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ORDER INSTITUTING DISCIPLINARY PROCEEDINGS, MAKING FINDINGS, AND IMPOSING SANCTIONS	)	
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	)	PCAOB Release No. 105-2019-009
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<i>In the Matter of Raich Ende Malter &amp; Co.</i>	)	April 9, 2019
<i>LLP,</i>	)	
	)	
<i>Respondent.</i>	)	
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	)	

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By this Order, the Public Company Accounting Oversight Board ("Board" or "PCAOB") is censuring Raich Ende Malter & Co. LLP ("Respondent" or "Firm"), imposing a civil money penalty of \$15,000 on the Firm, and requiring the Firm to undertake certain remedial measures. The Board is imposing these sanctions on the basis of its findings that Respondent violated Section 10A(j) of the Securities Exchange Act of 1934 ("Exchange Act"), Exchange Act Rule 10A-2, and PCAOB rules and standards in connection with the Firm's audits of two issuer audit clients.

I.

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

II.

In anticipation of institution of these proceedings, and pursuant to PCAOB Rule 5205, the Respondent has submitted an Offer of Settlement ("Offer") 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 Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to entry of this Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions ("Order") as set forth below.<sup>1</sup>

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer and are not binding on any other persons or entities in this or any other proceeding.

**ORDER****III.**

On the basis of Respondent's Offer, the Board finds that:

**A. Respondent**

1. Raich Ende Malter & Co. LLP is, and at all relevant times was, a New York limited liability partnership headquartered in East Meadow, New York. The Firm is registered with the Board pursuant to Section 102 of the Act and PCAOB rules. The Firm is licensed to practice public accounting in New York (Lic. No. 77-41150), New Jersey (Lic. No. 20CZ00005800) and other jurisdictions. At all relevant times, the Firm was the independent auditor for the two issuers discussed in this Order.

**B. Summary**

2. This matter concerns Respondent's violations of Section 10A(j) of the Exchange Act, Exchange Act Rule 10A-2, and PCAOB rules and standards that require a registered public accounting firm and its associated persons be independent of the firm's issuer audit clients throughout the audit and professional engagement period. Respondent was not independent of Issuer A, an audit client, during one audit and professional engagement period because a Firm partner served as lead or concurring partner on the audits of Issuer A's financial statements for more than five consecutive years.<sup>2</sup>

3. Respondent also violated the mandatory, two-year "cooling-off" period for former engagement partners under Auditing Standard 1220, *Engagement Quality Review* ("AS 1220") (formerly AS 7).<sup>3</sup> For two years of audits of Issuer B, Respondent assigned as the engagement quality reviewer an individual who previously had served as the engagement partner for that client in the prior year, in violation of the mandatory two-year "cooling off" period for former engagement partners.

4. This matter also concerns Respondent's violations of PCAOB quality control standards by failing to establish and implement quality control policies and procedures sufficient to provide Respondent with reasonable assurance that Firm

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<sup>2</sup> See Section 10A(j) of the Exchange Act; Exchange Act Rule 10A-2; PCAOB Rule 3520, *Auditor Independence*; and AS 1005, *Independence* (formerly AU 220). 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 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* (Jan. 2017).

<sup>3</sup> See AS 1220.08.

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personnel would comply with applicable professional standards, specifically the partner rotation and mandatory two-year "cooling-off" requirements, and that its monitoring procedures were effective.

**C. The Firm Violated PCAOB and Exchange Act Rules, and PCAOB Auditing Standards****The Partner Rotation Requirements**

5. In connection with the preparation and issuance of an audit report, PCAOB rules require that a registered public accounting firm and its associated persons comply with all applicable auditing and related professional practice standards.<sup>4</sup> PCAOB rules and standards require 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>5</sup> A registered public accounting firm's independence obligation with respect to an issuer audit client encompasses not only an obligation to satisfy the independence criteria 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 Securities and Exchange Commission ("Commission") under the federal securities laws.<sup>6</sup>

6. Section 10A(j) of the Exchange Act provides, "It shall be unlawful for a registered public accounting firm to provide audit services to an issuer if the lead (or coordinating) audit partner (having primary responsibility for the audit), or the audit partner responsible for reviewing the audit, has performed audit services for that issuer in each of the 5 previous fiscal years of that issuer." Exchange Act Rule 10A-2 provides that it shall be unlawful for an auditor not to be independent with respect to the partner rotation requirements of Commission Regulation S-X, among other requirements.

7. Rule 2-01 of Commission Regulation S-X provides that an accountant is not independent of an audit client when an audit partner performs the services of lead or concurring audit partner for the same issuer for more than five consecutive years.<sup>7</sup> At all relevant times, the Firm had more than 5 issuer audit clients and more than 10

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<sup>4</sup> PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*.

<sup>5</sup> See PCAOB Rule 3520; see also AS 1005.

<sup>6</sup> See PCAOB Rule 3520, Note 1.

<sup>7</sup> See Rule 2-01(c)(6)(i)(A)(1) of Regulation S-X, 17 C.F.R. § 210.2-01(c)(6)(i)(A)(1).

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partners and did not qualify for the exemption in Rule 2-01 from this requirement for small firms.<sup>8</sup>

8. At all relevant times, Issuer A was a limited partnership formed under the laws of the State of Delaware. Its principal business was to invest as a limited partner in other partnerships that were eligible for low-income tax credits under the Tax Reform Act of 1986. Issuer A's limited partnership interests and beneficial assignment certificates were securities registered pursuant to Section 12(g) of the Exchange Act. At all relevant times, Issuer A was an "issuer" as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

9. The Firm audited Issuer A's financial statements for the fiscal years ended ("FYE") March 31, 2012 through FYE March 31, 2017. For each of these six audits of Issuer A, the Firm issued unqualified audit reports that were filed with the Commission. During the FYE 2012 audit of Issuer A, the Firm assigned an individual to serve as the engagement quality review ("EQR") partner. This individual continued to serve on the audits of Issuer A as the engagement partner for FYE 2013 through FYE 2017.

