
ORDER INSTITUTING DISCIPLINARY PROCEEDINGS, MAKING FINDINGS, AND IMPOSING SANCTIONS)	
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<i>In the Matter of Thomas Kober, CPA</i>)	PCAOB Release No. 105-2019-019
)	
<i>Respondent.</i>)	August 21, 2019
)	
)	

By this Order, the Public Company Accounting Oversight Board ("Board" or "PCAOB") is: (1) censuring Thomas Kober, CPA ("Kober" or "Respondent"); and barring him from being an associated person of a registered public accounting firm, but allowing Kober, after two years, to petition the Board for consent to associate with a registered firm. The Board is imposing these sanctions on the basis of its findings that Kober violated PCAOB rules and standards in connection with the audit of the 2015 year-end financial statements of Issuer A.

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 Respondent.

II.

In anticipation of institution of these proceedings, and pursuant to PCAOB Rule 5205, Respondent 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.¹

¹ The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

ORDER**III.**

On the basis of Respondent's Offer, the Board finds that:²

A. Respondent

1. **Thomas Kober, CPA**, 62, of East Quogue, New York, is a certified public accountant licensed by the New York State Education Department (License No. 051160). He is a partner at BMKR LLP ("BMKR" or "Firm"). He was the lead engagement partner on BMKR's audit of Issuer A's 2015 year-end financial statements ("FY 2015 Audit"). At all relevant times, Kober 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

2. This matter concerns Kober's violations of PCAOB rules and standards in connection with the FY 2015 Audit. The violations primarily relate to his audit work around Issuer A's acquisition of a business. On the date of the acquisition, Issuer A recognized approximately \$2 million in goodwill, and then determined that it was fully impaired that same day. Kober failed, among other things, to evaluate whether Issuer A's accounting for the acquisition was in conformity with U.S. Generally Accepted Accounting Principles ("GAAP").

3. Also as part of the FY 2015 Audit, Kober failed to obtain sufficient appropriate audit evidence about whether Issuer A's revenue was properly valued and recorded in the proper period. In addition, he failed to perform sufficient procedures to evaluate whether Issuer A's related party transactions were properly identified, accounted for, and disclosed in the financial statements.

C. Respondent Violated PCAOB Rules and Standards

4. 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

² The Board finds that Respondent's conduct described in this Order meets the condition set out in Section 105(c)(5) of the Act, 15 U.S.C. § 7215(c)(5), which provides that certain sanctions may be imposed in the event of: (1) intentional or knowing conduct, including reckless conduct, that results in a violation of the applicable statutory, regulatory, or professional standard; or (2) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

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with the Board's auditing and related professional practice standards.³ An auditor may express an unqualified opinion on an issuer's financial statements only when the auditor has formed such an opinion on the basis of an audit performed in accordance with PCAOB standards.⁴ Among other things, those standards require that an auditor exercise due professional care and professional skepticism in the performance of the audit.⁵ PCAOB standards also require that an auditor plan and perform audit procedures to obtain sufficient appropriate audit evidence to provide a reasonable basis for the auditor's opinion.⁶

5. As part of assessing audit results, "[t]he auditor must evaluate whether the financial statements are presented fairly, in all material respects, in conformity with the applicable financial reporting framework."⁷ In evaluating the information disclosed in the financial statements, an auditor must consider the form, arrangement, and content of the financial statements, including matters such as "the bases of amounts set forth."⁸ In forming an opinion, the auditor should take into account all relevant audit evidence, regardless of whether it appears to corroborate or to contradict the assertions in the financial statements.⁹

³ See PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*; PCAOB Rule 3200T, *Interim Auditing Standards*. All references to PCAOB rules and standards are to the versions of those rules and standards in effect at the time of the 2015 Audit. 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 Rel. No. 2015-002 (Mar. 31, 2015); see also *PCAOB Auditing Standards Reorganized and Pre-Reorganized Numbering* (Jan. 2017).

⁴ See AU § 508.07, *Reports on Audited Financial Statements*.

⁵ See AU § 150, *Generally Accepted Auditing Standards*; AU § 230, *Due Professional Care in the Performance of Work*.

⁶ See Auditing Standard ("AS") No. 15, *Audit Evidence*, ¶ 4.

⁷ AS No. 14, *Evaluating Audit Results*, ¶ 30.

⁸ Id. ¶ 31.

⁹ See id., ¶ 3.

