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as to the Board's jurisdiction over Respondents and the subject matter of these proceedings, which are admitted, Respondents consent to entry of this Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions ("Order") as set forth below.¹

III.

On the basis of Respondents' Offers, the Board finds that:²

A. Respondents

1. **Thayer O'Neal Company, LLC** is a limited liability company organized under the laws of the state of Texas with headquarters in Sugar Land, Texas. The Firm registered with the Board pursuant to Section 102 of the Act and PCAOB rules. The Firm is licensed to practice public accounting by the Texas State Board of Public Accountancy (License No. C09097) and the Puerto Rico Board of Public Accountancy (License No. LLC-344).

2. **Thomas M. O'Neal, CPA** (also known as Mickey O'Neal), age 66, of Houston, Texas, is a certified public accountant licensed by the Texas State Board of Public Accountancy (License No. 018559) and the Puerto Rico Board of Public Accountancy (License No. R-205). He was the Managing Partner and an associated person of Thayer O'Neal. At all relevant times, O'Neal 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 O'Neal's violations of PCAOB rules and standards during the audit of the FY 2015 financial statements of Issuer A, a construction

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 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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company that installs solar panels for residential and commercial customers. As detailed below, O'Neal failed to obtain sufficient appropriate audit evidence and exercise due care including professional skepticism in connection with this audit.

4. This matter also concerns the Firm's failure to comply with AS 1220, *Engagement Quality Review* (formerly, Auditing Standard No. 7),³ for an issuer audit client. In the case of the Firm's audit of Issuer B's FY 2017 financial statements, the Firm failed to have an engagement quality review performed by a partner or another individual in an equivalent position.

C. Respondents Violated PCAOB Rules and Auditing Standards

5. 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.⁴ 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.⁵ Among other things, those standards require that an auditor exercise due professional care and professional skepticism in the performance of the audit.⁶

6. PCAOB standards also require that an auditor plan and perform audit procedures to obtain sufficient appropriate audit evidence to provide a reasonable

³ All references to PCAOB rules and standards are to the versions of those rules and standards, and to the organization and numbering thereof, in effect at the time of the relevant audits and reviews. 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* (January 2017).

⁴ See PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*; PCAOB Rule 3200T, *Interim Auditing Standards*; PCAOB Rule 3200, *Auditing Standards*.

⁵ See AU § 508.07, *Reports on Audited Financial Statements*.

⁶ See AU § 150, *Generally Accepted Auditing Standards*; AU § 230, *Due Professional Care in the Performance of Work*; Auditing Standard ("AS") No. 13, *The Auditor's Responses to the Risks of Material Misstatement*, ¶ 7.

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basis for the opinion.⁷ PCAOB standards state that the "auditor should design and perform audit procedures in a manner that addresses the assessed risks of material misstatement for each relevant assertion of each significant account and disclosure."⁸

7. When using "information produced by the company as audit evidence, the auditor should evaluate whether the information is sufficient and appropriate" by both: (a) "[t]est[ing] the accuracy and completeness of the information, or test[ing] the controls over the accuracy and completeness of that information"; and (b) "[e]valuat[ing] whether the information is sufficiently precise and detailed for purposes of the audit."⁹

8. The auditor's evaluation of audit results should include evaluation of "[t]he sufficiency and appropriateness of the audit evidence obtained."¹⁰ In concluding whether sufficient appropriate audit evidence has been obtained, an auditor must factor in the significance of uncorrected misstatements and the likelihood of their having a material effect, individually or in combination, on the financial statements, considering the possibility of further undetected misstatements.¹¹ If the 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.¹²

9. Among the procedures that an auditor should perform to obtain sufficient appropriate audit evidence is an evaluation of the accounting estimates used by management. Accordingly, when planning and performing procedures to evaluate accounting estimates, the auditor is required to consider, with an attitude of professional skepticism, both subjective and objective factors.¹³ The objective when evaluating accounting estimates is to obtain sufficient appropriate evidence to provide reasonable assurance that, among other things, the accounting estimates are reasonable in the circumstances and presented in conformity with applicable

⁷ See AS No. 15, *Audit Evidence*, ¶ 4.

⁸ AS No. 13 ¶ 8.

⁹ AS No. 15 ¶ 10.

¹⁰ AS No. 14, *Evaluating Audit Results*, ¶ 4(f).

¹¹ See id. ¶ 34(a).

¹² See id. ¶ 35.

¹³ See AU § 342.04, *Auditing Accounting Estimates*.

