



**ORDER**

**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. 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 Respondents and the subject matter of these proceedings, which is admitted, Respondents consent to the entry of this Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions ("Order").<sup>2</sup>

**III.**

On the basis of Respondents' Offers, the Board finds<sup>3</sup> that:

**A. Respondents**

1. Korwek & Company is, and at all relevant times was, a professional corporation organized under the laws of Maryland, with an office in Odenton, Maryland, and registered with the Board pursuant to Section 102 of the Act and PCAOB rules. Korwek & Company is licensed by the Maryland Board of Public Accountancy (license no. 0034344). Korwek & Company filed articles of dissolution with the Maryland State Department of Assessments and Taxation on or around November 8, 2016. At all relevant times the Firm was the external auditor of the broker-dealer identified below.

2. Charles E. Posey, CPA, age 64, of Millersville, Maryland, is a certified public accountant licensed by the Maryland Board of Public Accountancy (license no. 0004672). At all relevant times he was a partner at Korwek & Company. Posey served as the engagement partner for the Firm's audit of the 2015 financial statements of the broker-dealer identified below. Posey 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).

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<sup>2</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>3</sup> The Board finds that Respondents' conduct described in this Order meets the conditions set out in Section 105(c)(5), which provides that certain sanctions may be imposed in the event of (i) intentional or knowing conduct, including reckless conduct, or (ii) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

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**B. Summary**

3. This matter concerns Respondents' violations of PCAOB rules and standards in connection with the Firm's audit of the 2015 financial statements of registered broker-dealer client McDuffie/Morris Financial Group, Inc. ("McDuffie/Morris"). The Firm and Posey prepared McDuffie/Morris's financial statements and supporting schedules for the year ended April 30, 2015 filed with the Commission. As a result, the Firm and Posey were not independent of McDuffie/Morris under auditor independence criteria established by the Commission and made applicable by Exchange Act Rule 17a-5(f)(1) to audits of brokers and dealers.<sup>4</sup> The Firm nevertheless audited the financial statements and issued an audit report that McDuffie/Morris included with the financial statements it filed with the Commission. As a result, the Firm and Posey violated PCAOB Rule 3520, *Auditor Independence*, 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*.<sup>5</sup>

**C. Respondents Violated Board Rules and Auditing Standards**

4. At all relevant times, McDuffie/Morris was a broker-dealer incorporated in the state of Florida with its principal place of business in Ormond Beach, Florida. McDuffie/Morris's public filings disclosed that it was a broker-dealer concentrating in mutual funds, tax deferred investments, and related insurance products. McDuffie/Morris claimed an exemption from Exchange Act Rule 15c3-3 (the Customer Protection Rule).<sup>6</sup> At all relevant times, McDuffie/Morris was a "broker" or "dealer," as

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<sup>4</sup> Exchange Act Rule 17a-5, referenced throughout this Order as "Rule 17a-5," is found at 17 C.F.R. § 240.17a-5.

<sup>5</sup> All references to PCAOB rules and standards are to the versions of those rules and standards in effect at the time of the relevant audit. As of December 31, 2016, the PCAOB reorganized its rules and standards using a topical structure and a single, integrated numbering system. See *Reorganization of PCAOB Auditing Standards and Related Amendments to PCAOB Standards and Rules*, PCAOB Release No. 2015-002 (Mar. 31, 2015); see also *PCAOB Auditing Standards Reorganized and Pre-Reorganized Numbering* (January 2016), <https://pcaobus.org/Standards/Auditing/Documents/PrintableReferenceTable.pdf>.

<sup>6</sup> 17 C.F.R. § 240.15c-3-3, *Customer Protection – Reserves and Custody of Securities*.



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defined in Section 110(3) and (4) of the Act and PCAOB Rule 1001(b)(iii) and 1001(d)(iii).

5. 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 contain, among other things, certain financial statements: 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. Rule 17a-5(d)(2) also requires that the financial report contain certain supporting schedules—a net capital computation, a reserve requirement computation, and information relating to possession or control requirements—as well as a reconciliation between either computation and any materially different corresponding computation in the most recent Part II or Part IIA of Form X-17A-5 filed by the broker-dealer.

6. Rule 17a-5(g) requires that an independent public accountant prepare a report based on an examination of the financial report required to be filed by the broker or dealer under Rule 17a-5(d) in accordance with PCAOB standards.