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6. Where fair value measurements and disclosures are in the financial statements, PCAOB standards require that an auditor obtain sufficient appropriate audit evidence to provide reasonable assurance that they are in conformity with GAAP.¹⁰

7. Also, among the procedures that an auditor may perform to obtain sufficient appropriate audit evidence is audit sampling—the application of an audit procedure to less than 100 percent of the items within an account balance or class of transactions to evaluate some characteristic of the balance or class.¹¹ When planning a particular sample for a substantive test of details, an auditor should consider the relationship of the sample to the relevant audit objective and the characteristics of the population.¹² An auditor should also determine that the population from which the sample is drawn is appropriate for the specific audit objective.¹³ An auditor should select sample items in such a way that the sample can be expected to be representative of the population.¹⁴

8. PCAOB standards further require an auditor to evaluate a company's identification of, accounting for, and disclosure of relationships and transactions between the company and its related parties.¹⁵ Evaluating whether a company has properly identified its related parties and relationships and transactions with related parties involves assessing the process used by the company and making inquiries of management, the audit committee, and others.¹⁶ It also requires an auditor to perform procedures to test the accuracy and completeness of the related parties and relationships and transactions with related parties identified by the company, taking into account the information gathered during the audit.¹⁷ And an auditor must evaluate whether related party transactions have been properly accounted for and disclosed in the financial statements.¹⁸

¹⁰ See AU § 328, *Auditing Fair Value Measurements and Disclosures*, ¶¶ .03, .15.

¹¹ See AU § 350.01, *Audit Sampling*.

¹² See *id.*, ¶ .16.

¹³ See *id.*, ¶ .17.

¹⁴ See *id.*, ¶ .24.

¹⁵ See AS No. 18, *Related Parties*.

¹⁶ See *id.*, ¶¶ 3-9.

¹⁷ See *id.*, ¶ 14.

¹⁸ See *id.*, ¶ 17.

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9. As described below, Kober failed to comply with the applicable PCAOB rules and standards during the FY 2015 Audit.

Audit of Issuer A's FY 2015 Financial Statements

10. Kober was the engagement partner on the FY 2015 Audit. He authorized the Firm's issuance of an unqualified audit report, which included a going concern explanatory paragraph, on Issuer A's FY 2015 financial statements. The Firm's audit report, dated May 25, 2016, was included in Issuer A's Form S-1/A filed with the U.S. Securities and Exchange Commission ("Commission" or "SEC") on June 6, 2016.

11. Issuer A was, at all relevant times, a Florida corporation headquartered in Fort Lauderdale, Florida. Issuer A's public filings disclose that it was a development stage company providing document, project, marketing and sales management systems to its clients through its website and proprietary software. 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).

12. On January 5, 2015, Issuer A disclosed that it acquired 100% ownership of a business for purchase consideration of \$1,999,474 in Issuer A stock.¹⁹ Issuer A further disclosed that the acquisition was accounted for as a purchase transaction.²⁰ On the date of acquisition, Issuer A recorded net assets of the acquired business at fair market value of \$4,833 resulting in goodwill of \$1,994,641. On that same day, Issuer A determined that goodwill was fully impaired and recorded an impairment charge.

Kober Failed to Evaluate Whether Issuer A's Accounting for the Business Acquisition Was in Conformity with GAAP

13. Kober failed to evaluate whether Issuer A's purchase accounting for the business acquisition was in conformity with GAAP. GAAP requires that the identifiable assets acquired and liabilities assumed, and the consideration exchanged, be measured

¹⁹ See June 6, 2016 Issuer A, Form S-1/A at 45. Issuer A determined the fair value of the shares of the common stock issued in exchange for the 36 million outstanding shares of the acquired entity, which was recorded as purchase consideration, to be \$0.055 per share by using Issuer A's quoted share price on the over-the counter market pink sheets of the common stock on the acquisition date.

²⁰ See FASB Accounting Standards Codification ("ASC") 805, *Business Combinations*. Purchase transactions are accounted for using the acquisition method of accounting. Under this method, a company must, among other things, recognize and measure the assets acquired and the liabilities assumed, and recognize and measure goodwill.

