



**ORDER**

to obtain an engagement quality review on three audits of two issuers from fiscal year ("FY") 2012 through 2013, (2) Thomas directly and substantially contributed to the Firm's violations of AS 7 concerning the requirement for engagement quality reviews, and (3) Respondents violated Auditing Standard No. 3, *Audit Documentation* ("AS 3"), by failing to retain audit documentation with respect to an issuer audit engagement for 2013.

**II.**

In anticipation of the issuance of this Amended Order Instituting Disciplinary Proceedings, and Order Making Findings and Imposing Sanctions ("Order"), and pursuant to PCAOB Rule 5205, Respondents have submitted their Offers, which 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 are admitted, Respondents consent to the entry of this Order as set forth below.<sup>1</sup>

**III.**

On the basis of Respondents' Offers, the Board finds<sup>2</sup> that:

**A. Respondents**

1. Clay Thomas, P.C. is and, at all relevant times, was a professional corporation organized under the laws of the state of Texas. The Firm's office is located in Nacogdoches, Texas. The Firm is and, at all relevant times, was registered with the Board pursuant to Section 102 of the Act and PCAOB Rules. The Firm was licensed to

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<sup>1</sup> The findings herein are made pursuant to Respondents' Offers and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> The sanctions that the Board is imposing on Respondents in this Order are imposed pursuant to Sections 105(b)(3), 105(c)(4), and 105(c)(5) of the Act, 15 U.S.C. §§ 7215(b)(3), 7215(c)(4), and 7215(c)(5), and PCAOB Rules 5300(a) and (b). The Board finds that Respondents' conduct meets the conditions set out in Section 105(c)(5), which provides that certain 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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practice public accountancy by the Texas State Board of Public Accountancy ("TSBPA") (License No. C04871). The Firm's license expired as of September 30, 2014. Public records indicate that the Firm issued two audit reports for issuer clients in 2015. As of its 2015 Annual Report on PCAOB Form 2, the Firm had one principal (Clay Thomas, CPA) and no audit staff.

2. Clay Thomas, CPA, 57, is and, at all relevant times, was the sole owner of the Firm and a certified public accountant licensed by the TSBPA (License No. 077520). In addition, in 2013, Thomas was admitted to the State Bar of Texas. Thomas is and, at all relevant times, was 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). Thomas was the engagement partner on the Firm's audits of the financial statements of Biofuels Power Corp. ("Biofuels") for FY 2012, 2013, and 2014 and on the Firm's audits of the financial statements of Woodgate Energy Corp. ("Woodgate") for FY 2013 and 2014.

**B. Summary**

3. This matter concerns Respondents' repeated failure to cooperate with a Board investigation and comply with PCAOB rules and standards in connection with the audits of two issuer audit clients.

4. First, Thomas failed to appear for testimony, and Respondents failed to produce certain documents and information, in response to Accounting Board Demands ("ABDs") the Division issued during a formal investigation concerning the Firm's audits of Biofuels and Woodgate. Those failures occurred despite the Division providing Respondents with numerous accommodations and extensions of deadlines.

5. Second, in violation of PCAOB standards, the Firm failed to obtain engagement quality reviews in connection with its audits of Biofuels for FY 2012 and FY 2013, and Woodgate for FY 2013.

6. Third, Thomas failed to comply with PCAOB rules with respect to the same Biofuels and Woodgate audits. Thomas took or omitted to take actions knowing, or recklessly not knowing, that his acts and omission would directly and substantially contribute to the Firm's violations of PCAOB standards.

7. Fourth, Respondents violated AS 3, by failing to retain audit documentation for the Biofuels FY 2013 audit for the required period of time.

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### C. Respondents Failed to Cooperate with a PCAOB Investigation

8. Section 105(b)(3) of the Act authorizes the Board to impose disciplinary sanctions if a registered public accounting firm or associated person refuses to cooperate with a Board investigation. Board rules include procedures for implementing that authority.<sup>3</sup> Noncooperation with a Board investigation includes failing to comply with an ABD.<sup>4</sup> As described below, Thomas failed to comply with a May 18, 2015 ABD requiring him to appear for sworn testimony.<sup>5</sup> Further, Respondents failed to comply with ABDs issued on April 29, 2015, by failing to produce certain documents and information.<sup>6</sup>

#### Thomas's Failure to Appear for Testimony Pursuant to an ABD

9. On December 16, 2014, the Board issued an Order of Formal Investigation ("OFI") related to potential violations of PCAOB rules and standards involving the Firm's audits of the financial statements of Biofuels<sup>7</sup> and Woodgate.<sup>8</sup> Thomas was the sole auditor involved in those audits.

