



**ORDER**

**II.**

In anticipation of the 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 facts contained in paragraphs 9 through 17 below and the Board's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Disciplinary Proceedings, Making Findings and Imposing Sanctions ("Order") as set forth below.<sup>3</sup>

**III.**

On the basis of Respondents' Offers, the Board finds that:<sup>4</sup>

**A. Respondents**

1. Donahue Associates LLC is, and at all relevant times was, a limited liability corporation organized under the laws of New Jersey, and headquartered in Monmouth Beach, New Jersey. 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 is licensed to practice public accountancy in New Jersey (Lic. No. 20CB00407600). At all relevant times, the Firm was the external auditor for each of the issuers identified below.

2. Brian D. Donahue, CPA, age 58, is, and at all relevant times was, a certified public accountant licensed by the State of New Jersey (Lic. No. 20CC01355000). At all relevant times, Donahue was the sole partner and President of the Firm. Donahue is, and at all relevant times was, an associated person of a

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<sup>3</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.

<sup>4</sup> The Board finds that Respondents' conduct described in this Order meets the conditions set out in Section 105(c)(5) of the Act, 15 U.S.C. § 7215(c)(5), which provides that certain sanctions may be imposed in the event of: (1) intentional or knowing conduct, including reckless conduct, that results in a violation of the applicable statutory, regulatory, or professional standard; or (2) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

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registered public accounting firm as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i).

**B. Summary**

3. This matter concerns the Firm's failure to comply with Auditing Standard No. 7, *Engagement Quality Review* ("AS 7"), with respect to three issuer audit clients, by failing to obtain an engagement quality review of each audit, even though it was required, and despite being on notice from PCAOB inspectors.

4. Additionally, in connection with the Firm's audit report for one of the above audits, the Firm failed to take the steps required by Section 10A(b)(2) of the Exchange Act after becoming aware that an apparent illegal act had occurred.

5. With respect to each of the three audits in which the Firm failed to have an engagement quality review and with respect to the discovery of an illegal act, Donahue took or omitted to take actions knowing, or recklessly not knowing, that his acts and omissions would directly and substantially contribute to the Firm's violations of AS 7 and Exchange Act Section 10A(b)(2) in violation of PCAOB Rule 3502.

**C. Respondents Violated Section 10A(b)(2) of the Exchange Act and PCAOB Rules and Standards**

6. 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>5</sup>

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

7. For audits of financial statements for fiscal years beginning on or after December 15, 2009, AS 7 requires that an engagement quality review be performed on audits, interim reviews, and certain attestation engagements conducted pursuant to PCAOB standards.<sup>6</sup> AS 7 also 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>7</sup>

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<sup>5</sup> PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*, and PCAOB Rule 3200T, *Interim Auditing Standards*.

<sup>6</sup> See AS 7 ¶ 1.

<sup>7</sup> *Id.* at ¶ 13, 18 and 18c.



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8. In addition, 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 knowing, that the act or omission would directly and substantially contribute to a violation by that registered public accounting firm of the Act, 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 [Securities and Exchange] Commission issued under the Act, or professional standards."<sup>8</sup>

9. 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 and Donahue directly and substantially contributed to those violations.

*The Firm Failed to Obtain Engagement Quality Reviews Even After the PCAOB's Inspection Staff Put the Firm on Notice of the Standard*

10. In connection with an October 2012 inspection of the Firm, the PCAOB's Inspections staff reminded the Firm that it needed to comply with AS 7 for all audits and interim reviews performed by the Firm for fiscal years beginning on or after December 15, 2009. Despite being on notice, the Firm failed to comply with AS 7 regarding the performance of engagement quality reviews in connection with the audits described below.

*Audit of Universal Resources' FY 2013*

11. At all relevant times, Universal Resources (f/k/a Global Immune Technologies, Inc.) ("Universal") was a Wyoming corporation headquartered in Burlington, Vermont. Universal's public filings disclosed that it was a development stage company that intended to be a holding company of an American-based food distribution company serving direct delivery to customers in their homes. At all relevant times, Universal was an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

12. The Firm was engaged as Universal's external auditor for fiscal year ended March 31, 2013. On June 19, 2013, Universal filed a Form 10-K for fiscal year ended March 31, 2013 with the Commission. The Firm improperly permitted the issuance of its audit report dated June 11, 2013, which was included in Universal's

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<sup>8</sup> PCAOB Rule 3502, *Responsibility Not to Knowingly or Recklessly Contribute to Violations*.



