

ORDER

I.

The Board deems it necessary and appropriate, for the protection of investors and to further the public interest in the preparation of informative, accurate and independent audit reports, that disciplinary proceedings be, and hereby are, instituted pursuant to Section 105(c) of the Sarbanes-Oxley Act of 2002, as amended ("Act"), and PCAOB Rule 5200(a)(1) against the Firm and Carlson ("Respondents").

II.

In anticipation of the institution of these proceedings and pursuant to PCAOB Rule 5205, Respondents each submitted an Offer of Settlement ("Offers") that the Board has determined to accept. Respondents admit the facts, findings, and violations set forth below, admit the Board's jurisdiction over each of them and the subject matter of this proceeding, and consent to entry of this Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions ("Order").³

III.

On the basis of Respondents' Offers, the Board finds that:⁴

A. Respondents

1. Roth & Company, formed in 1990, is a registered public accounting firm located in Des Moines, Iowa. The Firm is licensed by the Iowa Accountancy Examining Board (license no. 2009-373). At all relevant times, the Firm was registered with the Board pursuant to Section 102 of the Act and Board rules.

³ 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.

⁴ 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.



ORDER

2. Jerome A. Carlson, CPA, 64, of Clives, Iowa, is a certified public accountant licensed by the Iowa Accountancy Examining Board (license no. 002998). He is a shareholder of Roth & Company. Carlson served as the engagement partner for the Firm's audits of the 2013 and 2014 financial statements of a broker-dealer audit client ("Broker-Dealer"). At all relevant times, Carlson is and 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).

B. Summary

3. Carlson and the Firm maintained and prepared accounting records and prepared financial statements for the year ended December 31, 2013 for a Broker-Dealer. As a result, Roth & Company was not independent of the Broker-Dealer under auditor independence criteria in effect at the time as established by the Commission and made applicable by Exchange Act Rule 17a-5 to audits of brokers and dealers.⁵ The Firm audited those financial statements ("2013 Audit") and issued an audit report ("2013 Audit Report"), which the Broker-Dealer included with the financial statements when it filed them with the Commission. The Firm represented in the 2013 Audit Report that the audit had been performed in accordance with Generally Accepted Auditing Standards ("GAAS").⁶ Because GAAS requires independence, however, this representation violated Rule 17a-5(i), which at the time required the audit report to state whether the audit was made in accordance with GAAS.

4. Through his actions, Carlson directly and substantially contributed to the Firm's violation of Rule 17a-5(i) and thereby violated PCAOB Rule 3502, *Responsibility Not to Knowingly or Recklessly Contribute to Violations*.

5. Board inspection staff reviewed aspects of the Firm's December 31, 2013 audit of the Broker-Dealer. The staff communicated to the Firm that the Firm's

⁵ Exchange Act Rule 17a-5, referenced throughout this Order as "Rule 17a-5," is found at 17 C.F.R. § 240.17a-5.

⁶ Under the rule provisions in effect during, and applicable to, the 2013 Audit, Rule 17a-5(g) required that audits of brokers and dealers be performed in accordance with GAAS. On July 30, 2013, the Commission adopted certain amendments to Rule 17a-5 ("Rule 17a-5 amendments"). See Broker-Dealer Reports, SEC Exchange Act Release No. 34-70073 (July 30, 2013), 78 Fed. Reg. 51910 (Aug. 21, 2013). Under the Rule 17a-5 amendments, Rule 17a-5(g) now sets forth that audits of brokers and dealers be performed in accordance with PCAOB standards, effective for audits of fiscal years ending on or after June 1, 2014.

ORDER

maintenance and preparation of accounting records and preparation of financial statements for the Broker-Dealer had impaired the Firm's independence. Notwithstanding that communication, Carlson and the Firm again maintained and prepared accounting records and prepared financial statements for the year ended December 31, 2014 for the Broker-Dealer. Carlson and the Firm took substantially the same steps to do so as they had the previous year, again impairing the Firm's independence. The Firm performed an audit of those financial statements ("2014 Audit") and issued a report on that audit ("2014 Audit Report"), which the Broker-Dealer included with the financial statements when it filed them with the Commission. As a result, Carlson and the Firm violated PCAOB Rule 3520 by failing to satisfy the independence criteria applicable to the engagement, including the criteria set out in Rule 2-01(c)(4)(i) of Commission Regulation S-X, and violated AU § 220, *Independence*.⁷

C. Respondents Violated a Commission Rule and Board Rules and Auditing Standards

6. Rule 17a-5(d)(1) requires, among other things, that every broker or dealer registered under section 15 of the Securities Exchange Act of 1934 file annually a financial report audited by an independent public accountant. Rule 17a-5(d)(2) requires that the financial report filed by a registered broker or dealer, among other things, contain a Statement of Financial Condition, a Statement of Income, a Statement of Cash Flows, a Statement of Changes in Stockholders' or Partners' or Sole Proprietor's Equity, and a Statement of Changes in Liabilities Subordinated to Claims of General Creditors.

