



**ORDER**

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 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<sup>4</sup> that:

**A. Respondents**

1. Cutler & Co., LLC, is a registered public accounting firm located in Arvada, Colorado. The Firm is licensed by the Colorado Board of Accountancy (License No. 13300). Cutler is the owner and sole principal of the Firm. The Firm has been registered with the Board pursuant to Section 102 of the Act and PCAOB Rules since 2013. At all relevant times, the Firm was the external auditor for the issuer identified below.

2. David J. C. Cutler, CPA, 60, is a resident of Arvada, Colorado. Cutler is a certified public accountant licensed by the Colorado Board of Accountancy (License No. 0018394). He was the engagement partner for the Firm's audit of the financial statements for the issuer identified below and authorized the issuance of the Firm's audit report on those financial statements. Cutler 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).

**B. Summary**

3. This matter concerns Respondents' violations of PCAOB rules and standards in connection with the issuance of an audit report on Sungame Corp.'s

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<sup>3</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>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 such sanctions may be imposed in the event of: (1) intentional or knowing conduct, including reckless conduct, that results in 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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("Sungame") financial statements for the year ended December 31, 2013 (the "Audit"). As detailed below, Respondents failed to exercise due professional care, including professional skepticism, and failed to obtain sufficient appropriate audit evidence to support the opinion expressed in the auditor's report. Specifically, Respondents failed to obtain sufficient appropriate evidence to address identified fraud risks related to Sungame's revenue and unearned revenue. Respondents also failed to adequately document critical aspects of the audit, and Cutler failed to adequately supervise the audit.

**C. Respondents Violated PCAOB Rules and Standards**

4. In connection with the preparation or issuance of any audit report, PCAOB rules require that a registered public accounting firm and its associated persons comply with all applicable Board auditing and related professional practice standards.<sup>5</sup> An auditor may express an unqualified opinion on an issuer's financial statements only when the auditor has formed that opinion on the basis of an audit performed in accordance with PCAOB standards.<sup>6</sup> Those standards require, among other things, that an auditor plan and perform the audit to obtain sufficient appropriate audit evidence to provide a reasonable basis for the auditor's opinion.<sup>7</sup> PCAOB standards further require an auditor to exercise due professional care and professional skepticism in performing the audit.<sup>8</sup>

5. In addition, PCAOB standards require the auditor to design and implement audit responses that address the identified risks of material misstatement.<sup>9</sup> As the assessed risk of material misstatement increases, the amount of evidence that the

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<sup>5</sup> See PCAOB Rules 3100, *Compliance with Auditing and Related Professional Practice Standards*; 3200T, *Interim Auditing Standards*. All references to PCAOB standards in this Order are to the versions of those standards in effect for the Audit.

<sup>6</sup> See AU § 508.07, *Reports on Audited Financial Statements*.

<sup>7</sup> See Auditing Standard No. 15, *Audit Evidence* ("AS 15"), ¶ 4.

<sup>8</sup> See AU § 150.02, *Generally Accepted Auditing Standards*; AU § 230, *Due Professional Care in the Performance of Work*.

<sup>9</sup> See Auditing Standard No. 13, *The Auditor's Responses to the Risks of Material Misstatement* ("AS 13"), ¶ 3.

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auditor should obtain also increases.<sup>10</sup> "The auditor should perform substantive procedures for each relevant assertion of each significant account and disclosure, regardless of the assessed level of control risk."<sup>11</sup> If the auditor performs confirmation procedures, "[t]he auditor should direct the confirmation request to a third party who the auditor believes is knowledgeable about the information to be confirmed."<sup>12</sup>

6. In the case of significant transactions that are outside the normal course of business for the entity, or that otherwise appear to be unusual given the auditor's understanding of the entity and its environment, PCAOB standards require the auditor to gain an understanding of the business rationale for such transactions and whether that rationale (or the lack thereof) suggests that the transactions may have been entered into to engage in fraudulent financial reporting or conceal misappropriation of assets.<sup>13</sup> The auditor should also perform substantive procedures, including tests of details, that are specifically responsive to the assessed significant risks, including any fraud risks.<sup>14</sup>

7. The auditor's assessment of the risks of material misstatement, including fraud risks, should continue throughout the audit.<sup>15</sup> "When the auditor obtains audit evidence during the course of the audit that contradicts the audit evidence on which the auditor originally based his or her risk assessment, the auditor should revise the risk assessment and modify planned audit procedures or perform additional procedures in response to the revised risk assessments."<sup>16</sup>

8. "The auditor's responses to the assessed risks of material misstatement, particularly fraud risks, should involve the application of professional skepticism in

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<sup>10</sup> See AS 15 ¶ 5; AS 13 ¶¶ 9(a), 37.

