks showing that K&C did not receive them until after June 13.

Similarly, the Issuer B work papers showed that auditor sign-offs were added after the documentation completion date. The work papers that Saeed reviewed in October 2008 (well after the May 12, 2008 documentation completion date) contained electronic sign-offs indicating that most—but not all—of the work papers had been "Completed" by October 2008, and that none of the work papers contained a sign-off showing that it had been "Reviewed." However, in the audit file that K&C provided to the PCAOB, the files contained sign-offs indicating that all 372 work papers had been both "Completed" (by a K&C staff member) and "Reviewed" (by Kabani and Deutchman) on the same day, March 26, 2008. The audit file provided to the PCAOB bears no notation explaining that the sign-offs had been added after May 12, 2008 (the documentation completion date), the person who added them, or the reason for doing so.

III. Procedural History

On June 15, 2012, the Board issued an Order Instituting Disciplinary Proceedings ("OIP") alleging that Applicants had violated PCAOB rules and auditing standards by adding, deleting, altering, and/or backdating numerous work papers across several audit engagements and that Applicants provided work papers for at least three of those engagements to the PCAOB in connection with its inspection without informing the PCAOB of the alterations.[5]

[5] The OIP also named Saeed as a respondent, but the Board settled the proceedings against him on May 21, 2013. *See Rehan Saeed, CPA*, Release No. 105-2013-004 (PCAOB May 21, 2013) (finding that Saeed violated PCAOB rules and auditing standards in connection with his failure to perform timely concurring reviews and his backdating of concurring review documentation; censuring him; and barring him from being an associated person of a registered public accounting firm, with leave to petition to terminate the bar in 18 months), *available at* https://pcaobus.org/Enforcement/Decisions/Documents/05212013_Saeed.pdf.

After a hearing, a PCAOB hearing officer issued an initial decision on April 22, 2014, finding that Applicants violated PCAOB rules by participating in a "wide-spread and resource-intensive effort" to alter documents in three issuer audit files in an attempt "to deceive PCAOB inspectors in an upcoming inspection about the deficiencies in the Firm's audit work papers."[6] The initial decision found that Kabani's and Deutchman's misconduct was "intentional and knowing," and that Khan's misconduct was "knowing, intentional, or at least reckless." The initial decision censured all four Applicants; revoked K&C's registration; permanently barred Kabani, Deutchman, and Khan from associating with a registered public accounting firm (with leave for Deutchman and Khan to reapply in two years and 18 months, respectively); and imposed civil penalties of $100,000 on Kabani, $35,000 on Deutchman, and $20,000 on Khan.

Applicants petitioned the Board for review of the initial decision. After conducting a *de novo* review of the record, the Board summarily affirmed the initial decision's findings and imposition of sanctions on January 22, 2015.[7] The Board explained that Applicants had "not identified any potentially meritorious challenges to the hearing officer's findings of violation[s]." Specifically, the Board found the "initial decision's presentation of the facts to be fairly based on a preponderance of the record evidence." The Board further found that "the changing, conflicting, and patently incredible explanations for the[] document alterations offered by [Applicants] throughout this proceeding accentuate the gravity of the misconduct and underscore how meritless [Applicants'] arguments to the contrary now are."

IV. Violations

Under Section 107(c)(2) of the Sarbanes-Oxley Act, we will sustain the Board's decision if we find that the record shows that Applicants engaged in the conduct that the Board found Applicants to have engaged in, that Applicants' conduct violated PCAOB rules, and that those rules are, and were applied in a manner, consistent with the purposes of Sarbanes-Oxley.[8] We

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[6] The hearing officer also found that K&C violated PCAOB rules by failing to establish sufficient policies and procedures concerning audit documentation and the performance of timely concurring reviews. He found further that Kabani and Deutchman took and/or omitted to take action knowing, or recklessly not knowing, that their acts and/or omissions would contribute directly and substantially to the Firm's quality control violations, in violation of PCAOB Rule 5302(b). In its subsequent review, the Board found it "unnecessary" to consider these findings and set them aside in light of the sanctions imposed for the other violations.

[7] PCAOB Rule 5460(e) states that "[t]he Board may summarily affirm an initial decision based upon the petition for review, without further briefing, if it finds that no issue raised in the petition for review warrants further consideration by the Board." We review only the Board's decision on appeal. *Cf. Fajardo v. INS*, 300 F.3d 1018, 1019 n.1 (9th Cir. 2002) ("The BIA summarily affirmed the IJ's order, which therefore constitutes the final agency decision under review."); *Philippe N. Keyes*, Exchange Act Release No. 54723, 2006 WL 3313843, at *6 n.17 (Nov. 8, 2006) ("[I]t is the decision of the NAC, not the decision of the Hearing Panel, that is the final action of NASD which is subject to Commission review."); 15 U.S.C. § 7217 (c)(2) (outlining Commission review of "final disciplinary sanctions imposed by the Board").

[8] *See* 15 U.S.C. § 7217(c)(2).

conduct a *de novo* review of the record to determine whether a preponderance of the evidence supports the PCAOB's findings.[9] We find that it does. Although Applicants broadly contend, without citation or further explanation, that the "weight of the evidence" against them "does not make up for the procedural shortcomings clearly stated in the Hearing Officer's decision," we find no reversible error in either that decision or the decision of the Board. To the contrary, based on our *de novo* review, we agree with the PCAOB that the Hearing Officer's findings are well supported by the evidence in the record and the law.[10]

A. The record demonstrates that Applicants altered or added work papers to the files of three audits after their documentation completion deadlines and produced the files to PCAOB staff without informing the PCAOB of the changes.

A preponderance of the evidence shows that Kabani devised and (with Deutchman and Khan) executed a plan to improperly alter and add work papers in the Issuer A, B, and C audit files. Kabani and Deutchman authorized, supervised, and implemented the effort to conceal deficiencies for the Issuer A, B, and C audits, and Khan authorized, supervised, and implemented this effort for the Issuer A audit. As described above, these efforts yielded the audit files that Applicants produced to the Division of Enforcement. A comparison to the files Saeed provided and a review of the files' metadata reveal numerous examples of changes made after the respective documentation completion dates and evidence of attempts to conceal the changes. Instead of identifying any of this to the PCAOB, Applicants remained silent, leaving the false impression that they had properly assembled complete and final audit files and done so by the deadlines under the auditing rules.

Applicants contend that they did not improperly alter the audit files before the PCAOB's inspection because Saeed reviewed "non-final" audit files for internal review purposes only, the Issuer A audit file was not altered, and they reviewed files that the PCAOB did not inspect. None of these arguments has merit.

1. The record does not establish that Saeed reviewed only "non-final" files.

Applicants assert that Saeed reviewed only "non-final" audit files as part of an internal quality-control exercise (thus implying that the deficiencies Saeed identified in his review are irrelevant because K&C had an already-assembled set of complete and final audit files somewhere else that it provided to the PCAOB). But the only evidence of this is Applicants' own testimony, which is either not supported by or is inconsistent with the other record evidence. Kabani testified at the PCAOB disciplinary hearing that while he told Saeed to review K&C's

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[9] *See, e.g.*, *S.W. Hatfield*, Exchange Act Release No. 69930, 2013 WL 3339647, at *1 (July 3, 2013) (applying preponderance of evidence standard in PCAOB disciplinary proceeding).

[10] Because we find the Hearing Officer's findings to be well supported, we reject Applicants' assertion that the PCAOB's decision should be set aside because the hearing officer "had no experience in the practice of auditing and accounting" and "was unfamiliar with the case, the previous pleadings and motion documents, and discovery issues before the hearing."

audit files the review was for internal quality control purposes and that he could not "care less" whether Saeed reviewed final versions of the audit files.