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

<sup>4</sup> See PCAOB Rule 5110(a)(1).

<sup>5</sup> See PCAOB Rules 5102(a) and 5110.

<sup>6</sup> See PCAOB Rules 5103(a) and 5110.

<sup>7</sup> At all relevant times Biofuels was a Texas corporation headquartered in Humble, Texas. Its public filings disclosed that it was a distributed energy company engaged in the building and operation of small-scale distributed electrical power generating plants and was engaged in refining, blending, and reprocessing biofuels for use in its electrical power generating facilities. At all relevant times, Biofuels' common stock was registered under Section 12(g) of the Securities Exchange Act of 1934; its common stock was quoted on the OTC Pink Marketplace under the symbol "BFLS.OB"; and Biofuels was an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

<sup>8</sup> At all relevant times, Woodgate was a Delaware corporation headquartered in Houston, Texas. Its public filings disclosed that it was engaged in the business of coal bed methane energy and the production of associated natural gas. At all relevant times, Woodgate's common stock was registered under Section 12(g) of the Exchange Act; its common stock was issued pursuant to an exemption from registration



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10. Pursuant to the OFI, the Division issued an ABD to Thomas on May 18, 2015. The ABD required Thomas to appear for sworn testimony. The ABD set his testimony to begin on June 16, 2015, and continue day-to-day until completed, at the PCAOB's offices in Washington, D.C.

11. On May 18 and May 21, 2015, the Division left voicemails for Thomas at three different telephone numbers requesting Thomas to confirm receipt of the ABD and his appearance for testimony that was scheduled to commence on June 16, 2015. The Division also sent an e-mail to Thomas on May 21, 2015, again requesting that he confirm receipt of the ABD and whether he would be appearing for testimony. Thomas did not reply or otherwise respond to the voicemails or email.

12. On May 27, 2015, the Division sent an email requesting that Thomas provide a time when he was available for a telephone call on May 28, 2015 to discuss several issues, including his testimony. On May 27, 2015, the Division received a letter from Thomas informing the Division that he could not appear for testimony on the dates set forth in the May 18, 2015 ABD because, in his capacity as an attorney, he had a trial on those dates. Thomas did not provide alternative dates for testimony.

13. On June 1, 2015, the Division sent a letter to Thomas requesting that he provide alternative dates for testimony by June 3, 2015, reminding him of the importance of complying with the Board's ABDs and formal investigation, and explaining that the "PCAOB may institute a disciplinary proceeding for noncooperation with an investigation when a registered public accounting firm or a person associated with a registered public accounting firm fails to comply with an ABD." Thomas responded to the Division's June 1 letter in an email dated June 5, 2015, but declined to offer alternative dates for his testimony.

14. On June 8, 2015, the Division left voicemail messages at Thomas's telephone numbers and sent an email to Thomas asking him to contact the Division.

15. The Division did not receive any response from Thomas. On June 16, 2015, Thomas failed to appear for scheduled testimony.

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of the Securities Act of 1933, as amended, as part of a private placement of securities; and Woodgate was an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

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Respondents' Failure to Respond to Certain Demands for Documents and Information

16. Following the issuance of the OFI, on December 19, 2014, the Division issued an ABD directed to the Firm for documents and information (the "December ABD"). The December ABD required the Firm to produce responsive documents and information by January 9, 2015. The demanded documents and information were relevant to the Board's investigation. Specifically, the December ABD required the Firm to produce, among other things, documents relating to the Firm's audits and reviews of Biofuels and Woodgate, peer reviews, and the Firm's system of quality control.

17. On February 2, 2015, the Division issued a separate ABD to Thomas (the "February ABD") for, among other things, the same documents and information demanded from the Firm in the December ABD. The February ABD required Thomas to produce responsive documents and information by February 17, 2015.

