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PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

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In the Matter of)
Larry O'Donnell, CPA, P.C. and)
Larry O'Donnell, CPA)
)
Respondents.)
)
_____)

PCAOB File No. 105-2010-002

FINAL DECISION

October 19, 2010

Appearances

Bernard A. McDonough, Esq., Washington, DC, for the Division of Enforcement and Investigations.

Ordered for Review on Board's Initiative: June 10, 2010
Last brief received: July 1, 2010

I.

On review of the Hearing Officer's initial decision, we find, as the Hearing Officer did, that Larry O'Donnell, CPA, P.C., ("the Firm") a registered public accounting firm, and Larry O'Donnell, CPA ("O'Donnell") (collectively, "Respondents") engaged in conduct constituting noncooperation with an investigation. Because of that conduct, we permanently revoke the Firm's registration, we permanently bar O'Donnell from being an associated person of a registered public accounting firm, and we impose a civil money penalty of \$75,000 on O'Donnell.

Respondents were served with the Board's Order Instituting Disciplinary Proceedings ("OIP") alleging noncooperation with an investigation, but they did not file an answer as required by the OIP or otherwise file any papers or appear in the proceeding. The Hearing Officer issued a default decision taking as true the allegations

in the OIP^{1/} and also taking account of evidence submitted by the Division of Enforcement and Investigations ("the Division") in a Motion for Entry of a Default Decision, which includes evidence supporting the allegations in the OIP. Our decision is based on a de novo review of the record, also taking as true the allegations of the OIP and taking account of the evidence submitted by the Division.

II.

The Firm is a public accounting firm located in Aurora, Colorado, organized as a professional corporation under Colorado law, and licensed by the Colorado Board of Accountancy. The Firm is registered with the PCAOB pursuant to Section 102 of the Sarbanes-Oxley Act of 2002 (the "Act") and PCAOB Rules. O'Donnell is a certified public accountant licensed in Colorado. At all relevant times, O'Donnell was the Firm's president, sole principal, and only audit staff. O'Donnell is, and at all relevant times was, an associated person of a registered public accounting firm as defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i).

On July 28, 2009, the Board issued an Order of Formal Investigation (OFI) pursuant to PCAOB Rule 5101(a)(1). The OFI stated that the Board had received information indicating that the Firm and one or more of its associated persons may have violated PCAOB Rules 3100 and 3200T by failing to comply with certain PCAOB standards in auditing and reviewing the financial statements of four companies specified in the OFI. The OFI authorized an investigation to determine whether the Firm or any associated person of the Firm had engaged in the specified acts or practices or in acts or practices of similar purport or object. The OFI authorized the Division to issue Accounting Board Demands ("ABDs") for documents and testimony relevant to the matters described in the OFI.

^{1/} PCAOB Rule 5409(a) provides that "[a] party may be deemed to be in default and the Board or the hearing officer may determine the proceeding against that party upon consideration of the record, including the order instituting proceedings or notice of hearing, the allegations of which may be deemed to be true, if that party fails . . . to answer when required to do so by a Board order"

A. The ABDs Related to Scharfman

Pursuant to the OFI, the Division issued an ABD requiring O'Donnell to provide testimony in the investigation. In testimony on December 8 and 10, 2009, O'Donnell provided information indicating the possibility that Lawrence Scharfman had become an associated person of the Firm. That information was potentially significant because, on August 11, 2009, the Board had permanently barred Scharfman from being an associated person of any registered public accounting firm.^{2/} It would be a violation of the Act and PCAOB Rules for the Firm to permit Scharfman's association without the consent of the Board or the Securities and Exchange Commission ("Commission") if the Firm knew, or in the exercise of reasonable care should have known, of the bar.^{3/} It would also be a violation of PCAOB Rules for O'Donnell to engage in conduct that he knew, or was reckless in not knowing, would substantially contribute to such a violation by the Firm.^{4/}

The possibility of such violations was indicated by O'Donnell's testimony about an agreement through which he was acquiring Scharfman's public company auditing practice. O'Donnell testified that the agreement involved paying Scharfman "roughly half" of the audit fees the Firm received from each of Scharfman's former audit clients for "a period of time" that O'Donnell thought was four years. O'Donnell also testified that he understood that the reason Scharfman was no longer performing audits for those clients was that Scharfman "went through a similar procedure like this," and that the outcome was that "he's no longer registered with the PCAOB."