This testimony contradicts Kabani's testimony during the PCAOB's investigation that he engaged Saeed to inspect the "final version" of the work papers. The checklist that Saeed used when reviewing K&C's audit files also asked him to confirm whether the audit files had been completed within 45 days of the report—a requirement applicable to *final* audit files. And Applicants themselves admitted to adding work papers to the audit files after the documentation deadlines. Nor do any of the contemporaneous emails describing the "PCAOB Cleanup" that were sent after the PCAOB announced its inspection mention or reasonably suggest that the "cleanup" was of non-final files, for internal quality-control purposes only. We agree with the PCAOB hearing officer that "[i]t only makes sense that Saeed would be given final versions [of the work papers to review], for what quality control benefits could the Firm reasonably have expected to derive from expending substantial resources reviewing non-final work papers, after the documentation completion deadline, in the weeks before an impending PCAOB inspection?"

Applicants challenge the PCAOB's findings by arguing that the hearing officer wrongly credited Saeed's testimony about reviewing final audit files given Saeed's "ethical and professional violations" and his admission "that he had no direct knowledge that he was in fact reviewing the final versions." Although the PCAOB hearing officer expressed concerns regarding Saeed's conduct and motives, he found Saeed nonetheless "credible on the major aspects of his testimony." We generally accord considerable weight and deference to the factfinder's credibility determination, and find no reason not to do so here.[11] Saeed testified that his "understanding" was that Applicants sent him "the complete final files of the engagement to look for deficiencies, [and] to prepare for the PCAOB inspection." He also admitted that he had "no information" about whether "in fact [he] received the complete final file as opposed to just having an expectation that a complete final file would be sent to him." We find this to be a credible explanation of what occurred, and K&C's contemporaneous emails and the audit files themselves corroborate that Applicants asked Saeed to review the final audit files.

Conversely, Applicants' own testimony lacked credibility. At the hearing, Applicants denied understanding what the terms "PCAOB Cleanup" or "PCAOB Cleaning-up" meant. Kabani claimed that he "did not notice any E-mail showing 'PCAOB clean up' in October" and that he had "no idea any PCAOB cleanup was going on at the time." Khan suggested that perhaps the junior staffer in charge of the project "was asking PCAOB to clean something" or that "it looks like PCAOB is cleaning something." The PCAOB hearing officer found that "[n]ot only was this testimony not credible, but it was so incredible that it undermined [Applicants'] overall credibility." Because we find it implausible that Applicants would not notice or understand a phrase like "PCAOB Cleanup" in the numerous emails they either sent or received that described an urgent and intensive effort to identify and correct deficiencies in audit files in the weeks after the PCAOB announced its inspection, we agree with that assessment.

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[11] *See S.W. Hatfield*, 2013 WL 3339647, at *12 (stating that the Commission defers to a PCAOB hearing officer's credibility determinations "unless the record contains substantial evidence to support overturning them").

Applicants attempt to bolster their credibility on appeal by referencing a polygraph test that Kabani took (and attempted to introduce into the record below) after the PCAOB hearing officer issued his initial decision. We find no impropriety in the Board's decision not to admit this test into the record. As the Board explained, Applicants did not establish that the polygraph results were material or that good cause excused Applicants' failure to present the results at the hearing.[12] Kabani's explanation for taking the polygraph test was that he was "shocked" by the PCAOB hearing officer's findings against him. As the Board explained, however, "[w]itness credibility is an issue to be considered in nearly every adjudicated proceeding, as is the possibility of an unfavorable decision." Applicants should not "be permitted to gamble on one course of action and, upon an unfavorable decision, to try another course of action."[13] The Board also correctly observed that "courts are especially reluctant to admit polygraph evidence where, as here, the parties did not stipulate to the admissibility of the test results and no notice of the administration of the test was given to the opposing party."[14]

Finally, Applicants contend that the PCAOB hearing officer misapplied the burden of proof by requiring them to prove that Saeed reviewed non-final work papers. Although the hearing officer held that Applicants "never proved . . . that [Saeed] was reviewing documents solely for quality control purposes or that he was reviewing non-final versions of the audit work papers," this conclusion was entirely proper. The hearing officer considered Applicants' claim that Saeed reviewed non-final work papers after the Division of Enforcement submitted evidence that Applicants reviewed and altered final audit files after the applicable documentation completion deadlines. With the Division of Enforcement having done so, Applicants bore the burden of producing evidence to support their factual claims.[15] Applicants, however, did not do

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[12] *See* PCAOB Rule 5464 (permitting motions to adduce additional evidence before the Board but requiring that such motions "show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously"). Applicants' assertion that the polygraph result was cumulative does not address why it is material or why it could not have been adduced earlier.

[13] *David T. Fleischman*, Exchange Act Release No. 8187, 1967 WL 87757, at *3 (Nov. 1. 1967) (finding that a respondent's failure "to testify and adduce available evidence to meet the charges against him and show mitigating factors does not entitle him to have the proceedings reopened after the issuance of an adverse decision"); *see also, e.g.*, *Gross v. SEC*, 418 F.2d 103, 108 (2d Cir. 1969) (upholding the Commission's decision to reject respondent's request to reopen hearing to take new testimony by observing that "[p]ublic policy considerations favor the expeditious disposition of litigation") (quoting *Fleischman*, 1967 WL 87757, at *3).

[14] *See, e.g.*, *Conti v. Comm'r*, 39 F.3d 658, 663 (6th Cir. 1994) ("[U]nilaterally obtained polygraph evidence is almost never admissible under Evidence Rule 403."); 1 KENNETH S. BROUN, MCCORMICK ON EVIDENCE § 206 (7th ed. 2013) ("[A]dmission of unstipulated [polygraph] results is so rare as to be aberrational").

[15] *See, e.g.*, *Atlanta-One, Inc. v. SEC*, 100 F.3d 105, 109–10 (9th Cir. 1996) (finding that NASD had not impermissibly shifted the burden of proof when it asked respondent during the hearing process to explain certain commissions that were alleged to have been excessive); *The Dratel Grp., Inc.*, Exchange Act Release No. 77396, 2016 WL 1071560, at *9 (Mar. 17, 2016)

(continued…)

so; rather, they offered only implausible explanations "which without adequate supporting evidence amount[] to little more than assertions."[16]

2. The record does not establish Applicants' claim that the Issuer A audit file was not altered.

With respect to the Issuer A audit file, Applicants claim that it would have been impossible for them to add the approximately 900 work papers that were in the file they produced to the PCOAB but not in the file Saeed provided. But the Board did not find that Applicants created all approximately 900 new documents. Applicants could have simply moved previously existing documents into the Issuer A audit file. Because Applicants did not note these additions (or the reasons for them) in the file, such conduct would still violate AS No.3.

Applicants argue further that the anomalies in the metadata are consistent with their having to assemble a replacement Issuer A audit file "to ensure that the PCAOB could review *something* regarding the subject audit" after learning that the initial file was corrupted. In their brief before us, Applicants contend that "even the developer of the [software], Thomson Reuters, indicated that they believe the two files, the one which could be opened by the PCAOB staff and the one that could not be opened, were different files," with "different sizes and different names." Applicants, however, neither cite to nor seek to introduce evidence that Thompson Reuters ever made this statement (nor do Applicants repeat this claim in their reply brief after the PCAOB challenged Applicants' lack of support). And, in fact, the two files had the *same* file name—a fact to which the K&C, Kabani, and Deutchman stipulated during the PCAOB proceeding. The PCAOB's expert also explained in his report that any size difference between a corrupt and non-corrupt file "is not a reliable indication that the contents of the pre-corrupt version were more or less extensive than those of the second file" because, for example, data may become incorrectly associated or unassociated with the corrupted file. In any event, because only one file was ever unreadable (the Issuer A file), Applicants argument, even if true, does not explain why there would be anomalous metadata in the Issuer B or C audit files.[17]

(…continued)
(holding that FINRA had the burden of proving that Applicants engaged in violative conduct but "Applicants bore the burden of producing evidence to support their claimed factual defenses").

