



## ORDER

### II.

In anticipation of institution of these proceedings, and pursuant to PCAOB Rule 5205, Respondents have each submitted an Offer of Settlement ("Offers") that the Board has determined to accept. Solely for purposes of these proceedings and any other proceedings brought by or on behalf of the Board, or to which the Board is a party, and without admitting or denying the findings herein, except as to the Board's jurisdiction over them and the subject matter of these proceedings, which is admitted, Respondents consent to entry of this Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions ("Order") as set forth below.

### III.

On the basis of Respondents' Offers, the Board finds<sup>1/</sup> that:

#### A. Respondents

1. Moore & Associates, Chartered is a public accounting firm located in Las Vegas, Nevada. At all relevant times, M&A was licensed under the laws of the state of Nevada (Nevada State Board of Public Accountancy License No. CORP-0467). M&A is registered with the Board pursuant to Section 102 of the Act and Board Rules. During the relevant time period, M&A employed between 4 and 12 audit personnel. None of the staff under Mr. Moore had any significant training or education in auditing or accounting.

2. Michael J. Moore, 55, of Las Vegas, Nevada, is a certified public accountant licensed under the laws of the state of Nevada (License No. CPA-3453R). He is the Firm's president and, at all times relevant to this matter, was an associated person of

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<sup>1/</sup> The findings herein are made pursuant to the Respondents' Offers and are not binding on any other person or entity in this or any other proceeding. The sanctions that the Board is imposing on Respondents in this Order may be imposed only if a respondent's conduct meets one of the conditions set out in Section 105(c)(5) of the Act, 15 U.S.C. § 7215(c)(5). The Board finds that Respondents' conduct described in this Order meets the condition set out in Section 105(c)(5), which provides that such sanctions may be imposed in the event of: (A) intentional or knowing conduct, including reckless conduct, that results in violation of the applicable statutory, regulatory, or professional standard; or (B) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

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the Firm, as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i).

### **B. Summary**

3. After M&A registered with the Board in October 2004, Moore began auditing the financial statements of public companies for the first time in more than ten years. Over the next three years, M&A accepted nearly 300 public audit engagements, with Moore serving as the auditor with final responsibility on each of them. Respondents added new clients at a nearly exponential rate while the audit staff was comprised of inexperienced staff members overseen by one professional. M&A staffed the audits with assistants who had no accounting or auditing education, experience or training. These unqualified audit assistants planned and executed the audits with little or no supervision from Moore. Through its approach to its audit practice, M&A violated PCAOB quality control standards, and Moore caused those violations. In the case of certain audit engagements on which the Board specifically focused attention through its investigative processes, Respondents failed to perform or ensure the performance of any audit work for critical aspects of the audit, in violation of PCAOB auditing standards. In each of those cases, Respondents also violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by issuing audit reports that represented that the audits had been conducted in accordance with PCAOB standards, when they knew, or were reckless in not knowing, that such representations were false.

4. Respondents also failed to cooperate with the Board's investigation of this matter in three ways. Respondents created false work papers that did not accurately reflect the work performed on the relevant audits and produced those false work papers to the Board's Division of Enforcement and Investigations. Moore also falsely testified that these work papers produced by Respondents were true and accurate audit work papers completed during the audit, when he knew they were not. In addition, M&A failed to produce documents required by an Accounting Board Demand.

### **C. Respondents Violated PCAOB Rules and Quality Control Standards**

5. PCAOB rules require that a registered public accounting firm comply with certain quality control standards.<sup>2/</sup> A firm should establish policies and procedures to encompass, among other things, (a) personnel management, (b) acceptance and continuance of clients and engagements, and (c) engagement performance.<sup>3/</sup> These

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<sup>2/</sup> See PCAOB Rules 3100, 3400T.

<sup>3/</sup> QC § 20.07.

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policies and procedures should be communicated to the firm's personnel,<sup>4/</sup> and the firm should implement monitoring procedures to obtain reasonable assurance that its system of quality control is effective.<sup>5/</sup> In addition, PCAOB rules prohibit an associated person of a registered public accounting firm from taking or omitting to take an action knowing, or recklessly not knowing, that the act or omission would directly and substantially contribute to a violation of Board standards by that firm.<sup>6/</sup> As described below, M&A violated the Board's quality control standards in several respects, and Moore directly and substantially contributed to those violations.