18. Respondents failed to produce certain documents and information, including documents concerning the Firm's FY 2013 audit of Biofuels, by the deadlines for the December ABD and February ABD.

19. In a March 17, 2015 letter to the Firm, the Division detailed the omissions in the Firm's and Thomas's productions, including their failure to produce audit documentation concerning the Firm's FY 2013 audit of Biofuels. In the letter, the Division staff reminded Respondents of the importance of their cooperation with the Board's ABDs and formal investigation.

20. In subsequent communications, Thomas stated that he had provided the original FY 2013 Biofuels audit documentation to Respondents' former counsel ("Former Counsel") for production to the Division and had not retained a copy. Thomas indicated that he would contact Former Counsel and request that Former Counsel send the FY 2013 Biofuels audit documentation to the Division.

21. After the Division continued unsuccessfully to obtain further information concerning the status of the FY 2013 Biofuels audit documentation, Thomas sent the Division an email on April 24, 2015. Thomas's April 24 email to the Division forwarded an email he had received from Former Counsel on the same day. Former Counsel's email stated that Thomas "never provided the documents in question" (the FY 2013 Biofuels audit documentation) to Former Counsel.

22. On April 29, 2015, the Division issued Thomas and the Firm separate ABDs (the "April ABDs") for documents and information regarding their assertion that they had provided the FY 2013 Biofuels audit documentation to Former Counsel. The

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April ABDs required Thomas and the Firm to produce responsive documents and information by May 13, 2015.

23. Aside from demands that Thomas and the Firm provide (a) a description of the search they performed in response to the April ABDs; and (b) a certification that they had produced all responsive documents, the April ABDs contained only three demands. Respondents failed to produce any documents or information in response to two of those three demands.

24. One of the two demands with which Respondents failed to comply (Item III.A.1) required them to provide a detailed description of all documents shipped by Respondents to Former Counsel. Respondents never produced the demanded information.

25. The other demand with which Respondents failed to comply (Item III.A.3) required them to provide "a sworn written declaration or affidavit describing in reasonable detail Clay Thomas's shipment to [Former Counsel] of the original complete and final set of audit documentation assembled for retention in connection with the Firm's audits and reviews of Biofuels Power Corporation's consolidated financial statements . . ." Respondents never responded to this demand.

26. In a June 1, 2015 letter, the Division advised Respondents that they had missed the May 13, 2015 deadline to respond to Items III.A.1 and 3 in the April ABDs. The Division informed Respondents that those documents and information should be provided immediately, again reminded Respondents of the importance of complying with the Board's ABDs and formal investigation, and again explained "that the PCAOB may institute a disciplinary proceeding for noncooperation with an investigation when a registered public accounting firm or a person associated with a registered public accounting firm fails to comply with an ABD." In addition, along with the April ABDs, the Division staff enclosed copies of an informational PCAOB Form ENF-1, detailing the consequences of a refusal to comply with an ABD.

The Charging Letter and Respondents' Statement of Position

27. On June 19, 2015, the Division sent Respondents a letter (the "Charging Letter") outlining the Division's intent to recommend that the Board commence a disciplinary proceeding to determine whether Thomas had failed to cooperate with a Board investigation, by failing to comply with the May 18, 2015 ABD for testimony, and whether both he and the Firm had failed to cooperate with a Board investigation by failing to comply with the April ABDs for documents and information.



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28. The Charging Letter detailed the events surrounding (a) Thomas's failure to appear for sworn testimony; and (b) Respondents' failure to comply with two specific demands for documents and information in the April ABDs.

29. The Division notified Respondents that they could submit, by July 6, 2015, a written statement to the Division, pursuant to PCAOB Rule 5109(d), setting forth their position regarding whether a disciplinary proceeding should be commenced.

30. On July 6, 2015, Respondents submitted a brief statement of position to the Charging Letter (the "SOP"). The SOP did not offer any alternative dates for the testimony of Thomas, and Respondents did not produce any documents or information requested in Items III.A.1 and 3 of the April ABDs.