[16] *The Dratel Grp.*, 2016 WL 1071560, at *9.

[17] Applicants attached to their opening brief what they purport to be "a copy of bank confirms that were originally stored in JPEG format and changed to .PDF (solely for the PCAOB)." According to Applicants, these documents show that, when copying a JPEG into Adobe format, the metadata had "a recent modification date, but the metadata for the JPEG file, which was still part of the file, had the original metadata dates." Applicants claim this is "direct evidence that the correct and complete work papers were already in the file and were not changed in anticipation of a PCAOB investigation." We find no significance in these attachments. The metadata for the .jpg versions of these work papers show the files' creation and modification dates as April 28, 2008. The metadata for the associated PDF versions of these work papers also show the files' creation and modification dates as April 28, 2008.

3. The record does not establish that K&C's review of files not part of the PCAOB's inspection showed that Applicants lacked the intent to alter files improperly.

Applicants also argue that they would not have reviewed audit files that were not part of the PCAOB's inspection "if [their] intent was to modify and alter work papers before the inspection." This argument elides the relevant context. K&C initiated a broad review before Applicants learned about the scope of the PCAOB inquiry; Kabani narrowed K&C's review after learning which files the PCAOB intended to inspect. This sequence of events suggests an intent to modify the work papers that the PCAOB was going to inspect, not the opposite. As Kabani emailed Saeed on October 13: "Since we have been informed by the PCAOB about which clients they will inspect, let's review those clients now."

B. Applicants' conduct violated PCAOB Rules 3100 and 4006.

The PCAOB found that Applicants' efforts to conceal documentation deficiencies in the three issuer audit files from PCAOB inspectors violated PCAOB Rules 3100 and 4006. PCAOB Rule 3100 requires registered public accounting firms and their associated persons to comply with "all applicable auditing and related professional practice standards." Here, the standard at issue—AS No. 3—requires auditors to assemble for retention a "complete and final set of audit documentation . . . as of a date not more than 45 days after the report release date (documentation completion date)."[18] Although AS No. 3 recognizes that "[c]ircumstances may require additions to audit documentation after the report release date," it specifies that "[a]ny documentation added must indicate the date the information was added, the name of the person who prepared the additional documentation, and the reason for adding it."[19]

PCAOB Rule 4006, in turn, requires registered public accounting firms and associated persons of such firms to "cooperate with . . . any Board inspection." That "[c]ooperation shall include, but is not limited to, cooperating and complying with any request, made in furtherance of the Board's authority and responsibilities under [Sarbanes-Oxley]" to "provide access to, and the ability to copy, any record in the possession, custody, or control of such firm or person" and to "provide information by oral interviews, written responses, or otherwise." Implicit in this cooperation requirement is that auditors provide accurate and truthful information.[20]

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[18] AS No. 3 ¶15.

[19] AS No. 3 ¶16.

[20] *Cf. Sinclair v. SEC*, 444 F.2d 399, 401 (2d Cir. 1971) ("The . . . falsification . . . on [the] order tickets is so clearly a violation of the record-keeping requirements of [Section] 17(a) of the 1934 Act . . . that it hardly deserves comment . . . . [T]hat information was obviously material and important, and, even assuming no legal obligation to furnish the names, there was an obligation, upon voluntarily supplying that information, to be truthful."); *Eric J. Brown*, Exchange Act Release No. 66469, 2012 WL 625874, at *11 (Feb. 27, 2012) (stating that the requirement that broker-dealers "make and keep current . . . certain books and records . . . includes the requirement that the records be accurate, which applies regardless of whether the information itself is mandated") (quotation marks omitted).

The record demonstrates that Applicants' conduct violated Rules 3100 and 4006. Kabani, Deutchman, Khan, and K&C (acting through the individual Applicants)[21] added and altered work papers (or directed others to do so) to the Issuer A, B, and C audit files after the relevant documentation completion dates without indicating that the documents were changed, the persons who did so, or the reasons for doing so. In each case, Applicants' failure to identify any changes interfered with the PCAOB's ability to fulfill its regulatory function of ensuring that auditors comply with their professional responsibilities.

C. PCAOB Rules 3100 and 4006 are, and were applied in a manner, consistent with the purposes of Sarbanes-Oxley.

Rules 3100 and 4006 are, and were applied in a manner, consistent with the purposes of Sarbanes-Oxley. Sarbanes-Oxley requires that the PCAOB establish auditing and other professional practice standards for registered public accounting firms "as may be necessary or appropriate in the public interest or for the protection of investors."[22] Rule 3100's requirement that persons associated with registered public accounting firms comply with all applicable auditing standards is thus consistent with Sarbanes-Oxley.[23]

Sarbanes-Oxley also provides that the rules of the Board may require, in connection with a Board investigation, the testimony of a firm or any person associated with a registered public accounting firm and the production of audit work papers or other documents.[24] It provides further that the Board may impose sanctions on any firm or associated person that "refuses to testify, produce documents, or otherwise cooperate with the Board in connection with an investigation."[25] Rule 4006's requirement that public accounting firms and associated persons cooperate with any Board inspection is thus consistent with the purposes of Sarbanes-Oxley.

For the same reasons, it was consistent with the purposes of Sarbanes-Oxley to apply these rules to Applicants' failure to adhere to applicable auditing standards and failure to cooperate with the Board's inspection and find that Applicants violated Rules 3100 and 4006.

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21 *See, e.g.*, *A.J. White & Co. v. SEC*, 556 F.2d 619, 624 (1st Cir. 1977) (noting that a firm "can act only through its agents, and is accountable for the actions of its responsible officers").

22 15 U.S.C. § 7213(a)(1).

23 *See Order Approving Proposed Rules Relating to Compliance with Auditing and Related Practice Standards and Advisory Groups*, Exchange Act Release No. 48730, 2003 WL 22478774, at *2 (Oct. 31, 2003) (finding that Rule 3100 was "consistent with the requirements of the [Sarbanes-Oxley] Act and the securities laws and are necessary and appropriate in the public interest and for the protection of investors"); *id.* at 2 (finding that "adoption of Rule 3100 would mean that any registered public accounting firms or person associated with such a firm that fails to adhere to applicable Standards could be the subject of a Board disciplinary proceeding").

24 15 U.S.C. § 7215(b)(2).

25 *Id.* § 7215(b)(3).

V. Sanctions

We review the PCAOB's imposition of sanctions to determine if, "having due regard for the public interest and the protection of investors," the sanction imposed "(A) is not necessary or appropriate in furtherance of [the Sarbanes-Oxley] Act or the securities laws; or (B) is excessive, oppressive, inadequate, or otherwise not appropriate to the finding or the basis on which the sanction was imposed."[26] Based on that review, we "may enhance, modify, cancel, reduce, or require the remission of a sanction imposed by the Board upon a registered public accounting firm or associated person thereof."[27] We consider both "the nature of the violation and the mitigating factors presented in the record."[28] In doing so, we are mindful of the responsibility to be "particularly careful to address potentially mitigating factors" and the "remedial and protective efficacy" of sanctions involving expulsion of a firm or individual from the auditing industry.[29] Under these standards, we sustain the Board's imposition of sanctions, because we agree that Applicants engaged in an egregious attempt to deceive the PCAOB and "might have been successful in [doing so] if Saeed had not reported his concerns."