7. Rule 17a-5 also requires that an independent public accountant give an opinion with respect to the statements filed pursuant to paragraph 17a-5(d).⁸ Rule 17a-5(f) requires that the public accountant be independent in accordance with the provisions of Rules 2-01(b) and (c) of Regulation S-X.⁹

⁷ Pursuant to amendments to Rule 17a-5 and PCAOB Rule 3520 that took effect before the 2014 Audit, both Rule 3520 and PCAOB auditing standards applied to the 2014 Audit.

⁸ Before the amendment of Rule 17a-5 and during the 2013 Audit, this requirement was set out in Rule 17a-5(e)(1)(i). After the amendment, including during the 2014 Audit, it is set out in Rule 17a-5(g).

⁹ Before the amendment of Rule 17a-5 and during the 2013 Audit, this requirement was set out in Rule 17a-5(f)(3). After the amendment, including during the

ORDER

The 2013 Audit

8. During the 2013 Audit,¹⁰ Rule 17a-5(g) required that "[t]he audit shall be made in accordance with generally accepted auditing standards." Rule 17a-5(i) required that "[t]he accountant's report shall . . . [s]tate whether the audit was made in accordance with generally accepted auditing standards."

9. GAAS requires auditors to maintain strict independence from their audit clients.¹¹ "[I]f an auditor's report states that its audit was in accordance with GAAS when the auditor was not independent, then it has violated Rule 17a-5(i)."¹²

10. Pursuant to Rule 17a-5(f), certain of the Commission's auditor independence criteria described in Rules 2-01(b) and (c) of Regulation S-X¹³ apply to audits of brokers and dealers.¹⁴ The applicable provisions include Rule 2-01(c)(4), which states in part:

2014 Audit, the requirement that the public accountant be independent in accordance with Rule 2-01 of Regulation S-X is set out in Rule 17a-5(f)(1).

¹⁰ The rule provisions set out herein are those in effect during, and applicable to, the relevant conduct.

¹¹ AU-C Section 200.15-.16, *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance With Generally Accepted Auditing Standards*. References herein to GAAS are to the versions of the auditing standards that were applicable to audits of brokers and dealers at the time of the audit at issue here.

¹² *Rosenberg Rich Baker Berman & Company*, Exchange Act Release No. 69765, 2013 WL 2898032, at *4 (June 14, 2013).

¹³ 17 C.F.R. § 210.2-01(b)-(c).

¹⁴ Not all independence criteria described in Rule 2-01(c) apply to audits of brokers and dealers. As the Commission has explained, those audits "are not subject to the partner rotation requirements or the compensation requirements of the Commission's independence rules [Rules 2-01(c)(6) and (c)(8)] because the statute mandating those requirements is limited to issuers," and they "are not subject to the audit committee pre-approval requirements or the cooling-off period requirements for employment [Rules 2-01(c)(7) and (c)(2)(iii)(B)] because those requirements only reference issuers." See Exchange Act Release No. 34-70073 at II.E.

ORDER

An accountant is not independent if, at any point during the audit and professional engagement period, the accountant provides the following non-audit services to an audit client:

(i) *Bookkeeping or other services related to the accounting records or financial statements of the audit client.* Any service, unless it is reasonable to conclude that the results of these services will not be subject to audit procedures during an audit of the audit client's financial statements, including:

(A) Maintaining or preparing the audit client's accounting records;

(B) Preparing the audit client's financial statements that are filed with the Commission or that form the basis of financial statements filed with the Commission

11. Roth & Company served as the auditor of the Broker-Dealer's December 31, 2013 financial statements. At all times relevant to the 2013 Audit, the Broker-Dealer was a "broker" and "dealer," as defined in Section 110 of the Act and PCAOB Rules 1001(b)(iii) and 1001(d)(iii), and was not an "issuer," as defined in Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

12. In March 2014, the Broker-Dealer filed with the Commission a Form X-17A-5 Part III for the year ended December 31, 2013. Included in that filing was the 2013 Audit Report, signed by Roth & Company and dated February 14, 2014. The 2013 Audit Report stated, among other things, that the Firm audited the Broker-Dealer's financial statements "in accordance with auditing standards generally accepted in the United States of America."

