

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 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").¹

III.

On the basis of Respondents' Offers, the Board finds² that:

A. Respondents

1. TJT, at all relevant times, had an office in Rochester, New York and was registered with the Board pursuant to Section 102 of the Act and PCAOB rules. Based on public records, the Firm does not appear to be currently licensed or registered in the state of New York or any other state. At all relevant times the Firm was the external auditor for the broker-dealer identified below.

2. Thomas J. Trumeter, age 57, of Rochester, New York, is a certified public accountant licensed by the New York State Education Department (license no. 061605). He is the founder and sole owner of TJT. Trumeter served as the engagement partner for the Firm's audits of the 2014 and 2015 financial statements of the broker-dealer identified below. Trumeter 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 Firm's audits of the 2014 and 2015 financial statements of registered broker-dealer client John James Investments, LTD. ("John

¹ 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.

² 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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James").³ The Firm and Trumeter prepared John James' financial statements and a supporting schedule for the year ended December 31, 2014 and again for the year ended December 31, 2015. As a result, the Firm and Trumeter were not independent of John James 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.⁴ The Firm nevertheless audited the financial statements and issued audit reports that John James included with the financial statements it filed with the Commission. As a result, the Firm and Trumeter 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*.⁵

C. Respondents Violated Board Rules and Auditing Standards

4. At all relevant times, John James was a broker-dealer incorporated in the state of New York with its principal place of business in Williamsville, New York. John James' public filings disclosed that in 2014 it engaged primarily in the sale of mutual fund investments, insurance, and variable annuities and in 2015 effected transactions in variable contracts and investment company shares (mutual funds) on an application way basis. John James claimed an exemption from Exchange Act Rule 15c3-3 (the Customer Protection Rule).⁶ At all relevant times, John James was a "broker" or

³ John James, which makes filings with the Commission under the name "John James Investments, LTD.," is also known and identified itself in earlier filings with the Commission as, and is incorporated in New York under the name of, "John James Futures Group, LTD."

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

⁵ All references to PCAOB rules and standards are to the versions of those rules and standards in effect at the time of the relevant audits. 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>.

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



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"dealer," as 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.⁷ 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.⁸

[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.⁹

⁷ PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*, and PCAOB Rule 3200T, *Interim Auditing Standards*.

⁸ See PCAOB Rule 3520; AU § 220.

⁹ 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-X¹⁰ apply to audits of brokers and dealers.¹¹ 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

2014 Audit

9. In March 2015, John James filed with the Commission a Form X-17A-5 Part III containing its annual financial report for the year ended December 31, 2014. Included in that filing was a report signed by TJT and dated March 12, 2015 ("2014 Audit Report") in connection with TJT's audit of John James' December 31, 2014 financial statements ("2014 Audit").

¹⁰ 17 C.F.R. § 210.2-01(b)-(c).

¹¹ 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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10. On December 10, 2014, Trumeter sent John James a letter noting "significant changes" in the upcoming audit of John James' December 31, 2014 financial statements due to the change in standards under which the audit was required to be conducted from Generally Accepted Auditing Standards ("GAAS") to PCAOB standards. Trumeter stated in that letter, among other things:

In accordance with the PCAOB standards on independence, your auditor cannot type or prepare the draft financial statement[s] as has been done in the past. Management should provide, along with a completed QuickBooks file, a typed draft of the financial statement[s], complete with footnotes. We will speak with you separately about how you can go about doing this.¹²

11. Trumeter obtained from John James in February and March 2015 various documents including a "Balance Sheet" as of December 31, 2014, a "Profit & Loss" report for January through December 2014, and a "Statement of Cash Flows" for January through December 2014.

12. Notwithstanding the letter he sent in December 2014, Trumeter, at the client's subsequent request, prepared John James' December 31, 2014 financial statements, including notes, and a supporting schedule, all of which John James filed with the Commission in March 2015.

13. Trumeter used the documents obtained from John James to prepare the Statement of Financial Condition as of December 31, 2014, as well as the Statement of Operations for the year ended December 31, 2014. In preparing the Statements of Financial Condition and Operations, Trumeter added and aggregated line items, changed line item descriptions, and—in two instances—reclassified amounts from one line item to another, as compared to corresponding information in the documents obtained from John James.

14. Moreover, Trumeter prepared the Statements of Cash Flows and Changes in Shareholder's Equity for the year ended December 31, 2014 and the Net Capital Computation as of December 31, 2014. Trumeter also prepared the notes to John

¹² As noted above, certain independence criteria in Rule 2-01 of Regulation S-X were made applicable to broker-dealer audits by Commission Rule 17a-5. They accordingly applied to broker-dealer audits even before, and not as a result of, the onset of PCAOB standards for broker-dealer audits of fiscal years ending on or after June 1, 2014.