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Form 10-K filing, without obtaining an engagement quality review and concurring approval of issuance. As a result, the Firm violated AS 7.<sup>9</sup>

### *Audit of CryoStem's FY 2013*

13. At all relevant times, American CryoStem Corporation ("CryoStem") was a Nevada corporation headquartered in Eatontown, New Jersey. CryoStem's public filings disclosed that it was a developer, marketer, and global licensor of patented adipose (fat) tissue-based cellular technologies, bio-materials, and related proprietary services, with a focus on clinical processing, commercial bio-banking, and application development for adipose tissue and adipose-derived stem cells. At all relevant times, CryoStem was an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

14. The Firm was engaged as CryoStem's external auditor for fiscal year ended September 30, 2013. On January 14, 2014, CryoStem filed with the Commission a Form 10-K for fiscal year ended September 30, 2013. The Firm improperly permitted the issuance of its audit report dated December 10, 2013, which was included in CryoStem's Form 10-K filing, without obtaining an engagement quality review and concurring approval of issuance. As a result, the Firm violated AS 7.<sup>10</sup>

### *Audit of The Everest Fund, L.P.'s FY 2014*

15. At all relevant times, The Everest Fund, L.P. ("Everest") was an Iowa limited partnership headquartered in Fairfield, Iowa. Everest's public filings disclose that it is in the business of speculative trading of commodity futures, options, and forward contracts. According to Everest's disclosures, the company's units of limited partnership interest are registered under Section 12(g) of the Exchange Act, and trade on recognized global futures exchanges and over the counter contracts, in the form of forward foreign currency transactions. At all relevant times, Everest 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 Everest's external auditor for fiscal year ended December 31, 2014. On March 30, 2015, Everest filed with the Commission a Form 10-K for fiscal year ended December 31, 2014. The Firm improperly permitted the issuance of its audit report dated March 16, 2015, which was included in Everest's Form 10-K

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<sup>9</sup> See AS 7 ¶ 13.

<sup>10</sup> Id.

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filing, without obtaining an engagement quality review and concurring approval of issuance. As a result, the Firm violated AS 7.<sup>11</sup>

Donahue Contributed to the Firm's Violations of AS 7

17. Donahue, the sole partner and President of the Firm, was solely responsible for the audits conducted by the Firm. Accordingly, Donahue had overall responsibility for ensuring that the Firm complied with PCAOB rules and standards. Donahue knew, or was reckless in not knowing, that he was directly and substantially contributing to the Firm's violations of AS 7, described above. As a result, he violated PCAOB Rule 3502.

Respondents Failed to Comply with Exchange Act Section 10A(b)(2)

18. When conducting an audit of issuer financial statements required pursuant to the Exchange Act, registered firms must comply with the requirements of Section 10A of the Exchange Act. Section 10A(b) requires a firm to take certain defined actions if, in the course of an audit, the auditor detects or otherwise becomes aware of information indicating that an illegal act has occurred.<sup>12</sup>

19. Unless the illegal act is clearly inconsequential, Section 10A(b)(1) requires that the firm inform the appropriate level of management about the illegal act and assure itself that the issuer's audit committee, or board of directors in the absence of an audit committee, is adequately informed with respect to the illegal act.

20. In addition, under Section 10A(b)(1), if a firm concludes that it is likely that an illegal act occurred, the firm must consider the effect of the illegal act on the issuer's financial statements.<sup>13</sup> If the auditor concludes that the illegal act has a material effect on the financial statements, that senior management has not taken (and the board of directors has not caused them to take) timely and appropriate remedial actions, and that the absence of remedial action is reasonably expected to warrant departure from a standard report of the firm, when made, or warrant resignation from the engagement, then Section 10A(b)(2) requires the firm to report those conclusions to the board of directors as soon as practicable. If the board of directors fails to take certain required

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<sup>11</sup> Id.

<sup>12</sup> See Section 10A(b) of the Exchange Act.

<sup>13</sup> See Section 10A(b)(1)(A) of the Exchange Act.