A. We sustain the revocation of K&C's registration and the bars from associating with a registered public accounting firm imposed on Kabani, Deutchman, and Khan.

1. Applicants' violations were intentional, knowing, and reckless.

Sarbanes-Oxley requires that to revoke a firm's registration or bar associated persons from future association the Board must find "intentional or knowing conduct, including reckless conduct, that results in a violation of the applicable statutory, regulatory, or professional standard."[30] Recklessness is an "extreme departure from the standards of ordinary care, . . . which presents a danger" to investors or the markets "that is either known to the (actor) or is so obvious that the actor must have been aware of it."[31] We find that the record supports the Board's finding that Applicants' conduct was knowing, intentional, or at a minimum reckless.

Kabani admitted that he directed staff to review K&C's audit files for errors after the PCAOB notified him about its plan to inspect K&C's records. Although Kabani claims this review was for internal quality-control purposes, we do not find that contention credible. To the contrary, the record shows that Kabani devised and directed K&C's "PCAOB Cleanup," during which K&C staff undertook an urgent and intensive effort to identify and fix deficiencies in the Issuer A, B, and C audit files after the documentation completion dates. Kabani then personally produced the Issuer A, B, and C audit files to PCAOB inspectors without disclosing what he

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26 *Id.* § 7217(c)(3).

27 *Id.*

28 *Gately & Assocs., LLC*, Exchange Act Release No. 62656, 2010 WL 3071900, at *13 (Aug. 5, 2010) (quoting *McCarthy v. SEC*, 406 F.3d 179, 190 (2d Cir. 2005)).

29 *Id.*

30 15 U.S.C. § 7215(c)(5).

31 *Gately & Assocs., LLC*, 2010 WL 3071900, at *11.

knew to be alterations and additions to those files. Kabani's conduct resulted in intentional and knowing violations of PCAOB rules.[32] Kabani's mental state is also attributable to K&C because Kabani was the sole shareholder and head of the firm and he engaged in the violative conduct within the scope of his authority.[33]

The evidence shows that Deutchman also intentionally and knowingly, or at least recklessly, participated in Kabani's "PCAOB Cleanup" scheme by identifying and fixing deficiencies in the audit files and encouraging Saeed to do the same. Although Deutchman did not personally produce the audit files to the PCAOB, he knew (or was reckless in not knowing) that the altered files would be provided to PCAOB inspectors without proper disclosures. As an experienced accountant and the firm's director of audit and accounting, Deutchman knew (or was reckless in not knowing) that these actions violated applicable audit documentation standards and would interfere with the PCAOB's inspection.

Khan also acted with the mental state required to impose a bar. He admitted that the Issuer A audit file had not been completely assembled by that audit's documentation completion date, and emails show that Khan was directly involved in furthering the "PCAOB Cleanup" scheme by coordinating Saeed's and the senior auditor's efforts to fix deficiencies in the Issuer A audit file. As a certified public accountant who oversaw the general audit work at the firm, Khan knew or was reckless in not knowing that the Issuer A audit files did not comply with AS No. 3 and that the attempts to fix the file's deficiencies without identifying those alterations to the PCAOB would interfere with the PCAOB's ability to carry out its inspection.

Applicants argue that the PCAOB's findings are "based on an impermissible pyramiding of inference upon inference upon inference to reach a result." Yet Applicants admit to much of their conduct, and the Board may "draw inferences of subjective intent from evidence of . . . objective acts, and from circumstantial evidence."[34] For the reasons stated above, we find that a preponderance of the evidence establishes that Applicants acted with the requisite mental state.

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[32] We also agree with the Hearing Officer's finding that, to the extent Kabani believed (as he told his staff) that PCAOB rules allowed K&C to modify its audit files, he was reckless in believing so because that interpretation was "contrary to the plain wording of AS [No.] 3."

[33] *See, e.g.*, *Adams v. Kinder-Morgan, Inc.*, 340 F.3d 1083, 1106–07 (10th Cir. 2003) (holding that the "scienter of the senior controlling officers of a corporation may be attributed to the corporation itself . . . when those senior officials were acting within the scope of their apparent authority"); *Suez Equity Inv'rs, L.P. v. Toronto-Dominion Bank*, 250 F.3d 87, 100–01 (2d Cir. 2001) (holding that the scienter of a corporate defendant's agent is attributable to the corporation); *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1089 n.3 (2d Cir. 1972) (holding that scienter of one who "controlled" two corporations could be imputed to those entities).

[34] *United States v. Piekarsky*, 687 F.3d 134, 1448 (3d Cir. 2012); *see also, e.g.*, *Am. Calcar, Inc. v. Am. Honda Motor Co.*, 768 F.3d 1185, 1189–91 (Fed. Cir. 2014) (stating that, even under a higher "clear and convincing" standard of proof, "[b]ecause direct evidence of deceptive intent is rare, a district court may infer intent from indirect and circumstantial evidence"); *Blair Alexander West*, Exchange Act Release No. 74030, 2015 WL 137266, at *8 n.20 (Jan. 9, 2015) ("It is well established that '[i]ntent may be proved through circumstantial evidence and

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2. Revoking K&C's registration and barring Kabani, Deutchman, and Khan is not excessive, oppressive, or otherwise inappropriate.

We further find that revoking K&C's registration and barring Kabani, Deutchman, and Khan from association with any registered public company accounting firm (with leave for Deutchman and Khan to petition the PCAOB to terminate their bar in two years and 18 months, respectively) is not excessive, oppressive, or otherwise inappropriate and is in the public interest.

Applicants acted egregiously. In adopting AS No. 3, the PCAOB emphasized that this standard was "one of the fundamental building blocks on which both the integrity of audits and the Board's oversight will rest."[35] The PCAOB also highlighted that "[c]lear and comprehensive audit documentation is essential to enhance the quality of the audit and, at the same time, to allow the Board to fulfill its mandate to inspect registered public accounting firms to assess the degree of compliance of those firms with applicable standards and laws."[36]

Applicants agreed to abide by these requirements when they choose to register with the PCAOB and to be associated with a registered firm. Applicants not only failed to do so but also embarked on a determined effort to undermine the PCAOB's regulatory responsibilities by deceiving PCAOB inspection staff about whether K&C's documentation complied with applicable auditing standards. Their scheme involved several weeks of sustained effort to identify and correct hundreds of deficiencies in multiple issuer files.

As senior management, Kabani and Deutchman had a heightened responsibility to ensure that they and the firm complied with PCAOB's inspections and document requirements. Instead, Kabani concocted a scheme—which he and Deutchman directed—to hide K&C's documentation failures from the PCAOB. Their actions were particularly troubling because, as the PCAOB hearing officer observed, they "implicitly represented to the Firm's staff that the alteration efforts had [their] stamp of imprimatur upon them." Although Khan was less senior, he still possessed significant responsibility over the Issuer A audit and had a professional obligation to ensure the file complied with PCAOB's auditing standards. Yet he also actively participated in the alteration or addition of work papers and directed other staff to do so.

Applicants' misconduct also involved a high degree of scienter. They were experienced auditors who knowingly, intentionally, and recklessly subverted basic regulatory standards, thus

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inferences drawn from surrounding circumstances.'") (quoting *Thomas C. Kocherans*, Exchange Act Release No. 36556, 1995 WL 723989, at *2 (Dec. 6, 1995)), *aff'd*, 641 F. App'x 27 (2016).