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James' financial statements by updating the notes to John James' financial statements for the prior year as well as incorporating material provided by John James.

15. Trumeter emailed John James draft financial statements, including notes, and a draft supporting schedule in March 2015 for management approval.

16. In November 2015, Board inspection staff conducted a review of certain aspects of the 2014 Audit. Board inspection staff communicated to the Firm the staff's finding that, as a result of the Firm's preparation of John James' financial statements and supporting schedule, the Firm had not been independent from John James with respect to the 2014 Audit.

2015 Audit

17. In April 2016, John James filed with the Commission a Form X-17A-5 Part III containing its annual financial report for the year ended December 31, 2015. Included in that filing was a report signed by TJT and dated April 6, 2016 ("2015 Audit Report") in connection with TJT's audit of John James' December 31, 2015 financial statements ("2015 Audit").

18. Trumeter completed an "Engagement Acceptance and Continuance Form" in connection with the 2015 Audit. That form included pre-printed text stating:

The SEC expects accountants to comply with the independence requirements established by the PCAOB, Independence Standards Board, and 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.

19. On March 31, 2016, John James emailed Trumeter a set of draft financial statements, including Statements of Financial Condition, Operations, Shareholder's Equity, and Cash Flows; notes to the financial statements (with a note reading "needs fixing"); and a Net Capital Computation.

20. Trumeter identified certain aspects of those financial statements, notes, and supporting schedule that he believed should be revised. Trumeter discussed and obtained approval for those proposed revisions during calls in April 2016 with the president of John James; made those revisions in the electronic copy of the draft financial statements that he had received; provided John James with a copy of that revised set for management approval; and generated from that set that he had revised

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the final versions of the financial statements including notes and of the Net Capital Computation, which were later filed by John James with the Commission.

21. The revisions made by Trumeter to the financial statements drafted by and obtained from John James included changes to 12 of 20 line item amounts and to three of 20 line item descriptions, as well as the addition of a line item, in the Statement of Financial Condition; changes to five of nine line item amounts and to one of nine line item descriptions, as well as the aggregation of two line items, in the Statement of Operations; changes to four of 10 amounts in the Statement of Shareholder's Equity; and changes to six of eight line item amounts, as well as the addition of five line items, in the Statement of Cash Flows.

22. Trumeter also revised four of eight notes to the financial statements, including, for example, to substantially rewrite Note 4, "Related Party Transactions," and to add one of three paragraphs in Note 6, "Income Taxes."

23. With respect to the Net Capital Computation, Trumeter changed 12 of 14 line item amounts; revised a statement therein indicating there were no differences with the net capital computation contained in the Form X-17A-5 Part IIA filed by John James with the Financial Industry Regulatory Authority for the year ended December 31, 2015 ("FOCUS Net Capital Computation") to indicate, instead, that there were four such differences; and added a listing of those differences with item descriptions and amounts.

24. Trumeter emailed John James revised draft financial statements, including notes, and a revised draft supporting schedule in April 2016 for management approval.

25. TJT and Trumeter prepared John James' December 31, 2015 financial statements, including notes, and supporting schedule, notwithstanding the fact that Trumeter took different steps to do so than he had in the previous year and believed that those steps would not impair the Firm's independence.

26. As a result of TJT's and Trumeter's conduct—both in preparing the December 31, 2014 financial statements and supporting schedule¹³ before being notified by Board inspection staff that such preparation impaired the Firm's independence, and in preparing the December 31, 2015 financial statements after that

¹³ The preparation of John James' supporting schedule 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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notification—the Firm and Trumeter were not independent of John James 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 2014 Audit and 2015 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."¹⁴ The Firm and Trumeter consequently violated PCAOB Rule 3520 and AU § 220 in connection with the 2014 Audit and 2015 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 \$15,000 is imposed upon the Firm. 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. The Firm 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 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 Office of the Secretary,

¹⁴ *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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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 is required:

1. within ninety (90) days from the date of this Order, 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 date of this Order, 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 date of this Order and before the Firm's commencement of any SEC Registered Broker-Dealer Engagement (or, where the Firm by the date of this Order has already commenced but not completed such an engagement, before the Firm's release of its report), 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 date of this Order, to all audit personnel employed by, or associated with (as defined in PCAOB Rule 1001(p)(i)), the Firm as of the date of this Order,

b. within thirty (30) days from the date of this Order, to any client of the Firm as of the date of this Order for which the Firm has performed or has been engaged to perform an SEC Registered Broker-Dealer Engagement,

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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 date of this Order. 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 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), Thomas J. Trumeter, CPA, is censured.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

March 29, 2017