O'Donnell testified that his agreement with Scharfman was documented, that he had issued audit opinions on some of the issuer audit clients acquired from Scharfman, and that he had already made "most likely about half a dozen" payments to Scharfman pursuant to the agreement, ranging from \$2,000 to \$15,000.^{5/} During O'Donnell's

^{2/} See Lawrence Scharfman CPA PA, PCAOB Rel. No. 105-2009-005 (August 11, 2009).

^{3/} See Section 105(c)(7)(A) of the Act and PCAOB Rule 5301(b).

^{4/} See PCAOB Rule 3502.

^{5/} O'Donnell testified that Scharfman did not consult with O'Donnell on the performance of the audits but "may talk about the fee arrangements because he has a vested interest in it." Even assuming for present purposes that Scharfman did not consult on the audits, the arrangement between O'Donnell and Scharfman may

testimony on December 10, 2009, Division staff told O'Donnell that they would issue an ABD requiring production of "the agreement [with Scharfman], including any addendums and attachments to that agreement, and copies of any checks that were issued to him and invoices relating to the engagements covered by that agreement." In response to the Division staff asking how hard it would be for O'Donnell "to put your hands on" those documents, O'Donnell answered that "The Scharfman agreements are in the administrative file. Most of those are not difficult." Division staff told O'Donnell that they would require production of the documents by December 18, 2009, and O'Donnell responded "Okay."

On December 14, 2009, the Division issued separate ABDs to the Firm and O'Donnell (the "December 14 ABDs"), each requiring production by December 18, 2009 of, among other things, "all documents relating or referring to Lawrence Scharfman CPA PA and/or Lawrence Scharfman CPA (together, "Scharfman"), including but not limited to: communications with Scharfman . . . ; agreements (including attachments, addenda, and modifications thereto); invoices or other bills; evidences of payment . . . and documents identifying any Scharfman clients who have become clients of the Firm." The December 18 deadline passed without Respondents producing the documents, requesting an extension of the deadline, or otherwise responding. On December 29, 2009, the Division sent Respondents a letter reminding them that production was overdue and demanding production immediately. Respondents did not respond to the December 29 letter.

On January 22, 2010, the Division sent Respondents a letter describing the Division's intention, based on the failure to respond to the December 14 ABDs, to recommend that the Board commence a disciplinary proceeding alleging noncooperation with the investigation. Pursuant to PCAOB Rule 5109(d), that letter offered Respondents an opportunity to submit a written statement of position regarding whether a disciplinary proceeding should be instituted, and gave them until February 5, 2010 to do so. The January 22 letter, like each previous transmittal of an ABD to Respondents, informed Respondents that Board disciplinary action for noncooperation with an investigation could result in sanctions including revocation of the firm's

nevertheless have made Scharfman an associated person of the Firm in violation of the bar. As defined in the Act and PCAOB Rules, an individual may be a person associated with a registered public accounting firm solely by virtue of "shar[ing] in the profits of, or receiv[ing] compensation in any other form from, that firm" in connection with the firm's preparation or issuance of any audit report." Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i). In this proceeding, the Division has not alleged that, and we do not reach the question of whether, Scharfman became an associated person of the Firm.

registration, a bar on association with registered firms, and other lesser sanctions. Respondents never responded to the January 22 letter and never produced the documents required by the December 14 ABDs.

B. Procedural History

The Board issued an OIP against Respondents on March 29, 2010. The OIP alleged that Respondents' conduct in connection with the December 14 ABDs constituted noncooperation with an investigation. The OIP required Respondents to file an answer to the allegations within 20 days after service of the OIP.