<sup>11</sup> AS 13 ¶ 36.

<sup>12</sup> See AU § 330.26, *The Confirmation Process*.

<sup>13</sup> See AU § 316.66, *Consideration of Fraud in a Financial Statement Audit*, see also AS 13 ¶ 15(c).

<sup>14</sup> See AS 13 ¶¶ 11, 13.

<sup>15</sup> See Auditing Standard No. 12, *Identifying and Assessing Risks of Material Misstatement* ("AS 12"), ¶ 74.

<sup>16</sup> Id.

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gathering and evaluating audit evidence."<sup>17</sup> "[I]f the auditor has doubts about the reliability of information to be used as audit evidence, the auditor should perform the audit procedures necessary to resolve the matter and should determine the effect, if any, on other aspects of the audit."<sup>18</sup> "[T]he auditor should not be satisfied with less-than-persuasive evidence because of a belief that management is honest."<sup>19</sup> Moreover, "[i]f a representation made by management is contradicted by other audit evidence, the auditor should investigate the circumstances and consider the reliability of the representation made."<sup>20</sup> "If the auditor is unable to obtain sufficient appropriate audit evidence to have a reasonable basis to conclude about whether the financial statements as a whole are free of material misstatement, . . . the auditor should express a qualified opinion or a disclaimer of opinion."<sup>21</sup>

9. The engagement partner is responsible for proper supervision of the work of engagement team members and for compliance with PCAOB standards.<sup>22</sup> In supervising the audit, the engagement partner should, among other things, evaluate whether: (1) the work was performed and documented; (2) the objectives of the audit procedures were achieved; and (3) the results of the work support the conclusions reached.<sup>23</sup> "To form an appropriate basis for expressing an opinion on the financial statements, the auditor must plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement due to error or fraud."<sup>24</sup>

10. As detailed below, Respondents failed to comply with the aforementioned rules and standards, among others, in connection with the Audit.

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<sup>17</sup> AS 13 ¶ 7.

<sup>18</sup> AS 15 ¶ 29.

<sup>19</sup> AU § 316.13.

<sup>20</sup> AU § 333.04, *Management Representations*.

<sup>21</sup> Auditing Standard No. 14, *Evaluating Audit Results* ("AS 14"), ¶ 35.

<sup>22</sup> Auditing Standard No. 10, *Supervision of the Audit Engagement* ("AS 10"), ¶ 3.

<sup>23</sup> See AS 10 ¶ 5(c).

<sup>24</sup> Auditing Standard No. 8, *Audit Risk*, ¶ 3; AS 14 ¶ 32.

## ORDER

### 1. Background

11. Sungame was, at all relevant times, a Delaware corporation with its principal office located in Las Vegas, Nevada. Sungame's public filings disclosed that it was a development stage company, seeking to develop a media content management and discovery platform, called "Flightdeck," and a business directory service, called "Vidirectory." During 2013, Sungame also began a new line of business, selling glasses-free 3D tablets. Sungame had no history of producing or selling such tablets. At all relevant times, Sungame's common stock was registered under Section 12(g) of the Securities Exchange Act of 1934, and was traded on the OTCBB exchange. At all relevant times, Sungame was an "issuer" as the term is defined in Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

12. In its Form 10-K for the year ended December 31, 2012, filed on March 29, 2013,<sup>25</sup> Sungame disclosed that it was "grossly undercapitalized in 2012 and unable to raise a significant amount of capital, other than receiving \$653,593 in advances from our majority shareholder." Sungame reported that its only assets at year-end 2012 consisted of \$2,604 in cash, \$612 in fixed assets and \$121,043 in capitalized software. At the same time, it reported \$1.9 million in liabilities, virtually all of which were attributable to loans and accounts payable that were due to related-parties. Sungame further disclosed that it had "no significant revenues from operations," and that "if we do not begin to generate revenue or cannot raise additional needed funds, we will either have to suspend development operations until we do raise the funds, or cease operations entirely."

13. In January 2014, Sungame retained the Firm to serve as Sungame's independent auditor. The Firm audited Sungame's financial statements for the year ended December 31, 2013, and issued an audit report, dated April 15, 2014, containing an unqualified opinion on those financial statements. The audit report also included going concern explanatory language regarding those financial statements. The audit report was included in a Form 10-K filed by Sungame with the U.S. Securities and Exchange Commission (the "Commission") on April 15, 2014.