[35] AS No. 3, Appendix A, ¶ A4.

[36] *Id.*; *cf. Rani T. Jarkas*, Exchange Act Release No. 77503, 2016 WL 1272876, at *13 (Apr. 1, 2016) (observing that it is "critically important to the self-regulatory system that members and associated persons cooperate with [FINRA] investigations") (quoting *Erenstein v. SEC*, 316 F. App'x 865, 871 (11th Cir. 2008)).

demonstrating an extreme disregard for regulatory authority over a prolonged period.[37] Allowing K&C to remain registered and Kabani, Deutchman, and Khan to remain associated persons would give them future opportunities to undermine the PCAOB's regulatory processes. It is well established that "[t]he existence of a violation raises an inference that it will be repeated,"[38] and Applicants have represented that they continue to practice as public auditors. These considerations demonstrate that Applicants each pose a continuing danger to the investing public, and that the revocation and bars are in the public interest.

Applicants argue that lesser sanctions are appropriate because the PCAOB did not "admonish Kabani" for any failures relating to the audits themselves. But an auditor's noncooperation with a PCAOB inspection is serious precisely because it frustrates the Board's ability to detect violations.[39] Nor does the lack of a disciplinary history mitigate Applicants' misconduct. Applicants are required to adhere to their regulatory obligations.[40] In any case, Deutchman has a disciplinary history that we find to be an aggravating factor.[41]

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[37] *Cf. Perpetual Sec., Inc.*, Exchange Act Release No. 56613, 2007 WL 2892696, at *11 (Oct. 4, 2007) (sustaining NASD's decision to expel firm and bar supervisory principals where they showed an "extreme disregard for NASD regulatory authority).

[38] *S.W. Hatfield*, 2013 WL 3339647, at *25 (citation omitted).

[39] *See, e.g.*, *R.E. Bassie & Co.*, Accounting and Auditing Enforcement Release No. 3354, 2012 WL 90269, at *11 (Jan. 10, 2012) (affirming bar and explaining that a "failure to cooperate impairs the Division [of Enforcement]'s ability to investigate, which in turn impairs the Board's ability to identify violations and sanction violators"); *see generally Brogan v. United States*, 522 U.S. 398, 402 (1998) (stating that, "since it is the very purpose of an investigation to uncover the truth, any falsehood relating to the subject of the investigation perverts that function").

[40] *See* PCAOB Rule 3100 ("A registered public accounting firm and its associated persons shall comply with all applicable auditing and related professional practice standards."); *cf. Siegel v. SEC*, 592 F.3d 147, 156–57 (D.C. Cir. 2010) (affirming Commission's finding that lack of disciplinary history was not mitigating because "associated person should not be rewarded for acting in compliance with the securities laws and with his duties as a securities professional"); *Kornman v SEC*, 592 F.3d 173, 187–88 (D.C. Cir. 2010) (affirming imposition of a permanent bar where registered investment adviser did not have a prior disciplinary history); *Rooms v. SEC*, 444 F.3d 1208, 1214 (10th Cir. 2006) (affirming imposition of a permanent bar by explaining that "[l]ack of a disciplinary history is not a mitigating factor; [respondent] was required to comply with the NASD's high standards of conduct at all times").

[41] *See Michael Deutchman, CPA*, Exchange Act Release No. 58240, 2008 WL 2902011 (July 29, 2008) (accepting offer of settlement and finding that Deutchman violated the Securities Exchange Act by preparing and issuing a public audit report without having registered with the Board); *cf. The Dratel Grp.*, 2016 WL 1071560, at *15 (Mar. 17, 2016) (finding that, even if Applicants had settled proceedings "for reasons of efficiency, they are part of Applicants' disciplinary history, which provides evidence of whether an applicant's misconduct is isolated, the sincerity of the applicant's assurance that he will not commit future violations and/or the egregiousness of the applicant's misconduct") (quotations omitted).

We nevertheless agree with the Board's determination that, under the circumstances, Deutchman and Khan should be allowed to petition the PCAOB to terminate their bars. Although Deutchman directed the scheme to alter the audit files and did not meet his obligation to inform the PCAOB inspectors about those alterations, we find it to be mitigating that (unlike with Kabani) there is no evidence he devised the scheme or directed the final production of documents to PCAOB's inspectors. And while Khan had a significant role at K&C and with the Issuer A audit, we find Khan's misconduct to be mitigated by his involvement in only one of the three audits at issue, by the lack of evidence that he devised the scheme, by his relatively less senior position of responsibility, and by his more limited public accounting experience. None of these mitigating considerations apply to Kabani, and we do not find it appropriate for him to be allowed to petition the PCAOB to terminate his bar. As K&C's head, Kabani personally devised and directed the scheme to alter the firm's audit files. He then personally instructed that those altered files be produced to both the PCAOB's inspectors and its Division of Enforcement.

Accordingly, we find that the PCAOB's decision to revoke K&C's registration and bar Kabani, Deutchman, and Khan from association with any registered public company accounting firm (with leave for Deutchman and Khan to petition the PCAOB to terminate their bars in two years and 18 months, respectively) is not excessive, oppressive, or otherwise inappropriate.

B. We sustain the imposition of civil money penalties and censures.

We also agree with the Board's imposition of civil monetary penalties and censures. Although Sarbanes-Oxley does not specify the factors to be considered in determining whether a penalty is in the public interest, the Board considered the factors set forth in Section 21B(c) of the Exchange Act for determining whether a penalty is in the public interest in a Commission administrative proceeding. We have found the Board's consideration of such factors to be appropriate previously.[42] But we have also held that the Board may impose a civil penalty when not all of the factors are present.[43] The relevant factors are: (1) whether there was fraudulent misconduct or deliberate or reckless disregard of a regulatory requirement; (2) harm to others; (3) unjust enrichment; (4) whether the applicant had committed prior violations; (5) the need for deterrence; and (6) such other matters as justice may require.[44]

Here, these factors weigh in favor of imposing a civil penalty. Applicants demonstrated a deliberate disregard for their obligation to maintain adequate audit documentation and to cooperate with a PCAOB inspection by producing altered documents to PCAOB inspectors. Although there is no evidence of direct harm to investors, Applicants' conduct indirectly harmed the market by preventing the PCAOB from carrying out an effective inspection.[45] Moreover,

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[42] *See R.E. Bassie & Co.*, 2012 WL 90269, at *13.

[43] *Id.*

[44] 15 U.S.C. § 78u-2(c).

[45] *See, e.g.*, *R.E. Bassie & Co.*, 2012 WL 90269, at *12 (holding that "[t]he fact that the Board could not identify whether there was specific harm to a particular investor" in connection with a failure to cooperate with an inspection "does not detract from the seriousness of the misconduct"); *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 WL 1697153, at *5

(continued…)

given the importance of inspections and the natural incentive for individuals to conceal document deficiencies that could lead to disciplinary action, we find that a civil penalty acts as a necessary additional deterrent.[46] These considerations also outweigh Applicants' lack of unjust enrichment or Kabani's and Khan's lack of prior disciplinary history.