The OIP was served on Respondents on April 1, 2010. Respondents did not file an answer or otherwise respond to the OIP within the 20 days prescribed by the OIP. On April 26, 2010, the Hearing Officer issued an order holding Respondents in default, but also giving Respondents until May 7, 2010 to file any motion, pursuant to PCAOB Rule 5409(b), to set aside the default. The April 26 order provided that if Respondents did not file a timely motion to set aside the default, the Division could file a motion seeking a default decision.

Respondents did not file a motion to set aside the default. On May 12, 2010, the Division filed a Motion for Entry of a Default Decision and submitted with the motion an appendix of documents offered as evidence of allegations in the OIP and of other matters. On May 19, 2010, the Hearing Officer issued an initial decision granting the Division's motion. The Hearing Officer found that each Respondent had failed to cooperate with the investigation by failing to comply with the December 14 ABD directed to that Respondent. The Hearing Officer concluded that those failures warranted revocation of the Firm's registration, a bar on O'Donnell's association with a registered public accounting firm, and a \$25,000 civil money penalty against each Respondent.

No party filed a petition for Board review of the initial decision. On June 10, 2010, the Board ordered review of the initial decision on its own initiative, pursuant to PCAOB Rule 5460(b). The June 10 Order permitted the parties to file briefs by specified deadlines. The Division filed a timely brief on July 1, 2010. That same date, the Division filed a Motion to Adduce Additional Evidence pursuant to PCAOB Rule 5464. The Division filed a second Motion to Adduce Additional Evidence on September 21, 2010. Respondents did not file a brief, respond to either of the Division's motions to adduce additional evidence, or otherwise appear in this review proceeding before the Board.

III.

Section 105(b)(3) of the Act, captioned "Noncooperation with Investigations," authorizes the Board to impose sanctions if a registered firm or associated person "refuses to testify, produce documents, or otherwise cooperate with the Board in connection with an investigation." PCAOB Rule 5300(b) similarly provides for sanctions if such a firm or person "has failed to comply with an accounting board demand, has given false testimony or has otherwise failed to cooperate in an investigation."

In this case, the uncontroverted evidence in the record establishes that Respondents failed to respond in any manner to the December 14 ABDs. They did not produce responsive documents, did not attempt to explain their failure or seek additional time, and did not assert any objection to the Division's authority to require production of the documents described in the December 14 ABDs. Respondents' failure to provide any such response continued despite the Division's follow up letter of December 29, 2009; the Division's January 22, 2010 letter pursuant to Rule 5109(d); and notice of the institution of disciplinary proceedings served on them on April 1, 2010. On these facts, we conclude that each Respondent's failure to respond to the December 14 ABDs constitutes noncooperation for which we may impose sanctions.

IV.

For noncooperation with an investigation, the Board is authorized to revoke or suspend a firm's registration, to bar or suspend an individual from association with any registered public accounting firm, or to impose certain lesser sanctions as the Board considers appropriate and as specified by rule of the Board.^{6/} We have concluded that the appropriate sanctions for Respondents' failures to respond to the December 14 ABDs are revocation of the Firm's registration, a bar against O'Donnell being associated with any registered public accounting firm, and a \$75,000 civil money penalty against O'Donnell.

^{6/} See Section 105(b)(3) of the Act and PCAOB Rule 5300(b). Rule 5300(b) specifies, by incorporating certain provisions of Rule 5300(a), that those lesser sanctions may include civil money penalties.

A. Revocation and Bar

The Board's power to investigate possible violations and to impose appropriate sanctions^{7/} is fundamental to its ability to "protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports."^{8/} Conducting investigations in an appropriate and timely manner depends upon registered firms' and associated persons' compliance with demands for documents and testimony made pursuant to the Board's authority under the Act. Noncooperation frustrates the oversight system by impeding the Board's ability to determine whether violations have occurred for which sanctions should be imposed, including sanctions that would protect investors from further violations, and thus deprives investors of an important protection that the Act was intended to provide.^{9/}

We find that Respondents' conduct warrants revocation of the Firm's registration and a bar on O'Donnell's association with any registered public accounting firm. Respondents' noncooperation prevented the Board from being able to follow up adequately on indications of possible violations of law and PCAOB Rules – specifically, the possible circumvention of a previous Board disciplinary order barring an individual from association with any registered firm because of that person's misconduct. Despite ample opportunity to respond to the document demands, Respondents have never done so and never suggested any possible mitigating circumstance relating to their failure. This type of noncooperation undermines the Board's ability to protect investors and advance the public interest, and indicates a lack of sufficient regard for Board processes and authority designed to do so.^{10/} If the Firm were to remain a registered firm and

^{7/} See Sections 101(c)(4), 105(b)(1), and 105(c)(4) of the Act.