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at fair value.²¹ Kober, however, failed to perform any procedures to determine whether the assets acquired and liabilities assumed were recorded in conformity with GAAP.²²

14. In addition, he failed to perform sufficient procedures to determine whether the acquisition was properly valued as required by GAAP.²³ Although he recalculated the number of shares times the stock price, Kober failed to perform any procedures to determine whether this acquisition was properly recorded at fair value, even though he knew Issuer A's stock was not trading in an active market.²⁴

15. Also, despite the fact that Issuer A fully impaired approximately \$2 million of goodwill²⁵ on the date of acquisition, Kober failed to perform any procedures to determine whether goodwill was properly valued.

16. In addition, Kober failed to evaluate evidence that contradicted the reasonableness of the value assigned to the purchase consideration, including the value assigned to the shares of the common stock issued on the acquisition date to the acquired entity's CEO²⁶ and Issuer A's determination that goodwill was impaired on the acquisition date.²⁷

²¹ See ASC 805.

²² See AU 328 ¶¶ .03, .15.

²³ See ASC 820-10-20, *Fair Value Measurements and Disclosures*. See also AS No. 15 ¶¶ 4-6, 11.

²⁴ An "active market" refers to a market in which transactions for the asset or liability take place with sufficient frequency and volume to provide pricing information on an ongoing basis. See ASC 820-10-20, *Fair Value Measurement – Overall – Glossary*.

²⁵ Goodwill is periodically tested for impairment—the condition that exists when the carrying amount of goodwill on a company's books exceeds its implied fair value. See ASC 350, *Intangibles – Goodwill and Other*. Such testing must occur annually, or more frequently if there is an indication of impairment. If the testing results in an impairment, the carrying amount of the goodwill must be reduced by the amount of the impairment. See id.

²⁶ As part of the acquisition, Issuer A satisfied a \$22,000 debt owed to the acquired entity's CEO in exchange for Issuer A stock valued at only \$.0003 per share—far less than the \$.055 quoted share price Issuer A used to value the acquisition.

²⁷ See AS No. 14, ¶ 3; AU 328 ¶¶ .03, .15.

ORDER***Kober Failed to Appropriately Audit Issuer A's Revenue***

17. Issuer A reported total revenue of \$110,431 for FY 2015.²⁸ To test revenue for the FY 2015 Audit, Kober selected a sample consisting of all sales transactions recorded in two different months, June and December, for testing, representing 34% of total revenue. Kober's selection of sales for testing did not constitute sufficient sampling under PCAOB standards because the selection of items for testing was not representative of the population.²⁹ Kober's sampling was done in such a way that sales transactions representing 66% of Issuer A's revenue did not have an opportunity for selection.³⁰

18. In addition, although Kober agreed each recorded sales transaction in the month to a sales invoice and, where applicable, traced cash deposit amounts to bank statements, these audit procedures were not appropriate because they failed to provide a reasonable basis to determine whether the cash deposits were generated from the sales from document, project, marketing and sales management systems, were recorded in the proper period, and were properly valued.

Kober Failed to Appropriately Audit Issuer A's Related Party Transactions

19. Issuer A disclosed that a member of its board of directors served as a managing partner, director, chief executive officer, or chief operating officer of other companies identified as related parties. Issuer A's transactions with these related parties accounted for 9% of its total FY 2015 revenue.

20. Kober understood Issuer A did not have a system or process in place for identifying related party transactions. Kober asked Issuer A's CEO about related parties and performed a Google search of Issuer A's officers and directors. He also relied on management representations for identified related party transactions.

21. Kober failed to perform sufficient procedures to identify and test related party transactions. Other than inquiring of management and performing a Google search as described above, Kober failed to perform procedures to identify related parties, identify the issuer's relationships and transactions with related parties, and evaluate the accuracy and completeness of Issuer A's disclosures.³¹

²⁸ See June 6, 2016 Issuer A, Form S-1/A at 37.

²⁹ See AU § 350.24.

³⁰ See id.

³¹ See AS No. 18 ¶¶ 14-15, 17.

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), Thomas Kober, CPA, is hereby censured;
- B. Pursuant to Section 105(c)(4)(B) of the Act and PCAOB Rule 5300(a)(2), Thomas Kober, 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);³² and
- C. After two (2) years from the date of this Order, Thomas Kober, CPA may file a petition, pursuant to PCAOB Rule 5302(b), for Board consent to associate with a registered public accounting firm.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

August 21, 2019

³² As a consequence of the bar, the provisions of Section 105(c)(7)(B) of the Act will apply with respect to Kober. 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."