14. Cutler served as the engagement partner for the Audit, and authorized the release of the audit report. Cutler supervised the work of an assistant who served on

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<sup>25</sup> The 2012 financial statements were audited by Ronald R. Chadwick, P.C., whose Board registration was revoked in 2015. See *In the Matter of Ronald R. Chadwick, P.C. and Ronald R. Chadwick, CPA*, PCAOB Rel. No. 105-2015-009 (Apr. 28, 2015).

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the engagement team.<sup>26</sup> That assistant performed the majority of the audit procedures during the Audit. The engagement quality review for the Audit was performed by an auditor from outside the Firm, who was hired by Cutler.<sup>27</sup>

15. During the Audit, Respondents did not speak to any Sungame executive officer or director prior to issuing the audit report on Sungame's 2013 financial statements. Respondents only obtained written representations and brief responses to questionnaires from Sungame's CEO. All of Respondents' verbal communications with Sungame during the audit were either with a consultant or with Sungame's controller, who they understood acted as a bookkeeper.

**2. Respondents Failed to Gather Sufficient Appropriate Audit Evidence**

16. During the audit, Respondents identified several significant risks. Among others, Respondents identified a fraud risk involving improper revenue recognition.<sup>28</sup> Respondents also identified fraud risks related to "a clear lack of segregation of duties and a high risk of management override of controls." Respondents further identified a specific fraud risk of misappropriation of assets by management, including a risk that the cash deposits could have been inappropriately diverted by management to related parties. However, Respondents failed to perform sufficient appropriate procedures to specifically address the identified risks.

17. Sungame disclosed in its 2013 financial statements approximately \$122,000 in revenue from tablet computer sales in 2013. Fifty-four percent of the revenue (\$66,000) was attributed to sales to Sungame's majority shareholder, Chandran Holding Media, Inc. ("CHMI"), which was controlled by Sungame's CEO. Approximately \$43,000 (35%) of Sungame's revenue was recorded on the last day of the Company's fiscal year, December 31, 2013. Other than obtaining written management representations concerning related party revenue, Respondents failed to plan and perform any procedures regarding Sungame's revenue.

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<sup>26</sup> See *Donna Lynn Johnson, CPA*, PCAOB Rel. No. 105-2017-005 (Feb. 23, 2017).

<sup>27</sup> See *Edward Andrew Hamilton, CPA*, PCAOB Rel. No. 105-2017-004 (Feb. 23, 2017).

<sup>28</sup> See AS 12 ¶ 71 (fraud risks are significant risks); see also AS 12 ¶ 68 (the auditor should presume a fraud risk involving improper revenue recognition).

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18. As of year-end 2013, Sungame reported approximately \$1.9 million in unearned revenue, which it attributed to deposits for future deliveries of tablet computers and advertising services. Sungame disclosed in its 2013 Form 10-K that the unearned revenue originated from deposits received from "resellers" and a new "master distributor." Respondents identified that Sungame's unearned revenue was a significant account, and that the transactions underlying Sungame's unearned revenue were "unusual."

19. Sungame represented to Respondents that virtually all of the deposits for Sungame's unearned revenue balance had been obtained through the master distributor. Respondents obtained a confirmation from the master distributor, confirming \$1.78 million (95%) of Sungame's unearned revenue balance. However, during the audit, Respondents learned that the vast majority of the deposits had been received directly from individuals solicited through "multi-level marketing," and not from the distributor. Additionally, the master distribution agreement wasn't signed until 2014 and stated that it was effective as of December 31, 2013 (i.e., it was not effective until the last day of the year under audit). Moreover, the agreement did not cover prepayments for tablets by third parties; the agreement provided for the distributor's purchase of tablets for resale and distribution, with payment occurring after delivery. Despite this information, Respondents failed to consider whether the master distributor was sufficiently knowledgeable to provide confirmation of Sungame's year-end 2013 unearned revenue balance and failed to perform procedures necessary to resolve any doubts about the reliability of the information received.<sup>29</sup>

20. During the audit, Respondents also learned that Sungame had not received approximately \$500,000 of the deposits recorded as unearned revenue. Instead, those deposits had been paid to CHMI rather than Sungame. In lieu of receiving the cash, Sungame received credits against an undocumented loan from CHMI. Respondents failed to gain an understanding of the business rationale for the undocumented loan to determine whether it may have been entered into to engage in fraudulent financial reporting or to conceal misappropriation of assets.<sup>30</sup>

21. In addition, Respondents failed to evaluate red flags concerning Sungame's unearned revenue. For example, Respondents reviewed receipts sent to Sungame's customers for their deposits, and realized that they lacked both customer contact information and terms, and might not be reliable. In addition, Respondents reviewed Sungame's bank statements, which reflected that numerous deposits had

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<sup>29</sup> See AU § 330.26; AU § 333.04; AS 15 ¶ 29.