^{8/} Section 101(a) of the Act.

^{9/} Cf. Gately & Associates, LLC, SEC Release No. 34-62656 at 22-23, 2010 WL 3071900 at *15 (August 5, 2010) (recognizing seriousness of failure to cooperate in PCAOB inspection designed, among other things, to uncover misconduct).

^{10/} Cf. Paz Securities, Inc., SEC Release No. 34-57656 at 6, 2008 WL 1697153 at *4 (Apr. 11, 2008) (NASD "members and their associated persons who fail to respond in any manner to [NASD information requests under Rule 8210] should be barred (or expelled) unless there are mitigating factors sufficient to rebut the presumption that such violators present too great a risk to the markets and investors to be permitted to remain in the securities industry.").

O'Donnell an associated person, they would have opportunities to similarly undermine those processes, and thereby jeopardize investor protection, in the future.^{11/}

B. Civil Money Penalty

We also find that Respondents' conduct warrants the imposition of a civil money penalty. Section 105(c)(4) of the Act authorizes the Board to impose such "disciplinary or remedial sanctions as it determines appropriate" for violations of certain laws, rules, and standards, and specifies that those sanctions may include civil money penalties up

^{11/} The record includes evidence of a state disciplinary history that provides additional reason to believe that Respondents pose such a risk. Exhibits to the Division's Motion for Entry of a Default Decision include a July 28, 2000 Final Agency Order of the Colorado State Board of Accountancy ("Colorado Board") imposing a \$2,000 fine on O'Donnell for failing to comply with state law requirements to register his firm with the Colorado Board every three years, even though he had been under a previous Colorado Board order, arising out of a previous failure, to comply with that requirement. In addition, the Division's September 21, 2010 Motion to Adduce Additional Evidence ("September 21 Motion") seeks to introduce evidence of a May 3, 2010 Colorado Board Stipulation and Final Agency Order imposing various restrictions and requirements because of O'Donnell's failure to comply with an earlier order requiring him to submit to concurring reviews, obtain prior approval of concurring reviewers, submit quarterly reports, and obtain certain continuing professional education, and his failure to respond to certain Colorado Board communications as required by state law. Because the Division has not supported inclusion of either of these documents with authentication by any Colorado official, we treat the Division's proffer of these documents as, in effect, a request that we take official notice of the information publicly available on the Colorado Board's web site. Given that Respondents have had an opportunity to dispute the information and have not done so, we do not hesitate to take notice of it, although we cite it here only as additional support for a conclusion that we would reach even in its absence. Cf. Joseph Ricupero, SEC Release No. 34-62891 at 11, 2010 WL 3523186 at *7-8 (September 10, 2010) (sustaining bar on individual's association with any National Association of Securities Dealer member because of individual's failure to respond to information requests, and noting that individual's prior disciplinary history is "further evidence" that individual posed risk to investing public should he re-enter securities industry). Accordingly, we grant the Division's September 21 Motion insofar as it relates to information from the Colorado Board's web site concerning, and including, the May 3, 2010 Stipulation and Final Agency Order.

to specified maximum amounts. Although that provision is separate from section 105(b)(3)'s provision authorizing sanctions for noncooperation with an investigation, section 105(b)(3) authorizes the Board to impose "such other lesser sanctions" (in addition to bars, revocations, and suspensions) as the Board specifies by rule, and the Board's rules implementing that authority incorporate, as such lesser sanctions, the civil money penalty provisions found in section 105(c)(4).^{12/}

In considering whether a civil money penalty is an appropriate disciplinary or remedial sanction, we are guided by the statutorily prescribed objectives of any exercise of our sanctioning authority: the protection of investors and the public interest. See section 101(a) of the Act (Board established "to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports"); section 101(c)(5) (Board to perform duties or functions as the Board determines necessary "to carry out this Act, in order to protect investors, or to further the public interest"). We are also cognizant that the Commission, in reviewing any contested sanctions that we impose, is called upon to do so with "due regard for the public interest and the protection of investors." Section 107(c)(3) of the Act.