6. Although M&A maintained a draft quality control manual in Moore's office, it failed to provide a copy of or otherwise communicate the substance of the manual to its personnel.<sup>7/</sup> Additionally, at all relevant times, the Firm failed to train assistants with respect to a system of quality controls that would reasonably ensure that the Firm's audits were performed in accordance with PCAOB standards.

### Personnel Management

7. PCAOB standards provide that policies and procedures should be established to provide the Firm with reasonable assurance that, among other things, (1) those hired possess the appropriate characteristics to enable them to perform competently, and (2) work is assigned to personnel having the degree of technical training and proficiency required in the circumstances.<sup>8/</sup> PCAOB standards further provide that, the more able and experienced the personnel assigned to an engagement, the less direct supervision is needed.<sup>9/</sup> M&A failed to comply with these standards.

8. The Firm's audit staff consisted of one staff member in 2005, which grew to 12 by 2008. None of the audit staff had any prior auditing or accounting experience or

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<sup>4/</sup> QC § 20.23.

<sup>5/</sup> QC § 30.03.

<sup>6/</sup> See PCAOB Rule 3502.

<sup>7/</sup> In March 2009, the Firm adopted a new quality control manual that all staff was required to review.

<sup>8/</sup> QC § 20.13

<sup>9/</sup> QC § 20.11

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education. Newly hired staff received informal on the job training from other audit assistants, who were not qualified to provide the training because they also lacked relevant education, experience or training on how to perform audits in compliance with PCAOB standards. New hires' informal training, among other things, included instructions to complete audit programs and audit reports without actually performing audit procedures. In fact, at least one audit assistant was trained to simply "fill in the blanks on the audit report with the names of the clients and the dates, but to not do any work."

9. In addition to full-time audit staff, M&A often engaged casual acquaintances and conveniently located relatives of Moore who were neither employees of the firm nor trained or experienced in accounting or auditing to perform audit procedures. For example, M&A dispatched Moore's ex-wife on one occasion and a distant cousin on another to perform inventory observations. On another occasion, M&A sent Moore's daughter's then-boyfriend to a foreign country to inspect certain fixed assets and inventory of an audit client.

### Acceptance and Continuance of Clients and Engagements

10. PCAOB standards require the Firm to establish policies and procedures that provide reasonable assurance that the Firm undertake only those engagements that it could reasonably expect to be completed with professional competence.<sup>10/</sup> The Firm failed to comply with this standard, accepting engagements that it could not undertake with professional competence. From 2004 through May 2009, the Firm issued a total of 680 audit opinions. The number of audit opinions issued per year grew from 1 in 2004 to 280 in 2008.<sup>11/</sup> For each of these audits, Moore was the only CPA at the Firm who participated,<sup>12/</sup> he was responsible for the audit, and he authorized the issuance of the Firm's audit report.

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<sup>10/</sup> See QC 20.15a.

<sup>11/</sup> M&A added audit clients with little, or no, regard for whether the Firm was equipped to perform the audit or if the client was acceptable. The Firm did not budget or track staff time by audit. Instead, the Firm relied solely on Moore to determine if the Firm had the expertise and resources to handle an audit client.

<sup>12/</sup> In December 2008, the Firm added one CPA to its staff. However, as of March 2009, that individual had not participated in any of the audits on which the Firm had issued opinions.

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### Engagement Performance

11. PCAOB standards provide that a firm should develop policies and procedures to provide it with reasonable assurance that the work performed by engagement personnel meets applicable professional standards, regulatory requirements, and the firm's standards of quality.<sup>13/</sup> The Firm heavily relied on audit assistants who possessed no prior auditing or accounting experience. There were no policies and procedures in place to ensure that the staff performed procedures necessary to comply with PCAOB standards or to even be aware of what those standards required.

12. The Firm typically assigned one staff member to each audit, and the staff member completed the audit with little to no supervision from Moore. Each staff member was responsible for approximately 50 audit clients at any one time. Work was assigned to personnel without the degree of technical training and proficiency required under the circumstances.<sup>14/</sup> As a result, audit assistants were assigned to audit clients that they were not qualified to audit.

### Moore's Substantial Contribution to Quality Control Violations

13. At all relevant times, Moore was responsible for designing, implementing, and monitoring the Firm's system of quality control. All of the Firm's conduct described in paragraphs 6 through 12 above was either conduct of Moore's or omissions to act for which Moore was responsible. With respect to all such acts and omissions, Moore knew, or was reckless in not knowing, that the act or omission would directly and substantially contribute to the quality control failings described above, which constituted violations of the Board's quality control standards. Moore thereby violated PCAOB Rule 3502.