Accordingly, we find that in light of their different levels of involvement and scienter Kabani's $100,000 civil penalty, Deutchman's $35,000 civil penalty, and Khan's $20,000 civil penalty are not excessive, oppressive, inadequate, or otherwise inappropriate.[47]

VI. Constitutional Arguments

Applicants claim that the PCAOB decision should be set aside because the PCAOB violated their due process rights and other constitutional requirements. We do not address whether the Constitution's due process requirements apply to PCAOB disciplinary proceedings because we find that Applicants' arguments fail on the merits.[48]

A. The PCAOB did not violate Applicants' due process rights by publishing Saeed's settlement.

Applicants argue that, by publishing its settlement with Saeed on its website, the PCAOB "effectively tainted the neutrality of the forum" and "ensured that [Applicants] would not receive a fair and impartial hearing insofar as [Applicants] were already adjudged by the PCAOB." Here, both the PCAOB hearing officer and the Board specified that their findings of liability in this matter "were grounded on record evidence, not on any finding in Saeed's settlement order."[49] We can find no evidence to the contrary and, regardless, our *de novo* review of the

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(Apr. 11, 2008) (observing that a failure to provide information in connection with an inspection "will rarely, in itself, result in direct harm to a customer" but rather will undermine an SRO's "ability to detect misconduct that may have occurred and that may have resulted in harm to investors" and therefore "is serious because it impedes detection of such violative conduct") (footnote omitted), *petition denied*, 566 F.3d 1172 (D.C. Cir. 2009).

[46] *R.E. Bassie*, 2012 WL 90269, at *13 (recognizing that if "individuals are concerned that cooperation with an investigation may provide information that could lead to sanctions, those individuals—absent the threat of a civil penalty—could have an incentive to avoid cooperation in order to maximize their income from issuer audit work for as long as possible").

[47] For the same reasons discussed herein, we also sustain the censures the PCAOB imposed.

[48] *Cf. Eric J. Weiss*, Exchange Act Release No. 69177, 2013 WL 1122496, at *6 n.40 (Mar. 19, 2013) (holding that self-regulatory organizations "such as FINRA are not state actors and thus not subject to the Constitution's due process requirements").

[49] *Kabani*, slip op. at 17; *see, e.g.*, *mPhase Techs, Inc.*, Exchange Act Release No. 74187, 2015 WL 412910, at *8 (Feb. 2, 2015) (holding that, although a dismissed complaint had been considered by an examiner during the investigation of applicant, there was no basis for reversal because it had not been a basis for FINRA's ultimate decision); *see also Schweiker v. McClure*,
(continued…)

evidence "cures whatever bias, if any, that may have existed."[50]

Applicants also argue that, by publishing Saeed's settlement, the Board violated PCAOB Rule 5203's requirement that no disciplinary hearing shall be public "except for good cause shown and with consent of the parties." We disagree. Although the settlement found that Saeed violated PCAOB rules and auditing standards during two of the audits at issue here, the settlement does not mention that Applicants were subject to a pending disciplinary action or allege that they had ever engaged in improper conduct. It is also well established that an administrative body may settle with one respondent while proceeding against other respondents in the same case.[51] This has been found to be particularly true where, as here, the settlement "state[s] that it was not binding on the other [non-settling] respondents."[52]

B. The PCAOB did not violate Applicants' due process rights by denying their request to designate a substitute expert witness, and any error was harmless.

Applicants argue that the PCAOB hearing officer improperly rejected their request to designate a substitute expert six weeks before the scheduled start of the hearing. We disagree. The evidence shows that the hearing officer acted well within his discretion to manage the course of a hearing by repeatedly attempting to accommodate Applicants' pre-hearing requests.[53]

During a September 2012 pre-hearing conference, the Division of Enforcement informed Applicants that it intended to call a data forensics expert as a witness. After Applicants obtained two extensions of the pre-hearing scheduling deadlines,[54] the parties exchanged expert reports on December 14, 2012. The PCAOB hearing officer extended the scheduling deadlines twice more to consider (and ultimately reject) Applicants' motion to strike the Division of Enforcement's expert report, and the parties exchanged revised expert reports on January 28, 2013.

In March 2013, the hearing officer granted Applicants' requests for yet additional extensions of time (including extending the deadline for filing final exhibits) after they replaced their counsel. In doing so, the hearing officer emphasized that, "[a]bsent a showing of exigent,

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456 U.S. 188, 195 (1982) (stating that the court "must start . . . from the presumption that the hearing officers . . . are unbiased"); *Withrow v. Larkin*, 421 U.S. 35, 47 (1975) (same).

50 *Richard G. Cody*, Exchange Act Release No. 64565, 2011 WL 2098202 at *19 (May 27, 2011), *aff'd*, 693 F.3d 251 (1st Cir. 2012).

51 *See, e.g.*, *The Stuart-James Co., Inc.*, Exchange Act Release No. 28810, 1991 WL 291802, at *1 (Jan. 23, 1991).

52 *Sinclair*, 444 F.2d at 401.

53 *See, e.g.*, *Underhill Sec. Corp.*, Exchange Act Release No. 7668, 1965 WL 87065, at *8 (Aug. 3, 1965) (stating that "[t]he determination whether to grant a continuance was a matter resting in the sound discretion of the [hearing] examiner").

54 Khan represented himself at this time and did not join in the motions discussed in this section.

unforeseen circumstances, [he was] unlikely to grant any further requests for extensions of those deadlines." But almost a month after the deadline for filing exhibits passed, Applicants requested just such an extension of the deadline. Applicants explained that they had retained a new expert, who they anticipated would be more effective than their prior counsel's expert in rebutting the Division of Enforcement's case, and requested leave from the scheduling order to file a report and present the new expert's testimony. The hearing officer denied the motion on the ground that "[r]egretting the selection of an expert . . . does not constitute good cause to amend the schedule . . . less than two months before the hearing."

At a final pre-hearing conference, Applicants agreed that their initial expert would testify; however, they did not call him during the hearing due to communication difficulties and a dispute over an unpaid invoice. The PCAOB hearing officer extended the hearing schedule to permit the expert to appear by video, but Applicants were ultimately unable to secure his testimony. Their replacement expert was allowed to attend the hearing during the testimony of the Division of Enforcement's expert and to consult with Applicants' counsel during breaks.[55]

Applicants argue that the PCAOB erred in excluding their replacement expert because the Division of Enforcement did not identify any prejudice or injury it would have suffered had their alternate expert testified. But "the absence of prejudice to the opposing party is not equivalent to a showing of good cause."[56] Courts have repeatedly found that a party's untimely decision to change witnesses is not a valid basis for disrupting a fair and reasonable scheduling order.[57]

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[55] Although Applicants imply that they sought to provide a substitute rebuttal expert only after learning that their initial expert could not appear at the hearing, witness unavailability was not the reason they gave the hearing officer for wanting to replace their expert.

[56] *Wagner v. Circle W Mastiffs*, Nos. 2:08-cv-431, 2:09-cv-0172, 2011 WL 124226, at *4 (S.D. Ohio Jan. 14, 2011); *see also Geiserman v. MacDonald*, 893 F.2d 787, 791 (5th Cir. 1990) (rejecting argument that an expert witness who had not been designated within the scheduling deadline should be allowed to testify since there would be no prejudice because "[s]uch delay . . . would have disrupted the court's discovery schedule and the opponent's preparation").