31. In the SOP, Respondents provided two responses with respect to Thomas's failure to appear for testimony or provide alternative dates. First, the SOP asserted that Thomas had "several jury trials . . . converging on the same several weeks for quite some time" and that, if the Division had "pinpointed a date," Thomas "might have been capable of scheduling a day for testimony to be taken in Texas but little more." Second, the SOP asserted that it is "beyond [Thomas's] financial reach to come to Washington for several days."

32. With respect to the April ABDs for documents and information, the SOP did not address Respondents' failure to provide a list of all documents they had shipped to their Former Counsel, including materials that Respondents' claim were original documents that were lost in shipment (Item III.A.1 of the April ABDs). And although the SOP stated that Respondents would be "happy to reaffirm" the facts surrounding their shipment of documents to Former Counsel, they did not enclose any sworn written affidavit or declaration, as demanded by Item III.A.3 of the April ABDs.

33. On July 14, 2015, the Division sent Respondents a letter addressing their SOP. That letter (a) noted Thomas's continuing failure to provide alternative testimony dates; and (b) pointed out that Thomas was continuing to audit public companies and issue audit reports while contending that he was unavailable for testimony. In addition, the July 14 letter advised Thomas that the Division was willing, under the circumstances, to either reimburse his reasonable costs associated with traveling to Washington, D.C. to testify, or conduct his testimony at the PCAOB's office in Texas, where Thomas lives. The letter further advised Thomas that the Division was willing to conduct his testimony over four consecutive days in either August or September 2015 in either Washington, D.C. or Irving, Texas, so long as he identified dates for his testimony by no later than July 17, 2015.



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34. On July 22, 2015, the Division received an email from Thomas in which he stated that he has "been attending several hearings around the state and have not been home to receive the Fedex [containing the Division's July 14, 2015 letter]. I will check back through my emails and respond as soon as possible."

35. Respondents never responded to the July 14, 2015 letter from the Division, Thomas never offered alternative dates for his testimony, and Respondents never produced documents and information demanded in Items III.A.1 and 3 of the April ABDs.

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36. As a result of the foregoing conduct, Thomas failed to cooperate with a Board investigation by failing to comply with an ABD demanding his sworn testimony. Further, both Respondents failed to cooperate with a Board investigation by failing to comply with ABDs requiring the production of certain documents and information to the Division.

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

37. 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 and related professional practice standards.<sup>9</sup> An 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. Those standards provide, among other things, that for each audit an engagement quality review and concurring approval of issuance are required in accordance with AS 7 and audit documentation is to be prepared and retained in accordance with AS 3.

**The Firm Failed to Obtain Engagement Quality Reviews**

38. For audits of financial statements for years beginning on or after December 15, 2009, AS 7 requires that an engagement quality review be performed on audits and interim reviews conducted pursuant to PCAOB standards.<sup>10</sup> AS 7 also

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<sup>9</sup> PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*. This Order applies PCAOB auditing standards in effect at the time of the conduct described herein.

<sup>10</sup> See AS 7 ¶ 1.



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provides that a firm may grant permission to a client to use the engagement report only after an engagement quality reviewer provides concurring approval of issuance of the report.<sup>11</sup>

39. As described below, the Firm failed to obtain an engagement quality review for each of the audits described below even though an engagement quality review was required to be performed.

### *Audits of Biofuels for FY 2012 and FY 2013*

40. The Firm was engaged to audit the financial statements of Biofuels for the years ended December 31, 2012 and 2013. The Firm issued an audit report, dated April 22, 2013, on Biofuels' FY 2012 financial statements. That audit report was included in Biofuels' Form 10-K filed with the Securities and Exchange Commission ("Commission") on April 24, 2013, and in Biofuels' Forms 10-K/A filed December 30, 2013, and January 22, 2014. The next year, the Firm issued an audit report, dated April 11, 2014, on Biofuels' FY 2013 financial statements. That audit report was included in Biofuels' Form 10-K filed with the Commission on April 15, 2014. The Firm improperly issued the audit reports on Biofuels' FY 2012 and FY 2013 financial statements without obtaining an engagement quality review and concurring approval of issuance. As a result, the Firm violated AS 7.