13. Carlson completed an "Engagement Acceptance and Continuance Form" in connection with the 2013 Audit. That form included pre-printed text reading:

The SEC expects auditors of broker-dealers to comply with the independence requirements established by the accounting profession (the AICPA), as well as the requirements promulgated by the Commission and its staff. The SEC's independence rules are set forth in Rule 2-01 of Regulation S-X. Rule 2-01's general standard of independence requires both the fact and the appearance of independence.

14. During 2013 and early 2014, Carlson and the Firm maintained and prepared certain accounting records of the Broker-Dealer. Specifically, Carlson and the Firm maintained the Broker-Dealer's fixed asset subledger and calculated the Broker-



ORDER

Dealer's annual depreciation expense. Moreover, Carlson and the Firm calculated the Broker-Dealer's income tax provision.

15. Carlson and the Firm also prepared the Broker-Dealer's December 31, 2013 financial statements. Carlson obtained from the Broker-Dealer various documents including a balance sheet as of December 31, 2013 and an income statement for the year ended December 31, 2013.

16. Carlson used the above documents obtained from the Broker-Dealer to prepare the Statement of Financial Condition as of December 31, 2013, as well as the Statement of Income and Statement of Changes in Stockholders' Equity for the year ended December 31, 2013, filed by the Broker-Dealer with the Commission in March 2014.

17. In preparing those financial statements, Carlson aggregated and disaggregated line items and changed line item descriptions as compared to corresponding information in the documents obtained from the Broker-Dealer.

18. Carlson also prepared the Statement of Cash Flows for the year ended December 31, 2013, as well as drafted the notes to the Broker-Dealer's financial statements, all of which were filed by the Broker-Dealer with the Commission in March 2014.

19. Carlson provided the Broker-Dealer with a set of draft financial statements in February 2014 for management approval.

20. As a result of Roth & Company's conduct in maintaining and preparing accounting records and in preparing the December 31, 2013 financial statements, the Firm was not independent of the Broker-Dealer under the independence criteria established by the Commission in Rule 2-01(c)(4) of Regulation S-X, which Rule 17a-5 made applicable to the audit. As the Commission explained in adopting Rule 2-01(c)(4), providing such services for an audit client "impairs the auditor's independence because the auditor will be placed in the position of auditing the firm's work when auditing the client's financial statements. . . . In addition, keeping the books is a management function, the performance of which leads to an inappropriate mutuality of interests between the auditor and the audit client."¹⁵

¹⁵ *Revision of the Commission's Auditor Independence Requirements*, Exchange Act Release No. 43602 (November 21, 2000) at IV.D.4.b(i).



ORDER

21. The Firm violated Rule 17a-5(i) by representing in its 2013 Audit Report that it had performed the 2013 Audit in accordance with GAAS when in fact, because of the independence impairment described above, the 2013 Audit had not been performed in accordance with GAAS. That violation constituted a violation of 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.

22. Carlson maintained and prepared accounting records and prepared financial statements for the Broker-Dealer for the year ended December 31, 2013, and authorized the issuance of the 2013 Audit Report. In connection with the 2013 Audit, therefore, in violation of PCAOB Rule 3502, Carlson took actions that he knew, or was reckless in not knowing, would directly and substantially contribute to the Firm's violation of Rule 17a-5(i).

The 2014 Audit

23. Following the 2013 Audit, Board inspection staff conducted a review of certain aspects of that audit. On October 31, 2014, Board inspection staff provided Roth & Company with a comment form in connection with that review. The comment form set out the staff's observation that the Firm had failed to maintain auditor independence under Rule 2-01(c)(4)(i) of Regulation S-X because it had maintained and prepared accounting records and prepared financial statements of the Broker-Dealer. Carlson reviewed the comment form at the time the Firm received it.

24. Under the current version of Rule 17a-5, applicable to the 2014 Audit, Rule 17a-5(g) requires that audits of brokers and dealers be performed in accordance with PCAOB standards.

25. 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.¹⁶ PCAOB rules and auditing standards also require that a registered public accounting firm and its associated persons be independent of the firm's audit client throughout the audit and professional engagement period.¹⁷

¹⁶ PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*, and PCAOB Rule 3200T, *Interim Auditing Standards*. All references to PCAOB standards are to the versions of those standards in effect at the time of the Firm's 2014 Broker-Dealer audit.

¹⁷ See PCAOB Rule 3520, *Auditor Independence*; AU § 220, *Independence*.