10. During the FYE 2017 audit and professional engagement period, the Firm was not independent of Issuer A because the engagement partner had served for more than five consecutive years on Issuer A's engagement, first as the EQR partner during the FYE 2012 audit followed by his service as the engagement partner for the FYE 2013 through FYE 2017 audits. As a result, the Firm failed to comply with Section 10A(j) of the Exchange Act, Exchange Act Rule 10A-2, PCAOB Rule 3520 and AS 1005.

**The Cooling Off Period Violations**

11. AS 1220.01 requires an EQR be performed on audit engagements, reviews of interim financial information, and certain attestation engagements conducted pursuant to PCAOB standards. AS 1220.08 further provides that "[t]he person who served as the engagement partner during either of the two audits preceding the audit subject to the EQR may not be the engagement quality reviewer."<sup>9</sup> The Firm failed to comply with AS 1220.08 as described below.

12. At all relevant times, Issuer B was an emerging growth company in the beverage industry incorporated in the State of Delaware with its principal office in New York, New York. Its shares were registered under Section 12(g) of the Exchange Act and were quoted on the OTCQB. At all relevant times, Issuer B was an "issuer" as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii). The Firm audited Issuer B's financial statements for FYE May 31, 2015 through FYE May 31,

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<sup>8</sup> Id. at § 210.2-01(c)(6)(ii).

<sup>9</sup> The Firm did not qualify for the small firm exemption under Rule 2-01(c)(6)(ii) of Regulation S-X, 17 C.F.R. § 210.2-01(c)(6)(ii), which also applies to the mandatory two-year "cooling off" requirement of AS 1220.08.

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2017 and issued unqualified audit reports that were filed with the Commission. The engagement partner who served on Issuer B's FYE 2015 audit also served as the engagement quality reviewer on the FYE 2016 and FYE 2017 audits without satisfying the mandatory two-year "cooling-off" period for former engagement partners in violation of AS 1220.

**D. The Firm Violated PCAOB Rules and Standards Related to Quality Control**

13. PCAOB rules require that a registered public accounting firm and its associated persons comply with the Board's quality control standards.<sup>10</sup> PCAOB quality control standards require that a registered public accounting firm establish policies and procedures to provide the firm with reasonable assurance that the work performed by engagement personnel meets applicable professional standards, regulatory requirements, and the firm's standards of quality.<sup>11</sup> Quality control policies and procedures should be established to provide the firm with reasonable assurance that personnel maintain independence (in fact and in appearance) in all required circumstances, which includes compliance with the Commission's independence requirements.<sup>12</sup> The policies and procedures also should address EQRs pursuant to AS 1220.<sup>13</sup> A firm should also have monitoring procedures to enable it to obtain reasonable assurance that its system of quality control is effective.<sup>14</sup>

14. Throughout the relevant time period, the Firm failed to implement and maintain a system of quality control that would provide it with reasonable assurance that the work performed by the engagement personnel complied with applicable professional standards. First, the Firm failed to establish policies and procedures to ensure compliance with partner rotation independence requirements, including failing to sufficiently monitor the number of years individuals served as engagement partner or EQR partner on an issuer audit engagement. Second, the Firm also failed to establish and implement quality control policies and procedures to provide reasonable assurance that the Firm would comply with the mandatory two-year "cooling-off" requirement of AS 1220.

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<sup>10</sup> PCAOB Rule 3400T, *Interim Quality Control Standards*.

<sup>11</sup> QC § 20.17, *System of Quality Control for a CPA Firm's Accounting and Auditing Practice*.

<sup>12</sup> QC § 20.09.

<sup>13</sup> QC § 20.18.

<sup>14</sup> QC § 30.03, *Monitoring a CPA Firm's Accounting and Auditing Practice*.

**ORDER****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 Respondent's Offer. Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 105(c)(4)(E) of the Act and PCAOB Rule 5300(a)(5), Raich Ende Malter & Co. LLP is hereby 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 Raich Ende Malter & Co. LLP. 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. Raich Ende Malter & Co. LLP shall pay this civil money penalty within 10 days of the issuance of this Order by (a) wire transfer in accordance with instructions furnished by Board staff; or (b) United States Postal Service postal money order, certified check, bank cashier's check or bank money order; (c) made payable to the Public Company Accounting Oversight Board; (d) delivered to the Controller, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington, D.C. 20006; and (e) submitted under a cover letter which identifies Raich Ende Malter & Co. LLP 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 the Office of the Secretary, Attention: Phoebe 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), Raich Ende Malter & Co. LLP is required:
  1. within ninety (90) days from the date of this Order, to establish policies and procedures, or review and/or supplement existing policies and procedures, for the purpose of providing the Firm with reasonable assurance of compliance with the partner rotation requirements of Section 10A(j) of the Exchange Act, Exchange Act Rule 10A-2 and Rule 2-01(c)(6)(i)(A)(1) of the Commission's Regulation S-X, and the mandatory two-year "cooling-off" period set forth in AS 1220.08;
  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 basis, concerning the partner rotation and mandatory two-year "cooling off" requirements, of any Firm audit personnel who

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participate in any way in the planning or performing of any audit services (as defined in PCAOB Rule 1001(a)(vii)); and

3. 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) and C(2) 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.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

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Phoebe W. Brown  
Secretary

April 9, 2019