For guidance, we also look to the factors enumerated in, and the Commission's application of, a somewhat comparable statutory authorization in the Securities Exchange Act of 1934 ("Exchange Act"). Like the authorization to the Board in the Act, section 21B of the Exchange Act authorizes the Commission to impose civil money penalties in administrative proceedings, up to specified maximum amounts, if the Commission finds that "such penalty is in the public interest."^{13/} Unlike the Act, however, Exchange Act section 21B provides guidance regarding relevant factors "[i]n considering under this section whether a penalty is in the public interest."^{14/} The factors specified in section 21B(c) 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

^{12/} See PCAOB Rule 5300(b)(1) (incorporating sanctions described in Rule 5300(a)(4)).

^{13/} Section 21B(a) of the Exchange Act.

^{14/} Section 21B(c) of the Exchange Act.

("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. See Next Financial Group, Inc. 93 SEC Docket 1369, 2008 WL 2444775 at *49 (June 18, 2008) (Initial Decision) ("Not all factors may be relevant in a given case, and the factors need not all carry equal weight"). The Commission has imposed civil money penalties under section 21B on numerous occasions, emphasizing various of these factors, including in cases in which the Commission imposed a bar in addition to the civil money penalty. See, e.g., VFinance Investments Inc., SEC Release No. 34-62448 at 27-28, 2010 WL 2674858 at * 18 (July 2, 2010) (barring individual from association with any broker or dealer in principal or supervisory capacity and imposing \$30,000 civil money penalty described as "warranted to create a monetary incentive for Respondents and other industry participants to fulfill their recordkeeping obligations and cooperate with regulatory inquiries – particularly when, as in this case, such person is aware that compliance may reveal regulatory violations potentially resulting in disgorgement or monetary penalties"); Gregory O. Trautman, SEC Release No. 34-61167A at 42, 44, 2009 WL 4828994 at *22-23 (December 15, 2009) (barring individual from association with any broker or dealer and imposing a \$120,000 civil money penalty as "necessary to deter others" from such conduct, and in light of fact that conduct involved deception causing harm to others and resulting in enrichment of individual's firm); Guy P. Riordan, SEC Release No. 34-61153 at 38-39, 2009 WL 4731397 at *21-22 (December 11, 2009) (barring individual from association with any broker or dealer and imposing separate \$100,000 civil money penalties for each of five violations in light of fact that conduct involved fraud, deceit, manipulation or deliberate or reckless disregard of a regulatory requirement and resulted in substantial pecuniary gain); Joseph John VanCook, SEC Release No. 34-61039A at 31-32, 2009 WL 4005083 at *18 (November 20, 2009) (barring individual from association with any broker or dealer and imposing \$100,000 civil money penalty described as "an amount necessary to deter VanCook from future misconduct" and that "will also have a remedial effect of deterring others from engaging in the same misconduct").^{15/}

^{15/} Trautman, Riordan, and VanCook all involved financial harm to investors that the Commission orders addressed through substantial disgorgement remedies (more than \$600,000 in Trautman, more than \$900,000 in Riordan, and more than \$500,000 in VanCook), underscoring that the separate civil money penalty is imposed for a purpose distinct from making a financially harmed victim whole.