ORDER

[A] registered public accounting firm or associated person's independence obligation with respect to an audit client encompasses not only an obligation to satisfy the independence criteria applicable to the engagement set out in the rules and standards of the PCAOB, but also an obligation to satisfy all other independence criteria applicable to the engagement, including the independence criteria set out in the rules and regulations of the Commission under the federal securities laws.¹⁸

26. As noted above, pursuant to Rule 17a-5(f), Rule 2-01(c)(4)(i) of Regulation S-X applies to broker and dealer audits and provides that an accountant is not independent if, at any point during the audit and professional engagement period, the accountant prepares the audit client's accounting records or the audit client's financial statements that are filed with the Commission.

27. Roth & Company served as the auditor for the Broker-Dealer's 2014 Audit. At all times relevant to the 2014 Audit, the Broker-Dealer was a "broker" and "dealer," as defined in Section 110 of the Act and PCAOB Rules 1001(b)(iii) and 1001(d)(iii), and was not an "issuer," as defined in Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

28. In March 2015, the Broker-Dealer filed with the Commission a Form X-17A-5 Part III for the year ended December 31, 2014. Included in that filing was the 2014 Audit Report signed by the Firm and dated February 13, 2015.¹⁹

29. In connection with the 2014 Audit, Carlson again completed an "Engagement Acceptance and Continuance Form." That form contained pre-printed text referencing applicable independence requirements including "the independence requirements established by the PCAOB" and "[t]he SEC's independence rules . . . set forth in Rule 2-01 of Regulation S-X."

30. Carlson also completed a work paper summarizing a November 2014 planning meeting with the Broker-Dealer. That work paper contained text under the header "Maintain Independence under SEC rules" reading, "Auditor cannot prepare any workpapers or reports that would be subject to auditing procedures," with a list of items

¹⁸ See PCAOB Rule 3520, Note 1.

¹⁹ The 2014 Audit Report stated, among other things, that the Firm audited the Broker-Dealer's financial statements "in accordance with the standards of the Public Company Accounting Oversight Board (United States)."

ORDER

underneath including "Reports," "Footnote disclosures," and "Determining adjustments/account balances."

31. Carlson also completed a work paper titled "Discussion Items" which included the following text under a header reading "Independence":

- Auditor cannot provide any professional services that they would need to audit
 - Drafting financial statements
 - Determining account balances (depreciation, income tax accrual, prepaid expenses)

32. During 2014 and early 2015, Carlson and the Firm again maintained and prepared accounting records of the Broker-Dealer by maintaining its fixed asset subledger and by calculating its annual depreciation expense.

33. Carlson and the Firm also prepared the Broker-Dealer's December 31, 2014 financial statements. In January and February 2015, Carlson and Firm staff obtained from the Broker-Dealer substantially the same types of documents obtained the previous year, including a balance sheet as of December 31, 2014 and an income statement for the year ended December 31, 2014.

34. In February 2015, Carlson used the documents obtained from the Broker-Dealer to prepare the Statement of Financial Condition as of December 31, 2014, as well as the Statement of Income and Statement of Changes in Stockholders' Equity for the year ended December 31, 2014, filed by the Broker-Dealer with the Commission in March 2015.

35. In preparing the Statement of Financial Condition, Statement of Income, and Statement of Changes in Stockholders' Equity filed by the Broker-Dealer with the Commission, Carlson aggregated and disaggregated line items and changed line item descriptions as compared to corresponding information in the documents obtained from the Broker-Dealer.

36. Carlson also prepared the Statement of Cash Flows for the year ended December 31, 2014, as well as drafted the notes to the Broker-Dealer's financial statements, all of which were filed by the Broker-Dealer with the Commission in March 2015.

ORDER

37. Carlson provided the Broker-Dealer with a set of draft financial statements in February 2015 for management approval.

38. Notwithstanding the Firm's receipt on October 31, 2014 of the Board inspection staff's comment form noting that maintenance and preparation of accounting records and preparation of financial statements impair an auditor's independence, Carlson and the Firm thereafter continued maintaining and preparing the Broker-Dealer's accounting records in late 2014 and early 2015, prepared the Broker-Dealer's December 31, 2014 financial statements and, respectively, authorized the issuance of and issued the 2014 Audit Report.

39. As a result of maintaining and preparing accounting records and preparing the December 31, 2014 financial statements, Roth & Company was not independent of the Broker-Dealer in connection with the 2014 Audit and violated PCAOB Rule 3520 and AU § 220.

40. As a result of his participation in maintaining and preparing accounting records and in preparing the December 31, 2014 financial statements, Carlson also was not independent of the Broker-Dealer in connection with the 2014 Audit and violated PCAOB Rule 3520 and AU § 220.