<sup>30</sup> See AS 13 ¶ 15(c); AU § 316.66.



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been sent with notations indicating they were an "investment" or for the purchase of stock. Respondents, however, failed to perform any audit procedures necessary to resolve those inconsistencies and determine the effect, if any, on other aspects of the audit before the Firm issued its audit report.<sup>31</sup>

22. On August 15, 2014, Sungame filed a Form 8-K with the Commission, announcing that Sungame's audited December 31, 2013 financial statements should no longer be relied upon.<sup>32</sup> Sungame subsequently disclosed, in a Form 10-Q filing for the period ended June 30, 2014,<sup>33</sup> that, "all items previously recognized as revenue and deferred revenue [for the year ended 2013 and the first quarter of 2014] will be restated as rebate liability, advances payable, or debt."

### **3. Respondents Failed to Prepare Appropriate Audit Documentation**

23. PCAOB standards require that auditor document the procedures performed, evidence obtained, and conclusions reached with respect to relevant financial statement assertions.<sup>34</sup> "Audit documentation must clearly demonstrate that the work was in fact performed."<sup>35</sup> Among other things, the auditor must document significant findings or issues, actions taken to address them (including additional evidence obtained), and the basis for the conclusions reached in connection with each engagement.<sup>36</sup> Significant findings or issues that must be documented include risks of

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<sup>31</sup> See AS 15 ¶ 29.

<sup>32</sup> Subsequent to the Audit, in July 2014, a consultant hired by Respondents to perform a post-issuance review of the Audit identified publicly available information that raised concerns related to Sungame's recorded revenue and unearned revenue balances. Some of that information was publicly available at the time of the Audit. Respondents conveyed that information to Sungame in July 2014. Sungame thereafter conducted an internal investigation, which led to the August 15, 2014 Form 8-K filing.

<sup>33</sup> That Form 10-Q, filed with the Commission on September 18, 2014, stated that the financial information contained therein had not been reviewed by Sungame's independent accountant.

<sup>34</sup> See Auditing Standard No. 3 ("AS 3"), *Audit Documentation*, ¶ 6.

<sup>35</sup> Id. ¶ 6.

<sup>36</sup> See id. ¶ 12.

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material misstatement that are determined to be significant risks and the results of the auditing procedures performed in response to those risks.<sup>37</sup> "The auditor must identify all significant findings or issues in an engagement completion document."<sup>38</sup>

24. Respondents violated the foregoing standards during the Audit because they: (1) failed to document the engagement partner review, (2) failed to adequately document significant issues and findings; and (3) failed to adequately document other audit procedures so that an auditor with no previous connection with the engagement could understand the nature, timing, extent, and results of the procedures performed, evidence obtained and conclusions reached.

**4. Cutler Failed to Appropriately Supervise the Audit**

25. As the engagement partner, Cutler was responsible for the Sungame audit engagements and its performance.<sup>39</sup> Accordingly, Cutler was responsible for proper supervision of the work of the engagement team members and for compliance with PCAOB standards.<sup>40</sup> Cutler was required to review the work of engagement team members to evaluate whether the work was performed and documented, the objectives of the procedures were achieved, and the results of the work supported the conclusions reached.<sup>41</sup> As discussed above, the engagement team failed to obtain sufficient appropriate audit evidence in several areas during the Audit, and failed to adequately document the Audit.

**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), Cutler & Co., LLC and David J.C. Cutler, CPA are hereby censured;

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<sup>37</sup> See id. ¶ 12(f-1).

<sup>38</sup> Id. ¶ 13.

<sup>39</sup> See AS 10 ¶ 3.

<sup>40</sup> See id.

<sup>41</sup> See id. at ¶ 5.



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- B. Pursuant to Section 105(c)(4)(B) of the Act and PCAOB Rule 5300(a)(2), David J.C. Cutler, 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>42</sup>
- C. After two (2) years from the date of this Order, David J.C. Cutler, CPA, may file a petition, pursuant to PCAOB Rule 5302(b), for Board consent to associate with a registered public accounting firm.
- D. Pursuant to Section 105(c)(4)(A) of the Act and PCAOB Rule 5300(a)(1), the registration of Cutler & Co., LLC, is revoked;
- E. After two (2) years from the date of this Order, Cutler & Co., 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 \$20,000 is imposed upon the Firm. 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 shall 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 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 the Firm 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 said cover letter and money order or check shall be sent to Office of the Secretary,

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<sup>42</sup> As a consequence of the bar, the provisions of Section 105(c)(7)(B) of the Act will apply with respect to Cutler. 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."

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Attention: Phoebe W. 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

February 23, 2017