## **D. Respondents Violated PCAOB Rules and Auditing Standards**

14. In connection with the preparation or issuance of an audit report, PCAOB rules require that a registered public accounting firm and its associated persons comply with the Board's auditing standards and related professional practice standards.<sup>15/</sup> An

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<sup>13/</sup> QC § 20.17.

<sup>14/</sup> *Id.*

<sup>15/</sup> See PCAOB Rules 3100, 3200T.

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auditor may express an unqualified opinion on an issuer's financial statements only when the auditor has formed such an opinion on the basis of an audit performed in accordance with PCAOB standards.<sup>16/</sup> Among other things, those standards require that an auditor exercise due professional care, exercise professional skepticism, and obtain sufficient competent evidence to afford a reasonable basis for an opinion regarding the financial statements.<sup>17/</sup> As detailed below, Respondents failed to meet these standards in connection with the audits of three issuers on which the Board specifically focused attention through its authority to investigate possible violations of law, rules, and standards: the audits of the financial statements of Standard Drilling, Inc. ("Standard Drilling") for FY 2006, Biocoral, Inc. ("Biocoral") for FY 2006 and 2007, and Ethos Environmental, Inc. ("Ethos") for FY 2007.

### **Audit of Standard Drilling's 2006 Financial Statements**

15. Standard Drilling is a Nevada corporation headquartered, at all relevant times, in Washington, D.C. with an operations office in Houston, TX. Its common stock is registered under Section 12(g) of the Exchange Act and is traded on the pink sheets. Standard Drilling's public filings disclose that it was primarily in the business of constructing and selling land drilling rigs. At all relevant times, Standard Drilling was an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

16. The Firm was engaged as Standard Drilling's auditor on April 30, 2007 to audit Standard Drilling's financial statements for the fiscal year ended December 31, 2006. Two weeks after being engaged as Standard Drilling's independent auditor, the Firm issued an audit report dated May 14, 2007, that was included in Standard Drilling's Form 10-KSB filed with the United States Securities and Exchange Commission ("Commission") on May 18, 2007.<sup>18/</sup> In the audit report, the Firm expressed an unqualified opinion on Standard Drilling's balance sheet as of December 31, 2006, and the related statement of operations, stockholders' equity and comprehensive income, and cash flows for the period ended December 31, 2006. The Firm's audit report stated that Standard Drilling's financial statements presented fairly, in all material respects,

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<sup>16/</sup> See AU § 508.07, *Reports on Audited Financial Statements*.

<sup>17/</sup> See AU § 150.02, *Generally Accepted Auditing Standards*; § 230, *Due Professional Care in the Performance of Work*; and § 326, *Evidential Matter*.

<sup>18/</sup> Respondents completed the audit in two weeks as an accommodation to the client, even though Moore and the audit assistant believed two weeks was not sufficient time to complete the audit.

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Standard Drilling's financial position, results of operations and cash flows in conformity with U.S. GAAP. In addition, the report stated that the audit was conducted in accordance with the standards of the PCAOB. Moore was the engagement partner who had final responsibility for the audit as that phrase is used in AU § 311, *Planning and Supervision*, and authorized the issuance of the audit report.

17. The audit team consisted of Moore and one audit assistant. Field work was conducted at M&A's office in Las Vegas. At no time during the audit did anyone from, or on behalf of, M&A travel to Standard Drilling's headquarters or operations office. To perform its audit, M&A exclusively relied on documents provided to it by Standard Drilling's management.

18. Standard Drilling reported an accounts receivable balance of \$486,610 as of December 31, 2006. This balance was 4% of Standard Drilling's total assets and 46% of current assets and included 100% of its FY 2006 revenue. While identified as a significant issue by M&A, Respondents failed to audit accounts receivable. The only audit documentation relating to accounts receivable was an off-the-shelf third party audit program template completed by the audit assistant. Respondents failed to perform any procedures to confirm receivables.<sup>19/</sup> Instead, the audit team documented that confirmation procedures were "not applicable" without documenting how the Firm overcame the presumption that confirmations were necessary.<sup>20/</sup> At the time of the audit, the audit assistant did not know that confirmation of accounts receivable was a presumptively required audit procedure and was unfamiliar with the concept of performing alternative procedures in lieu of confirmations. Even though he was responsible for supervising the audit, Moore was not aware of any procedures performed to test the existence and valuation of accounts receivable.

19. The audit team also performed few or no procedures concerning Standard Drilling's reported revenue. The audit assistant filled out a template audit program for accounts receivable and sales and initialed the document to indicate having performed procedures related to the company's sales transactions. These procedures, however,

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<sup>19/</sup> AU § 330.34, *The Confirmation Process*, states that there is a presumption that the auditor will request the confirmation of accounts receivable during an audit unless (1) accounts receivable are immaterial to the financial statements, (2) the use of confirmations would be ineffective, or (3) inherent and control risk is low.

<sup>20/</sup> AU § 330.35 provides that the auditor should document how he or she overcame the presumption that confirmations are necessary to audit accounts receivable.



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consisted simply of reading the company's footnote disclosure covering revenue recognition. The audit assistant failed to evaluate the company's revenue recognition policy or perform any testing of the company's compliance with the policy. Moore, who believed that the audit assistant was probably not qualified to perform procedures related to revenue recognition, was unaware of any procedures performed to test reported revenue.

20. Standard Drilling reported net property and equipment of \$11.8 million as of December 31, 2006, which equaled 54% of total assets. Property and equipment was comprised of oil and gas properties (\$3 million), drilling rigs and machinery (\$7.5 million) and office furniture and equipment (\$1.3 million). Respondents' evaluation of the existence or valuation of the company's reported property and equipment was limited to relying on the company's general ledger as audit evidence for property and equipment, even though Moore knew that the general ledger did not provide sufficient competent audit evidence and that M&A did not do enough audit work in this respect.

21. Under the caption "Other Assets," the company also reported an asset of approximately \$9 million for "deposits on rigs," which equaled 42% of total reported assets. While M&A received company-prepared schedules to support this asset, the schedules do not tie to the balance sheet. According to the work papers, "deposits on rigs" equaled \$11.9 million, not \$9 million as reported. Respondents failed to resolve this inconsistency or obtain sufficient competent evidence to conclude on the existence and valuation of the deposits on rigs.<sup>21/</sup> The audit assistant never knew if the company's assets were valued properly, and Respondents failed to obtain sufficient competent evidence to conclude on the existence and valuation of property and equipment and other assets.<sup>22/</sup>

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<sup>21/</sup> Auditing Standard No. 3 ¶ 5, *Audit Documentation* ("AS No. 3"), states that audit documentation should "[d]emonstrate that the underlying accounting records agreed or reconciled with the financial statements." AU § 339A.05, *Working Papers*, provides that the audit work papers "should be sufficient to show that the accounting records agree or reconcile to the financial statements."

<sup>22/</sup> Respondents also failed to obtain sufficient competent audit evidence to conclude on the existence and valuation of the Company's reported \$4.1 million of accounts payable, \$2.7 million of accrued expenses, and \$13.4 million in stockholders' equity.

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22. Respondents also failed to appropriately staff the audit, and Moore failed to appropriately supervise the work of the audit assistant.<sup>23/</sup> Respondents assigned the assistant to the audit despite Moore's knowledge of the assistant's limited qualifications, including that she had never audited an oil-and-gas company and did not know how to audit revenue, accounts receivable, and property. Moore, as the auditor with final responsibility for the audit, also failed to ensure that the assistant understood the objectives of the audit and the procedures to be performed, and he failed to adequately review the work performed.<sup>24/</sup>

### **Audits of Biocoral's 2006 and 2007 Financial Statements**

23. Biocoral is a Delaware corporation headquartered in Perret Cedex, France. Its common stock is registered under Section 12(g) of the Exchange Act and is quoted on the OTC Bulletin Board. Biocoral's public filings disclose that it is an international biomaterials "tissue-engineering" company specializing in the research, development and commercialization of patented high biotechnologies and biomaterials in the health care area. At all relevant times, Biocoral was an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

24. M&A issued audit reports dated March 28, 2007 (included in Biocoral's Form 10-K filed March 30, 2007) and March 28, 2008 (included in Biocoral's Form 10-K filed March 31, 2008), both of which were filed with the Commission.<sup>25/</sup> In both audit reports,

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<sup>23/</sup> AU § 230.06 provides that "[a]uditors should be assigned to tasks and supervised commensurate with their level of knowledge, skill, and ability so that they can evaluate the audit evidence they are examining. . . . The auditor with final responsibility is responsible for the assignment of tasks to, and supervision of, assistants."

<sup>24/</sup> AU § 311.11 provides that the supervisory responsibility of the auditor with final responsibility for the audit includes directing the efforts of assistants who are involved in accomplishing the objectives of the audit, determining whether those objectives were accomplished, keeping informed of significant problems encountered, and reviewing the work performed, all commensurate with the complexity of the subject matter and the qualifications of the assistant.

<sup>25/</sup> The Firm also issued an audit report dated September 7, 2007 included with Biocoral's Form 10-K/A filed with the Commission on September 11, 2007. Biocoral restated its financial statements for each of the three years in the period ended December 31, 2006 to correct errors related to the presentation of patent cost capitalizations and the recording of the fair value of embedded derivatives attached to



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the Firm expressed an unqualified audit opinion and stated that the audit was conducted in accordance with PCAOB standards and that Biocoral's consolidated financial statements presented fairly, in all material respects, the consolidated financial position of Biocoral and its subsidiaries, the consolidated results of operations, and cash flows in conformity with GAAP. The firm also issued unqualified audit opinions over Biocoral's internal control over financial reporting as of December 31, 2006 and December 31, 2007. Moore was the engagement partner who had final responsibility for the audits.

25. The audit team for both years consisted of Moore and an audit assistant. Neither Moore nor the audit assistant spoke or read French at the time of the audits. No one from, or on behalf of, M&A traveled to France in connection with the 2006 audit. Rather, all field work performed by M&A was conducted at its offices in Las Vegas.<sup>26/</sup>

26. The Biocoral audits involved the audit of eight subsidiaries. While M&A was the principal auditor, Biocoral retained a PCAOB-registered French audit firm to audit its two French subsidiaries, Biocoral France S.A.S. and Inoteb S.A. Biocoral France was responsible for 100% of Biocoral's 2006 and 2007 net sales.

27. Moore decided that M&A would use the work of the French audit firm and would assume responsibility for that work, rather than make reference to the French audit firm in M&A's audit opinions.<sup>27/</sup> PCAOB standards require a principal auditor to perform certain procedures when using the work of another auditor and taking responsibility for that work.<sup>28/</sup> Those procedures include adopting appropriate measures

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convertible debt. The restatement stemmed from comment letters received from the staff of the Commission's Division of Corporation Finance.

<sup>26/</sup> A non-audit partner of the Firm traveled to Paris in 2008 and met with Biocoral's CEO, however, the partner did not perform any audit field work as part of the trip.

<sup>27/</sup> Under AU § 543, a principal auditor that uses another auditor's work chooses between assuming responsibility for that work (in which case the principal auditor's report makes no reference to the other auditor's work or report) and not assuming responsibility (in which case the principal auditor's report should make reference to the other auditor and clearly indicate the division of responsibility between the two auditors). See AU § 543.03.

<sup>28/</sup> AU § 543.10 (principal auditor should "make inquiries concerning the professional reputation and independence of the other auditor" and "adopt appropriate measures to assure the coordination of his activities with those of the other auditor in



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to assure the coordination of the auditor's activities with those of the other auditor in order to achieve a proper review of matters affecting the consolidating or combining of accounts in the financial statements.<sup>29/</sup>

28. Respondents relied solely on receipt of an independence letter from the French audit firm and the receipt, from Biocoral's CEO, of the French subsidiaries' financial statements and the French audit firm's audit reports. Respondents failed to make any inquiries concerning the French audit firm's professional reputation and failed to undertake any measures to assure the coordination of its activities with those of the French audit firm. Respondents did not obtain from the French audit firm, and review and retain, any of the following information: (1) an engagement completion document; (2) a list of significant fraud risk factors, the French audit firm's response to those risks, and the results of any related procedures; (3) information relating to significant findings or issues inconsistent with the auditor's final conclusions; (4) a schedule of audit adjustments; (5) all significant deficiencies and material weaknesses in internal control over financial reporting; (6) letters of representation from management; and (7) all matters to be communicated to the audit committee. Accordingly, Respondents failed to perform the necessary procedures to be able to use the work of the French audit firm in M&A's audits of Biocoral.

29. In addition, Respondents failed adequately to audit Biocoral's reported assets. Biocoral's largest reported asset as of December 31, 2006 and 2007 was "Intangible assets, net" of \$527,879 and \$705,496, which equaled approximately 40% and 50% of the company's reported assets, respectively. Intangible assets were comprised of patents held by Biocoral and its subsidiary BioHoldings. Respondents included copies of the patents in the Biocoral permanent file. Other than receipt of copies of the patents, Respondents failed to perform any procedures related to the patents. Respondents also failed to perform procedures to audit the company's amortization of its patent costs.

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order to achieve a proper review of matters affecting the consolidating or combining of accounts in the financial statements," including considering procedures such as ascertaining that the other auditor is familiar with relevant accounting principles, auditing standards, and financial reporting requirements and will conduct his or her audit and will report in accordance therewith); AU § 543.12 and AS No. 3 ¶19 (describing certain information that the principal auditor must obtain, review, and retain).

<sup>29/</sup> AU § 543.10.

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30. M&A also was engaged to audit Biocoral management's assessment of the effectiveness of Biocoral's internal controls over financial reporting. M&A issued unqualified opinions for 2006 and 2007 on Biocoral's internal control over financial reporting, stating that it conducted its audits in accordance with PCAOB standards.<sup>30/</sup> Respondents failed, however, to perform any procedures to test Biocoral's internal controls. In addition, Respondents failed to take any steps to determine whether the French audit firm had performed an audit of the internal controls of Biocoral France and Inoteb.

31. Respondents failed to appropriately staff the Biocoral audits, and Moore failed adequately to supervise the audit assistant. Respondents assigned the assistant despite Moore's awareness of her limited qualifications, including the fact that she had no prior experience auditing financial statements that required the consolidation of multiple subsidiaries and that involved foreign entities. In addition, Moore, as the auditor with final responsibility for the audit, failed to ensure that the assistant understood the objectives of the audit and the procedures to be performed, and he failed to adequately review the work performed.

### **Audit of Ethos's 2007 Financial Statements**

32. Ethos is a Nevada corporation based in San Diego, CA. Its common stock is registered with the Commission under Section 12(g) of the Exchange Act and is quoted on the OTC Bulletin Board. Ethos's public filings disclose that, at all times relevant to this matter, it manufactured and distributed a line of fuel reformulators that add cleaning and lubrication qualities to fuel or motor oil. At all relevant times, Ethos was an issuer, as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

33. The Firm was Ethos's independent auditor beginning on November 30, 2007. The Firm issued an audit report dated April 14, 2008, which was included in Ethos's Form 10-KSB filed with the Commission on April 15, 2008. In the report, the Firm expressed an unqualified opinion on Ethos's consolidated balance sheet as of December 31, 2007, and the related consolidated statements of operations, stockholders' equity, and cash flows for the year ended December 31, 2007. The Firm's audit report stated that its audit was conducted in accordance with PCAOB standards

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<sup>30/</sup> For the 2007 audit, Auditing Standard No. 5, *An Audit of Internal Control Over Financial Reporting That is Integrated with An Audit of Financial Statements*, was in effect. For the 2006 audit, Auditing Standard No. 2, *An Audit of Internal control Over Financial Reporting Performed in Conjunction with An Audit of Financial Statements*, was in effect.

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and that Ethos's financial statements presented fairly, in all material respects, Ethos's financial position in conformity with GAAP. Moore was the engagement partner with final responsibility for the audit.

34. Inquiry of the predecessor auditor is a necessary auditing procedure because it may provide information that will assist the successor auditor in determining whether to accept the engagement, and an auditor should not accept an engagement before evaluating certain communications with the predecessor auditor.<sup>31/</sup> Respondents failed to comply with this standard in connection with the Ethos audit. Moreover, even after Ethos, on January 24, 2008, filed a Form 8-K/A identifying several accounting issues raised by its predecessor auditor, Respondents failed to contact the predecessor auditor to inquire of or evaluate the issues raised. These accounting issues included questions concerning whether there was persuasive evidence of an arrangement with buyers, whether collectability of reported revenue was reasonably assured, and whether Ethos had entered into a consignment arrangement with certain buyers. In addition, Respondents failed to consider whether and to what extent these accounting issues raised by the predecessor auditor may have affected the nature, timing or extent of the audit procedures to be performed.<sup>32/</sup>

35. Ethos reported approximately \$10.3 million in revenue for the year ended December 31, 2007, an annual increase of approximately 120%. Ethos disclosed that two customers accounted for 87% of its reported revenue, one non-U.S. customer accounting for 79% and a second customer accounting for 8%. Ethos also reported nearly \$6 million in accounts receivable as of December 31, 2007. Ethos disclosed that 84% of its reported balance was due from one customer and that the reported accounts receivable was net of an allowance for uncollectable debt of \$111,362.