V.

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), the Firm is censured.
- B. Pursuant to Section 105(c)(4)(D) of the Act and PCAOB Rule 5300(a)(4), a civil money penalty in the amount of \$20,000 is imposed upon the Firm, and a separate and additional civil money penalty in the amount of \$10,000 is imposed upon Jerome A. Carlson, CPA. All funds collected by the Board as a result of the assessment of these civil money penalties will be used in accordance with Section 109(c)(2) of the Act. The Firm and Jerome A. Carlson, CPA shall each pay the civil money penalty imposed within ten (10) days of the issuance of this Order by (1) wire transfer pursuant to instructions provided by Board staff; or (2) United States

ORDER

Postal Service money order, bank money order, certified check, or bank cashier's check (a) made payable to the Public Company Accounting Oversight Board, (b) delivered to the Controller, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington D.C. 20006, and (c) submitted under a cover letter that identifies, as applicable, the Firm or Jerome A. Carlson, CPA as one of the Respondents 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 said cover letter and money order or check shall be sent to Office of the Secretary, Attention: Phoebe W. Brown, Secretary, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington D.C. 20006.

- C. Pursuant to Section 105(c)(4)(G) of the Act and PCAOB Rule 5300(a)(9), the Firm, should the Board grant any future application of the Firm for registration, is required:

1. within ninety (90) days from the date the Board grants any future application of the Firm for registration ("Future Registration Date"), to establish policies and procedures, or revise and/or supplement existing policies and procedures, for the purpose of providing the Firm with reasonable assurance of compliance with applicable independence requirements, including those requirements of Rule 2-01 of Regulation S-X applicable to an SEC Registered Broker-Dealer Engagement (defined to mean an engagement to provide a report—whether an audit report, an examination report, or a review report—required under paragraph (d)(1)(i)(C) of Rule 17a-5, as amended);

2. within ninety (90) days from the Future Registration Date, to establish a policy of ensuring training, whether internal or external, on an annual or more frequent regular basis, concerning applicable independence requirements, including those requirements of Rule 2-01 of Regulation S-X applicable to an SEC Registered Broker-Dealer Engagement, of any Firm audit personnel who participate in any way in the planning or performing of any SEC Registered Broker-Dealer Engagement;

3. within ninety (90) days from the Future Registration Date and before the Firm's commencement of any SEC Registered Broker-Dealer Engagement, to ensure training pursuant to the policy described in paragraph C(2) above on at least one occasion;

ORDER

4. to provide a copy of this Order—
 - a. within thirty (30) days from the Future Registration Date, to all audit personnel employed by, or associated with (as defined in PCAOB Rule 1001(p)(i)), the Firm as of the Future Registration Date,
 - b. within thirty (30) days from the Future Registration Date, to any client of the Firm as of the Future Registration Date for which the Firm has performed or has been engaged to perform an SEC Registered Broker-Dealer Engagement,
 - c. before the commencement of any SEC Registered Broker-Dealer Engagement, to any future client for which the Firm is engaged within three (3) years of the date of this Order to perform such an engagement; and
 5. to certify in writing to the Director of the Division of Enforcement and Investigations, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington D.C. 20006, the Firm's compliance with paragraphs C(1) through C(4)(b) above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Firm shall submit such certification within one hundred twenty (120) days from the Future Registration Date. The Firm shall also submit such additional evidence of and information concerning compliance as the staff of the Division of Enforcement and Investigations may reasonably request.
- D. Pursuant to Section 105(c)(4)(C) of the Act and PCAOB Rule 5300(a)(3), the Firm, should the Board grant any future application of the Firm for registration, is prohibited from accepting any new SEC Registered Broker-Dealer Engagement clients for a period of one year from the date of this Order.
 - E. Pursuant to Section 105(c)(4)(E) of the Act and PCAOB Rule 5300(a)(5), Jerome A. Carlson, CPA, is censured.
 - F. Pursuant to Section 105(c)(4)(B) of the Act and PCAOB Rule 5300(a)(2), Jerome A. Carlson, CPA, is barred from being an associated person of a

ORDER

registered public accounting firm, as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i),²⁰ and

- G. After one (1) year from the date of this Order, Jerome A. Carlson, CPA, may file a petition, pursuant to PCAOB Rule 5302(b), for Board consent to associate with a registered public accounting firm.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

September 15, 2016

²⁰ As a consequence of the bar, the provisions of Section 105(c)(7)(B) of the Act will apply with respect to Carlson. Section 105(c)(7)(B) provides: "It 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."