The courts have recognized that Commission sanctions involving bars and section 21B civil money penalties are appropriate, and should be upheld absent a "gross abuse of discretion," given that "Congress has charged the Commission with protecting the investing public," and the question of appropriate remedies is "peculiarly a matter for administrative competence." Rizek v. SEC, 215 F.3d 157, 160 (1st Cir. 2000) (upholding bar on individual's association with any broker, dealer, member of a national securities exchange, or member of a registered securities association and imposition of \$100,000 civil money penalty) (quoting A.J. White & Co. v. SEC, 556 F.2d 619, 624 (1st Cir. 1977), and Butz v. Glover Livestock Comm'n Co., 411 U.S. 182, 185 (1973)).

The Board, too, is charged to exercise its sanctioning authority "as the Board considers appropriate"^{16/} (subject to Commission review) to protect the investing public. Looking to the Exchange Act section 21B factors and precedent for guidance on protecting investors and advancing the public interest through civil money penalties,^{17/} we conclude that a civil money penalty is plainly appropriate in this case.

In response to the December 14 ABDs, Respondents disregarded their obligation to cooperate with the Board's investigation. On the record, as described above, it is clear that this disregard was deliberate or reckless. Respondents produced none of the demanded documents and provided no response concerning the demanded documents even after receiving follow-up demands, warnings about disciplinary action, and notice of the institution of disciplinary proceedings.

We also conclude that Respondents' conduct caused at least indirect harm to others. Investors and markets are put at risk, and perhaps harmed in ways that never become known, when a regulatory investigation is improperly thwarted by a regulated person's refusal to provide information. Such noncooperation undermines the Board's

^{16/} Section 105(b)(3)(A)(iii) of the Act; see also Section 105(c)(4) of the Act ("Board may impose such disciplinary or remedial sanctions as it determines appropriate").

^{17/} Relevant, and similar, guidance is also provided by the courts even outside of the section 21B context. See McCarthy v. SEC, 406 F.3d 179, 190 (2d Cir. 2005) (factors relevant in deciding whether a sanction is appropriately remedial include "the seriousness of the offense, the corresponding harm to the trading public, the potential gain to the [offender] for disobeying the rules, the potential for repetition in light of the current regulatory and enforcement regime, and the deterrent value to the [offender] and others").

ability to protect investors and advance the public interest by identifying and addressing misconduct in connection with the audits of public companies' financial statements. The undermining of this protection is a harm to investors and markets that factors into a sanctions analysis. Cf. Gately, SEC Release No. 34-62656 at 19, 2010 WL 3071900 at *13 (recognizing as obvious the risk to investors and markets posed by a failure to produce information in a Board inspection).

We have also considered together the section 21B factors concerning whether any person was unjustly enriched and whether there is a need to deter such person and other persons from similar noncooperation. The obligation of registered firms and associated persons to cooperate with the Board is a fundamental aspect of PCAOB registration status.^{18/} Yet, under the processes set out in the Act and the Board's rules, it necessarily takes some time before Board disciplinary sanctions in response to noncooperation are imposed and take effect. During that time, nothing prevents the firm or person from continuing to reap financial benefits from performing audit services for issuers, all the while ignoring the corresponding cooperation obligation that is essential to the Board's ability to protect investors in those issuers.

In short, in the absence of a civil money penalty, noncooperation with the Board might seem to certain kinds of individuals – who fear that cooperation will provide information that would lead to sanctions for violations of laws, rules, or standards – to be the course most likely to prolong the period of their registration and allow them to maximize their income from issuer audit work before being sanctioned. A civil money penalty for noncooperation is appropriate both as a deterrent to that kind of reasoning and conduct, see VFinance Investments, Inc., SEC Release No. 34-62448 at 27-28, 2010 WL 2674858 at * 18 (civil money penalty warranted to create incentive for respondents and other industry participants to cooperate with regulatory inquiries, particularly when aware that compliance may reveal regulatory violations potentially resulting in disgorgement or monetary penalties), and, where applicable, to take

^{18/} Section 105(b)(3) is only one of the statutory provisions reflecting the importance of such cooperation. See also section 102(b)(3) of the Act (requiring registration applicants to consent to cooperate with Board requests for testimony and production of documents, to agree to secure and enforce similar consents from their associated persons, and to acknowledge and agree that such cooperation is a condition to the continuing effectiveness of the firm's registration with the Board); cf. Gately, SEC Release No. 34-62656 at 20, 2010 WL 3071900 at *13 (noting with reference to section 102 that Act "makes it clear" that failure to comply with obligation to cooperate "presumptively disqualifies a firm from conducting public company audits.").