## ORDER

actions in response to such a report, Section 10A(b)(3) requires the firm to resign from the engagement or report its Section 10A(b)(2) conclusions to the Commission.<sup>14</sup>

21. In August 2013, Respondents discovered that incorrect financial statements understating Universal's net loss and assets had accompanied its Universal audit report dated June 11, 2013. Respondents became aware at the time of the discovery that Universal had or may have violated federal securities laws and regulations, in particular, the requirement that periodic reports contain all information necessary to ensure that statements made in such reports are not materially misleading.<sup>15</sup>

22. Respondents knew that the apparently illegal act had a material effect on Universal's financial statements, and requested that the issuer file corrected financial statements. The Firm contacted Universal's management and counsel, but when the financial statements were not promptly re-filed after discussions with management and issuer counsel, Respondents failed to directly report its conclusions to the board of directors and failed to resign from the engagement or report its Section 10A(b)(2) conclusions to the Commission.

23. On January 1, 2014, the Firm was terminated by Universal as its external auditor. On January 6, 2014, Universal filed a Form 8-K with the Commission indicating that it had changed auditors. Respondents submitted a letter to Commission staff accompanying Universal's Form 8-K filing stating that it agreed with Universal's contention that there were no disagreements between it and the Firm and that there were no reportable events. At the time the letter was submitted, Respondents failed to ascertain whether corrected financial statements had been re-filed by Universal, and failed to evaluate whether Universal's failure to re-file corrected financial statements constituted a disagreement or a reportable event under Item 304 of Commission Regulation S-K.

24. On March 17, 2014, Universal filed a Form 8-K stating that there were accounting errors in its financial statements from fiscal year ended March 31, 2013, as well as its first, second, and third quarters of fiscal year ended March 31, 2013, and its first and second quarters of fiscal year ended March 31, 2014. The Form 8-K stated that

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<sup>14</sup> If the firm resigns from the engagement pursuant to Section 10A(b)(3)(A), the firm must report the matter to the Commission pursuant to Section 10A(b)(4).

<sup>15</sup> See Exchange Act Rule 12b-20; see also SEC v. Parklane Hosiery, Inc., 558 F.2d 1083, 1085 n.1 (2d Cir. 1977) (implicit in requirement to file annual report is requirement that report not be materially false or misleading).

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Universal concluded that the previously issued 2013 financial statements and the first and second quarters of fiscal 2014 should no longer be relied upon.

25. In failing to take appropriate steps as described above, the Firm violated Exchange Act Section 10A(b)(2).

Donahue Contributed to the Firm's Violations of Exchange Act Section 10A(b)(2)

26. Donahue knew, or was reckless in not knowing, that he was directly and substantially contributing to the Firm's violations of Exchange Act Section 10A(b)(2). As a result, Donahue violated PCAOB Rule 3502.

**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 Section 105(c)(4)(E) of the Act and PCAOB Rule 5300(a)(5), Donahue Associates LLC, and Brian D. Donahue, CPA are hereby censured;
- B. Pursuant to Section 105(c)(4)(B) of the Act and PCAOB Rule 5300(a)(2), Brian D. Donahue, 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>
- C. After one (1) year from the date of this Order, Brian D. Donahue, CPA may file a petition, pursuant to PCAOB Rule 5302(b), for Board consent to associate with a registered public accounting firm;

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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 Donahue. 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.”

**ORDER**

- D. Pursuant to Section 105(c)(4)(A) of the Act and PCAOB Rule 5300(a)(1), the registration of Donahue Associates LLC is revoked;
- E. After one (1) year from the date of this Order, Donahue Associates LLC may reapply for registration by filing an application pursuant to PCAOB Rule 2101; and
- F. Pursuant to Section 105(c)(4)(D) of the Act and PCAOB Rule 5300(a)(4), a civil money penalty in the amount of \$5,000 is imposed upon Donahue Associates LLC. All funds collected by the Board as a result of the assessment of this civil money penalty will be used in accordance with Section 109(c)(2) of the Act. Donahue Associates LLC shall pay this civil money penalty within 10 days of the issuance of this Order by (a) wire transfer in accordance with instructions furnished by Board staff; or (b) United States postal money order, certified check, bank cashier's check or bank money order; (c) made payable to the Public Company Accounting Oversight Board; (d) delivered to the Controller, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington, D.C. 20006; and (e) submitted under a cover letter which identifies Donahue Associates LLC as a Respondent in these proceedings, sets forth the title and PCAOB Release 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 the Office of the Secretary, Attention: Phoebe Brown, Secretary, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington, D.C. 20006.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

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Phoebe W. Brown  
Secretary

June 14, 2016