### *Audit of Woodgate for FY 2013*

41. The Firm was engaged to audit the financial statements of Woodgate for the year ended December 31, 2013. The Firm issued an audit report, dated April 11, 2014, on Woodgate's December 31, 2013 financial statements. That audit report was included in Woodgate's Form 10-K filed with the Commission on April 15, 2014 and also in a Form 10-K/A filed July 29, 2014. As a result of Woodgate's restatement of its FY 2013 financial statements, the Firm issued an audit report for FY 2013, dated August 19, 2014, which was included in Woodgate's Form 10-K/A filed with the Commission on August 29, 2014. The Firm improperly issued the audit reports without obtaining an engagement quality review and concurring approval of issuance. As a result, the Firm violated AS 7.

### Thomas Contributed to the Firm's Violations of PCAOB Rules and Standards

42. PCAOB rules prohibit an associated person of a registered public accounting firm from "tak[ing] or omit[ting] to take an action knowing, or recklessly not

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<sup>11</sup> Id. at ¶ 13.

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knowing, that the act or omission would directly and substantially contribute to a violation by that registered public accounting firm of the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards."<sup>12</sup>

43. Thomas, the sole owner and only member of the Firm, was principally responsible for the audits conducted by the Firm. Accordingly, Thomas had overall responsibility for ensuring that the Firm complied with PCAOB rules and standards. Thomas knew, or was reckless in not knowing, that he was directly and substantially contributing to the Firm's violations of AS 7 when he caused the Firm to grant permission to Biofuels and Woodgate to use audit reports without the Firm having obtained the required engagement quality reviews and concurring approvals of issuance. As a result, Thomas violated PCAOB Rule 3502.

### Respondents Failed to Comply with AS 3

44. Respondents also failed to comply with PCAOB audit documentation standards in connection with the FY 2013 Biofuels audit. Pursuant to AS 3, an "auditor must prepare audit documentation in connection with each engagement conducted pursuant to the standards of the PCAOB."<sup>13</sup> AS 3 further requires the auditor to "retain audit documentation for seven years from the date the auditor grants permission to use the auditor's report in connection with the issuance of the company's financial statements (*report release date*), unless a longer period of time is required by law."<sup>14</sup>

45. As described above, Thomas informed the Division, in a letter dated April 14, 2015, that he had sent the original FY 2013 Biofuels audit documentation to Respondents' Former Counsel without retaining a copy of that audit documentation. Respondents thereby violated AS 3<sup>15</sup> and were unable to provide the FY 2013 Biofuels audit documentation to the Division in response to demands made during its investigation.

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<sup>12</sup> PCAOB Rule 3502, *Responsibility Not to Knowingly or Recklessly Contribute to Violations*.

<sup>13</sup> AS 3 ¶ 4.

<sup>14</sup> AS 3 ¶ 14.

<sup>15</sup> See id.

**ORDER**

**IV.**

In view of the foregoing, and to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports, the Board determines it appropriate to impose the sanctions agreed to in Respondents' Offers. Accordingly, it is hereby ORDERED that:

- A. Pursuant to Sections 105(b)(3)(A)(iii) and 105(c)(4)(E) of the Act and PCAOB Rules 5300(a)(5) and 5300(b)(1), Clay Thomas, P.C. and Clay Thomas, CPA are hereby censured;
- B. Pursuant to Section 105(b)(3)(A)(ii) and 105(c)(4)(A) of the Act and PCAOB Rules 5300(a)(1) and 5300(b)(1), the registration of Clay Thomas, P.C. is revoked; and
- C. Pursuant to Section 105(b)(3)(A)(i) and 105(c)(4)(B) of the Act and PCAOB Rules 5300(a)(2) and 5300(b)(1), Clay Thomas, CPA 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).<sup>16</sup>

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

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Phoebe W. Brown  
Secretary

February 18, 2016

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<sup>16</sup> As a consequence of the bar, the provisions of Section 105(c)(7)(B) of the Act will apply with respect to Thomas. Section 105(c)(7)(B) of the Act provides that "[i]t shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any issuer, broker, or dealer in an accountancy or a financial management capacity, and for any issuer, broker, or dealer that knew, or in the exercise of reasonable care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission."