

PCAOB

Public Company Accounting Oversight Board

1666 K Street, N.W.
Washington, DC 20006
Telephone: (202) 207-9100
Facsimile: (202) 862-0757
www.pcaobus.org

ORDER INSTITUTING DISCIPLINARY
PROCEEDINGS, MAKING FINDINGS AND
IMPOSING SANCTIONS

*In the Matter of Fulvio & Associates, L.L.P.,
Kenneth Werner, CPA, Gennaro Fulvio, CPA,
and Kevin Clark, CPA,*

Respondents.

)
)
)
)
)
)
)
)
)
)
)
)
)
)

PCAOB Release No. 105-2017-029
June 27, 2017

By this Order, the Public Company Accounting Oversight Board (the "Board" or "PCAOB") is (1) censuring Fulvio & Associates, L.L.P. ("Firm"), a registered public accounting firm, revoking the Firm's registration,¹ and imposing a civil money penalty in the amount of \$20,000 upon the Firm; (2) censuring Kenneth Werner, CPA ("Werner"), barring him from being an associated person of a registered public accounting firm,² and imposing a civil money penalty in the amount of \$10,000 upon him; (3) censuring Gennaro Fulvio, CPA ("Fulvio"), and limiting Fulvio's activities in connection with any "audit," as that term is defined in Section 110(1) of the Sarbanes-Oxley Act of 2002, as amended (the "Act"), for a one year period from the date of this Order, by prohibiting Fulvio from serving in certain capacities in any audit as described in Section IV.F. herein; (4) censuring Kevin Clark, CPA ("Clark") and barring him from being an associated person of a registered public accounting firm.³ The Board is imposing these sanctions on the basis of its findings that (a) the Firm, Werner, Fulvio, and Clark (collectively, "Respondents") repeatedly violated PCAOB rules and standards in connection with their audit and examination engagement for Vision Financial Markets LLC ("VFM"), a broker-dealer, for fiscal year ending ("FYE") June 30, 2014; and (b) Werner and Clark violated PCAOB rules and standards by improperly altering audit documentation and failing to cooperate with a Board inspection.

¹ The Firm may reapply for registration after one (1) year from the date of this Order.

² Werner may file a petition for Board consent to associate with a registered public accounting firm after two (2) years from the date of this Order.

³ Clark may file a petition for Board consent to associate with a registered public accounting firm after one (1) year from the date of this Order.

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 Act and PCAOB Rule 5200(a)(1) against Respondents.

II.

In anticipation of institution of these proceedings, and pursuant to PCAOB Rule 5205, Respondents have each submitted an Offer of Settlement ("Offers") that the Board has determined to accept. Solely for purposes of these proceedings and any other proceedings brought by or on behalf of the Board, or to which the Board is a party, and without admitting or denying the findings herein, except as to the Board's jurisdiction over Respondents and the subject matter of these proceedings, which is admitted, Respondents consent to entry of this Order Instituting Disciplinary Proceedings, Making Findings and Imposing Sanctions ("Order") as set forth below.⁴

III.

On the basis of Respondents' Offers, the Board finds that:⁵

A. Respondents

1. Fulvio & Associates, L.L.P. is a limited liability partnership organized under the laws of New York, and headquartered in New York, New York. Fulvio registered with the Board on March 4, 2009, pursuant to Section 102 of the Act and PCAOB rules. The Firm is licensed as a certified public accountancy partnership in New York (Lic. No. 77 046476). At all relevant times, the Firm was the external auditor for VFM, with Werner serving as the engagement partner, Fulvio serving as the engagement quality reviewer, and Clark serving as the senior manager on the audit engagement. At the time of the FY 2014 audit of VFM, Werner and Fulvio led the Firm's audit practice. The Firm had only two other partners; they were tax professionals who did not perform audit work. Thus,

⁴ The findings herein are made pursuant to Respondents' Offers and are not binding on any other persons or entities in this or any other proceeding.

⁵ 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).



ORDER

for almost every audit performed by the Firm at this time, Werner served as the engagement partner and Fulvio served as the engagement quality reviewer. For the remaining audits, Werner and Fulvio switched roles. This Order uses the term "Team Respondents" to refer collectively to the respondents responsible for the work of the engagement team on the FY 2014 VFM engagement – i.e., the Firm, Werner, and Clark.

2. Kenneth Werner, CPA, age 60, of New York, New York, is, and at all relevant times was, a partner of the Firm and a certified public accountant licensed by the State of New York (Lic. No. 07 058800). Werner was the engagement partner for the Firm's audit and examination of VFM's FY 2014 financial statements and other required filings. As such, he was responsible for supervising the work of the engagement team. Werner 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).

3. Gennaro Fulvio, CPA, age 60, of New York, New York, is, and at all relevant times was, a partner of the Firm and a certified public accountant licensed by the State of New York (Lic. No. 07 041733). In addition to serving as the engagement quality reviewer for the Firm's audit and examination of VFM's FY 2014 financial statements and other required filings, Fulvio was the founder and Managing Partner of the Firm. He 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).

4. Kevin Clark, CPA, age 60, of Staten Island, New York, is, and at all relevant times was, an employee of the Firm and a certified public accountant licensed by the State of New York (Lic. No. 07 052952). Clark was the senior manager for the Firm's audit and examination of VFM's FY 2014 financial statements and other required filings. As such, his role on the FY 2014 VFM engagement included supervising the work of the other members on the engagement team, other than Werner. Clark 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

5. This matter concerns the Team Respondents' violations of PCAOB rules and standards in connection with their audit of the financial statements and accompanying supporting schedules of VFM for FYE June 30, 2014 (the "Audit"). Among other things, the Team Respondents failed to obtain sufficient appropriate audit evidence to support the Firm's audit opinion on VFM's financial statements and supporting schedules.

ORDER

6. This matter also concerns the Team Respondents' violations of Attestation Standard No. 1 ("AT 1"), *Examination Engagements Regarding Compliance Reports of Brokers and Dealers*, when performing their examination of the statements made by VFM in its FYE June 30, 2014 compliance report (the "Examination") prepared pursuant to Securities Exchange Act of 1934 ("Exchange Act") Rule 17a-5, 17 C.F.R. § 240.17a-5 ("Rule 17a-5"). In particular, Team Respondents failed to identify and test VFM's key internal controls over compliance with U.S. Securities and Exchange Commission ("Commission") rules for safeguarding certain customer assets held by VFM.

7. Additionally, in connection with the above Audit and Examination, Fulvio violated Auditing Standard No. 7, *Engagement Quality Review* ("AS 7") by providing his concurring approval of issuance without performing the required engagement quality reviews with due professional care.

8. Lastly, Werner and Clark violated PCAOB Rule 4006, *Duty to Cooperate with Inspectors*, and Auditing Standard No. 3, *Audit Documentation* ("AS 3"). In advance of the Board's 2014 inspection of the Firm, Werner and Clark improperly added audit documentation to the VFM work papers and made that misleading documentation available to PCAOB inspectors in violation of Rule 4006 and AS 3.

C. Team Respondents Violated PCAOB Rules and Standards in Their Audit of VFM's 2014 Financial Statements and Supporting Schedules

9. 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.⁶ For audits of fiscal years ending on or after June 1, 2014, Rule 17a-5(g) requires that audits of broker-dealers be performed in accordance with PCAOB standards. An auditor may express an

⁶ See 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 VFM Audit. As of December 31, 2016, the PCAOB reorganized its rules and auditing 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>.

ORDER

unqualified opinion on financial statements only when the auditor has formed such an opinion on the basis of an audit performed in accordance with PCAOB standards.⁷ Among other things, PCAOB standards require an auditor to exercise due professional care and professional skepticism in performing the audit, and plan and perform audit procedures to obtain sufficient appropriate audit evidence to afford a reasonable basis for an opinion regarding the financial statements.⁸

10. PCAOB standards also require that the auditor properly plan the audit, including performing risk assessment procedures sufficient to provide a reasonable basis for identifying and assessing the risk of material misstatement, whether due to error or fraud.⁹ The auditor should identify and assess the risks of material misstatement at the financial statement level and the assertion level, and design and perform audit procedures in a manner that addresses the risks of material misstatement for each relevant assertion of each significant account and disclosure.¹⁰

11. PCAOB standards provide that, when an auditor uses information produced by the company as audit evidence, the auditor should perform procedures to test the accuracy and completeness of that information, or test the controls over the accuracy and completeness of that information.¹¹

12. PCAOB standards also require that, when the auditor is engaged to audit supplemental information accompanying the financial statements of the audit client, the auditor should perform audit procedures to obtain appropriate audit evidence sufficient to support the auditor's opinion regarding whether the supplemental information is fairly

⁷ See AU § 508.07, *Reports on Audited Financial Statements*.

⁸ See AU § 150, *Generally Accepted Auditing Standards*; AU § 230, *Due Professional Care in the Performance of Work*; and Auditing Standard No. 15, *Audit Evidence* ("AS 15").

⁹ See Auditing Standard No. 9, *Audit Planning* ("AS 9"), ¶¶ 4-5; Auditing Standard No. 12, *Identifying and Assessing Risks of Material Misstatement* ("AS 12"), ¶¶ 4-58.

¹⁰ See AS 12 ¶ 59; Auditing Standard No. 13, *The Auditor's Responses to the Risks of Material Misstatement* ("AS 13"), ¶ 8.

¹¹ See AS 15 ¶ 10.

ORDER

stated, in all material respects, in relation to the financial statements as a whole.¹² In doing so, the auditor should perform procedures to test the accuracy and completeness of the information presented in the supplemental information.¹³

13. According to PCAOB standards, if an 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.¹⁴

14. As described below, Team Respondents failed to comply with PCAOB rules and standards in connection with the Audit.

Audit of VFM's 2014 Financial Statements

15. At all relevant times, VFM was a Delaware limited liability corporation headquartered in Stamford, Connecticut. VFM's public filings disclose that it is registered with the Commission as a broker-dealer operating on a self-clearing basis, and is registered with the Commodity Futures Trading Commission as a futures commission merchant. At all relevant times, VFM was a "broker" and "dealer," as defined in Section 110(3) and (4) of the Act and PCAOB Rule 1001(b)(iii) and (d)(iii). VFM is a "carrying broker-dealer;" that is, it is a broker-dealer that maintains custody of customer funds and securities.

16. On August 29, 2014, VFM filed with the Commission a Form X-17A-5 Part III for FYE June 30, 2014. Included in that filing was the Firm's FY 2014 audit report dated August 26, 2014 ("Audit Report"). Werner authorized the Firm's issuance of the Audit Report, which expressed an unqualified opinion on VFM's financial statements and supporting schedules, and stated, among other things, that the Firm's audit was conducted in accordance with PCAOB standards. Fulvio, as the engagement quality reviewer, provided concurring approval of issuance of the Audit Report.

17. As of FYE June 30, 2014, VFM reported assets of approximately \$1.06 billion, revenue of approximately \$93.3 million, and net income of approximately \$1.6

¹² See Auditing Standard No. 17, *Auditing Supplemental Information Accompanying Audited Financial Statements* ("AS 17"), ¶¶ 2-3.

¹³ *Id.* ¶ 4(e).

¹⁴ See Auditing Standard No. 14, *Evaluating Audit Results* ("AS 14"), ¶ 35.

ORDER

million. VFM also reported the fair value of its securities owned at approximately \$124.5 million, and of its securities sold (not yet purchased) at approximately \$257.4 million; those assets and liabilities were material to VFM's financial statements. For the VFM Audit, Team Respondents set planning materiality at \$705,981.

18. During audit planning, Team Respondents identified overstatement of investments as a significant risk in the audit area of "Securities/Other Investments," and assessed this risk as high with respect to the valuation of those securities. VFM's Securities/Other Investments included both securities VFM owned and those that it had sold with an obligation to repurchase ("securities sold (not yet purchased)"). With respect to VFM's securities owned, Team Respondents assessed the overall risk of material misstatement as high for the valuation and completeness assertions. For VFM's securities sold (not yet purchased), Team Respondents failed to perform any risk assessment procedures at all, in violation of PCAOB standards.¹⁵

19. To test the value of VFM's securities owned and its securities sold (not yet purchased), Team Respondents needed to evaluate, among other things, the quantity of the securities VFM held. However, in performing that evaluation during the Audit, Team Respondents relied solely on information produced by VFM without performing any procedures to test either the accuracy and completeness of that information, or VFM's controls over the accuracy and completeness of the information, as required by PCAOB standards.¹⁶ As a result, Team Respondents failed to obtain sufficient appropriate audit evidence concerning the value of both VFM's securities owned and its securities sold (not yet purchased).¹⁷

Supplemental Information in VFM's Supporting Schedules

20. Additionally, Team Respondents failed to obtain sufficient appropriate audit evidence regarding the supplemental information in the supporting schedules that accompanied VFM's FY 2014 financial statements. Rule 17a-5 required VFM to file

¹⁵ See AS 9 ¶¶ 4-5; AS 12 ¶ 4.

¹⁶ PCAOB standards provide that, when using information produced by the company as audit evidence, the auditor should "test the accuracy and completeness of the information, or test the controls over the accuracy and completeness of that information." AS 15 ¶ 10.

¹⁷ See AS 15 ¶¶ 4-6.

ORDER

certain supporting schedules that are audited by a PCAOB-registered firm.¹⁸ PCAOB standards provide that the objective of such audit procedures is to obtain appropriate audit evidence that is sufficient to support the auditor's opinion regarding whether the supplemental information is fairly stated, in all material respects, in relation to the financial statements as a whole.¹⁹

21. One of VFM's supporting schedules reported on its compliance with a Commission rule requiring VFM to, among other things, maintain a reserve of funds or qualified securities in an account at one or more banks for the exclusive benefit of customers (the "Reserve Requirements Rule").²⁰ Another VFM supporting schedule reported on its compliance with a Commission rule requiring it to, among other things, maintain a sufficient amount of net capital liquidity to satisfy claims promptly ("Net Capital Rule").²¹

22. In these supporting schedules, VFM reported net capital of approximately \$36 million, which it reported was about \$18 million in excess of its minimum net capital requirement. VFM also reported cash segregated for the exclusive benefit of its customers of approximately \$63 million, which it reported was about \$3 million in excess of its reserve requirement. As in the securities testing described above, Team Respondents' procedures concerning these supporting schedules relied solely on information produced by VFM without testing that information for accuracy and completeness, or testing the VFM controls over the accuracy and completeness of that information. Consequently, Team Respondents violated PCAOB standards by failing to obtain sufficient appropriate audit evidence that the supplemental information in the supporting schedules was fairly stated, in all material respects, in relation to the financial statements as a whole.²²

¹⁸ See Rule 17a-5(d)(1)(i)(A), (C) and (g).

¹⁹ See AS 17 ¶ 3.

²⁰ See 17 C.F.R. § 240.15c3-3, *Customer Protection – Reserves and Custody of Securities* ("Rule 15c3-3"). Rule 15c3-3, known as the Customer Protection Rule, contains the Reserve Requirements Rule at 15c3-3(e).

²¹ See 17 C.F.R. § 240.15c3-1, *Net Capital Requirements for Brokers or Dealers* ("Rule 15c3-1").

²² See AS 17 ¶¶ 2-4.

ORDER

D. Team Respondents Violated PCAOB Attestation Standard No. 1 in Their Examination of VFM's 2014 Compliance Report

Certain Commission Reporting Requirements for VFM

23. Under the Commission's "financial responsibility rules,"²³ VFM had to satisfy certain requirements relating to net capital and the protection of customer assets.²⁴ Additionally, Rule 17a-5 required VFM to file with the Commission an annual report containing a) a financial report that included financial statements and supporting schedules,²⁵ b) a compliance report concerning, among other things, the effectiveness of VFM's internal controls over compliance with the financial responsibility rules,²⁶ and c) a report by a PCAOB-registered firm based on an examination of VFM's financial and compliance reports.²⁷ Rule 17a-5 also required that the audit of the financial report and the examination of the compliance report be performed in accordance with PCAOB standards.²⁸

24. In the compliance report, VFM had to make certain statements ("assertions") about its compliance with the financial responsibility rules, including that: a) its Internal Control Over Compliance²⁹ ("ICOC") was effective during the most recent

²³ The term "financial responsibility rules" includes Rule 15c3-1; Rule 15c3-3; 17 C.F.R. § 240.17a-13, *Quarterly Security Counts to be Made by Certain Exchange Members, Brokers, and Dealers*; and any rule of a broker's or dealer's designated examining authority that requires account statements to be sent to the customers of the broker or dealer. The financial responsibility rules are the same as the rules cited in Rule 17a-5(d)(3)(ii).

²⁴ Although some broker-dealers qualify for exemption from one of the financial responsibility rules, Rule 15c3-3, VFM as a carrying broker-dealer did not qualify for exemption.

²⁵ See Rule 17a-5(d)(1)(i)(A), (d)(2).

²⁶ See Rule 17a-5(d)(1)(i)(B)(1), (d)(3).

²⁷ See Rule 17a-5(d)(1)(i) and (g).

²⁸ See Rule 17a-5(g).

²⁹ Rule 17a-5(d)(3)(ii) provides: "The term *Internal Control Over Compliance* means internal controls that have the objective of providing the broker or dealer with

ORDER

fiscal year; b) its ICOC was effective as of the end of the most recent fiscal year; and c) it was in compliance with Rule 15c3-1 and Rule 15c3-3(e) as of the end of the most recent fiscal year.³⁰

PCAOB Attestation Standard No. 1

25. AT 1 provides that, in performing an examination of the broker-dealer's compliance report, the auditor's objective is to express an opinion regarding whether the assertions in the compliance report are fairly stated, in all material respects.³¹ AT 1 also provides that, to express such opinion, the auditor must plan and perform the examination to obtain appropriate evidence that is sufficient to obtain reasonable assurance about whether 1) one or more material weaknesses³² existed during, or as of the end of, the most recent fiscal year being reported; and 2) one or more instances of non-compliance with the Net Capital Rule or the Reserve Requirements Rule existed as of the end of the most recent fiscal year being reported.³³ As noted in AT 1, the auditor's examination should include an evaluation of the effectiveness of ICOC with each financial responsibility rule during, and as of the end of, the most recent fiscal year.³⁴

26. AT 1 also provides that the auditor must exercise due professional care and professional skepticism when planning and performing the examination

reasonable assurance that non-compliance with §240.15c3-1, §240.15c3-3, §240.17a-13, or any rule of the designated examining authority of the broker or dealer that requires account statements to be sent to the customers of the broker or dealer (an 'Account Statement Rule') will be prevented or detected on a timely basis."

³⁰ See Rule 17a-5(d)(3)(i)(A).

³¹ See AT 1 ¶ 3.

³² A "material weakness" is one or more deficiencies in ICOC such that there is a reasonable possibility that non-compliance with the Net Capital Rule or Reserve Requirements Rule will not be prevented or detected on a timely basis, or that non-compliance to a material extent with Rule 15c3-3 (except for the Reserve Requirements Rule element), among other things, will not be prevented or detected on a timely basis. See AT 1, Appendix A ¶ A4.

³³ See AT 1 ¶ 4.

³⁴ Id. ¶ 4, Note.

ORDER

engagement, and that the engagement partner is responsible for proper planning and supervision of work for the engagement.³⁵ Additionally, when planning the examination of the compliance report, the auditor should obtain an understanding of the broker-dealer's processes regarding compliance with the financial responsibility rules, which includes evaluating the design of controls relevant to the examination and determining whether they have been implemented.³⁶ When performing the examination, the auditor must test the controls that are important to his or her conclusion about whether the broker-dealer has maintained effective ICOC for each financial responsibility rule during the fiscal year and at fiscal year-end, and must obtain evidence that the tested controls are designed effectively and operated effectively during the fiscal year and at fiscal year-end.³⁷ AT 1 further requires the auditor to conduct tests to determine whether the broker-dealer was in compliance with the Net Capital Rule and Reserve Requirements Rule at fiscal year-end; the auditor does this by, among other things, testing the accuracy and completeness of the information that the broker-dealer used to compute its compliance with those rules at fiscal year-end.³⁸

27. As described below, Team Respondents failed to comply with applicable PCAOB rules and standards in connection with their examination of the assertions made by VFM in its FYE June 30, 2014 compliance report (the "Examination").

Team Respondents' Examination of VFM's 2014 Compliance Report

28. On August 29, 2014, VFM filed Form X-17A-5 Part III for FY 2014 with the Commission. Included in that filing was VFM's FY 2014 compliance report dated August 26, 2014 ("Compliance Report"). On August 26, 2014, Werner had authorized the Firm's issuance of its examination report concerning VFM's Compliance Report ("Examination Report"), and Fulvio, as the engagement quality reviewer, provided concurring approval of issuance of the Examination Report. The Examination Report expressed Respondents' opinion that VFM's assertions in the Compliance Report were fairly stated, in all material respects, and the Examination Report stated, among other things, that the Examination was conducted in accordance with PCAOB standards.

³⁵ Id. ¶¶ 6(d), 7.

³⁶ Id. ¶ 9(b) and Note.

³⁷ Id. ¶ 11.

³⁸ Id. ¶ 21.

ORDER

29. Team Respondents failed to plan and perform the Examination to obtain appropriate evidence sufficient to provide reasonable assurance about whether there were material weaknesses in VFM's ICOC, as required by AT 1.³⁹ In particular, Team Respondents did not comply with the AT 1 requirement to obtain an understanding of VFM's ICOC.⁴⁰ In addition, Team Respondents failed to test key ICOC controls and obtain evidence that they were designed effectively and operating effectively, as required by AT 1.⁴¹

30. Team Respondents also violated AT 1 by failing to perform sufficient tests to determine that VFM was in compliance with the Net Capital Rule at FYE June 30, 2014.⁴² Specifically, Team Respondents failed to test the accuracy and completeness of the information that VFM used to compute its compliance with the Net Capital Rule at fiscal year-end.⁴³

31. As a result of the above deficiencies, Team Respondents lacked a sufficient basis for their opinion that VFM's assertions in its 2014 Compliance Report were fairly stated, in all material respects. Consequently, Team Respondents violated AT 1.⁴⁴

E. Fulvio Violated PCAOB Rules and Standards in Connection with the Engagement Quality Reviews for the Audit and Examination

32. Auditing Standard No. 7, *Engagement Quality Review*, requires that an engagement quality review be performed on all audits and certain attestation engagements conducted pursuant to PCAOB standards.⁴⁵ AS 7 also provides that a firm may grant permission to an audit client to use the firm's audit report or examination

³⁹ Id. ¶ 4; Appendix A ¶ A4.

⁴⁰ Id. ¶ 9(b) and Note.

⁴¹ See AT 1 ¶¶ 9(b), 11.

⁴² Id. ¶ 21.

⁴³ Id.

⁴⁴ Id. ¶¶ 3-4.

⁴⁵ See AS 7 ¶ 1.

ORDER

report only after an engagement quality reviewer provides concurring approval of issuance of the report.⁴⁶

33. Moreover, under AS 7, the engagement quality reviewer may provide concurring approval of issuance for an audit or examination report only if, after performing with due professional care the review required by AS 7, he or she is not aware of a significant engagement deficiency.⁴⁷ AS 7 states that a significant engagement deficiency in an audit exists under any of the following four circumstances: "(1) the engagement team failed to obtain sufficient appropriate evidence in accordance with the standards of the PCAOB, (2) the engagement team reached an inappropriate overall conclusion on the subject matter of the engagement, (3) the engagement report is not appropriate in the circumstances, or (4) the firm is not independent of its client."⁴⁸ A significant engagement deficiency in an attestation engagement exists under any of the final three circumstances described above, or when "the engagement team failed to perform attestation procedures necessary in the circumstances of the engagement."⁴⁹

34. An engagement quality reviewer should evaluate the significant judgments made by the engagement team and the related conclusions reached in forming the overall conclusion on the engagement and in preparing the engagement report.⁵⁰ In performing an engagement quality review for an audit, the engagement quality reviewer should, among other things, evaluate the engagement team's assessment of, and audit responses to, significant risks, including fraud risks, identified by the engagement team or other significant risks identified by the engagement quality reviewer.⁵¹ The engagement quality reviewer should also evaluate whether the engagement documentation that he or she reviewed indicates that the engagement team responded appropriately to significant risks and whether the engagement documentation that he or she reviewed supports the conclusions reached by the engagement team with respect to

⁴⁶ Id. ¶¶ 13, 18C.

⁴⁷ Id. ¶¶ 12, 18B.

⁴⁸ Id. ¶ 12, Note.

⁴⁹ Id. ¶ 18B, Note.

⁵⁰ Id. ¶¶ 9, 18A.

⁵¹ Id. ¶ 10(b).

ORDER

matters reviewed.⁵² Finally, the engagement quality reviewer should review the engagement completion document and other relevant information.⁵³

35. In connection with the Audit, Fulvio failed to appropriately evaluate the significant judgments made, and the related conclusions reached, by the engagement team with respect to significant areas of the Audit, including valuation of securities owned and securities sold (not yet purchased). Fulvio similarly failed to appropriately evaluate the significant judgments made, and the related conclusions reached, by the engagement team with respect to significant areas of the Examination, including the testing of VFM's ICOC and the testing of VFM's compliance with the Net Capital Rule at fiscal year-end.

36. Indeed, Fulvio failed to obtain and evaluate any audit documentation with respect to the significant judgments made, and the related conclusions reached, by the engagement team in either the Audit or the Examination. Tellingly, the sole evidence in the Firm's audit file of any work performed by Fulvio is a Supervision, Review, and Approval Form. This work paper is simply a checklist in which Fulvio checked "Yes" to 17 sets of statements that track requirements in AS 7 and AS 3, with no references to other work papers. Notably, in response to the checklist statement, "I have reviewed the engagement completion document," Fulvio checked "Yes," even though Team Respondents never created an engagement completion document for the Audit or Examination, as required by PCAOB standards.⁵⁴

37. Fulvio provided his concurring approvals of issuance without performing the engagement quality reviews with due professional care, and accordingly violated AS 7.

F. Werner and Clark Improperly Altered Audit Documentation and Failed to Cooperate with a Board Inspection

38. The PCAOB audit documentation standard, AS 3, requires, among other things, that prior to the report release date, the auditor must have completed all

⁵² Id. ¶ 11.

⁵³ Id. ¶¶ 10(e), 18A.

⁵⁴ See AS 3 ¶ 13. Furthermore, as the engagement quality reviewer, Fulvio violated PCAOB standards by failing to review an engagement completion document for the Audit and Examination. See AS 7 ¶¶ 10(e), 18A.

ORDER

necessary auditing procedures and obtained sufficient evidence to support the representations in the auditor's report.⁵⁵ Respondents' report release date for the Audit was August 29, 2014.

39. Additionally, AS 3 requires that a complete and final set of audit documentation be assembled for retention by the "documentation completion date," a date no later than 45 days from the date on which the auditor grants permission to use its report.⁵⁶ After the documentation completion date, audit documentation must not be deleted or discarded from the audit file, but it may be added as long as the auditor documents the date of the addition, the person who prepared the additional documentation, and the reason for adding the documentation.⁵⁷ The documentation completion date for the Audit was October 13, 2014.

40. PCAOB rules require that registered public accounting firms and their associated persons "shall cooperate with the Board in the performance of any Board inspection."⁵⁸ This cooperation obligation "includes an obligation not to provide misleading documents or information in connection with the Board's inspection processes."⁵⁹

41. As described below, Werner and Clark violated PCAOB Rule 4006 and AS 3.

42. After the report release date, Werner and Clark knew that the engagement team was still attempting to obtain evidence in connection with various aspects of the audit, including evidence for a "Customer Fully Paid Possession Testing" work paper ("Fully Paid Possession" work paper). Werner and Clark also knew that this work paper was created to give the misleading impression that certain audit procedures were performed before the report release date.

⁵⁵ AS 3 ¶ 15; see also id. ¶ 14 (defining report release date).

⁵⁶ See id. ¶ 15.

⁵⁷ See id. ¶ 16.

⁵⁸ See PCAOB Rule 4006.

⁵⁹ See *Deloitte Touche Tohmatsu Auditores Independentes*, PCAOB Rel. No. 105-2016-031, ¶ 62 (December 5, 2016); *José Domingos do Prado*, PCAOB Rel. No. 105-2016-032, ¶ 55 (December 5, 2016); *Nathan M. Suddeth, CPA*, PCAOB Rel. No. 105-2013-007, ¶ 4 (September 10, 2013).

ORDER

43. On or before November 10, 2014, the Board notified Respondents that the Firm's VFM audit would be reviewed during an inspection, with inspection fieldwork to start the week beginning December 8, 2014. In fact, since being notified in May 2014 that the Board would inspect the Firm at year-end, Respondents had suspected that the VFM audit would be reviewed because VFM was the Firm's only broker-dealer client not exempt from Rule 15c3-3.

44. In anticipation of the inspection, Werner and Clark also created and altered documents and improperly added them to the audit work papers after the documentation completion date without making any disclosures required by AS 3. These documents did not exist at the time of the audit. The misleading documents were then made available to the Board's inspectors in connection with the Firm's inspection, without any disclosure that they had recently been added to the VFM work papers.

45. The misleading documents consisted of several audit work papers. Specifically, a Control Environment work paper was created a few days after Respondents received notification of the Board inspection of the VFM audit, and an Internal Controls Questionnaire work paper also was created after the documentation completion date. Additionally, in an email that Clark sent to a Firm subordinate who was belatedly seeking evidence from VFM for the Fully Paid Possession work paper, Clark advised, "Tell [VFM] that the PCAOB is coming at the end of November to review the files and that we're trying to dot the 'i's' and cross the 't's' in our workpapers." This work paper, too, was improperly added to the audit documentation as described above.

46. By creating and improperly adding documentation to the VFM Audit work papers in anticipation of the PCAOB inspection and making those misleading documents available to the PCAOB inspectors, Werner and Clark violated PCAOB Rule 4006 and AS 3.

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), Fulvio & Associates, L.L.P., Kenneth Werner, CPA, Gennaro Fulvio, CPA, and Kevin Clark, CPA are hereby censured;
- B. Pursuant to Section 105(c)(4)(A) of the Act and PCAOB Rule 5300(a)(1), the registration of Fulvio & Associates, L.L.P. is revoked;

ORDER

- C. After one (1) year from the date of this Order, Fulvio & Associates, L.L.P. may reapply for registration by filing an application pursuant to PCAOB Rule 2101;
- D. Pursuant to Section 105(c)(4)(B) of the Act and PCAOB Rule 5300(a)(2), Kenneth Werner, 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);⁶⁰
- E. After two (2) years from the date of this Order, Kenneth Werner, CPA may file a petition, pursuant to PCAOB Rule 5302(b), for Board consent to associate with a registered public accounting firm;
- F. Pursuant to Section 105(c)(4)(C) of the Act and PCAOB Rule 5300(a)(3), for a period of one year from the date of this Order, Gennaro Fulvio's role in any "audit," as that term is defined in Section 110(1) of the Act and PCAOB Rule 1001(a)(v), shall be restricted as follows: Gennaro Fulvio shall not (1) serve, or supervise the work of another person serving, as an "engagement partner," as that term is used in the Board's Auditing Standard No. 10 or AS 1201, *Supervision of the Audit Engagement*; (2) serve, or supervise the work of another person serving, as an "engagement quality reviewer," as that term is used in the Board's Auditing Standard No. 7 or AS 1220, *Engagement Quality Review*; (3) serve, or supervise the work of another person serving, in any role that is equivalent to engagement partner or engagement quality reviewer, but differently denominated (such as "lead partner," "practitioner-in-charge," or "concurring partner"); (4) exercise authority, or supervise the work of another person exercising authority, either to sign a registered public accounting firm's name to an audit report, or to consent to the use of a previously issued audit report, for any issuer, broker, or dealer; or (5) serve, or supervise the work of another person serving, as the "other

⁶⁰ As a consequence of the bar, the provisions of Section 105(c)(7)(B) of the Act will apply with respect to Werner. Section 105(c)(7)(B) of the Act provides that "[i]t shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any issuer, broker, or dealer in an accountancy or a financial management capacity, and for any issuer, broker, or dealer that knew, or in the exercise of reasonable care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission."

ORDER

auditor," or "another auditor," as those terms are used in the Board's Interim Auditing Standard AU Section 543 or AS 1205, *Part of the Audit Performed by Other Independent Auditors*;

- G. Pursuant to Section 105(c)(4)(B) of the Act and PCAOB Rule 5300(a)(2), Kevin Clark, 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);⁶¹
- H. After one (1) year from the date of this Order, Kevin Clark, CPA may file a petition, pursuant to PCAOB Rule 5302(b), for Board consent to associate with a registered public accounting firm;
- I. 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 Fulvio & Associates, L.L.P, and a civil money penalty in the amount of \$10,000 is imposed upon Kenneth Werner, CPA. 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. Fulvio & Associates, L.L.P. and Kenneth Werner, CPA shall pay their respective civil money penalties within 10 days of the issuance of this Order by (1) wire transfer in accordance with instructions furnished 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 payor 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, Attention: Phoebe W.

⁶¹ As a consequence of the bar, the provisions of Section 105(c)(7)(B) of the Act will apply with respect to Clark. Section 105(c)(7)(B) of the Act provides that "[i]t shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any issuer, broker, or dealer in an accountancy or a financial management capacity, and for any issuer, broker, or dealer that knew, or in the exercise of reasonable care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission."

ORDER

Brown, Secretary, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington D.C. 20006.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

June 27, 2017