[57] *See, e.g.*, *Crandall v. Hartford Cas. Ins. Co.*, No. CV 10–00127–REB, 2012 WL 6086598, at *3 (D. Idaho Dec. 6, 2012) ("A party's dissatisfaction with their expert's opinions and/or an expert's lack of regular and timely communication is an unfortunate circumstance, to be sure . . . . However, the timely progression of a lawsuit cannot turn on whether a party is fully satisfied with the particular choice of an expert. Those are decisions, including the due diligence necessary to guard against difficulties arising from such decisions, that must be made by parties within the scheduling time-frames imposed by the Court."); *Adams v. Sch. Bd. of Hanover Cty.*, No. 3:05CV310, 2008 WL 5070454, at *4 (E.D. Va. Nov. 26, 2008) ("The arrival of new counsel . . . does not entitle parties to conduct additional discovery or otherwise set aside valid and binding orders of the court."); *Kenny v. Cty. of Suffolk*, No. CV 05–6112(ADS)(WDW), 2008 WL 4936856, at *1 (E.D.N.Y. Nov. 17, 2008) ("Incoming counsel is bound by the actions of his or her predecessor, and to hold otherwise would allow parties to create good cause simply by switching counsel." (quotation marks omitted)).

Nor have Applicants identified any harm from the hearing officer's decision. Applicants claim that the decision allowed the Division of Enforcement to provide uncontroverted expert testimony, but they have not explained how their expert would have controverted the findings of the Division of Enforcement's expert.[58] We thus find no reversible error in the hearing officer's decision not to amend the scheduling order to allow Applicants to designate a replacement expert.

C. The PCAOB did not deprive Applicants of a right to a speedy trial or a jury trial.

Applicants assert that the PCAOB's proceeding should be dismissed because it deprived them of their right to a speedy trial under the Sixth Amendment and a jury trial under the Seventh Amendment. First, Applicants waived these arguments by not raising them before the PCAOB or providing any reasons for their failure to do so.[59] Applicants contend that they were not required to raise these arguments before the PCAOB because "they were simply participating in the forum required under the [Sarbanes-Oxley] Act" and that the doctrine of exhaustion of administrative remedies required them to "endure" these proceedings before obtaining vindication. But the very purpose of requiring parties to exhaust their administrative remedies is to give agencies "'an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court.'"[60] Although Applicants question the PCAOB hearing officer's competence to decide constitutional issues, that still would not explain or excuse Applicants' failure to raise the issue before the *Board*.[61] Nor do Applicants' constitutional arguments fall within the "rare case" in which we might exercise our discretion to consider an untimely constitutional argument.[62] Applicants' failure to raise their constitutional arguments before the PCAOB is thus reason enough to reject them.

Second, even if not waived, Applicants' constitutional arguments lack merit. The Supreme Court has made clear that the Sixth Amendment "is specifically limited to 'criminal

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58 *See, e.g., EEOC v. Rockwell Int'l Corp.*, 243 F.3d 1012, 1016 (7th Cir. 2001) (finding that district court had not abused its discretion in denying EEOC's untimely motion to supplement the record where granting motion would have caused additional delay and the proposed evidence was "irrelevant"); *Sexton v. Gulf Oil Corp.*, 809 F.2d 167, 170 (5th Cir. 1987) (finding that district court had not erred in denying plaintiff's untimely expert designation where plaintiff had not, among other things, provided "a convincing showing that the experts' inability to testify significantly prejudiced plaintiff").

59 *See, e.g., Woodford v. Ngo,* 548 U.S. 81, 88–90 (2006).

60 *See, e.g., id.* at 89 (quoting *McCarthy v. Madigan,* 503 U.S. 140, 145 (2006)).

61 *See Free Enter. Fund v. PCAOB,* 561 U.S. 477, 484 (2010) (the PCAOB "was modeled on private self-regulatory organizations in the securities industry").

62 *optionsXpress, Inc.,* 2013 WL 5635987, at *5 (stating that a party cannot obtain relief by, for the first time before the Commission, "seek[ing] production of 'potentially exculpatory items' that it 'failed to bring . . . to the law judge's attention . . . even though it had been provided with documents referring to them' prior to the hearing") (quoting *KPMG Peat Marwick LLP,* Exchange Act Release No. 43862, 2001 WL 47245, at *18 n.90 (Jan. 19, 2001)).

prosecutions.'"[63] Applicants cite two district court cases for the proposition that a monetary fine could be considered quasi-criminal.[64] But the Supreme Court has stressed that "only the clearest proof" will suffice "to override legislative intent and transform . . . a civil remedy into a criminal penalty."[65] The courts and the Commission have long rejected the argument that Commission proceedings against a broker-dealer or his representatives are quasi-criminal in nature, and we find the reasoning of those cases applicable to the PCAOB's proceedings.[66]

The Supreme Court has similarly held that "the Seventh Amendment is not applicable to administrative proceedings."[67] Jury trials, the Court has explained, "'would be incompatible

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[63] *See, e.g.*, *Hannah v. Larche*, 363 U.S. 420, 440 n.16 (1960) (finding respondents' contention that the procedures adopted by the Commission on Civil Rights violated the Sixth Amendment did "not merit extensive discussion" because "the proceedings of the Commission clearly do not fall within th[e] category [of "criminal prosecutions]"); *Jhirad v. Ferrandina*, 536 F.2d 478, 485 n.9 (2d Cir. 1976) (holding that "the Sixth Amendment's guarantee to a speedy trial [is] limited by its terms to criminal prosecutions"); *Mission Sec. Corp.*, Exchange Act Release No. 63453, 2010 WL 5092727, at *9 n.23 (Dec. 7, 2010) (holding that a FINRA disciplinary proceeding was not a criminal prosecution for purposes of the Sixth Amendment).

[64] *See United States v. Sanchez*, 520 F. Supp. 1038, 1040 (S.D. Fla. 1981) (noting that "the imposition of a fine as a penalty for violation of the law can be considered 'quasi-criminal' in nature," but nevertheless stating that "[t]he term 'quasi-criminal' is not here used to imply that the full panoply of constitutional protections attendant to a true criminal proceeding should apply in this context"); *SEC v. Shanahan*, 504 F. Supp. 2d 680, 683 (E.D. Mo. 2007) (citing cases holding that Fifth Amendment privilege against self-incrimination may apply in quasi-criminal proceedings where potential sanctions include fines, penalties, or forfeiture).

[65] *Hudson v. United States*, 522 U.S. 93, 100 (1997) (quotation marks omitted) (determining that banking sanctions were civil in nature and that the Sixth Amendment's Double Jeopardy Clause therefore did not prevent a subsequent criminal proceeding); *William F. Lincoln*, Exchange Act Release No. 39629, 1998 WL 80228, at *4–5 (Feb. 9, 1998) (finding that administrative proceeding did not violate the Sixth Amendment's Double Jeopardy Clause because a bar from associating with any broker, dealer, or member of a national securities exchange or registered securities exchange was not criminal in nature).

[66] *See, e.g.*, *SEC v. Sirianni*, 334 F. App'x 386, 389 (2d Cir. 2009) (stating that "we are aware of no basis in law to conclude that an SEC enforcement action is a 'quasi-criminal' proceeding, and reject this argument"); *Daniel Turov*, Exchange Act Release No. 31649, 1992 WL 394575, at *3 (Dec. 23, 1992) (holding that a disciplinary hearing before a self-regulatory organization is not a "criminal prosecution" within the meaning of the Sixth Amendment); *Milton J. Wallace*, Exchange Act Release No. 11252, 1975 WL 162079, at *4 (Feb. 14, 1975) (holding that the Sixth Amendment's guarantee of a speedy trial was inapplicable to remedial administrative proceedings).