36. Respondents failed to adequately test revenue or accounts receivable. Respondents did not obtain or evaluate any source documentation concerning the reported sales. While the work papers contained accounts receivable confirmations purportedly signed by Ethos's customers, Respondents did not send any confirmations

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<sup>31/</sup> See AU § 315.03, .07-10, *Communications Between Predecessor and Successor Auditors*.

<sup>32/</sup> Respondents were also aware that the company received a comment letter from the staff of the SEC's Division of Corporation Finance requesting information concerning the issues raised by the predecessor auditor and disclosed in the Form 8-K/A filing. Yet, as discussed below, Respondents failed to perform any procedures related to revenue recognition.

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to Ethos's customers, but received confirmation responses directly from Ethos's management. As a result, Respondents failed to maintain control over the confirmation requests and responses, contrary to PCAOB standards.<sup>33/</sup>

37. Respondents' work papers included an accounts receivable aging report prepared by Ethos's management. The report reflected that \$3.2 million, or 54%, of reported accounts receivable was more than 90 days past due. Of this amount, \$2.6 million was attributed to a non-U.S. customer. According to the aging report, the same customer owed Ethos a current amount of \$2.5 million. Notwithstanding the significant past due amounts and the concentration of \$5.1 million, or 86%, of total receivables with one customer, Respondents failed to perform any procedures to test the allowance for doubtful accounts.

38. Respondents also failed appropriately to staff the Ethos audit, and Moore failed appropriately to supervise the audit assistant. The assistant assigned to the audit, and instructed by Moore to plan and perform the audit, had worked at the Firm for approximately one year. She had no education, training or experience with auditing or accounting matters beyond informal training from another audit assistant who likewise had no prior education or training, and limited experience with auditing or accounting matters. Based on this training, the audit assistant understood that an audit consisted solely of preparing an audit report, but not performing audit procedures designed to elicit competent evidence. As a result, the audit assistant performed few or no audit procedures during the Ethos audit. Moore failed to provide supervision commensurate with the audit assistant's limited qualifications and the complexities of the audit, failing to ensure that the assistant understood the objectives of the audit and the procedures to be performed, and failing to adequately review the assistant's work.<sup>34/</sup>

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<sup>33/</sup> See AU § 330.28, *The Confirmation Process*.

<sup>34/</sup> Ethos restated its FY 2007 financial statements on Form 10KSB/A filed with the Commission on November 20, 2008. Respondents issued an audit report dated November 19, 2008 containing an unqualified audit opinion on the restated financial statements. The restatement decreased reported revenue by more than \$9 million, or nearly 87% of originally reported revenue. The restatement also decreased accounts receivable by nearly \$6 million, or more than 98% of originally reported accounts receivable.

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### **E. Respondents Violated Section 10(b) of the Exchange Act and Commission Rule 10b-5**

39. Section 10(b) of the Exchange Act and Commission Rule 10b-5 thereunder prohibit a person, in connection with the purchase or sale of a security, from making an untrue statement of a material fact or from omitting to state a material fact necessary to make statements made, in light of the circumstances under which they were made, not misleading. To violate Section 10(b) or Rule 10b-5, a defendant must act with scienter, Aaron v. SEC, 446 U.S. 680, 695, 701-02 (1980), which the Supreme Court has defined as "a mental state embracing intent to deceive, manipulate, or defraud." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n. 12 (1976). Scienter encompasses knowing or intentional conduct, or recklessness. See, e.g., IIT v. Cornfeld, 619 F.2d 909, 923 (2d Cir. 1980). An auditor violates Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by issuing an audit report stating that the audit has been performed in accordance with PCAOB standards when he knows, or is reckless in not knowing, that the statement is false. In re: Richard P. Scalzo, CPA, Exchange Act Rel. No. 48328, 2003 SEC LEXIS 1915, at \*1 (August 13, 2003) and In re: Dennis M. Gaito, CPA, Exchange Act Rel. No. 45941, 2002 SEC LEXIS 1306, at \*1 (May 16, 2002). These statements are clearly material, as "[f]ew matters could be more important to investors than that of whether an issuer's financial statements, contained in its filings with the Commission, had, in fact, been subjected to an annual audit conducted in accordance with [PCAOB standards] in all material respects." Scalzo, 2003 SEC LEXIS 1915, at \*52-53.