7. 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>7</sup> PCAOB rules and 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.<sup>8</sup>

[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.<sup>9</sup>

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<sup>7</sup> PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*; PCAOB Rule 3200T, *Interim Auditing Standards*.

<sup>8</sup> See PCAOB Rule 3520; AU § 220.

<sup>9</sup> See PCAOB Rule 3520, Note 1.



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8. Pursuant to Rule 17a-5(f)(1), certain of the Commission's auditor independence criteria described in Rule 2-01 of Regulation S-X<sup>10</sup> apply to audits of brokers and dealers.<sup>11</sup> The applicable provisions include Rule 2-01(c)(4), which states in part:

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:

...

(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 . . . .

9. In July 2015, McDuffie/Morris filed with the Commission a Form X-17A-5 Part III containing its annual financial report for the year ended April 30, 2015. Included in that filing was a report signed by Korwek & Company and dated June 12, 2015 ("Audit Report") in connection with Korwek & Company's audit of McDuffie/Morris's April 30, 2015 financial statements ("Audit").

10. In May 2014, Posey and another partner at the Firm learned while viewing an online seminar about auditing that auditors of broker-dealers were prohibited from preparing the financial statements that those clients filed with the Commission. The

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<sup>10</sup> 17 C.F.R. § 210.2-01(b)-(c).

<sup>11</sup> 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. 70073 at II.E.

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other partner subsequently contacted an accountant not employed at the Firm (the "Outside Accountant") and asked him whether he would prepare financial statements in the future for any broker-dealer audit client of the Firm that would not be preparing its own financial statements, if retained and paid by the broker-dealer to do so. The Outside Accountant said he would. The other partner informed Posey of the Outside Accountant's willingness to enter into such an arrangement with any Firm broker-dealer audit client.

11. Posey obtained from McDuffie/Morris in May and June 2015 various documents including a trial balance as of April 30, 2015.

12. Notwithstanding the Firm's communications with the Outside Accountant about preparing financial statements for broker-dealer audit clients of the Firm, Posey used the trial balance obtained from McDuffie/Morris to prepare the Statement of Financial Condition and Net Capital Computation as of April 30, 2015, as well as the Statement of Operations and Statement of Stockholder Equity for the year ended April 30, 2015, filed by McDuffie/Morris with the Commission in July 2015.

13. In preparing the Statements of Financial Condition, Operations, and Stockholder Equity and the Net Capital Computation filed by McDuffie/Morris with the Commission, Posey aggregated line items and changed line item descriptions as compared to corresponding information in the trial balance obtained from McDuffie/Morris.

14. Posey also prepared the Statement of Cash Flows for the year ended April 30, 2015; the notes to McDuffie/Morris's financial statements, by updating the notes to McDuffie/Morris's financial statements for the prior year as well as by incorporating material provided by McDuffie/Morris; and two additional supporting schedules. All of these were filed by McDuffie/Morris with the Commission.

15. Posey emailed McDuffie/Morris a set of draft financial statements and supporting schedules in June 2015 for management approval.

16. As a result of Korwek & Company's and Posey's conduct in preparing the financial statements and supporting schedules,<sup>12</sup> the Firm and Posey were not

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<sup>12</sup> The preparation of McDuffie/Morris's Net Capital Computation and related reconciliation constituted "[b]ookkeeping or other services related to the accounting records or financial statements of the audit client" within the meaning of Rule 2-01(c)(4)(i) and accordingly was a non-audit service inconsistent with auditor independence.

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independent of McDuffie/Morris 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."<sup>13</sup> The Firm and Posey consequently violated PCAOB Rule 3520 and AU § 220 in connection with 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), 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 \$10,000 is imposed upon the Firm, and a separate and additional civil money penalty in the amount of \$2,500 is imposed upon Charles E. Posey, 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 Charles E. Posey, CPA each shall pay the civil money penalty 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, which identifies the Firm or Charles E. Posey, CPA 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

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<sup>13</sup> *Revision of the Commission's Auditor Independence Requirements*, Exchange Act Release No. 43602 (November 21, 2000) at IV.D.4.b(i).

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Order, a copy of which 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;

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



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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), Charles E. Posey, CPA, is censured.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

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Phoebe W. Brown  
Secretary

March 29, 2017