[67] *Tull v. United States*, 481 U.S. 412, 418, n.4 (1987).

with the whole concept of administrative adjudication.'"[68] The Commission itself has held that rights under "the Sixth and Seventh Amendments ha[ve] no relevance to a proceeding . . . before a self-regulatory organization," which the Commission has noted is neither a "criminal prosecution" within the meaning of the Sixth Amendment nor a "suit at common law" within the meaning of the Seventh Amendment.[69] This holds equally true for PCAOB proceedings.[70]

D. The Division of Enforcement complied with its *Brady v. Maryland* obligations.

Applicants argue that the Division of Enforcement did not comply with its obligations under *Brady v. Maryland*.[71] Under *Brady*, the prosecution in a criminal proceeding must disclose materially exculpatory or impeaching evidence to the defendant.[72] Although *Brady* has no direct application to administrative proceedings, PCAOB Rule 5422(b) is generally consistent with *Brady*.[73] As relevant here, Applicants speculate that the Division of Enforcement possessed evidence that no wrongdoing had occurred and did not undertake sufficient efforts to determine whether other exculpatory information existed. Applicants waived these arguments by not raising them before the Board and, in any event, they lack merit.

We have held that parties cannot wait until their appeal to the Commission before raising *Brady* claims.[74] Here, Applicants themselves produced the audit files (and attendant underlying

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68 *Atlas Roofing Co. v. OSHRC*, 430 U.S. 442, 454 (1977)) (emphasis deleted) (quoting *Pernell v. Southall Realty*, 416 U.S. 363, 383 (1974)); *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 80 (1989) (same); *see also Daniel Turov*, Exchange Act Release No. 31649, 1992 WL 394575, at *3 (Dec. 23, 1992) (holding that a disciplinary hearing before a self-regulatory organization is not a "suit at common law" within the meaning of the Seventh Amendment).

69 *Turov*, 1992 WL 394575, at *3 (rejecting applicant's contention that an NYSE disciplinary hearing violated his right to a jury trial under the Sixth and Seventh Amendments).

70 *See Free Enter. Fund*, 561 U.S. at 484 (explaining that the PCAOB is "modeled on private self-regulatory organizations in the securities industry . . . that investigate and discipline their own members subject to Commission oversight.").

71 373 U.S. 83 (1963).

72 *Id.* at 87.

73 *See* PCAOB Rule 5422(b) (prohibiting interested PCAOB divisions from withholding "documents that contain material exculpatory evidence" in connection with a disciplinary proceeding); *cf. optionsXpress, Inc.*, Exchange Act Release No. 70698, 2013 WL 5635987, at *3 & n.15 (Oct. 16, 2013) (observing that, "[a]lthough *Brady* has no direct application to civil or administrative proceedings such as this one," the Commission incorporated the *Brady* doctrine by adopting Rule of Practice 230(b)(2), which "makes clear that the former subsection does not 'authorize[] the Division . . . to withhold, contrary to the doctrine of *Brady*[,] . . . documents that contain material exculpatory evidence'") (quoting 17 C.F.R. § 201.230(b)(2)).

74 *optionsXpress, Inc.*, 2013 WL 5635987, at *5 (stating that a party cannot obtain relief by, for the first time before the Commission, "seek[ing] production of 'potentially exculpatory

(continued…)

metadata) about which they complain. And the OIP and the Division of Enforcement's expert report put them on notice about what factual allegations the Division of Enforcement intended to establish at the hearing. Applicants had the opportunity to request information from the PCAOB, to present their own witnesses and evidence at the hearing, and to cross-examine the PCAOB's witnesses about what the metadata may have shown. Yet Applicants give no reason for waiting until now to argue that the Division of Enforcement failed to present or investigate allegedly exculpatory evidence. We therefore find that Applicants waived their *Brady*-related arguments.[75]

Applicants' *Brady*-related arguments also lack merit. According to Applicants, the Division of Enforcement withheld metadata in the original, corrupted Issuer A audit file that provided "direct evidence" that no wrongdoing occurred. Yet Applicants themselves produced the Issuer A file, stipulated that it was "corrupt and unreadable," and have provided no plausible showing that it nevertheless contained exculpatory information. Instead, Applicants speculate that further investigation by the PCAOB might have produced evidence that would aid their defense. This is not a *Brady* argument, but an improper attempt to shift responsibility for defending themselves to the PCAOB.[76] And there can be no *Brady* violation where any supposedly exculpatory evidence was in the Applicants' own possession.[77] And even if we assumed that the Issuer A audit file Applicants initially produced contained no metadata evidence of late-added or modified documents, that would still not overcome the other evidence

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(…continued)
items' that it 'failed to bring . . . to the law judge's attention . . . even though it had been provided with documents referring to them' prior to the hearing").

[75] *See, e.g.*, *id.* (finding parties' failure to raise *Brady* claim before a law judge was sufficient, by itself, to deny that claim); *John Montelbano*, Exchange Act Release No. 47227, 2003 WL 147562, at *12 (Jan. 22, 2003) (rejecting as "untimely" request for the NASD to produce allegedly "withheld [and] buried" documents when documents were not sought while case was pending before a hearing panel); PCAOB Rule 5460(a) (requiring party to "set forth specific findings and conclusions of the initial decision as to which exception is taken" when filing a petition for review with the Board).

[76] *See, e.g.*, *United States v. Zambrana*, 841 F.2d 1320, 1328 (7th Cir. 1988) (stating that, "[i]n the course of representing a defendant, we remind defense counsel that it is incumbent upon him to make specific requests for specific evidence in the possession of the prosecution, and it is not the responsibility of the prosecutor or the judge to do the work of the defense counsel"); *Kirlin Sec., Inc.*, Exchange Act Release No. 61135, 2009 WL 4731652, at *13 n.87 (Dec. 10, 2009) (stating that while the burden of proving a violation rests with the regulatory agency, "the applicant bears the burden of producing evidence to support his claimed defenses").

[77] *See, e.g.*, *Rhoads v. Henry*, 598 F.3d 495, 502 (9th Cir. 2010) ("[N]o *Brady* violation occurs when a defendant possessed the information that he claims was withheld."); *Brown v. Cain*, 104 F.3d 744, 750 (5th Cir. 1997) ("The prosecution had no obligation under *Brady* to produce for [the defendant] evidence or information already known to him, or that he could have obtained from other sources by exercising reasonable diligence.").

that Applicants violated the PCAOB's rules by added or altering work papers after the documentation completion dates without disclosure to the PCAOB.

* * *

For the foregoing reasons, we sustain the Board's disciplinary action and, as a result, order that the automatic stay under Sarbanes-Oxley Section 105(e) be terminated.[78]

An appropriate order will issue.[79]

By the Commission (Acting Chairman PIWOWAR and Commissioner STEIN).

Brent J. Fields
Secretary

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[78] 15 U.S.C. § 7215(e)(1) (stating that an "[a]pplication to the Commission for review . . . of any disciplinary action of the Board shall operate as a stay of any such disciplinary action, unless and until the Commission orders . . . that no such stay shall continue to operate").

[79] We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 80201 / March 10, 2017

Admin. Proc. File No. 3-16518

In the Matter of the Application of

KABANI & COMPANY, INC., HAMID KABANI, CPA, MICHAEL DEUTCHMAN, CPA, and KARIM KHAN MUHAMMAD, CPA

For Review of Disciplinary Action Taken by the

PCAOB

ORDER SUSTAINING DISCIPLINARY ACTION TAKEN BY PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

On the basis of the Commission's opinion issued this day, it is

ORDERED that the PCAOB's disciplinary action taken against Kabani & Company, Inc., Hamid Kabani, CPA, Michael Deutchman, CPA, and Karim Khan Muhammad, CPA, is hereby sustained; and it is further

ORDERED that the automatic stay of the PCAOB's sanctions imposed on Kabani & Company, Inc., Hamid Kabani, CPA, Michael Deutchman, CPA, and Karim Khan Muhammad, CPA, is hereby terminated.

By the Commission.

Brent J. Fields
Secretary