account of the fact that financial gains from continuing to perform issuer audit work while not fulfilling the responsibilities that accompany PCAOB registration status might fairly be viewed as similar to unjust enrichment. In this case, uncontroverted evidence in the record suggests that Respondents have continued to perform issuer audit work while not cooperating with a PCAOB investigation.^{19/}

We have also considered a factor analogous to the section 21B factor concerning whether a person has previously been found by another appropriate regulatory agency or a self-regulatory organization ("SRO") to have violated relevant federal or state laws or SRO rules. We view findings of a state board of accountancy as a potentially relevant factor in this analysis.^{20/} Evidence of O'Donnell's Colorado Board disciplinary

^{19/} The record evidence on this point is found in issuers' Commission filings containing what purport to be audit reports issued by the Firm after the December 18, 2009 deadline for responding to the December 14 ABDs. Exhibits to the Division's Motion for Entry of a Default Decision include copies of such filings, authenticated by an attestation from the Commission's Records Officer, containing what purport to be five audit reports issued by the Firm from January 5 to March 15, 2010. Exhibits to that motion also include other issuer Commission filings containing what purport to be 20 audit reports issued by the Firm from March 24 to April 15, 2010, although these exhibits are not authenticated by an attestation from a Commission official. In addition, the Division's July 1, 2010 Motion to Adduce Additional Evidence ("July 1 Motion") seeks to add to the record similar evidence of what purport to be four other audit reports issued by the Firm after the Hearing Officer's Initial Decision, although these filings are also not authenticated by an attestation from a Commission official. The filings authenticated by a Commission official's attestation do not conclusively establish that the Firm issued the included audit reports, but they are evidence that the Firm did so, and Respondents have not disputed the point. The filings not authenticated by a Commission official's attestation are slightly less reliable evidence but, in light of the nature and general public availability of the filings, not so much less reliable as to require exclusion from any consideration here, particularly since Respondents have neither disputed the point nor opposed the July 1 Motion. We grant the July 1 Motion and allow the additional evidence into the record.

^{20/} Section 21B's term "appropriate regulatory agency" is defined in the Exchange Act and includes only certain federal regulators. We proceed here by analogy to, not by application of, Section 21B. Section 2(a)(1) of the Act defines "appropriate State regulatory authority" to include "the State agency or other authority responsible for the licensure or other regulation of the practice of accounting in the

history, described above, includes findings of multiple instances of failing to provide required information to the Colorado Board. As discussed above, that evidence is only in the form of information of which we have taken official notice, but Respondents have had an opportunity to dispute the information and have not done so. In any event, we cite the evidence in this context only as additional information consistent with, but not essential to, a determination to impose a civil money penalty in this case.

In light of the factors described above, we have determined to impose a civil money penalty. We turn now to consideration of the amount of the penalty. The Act specifies maximum penalty amounts, and those specified amounts are from time to time subject to penalty inflation adjustments published in the Code of Federal Regulations. For conduct occurring after March 3, 2009 (the period encompassing Respondents' noncooperation), the Act, as adjusted, authorizes the Board to impose a civil money penalty of up to \$900,000 for a natural person and up to \$17.8 million for other persons in cases involving intentional or knowing conduct, including reckless conduct, or repeated instances of negligent conduct.^{21/}

In this case we have determined to impose a civil money penalty of \$75,000 on O'Donnell.^{22/} While this is well below the maximum penalty that we could impose, it nonetheless reflects the seriousness of the noncooperation, including the harm to investors from the possibility that such noncooperation may have prevented the Board from uncovering evidence that would have revealed failures or violations warranting an even steeper penalty. We also view it as sufficient to deter similar noncooperation by others.

State or States having jurisdiction over a registered public accounting firm or associated person thereof."