40. Respondents violated Section 10(b) of the Exchange Act and Commission Rule 10b-5 by issuing audit reports in connection with Standard Drilling's, Biocoral's, and Ethos's financial statements falsely stating that the audits were conducted in accordance with PCAOB standards. The Respondents knew, or were reckless in not knowing, that few if any substantive audit procedures were performed prior to the issuance of the Firm's audit reports. Respondents also knew, or were reckless in not knowing, that they had staffed these audits with assistants who had no accounting or auditing education, experience, or training, and who executed the audits with little or no supervision by Moore.

### **F. Noncooperation in Connection with the Board's Investigation**

41. The Act authorizes the Board to impose disciplinary sanctions for a registered firm's or associated person's noncooperation with a Board investigation,<sup>35/</sup>

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<sup>35/</sup> See Section 105(b)(3) of the Act.

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and Board rules include procedures for implementing that authority.<sup>36/</sup> Noncooperation with a Board investigation includes knowingly making any false material declaration or making or using any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration. As described below, M&A failed to cooperate with a Board investigation by submitting work papers to the PCAOB it knew to contain false material declarations. Moore also failed to cooperate with a Board investigation by falsely testifying that these documents represented the Firm's work papers. Finally, M&A failed to cooperate with a Board investigation by refusing to produce certain documents called for by an Accounting Board Demand.

42. On February 28, 2008, as part of an informal inquiry, the Division of Enforcement and Investigations ("Enforcement") requested the production of certain work papers ("Document Request"). In March and April 2008, M&A produced what appeared to be copies of the work papers in response to the Document Request. Certain portions of the purported work papers, however, were created at Respondents' direction after receiving Enforcement's Document Request. These newly created work papers were not created by audit team members and did not reflect actual work performed during the audits in question.

43. On November 11, 2008, in the course of a formal investigation, Enforcement issued to Respondents an Accounting Board Demand requiring the production of, among other things, the same documents that were the subject of the Document Request. In response, Moore represented in communications with Enforcement and in sworn testimony that the documents produced to Enforcement were a true and complete set of the audit work papers. The documents, however, were significantly different than documents previously provided to the Board's Division of Registration and Inspections ("Inspections") during the course of the inspection of the Firm in 2007. When confronted with the documents produced to Inspections, Moore could not explain the discrepancies between them and the documents produced to Enforcement, but maintained that the work papers produced to Enforcement were true and correct copies of the original work papers.

44. Two months after asserting the documents produced to Enforcement were true and complete sets of the demanded audit work papers, Moore changed his story and conceded that the documents were not the original work papers.<sup>37/</sup> At no time

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<sup>36/</sup> See PCAOB Rules 5110 and 5200(a)(3).

<sup>37/</sup> The Firm subsequently produced the original work papers to Enforcement.

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previously did Moore indicate that the work papers produced to Enforcement were anything other than true and complete copies of the original work papers. In reality, Moore knew that he had caused the creation of new work papers documenting procedures not performed at the time of the audit and had them sent to Enforcement in response to the demand for the work papers supporting the original audits.

45. Lastly, M&A also failed to cooperate with the Board's investigation by refusing to produce documents called for by an Accounting Board Demand issued to the firm on March 19, 2009. On May 12, 2009, after repeatedly asking for, and receiving, extensions of the April 2, 2009 deadline to produce all documents responsive to the Accounting Board Demand, counsel for M&A informed the Enforcement staff that the Firm would not comply with the Accounting Board Demand. To date, no documents responsive to that Accounting Board Demand have been produced by M&A.

### IV.

In view of the foregoing, and to protect the interests of investors and further the public interest in the preparation of informative, fair, and independent audit reports, the Board determines it appropriate to impose the sanctions agreed to in Respondents' Offers. The Board, in determining the appropriate sanctions, has taken into account the fact that Moore has agreed to pay a civil monetary penalty to the U.S. Securities and Exchange Commission in the matter styled SEC v. Michael J. Moore and Moore & Associates Chartered, Case No. 2:09-cv-01637 (D. Nev. Filed August 27, 2009). Accordingly, it is hereby ORDERED that:

- A. Pursuant to Sections 105(b)(3) and 105(c)(4)(A) of the Act and PCAOB Rules 5300(a)(1) and 5300(b)(1), the registration of Moore & Associates, Chartered is revoked; and
- B. Pursuant to Sections 105(b)(3) and 105(c)(4)(B) of the Act and PCAOB Rules 5300(a)(2) and 5300(b)(1), Michael J. Moore is barred from being an associated person of a registered public accounting firm, as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i).

ISSUED BY THE BOARD.

/s/ J. Gordon Seymour

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J. Gordon Seymour  
Secretary

August 27, 2009