^{21/} See Sections 105(c)(4)(D) and 105(c)(5) of the Act; 17 C.F.R. § 201.1004 Table IV; see also PCAOB Rules 5300(b)(1) and 5300(a)(4). For sanctionable conduct in that same period that does not involve intentional or knowing (including reckless) conduct or repeated instances of negligent conduct, the Act, as adjusted, authorizes the Board to impose a civil money penalty of up to \$120,000 for a natural person and \$2.375 million for other persons.

^{22/} Because the Firm is a professional corporation of which O'Donnell is the sole principal and there is no evidence that any other person could have caused the Firm to respond to the ABD, we conclude that, in these circumstances, no additional purpose would be served by imposing a separate civil money penalty on the Firm.

V.

For the reasons described above, we conclude that, in order to protect the interests of investors and to further the public interest, the Firm's PCAOB registration should be permanently revoked, O'Donnell should be permanently barred from associating with any registered public accounting firm, and a civil money penalty of \$75,000 should be imposed against O'Donnell.^{23/}

An appropriate order will issue.^{24/}

By the Board.

^{23/} All funds collected by the Board as a result of the assessment of civil money penalties shall be used in accordance with Section 109(c)(2) of the Act.

^{24/} The portion of the Division's September 21 Motion that seeks to add to the record the public portion of the Board's July 30, 2009 inspection report on the Firm is denied. The public portion of the report was expanded in September 2010 to disclose quality control criticisms, which, by law and PCAOB Rules, are publicly disclosed only if a firm fails to address those criticisms to the Board's satisfaction within 12 months after the report is issued. The public portion of the report also discloses that the Firm did not provide any response to a draft of the report when given the opportunity (afforded to all firms) to do so. The Division argues that the Firm's "failure to address the quality control criticisms . . . or to comment on the draft report, is material and relevant to the Board's determination of what sanctions should be imposed upon the Firm in this case." Neither point, however, is relevant to sanctions. Registered firms are not required to respond to draft inspection reports, and the choice not to do so has no bearing on a sanctions analysis. Nor is failure to address inspection report quality control criticisms – which are not adjudicated findings of misconduct – a violation of the Act or PCAOB Rules. Such a failure has the statutorily prescribed consequence of public disclosure of the criticism, but it has no bearing on a sanctions analysis. Where warranted, the Board may follow up through enforcement action addressing the conduct that gave rise to the report criticism, but the appropriateness of sanctions would depend upon the Division establishing through the adjudicative process that a firm had failed to comply with PCAOB standards, not merely that inspection report criticisms had not been addressed to the Board's satisfaction.



PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

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In the Matter of)
Larry O'Donnell, CPA, P.C. and)
Larry O'Donnell, CPA)
)
Respondents.)
)
_____)

PCAOB File No. 105-2010-002

ORDER IMPOSING SANCTIONS

October 19, 2010

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

ORDERED that Larry O'Donnell, CPA, is permanently barred from associating with any registered public accounting firm; and it is further


ORDERED that Larry O'Donnell, CPA, P.C.'s registration with the Board is permanently revoked; and it is further

ORDERED that Larry O'Donnell, CPA, shall pay a civil money penalty in the amount of \$75,000 by (a) United States postal money order, certified check, bank cashier's check, or bank money order, (b) made payable to the Public Company Accounting Oversight Board, (c) delivered to the Controller, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington, D.C. 20006 within 30 days after the effective date, described below and (d) submitted under a cover letter which identifies Larry O'Donnell, 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 Order, a copy of which cover letter and money order or check shall be sent to Office of the Secretary, Attention: J. Gordon Seymour, General Counsel and Secretary, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington, D.C. 20006.

Effective Date: If a respondent 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 a respondent 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 a respondent files an application for review by the Commission or the Commission orders review of sanctions ordered against a respondent, the effective date of the sanctions ordered against that respondent shall be the date the Commission lifts the stay imposed by Section 105(e) of the Sarbanes-Oxley Act of 2002.

By the Board.



J. Gordon Seynhour
Secretary

October 19, 2010