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accounting principles.¹⁴ In evaluating the reasonableness of an estimate, "the auditor should obtain an understanding of how management developed the estimate."¹⁵

10. Additionally, AS 1220 requires that an engagement quality review be performed on audits and interim reviews conducted pursuant to PCAOB standards.¹⁶ AS 1220 also provides that an engagement quality reviewer from the firm that issues the engagement report must be a partner or another individual in an equivalent position.¹⁷

11. Finally, PCAOB rules prohibit an associated person of a registered public accounting firm from "tak[ing] or omit[ting] to take an action knowing, or recklessly not knowing, that the act or omission would directly and substantially contribute to a violation by that registered public accounting firm of the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the [Securities and Exchange] Commission issued under the Act, or professional standards."¹⁸

12. As described below, Respondents failed to comply with PCAOB rules and standards.

**O'Neal Violated PCAOB Rules and
Standards with Respect to the FY 2015 Audit of Issuer A**

13. Issuer A is a Nevada corporation with headquarters in Tucson, Arizona. Issuer A's public filings disclose that it is a commercial and residential installer of Photovoltaic solar systems, LED lighting solutions, and electrical services, and a provider of financing for energy saving products. 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).

¹⁴ See *id.* ¶ .07.

¹⁵ *Id.* ¶ .10.

¹⁶ See AS 1220.01.

¹⁷ See *id.* ¶ .03.

¹⁸ PCAOB Rule 3502, *Responsibility Not to Knowingly or Recklessly Contribute to Violations*.

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14. The Firm served as external auditor for Issuer A for the FY 2015 Audit.¹⁹ The Firm's audit report for Issuer A's FY 2015 financial statements, dated April 8, 2016, was included in Issuer A's Form 10-K filed with the U.S. Securities and Exchange Commission ("Commission"), on April 11, 2016. The Firm expressed an unqualified opinion that Issuer A's FY 2015 financial statements presented fairly, in all material respects, Issuer A's financial position, results of operations, and cash flows in conformity with U.S. generally accepted accounting principles ("GAAP"). O'Neal, as engagement partner, authorized the issuance of the Firm's audit report.

15. Issuer A reported cost of sales of \$1.3 million on reported revenue of \$1.89 million in FY 2015,²⁰ including revenue of \$1.83 million from its solar contracts.²¹ Ninety-nine percent of the revenue from solar contracts was related to incomplete contracts as of the fiscal year ended December 31, 2015.²²

16. Issuer A disclosed that revenues from these solar contracts were accounted for under the percentage-of-completion ("POC") method of accounting in accordance with GAAP.²³ To apply POC, some basis or standard for measuring the progress to completion for each contract at particular interim dates is necessary. Issuer A also disclosed that its basis for measuring progress to completion was contract costs (*i.e.*, cost-to-cost). Under the POC cost-to-cost method, all contract costs are expensed as incurred, and the incurred cost as a percentage of the total estimated costs measures the progress to completion. Therefore, under the cost-to-cost method, revenue and gross profits are recognized based on the estimated progress to completion for each incomplete contract.

¹⁹ See Issuer A Form 10-K for the fiscal year ended December 31, 2015 ("Issuer A Form 10-K") at 12.

²⁰ See id. at 15.

²¹ See id.

²² See id. at 21.

²³ See Financial Accounting Standards Board ("FASB") Accounting Standard Codification ("ASC") 605-35, *Revenue Recognition – Construction-Type and Production-Type Contracts*. Under GAAP, POC is the preferred method for recognizing revenue when reasonably dependable estimates of contract revenues, contract costs, and the extent of progress toward completion can be made. Otherwise, POC should not be used, and revenue should be recognized only when a contract is completed or substantially completed.

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17. In auditing Issuer A's \$1.3 million of reported cost of sales, O'Neal planned to substantively test the actual contract costs that Issuer A charged on each contract to ensure that costs were recorded in the proper period and properly valued. He failed to do so.

18. Instead, O'Neal obtained a management prepared schedule ("POC schedule") of actual costs incurred by Issuer A on each incomplete contract. He tested the POC schedule for mathematical accuracy and agreed the actual costs incurred amounts to Issuer A's general ledger.

19. O'Neal, however, failed to perform sufficient procedures to test the cost of sales. Specifically, he failed to perform any audit procedures to test the accuracy and completeness or processes and controls concerning the recording, allocation, and classification of the costs recorded in the general ledger.²⁴ For example, O'Neal could have traced actual costs incurred from the general ledger to invoices from vendors as well as other supporting documents to determine whether costs were properly recorded on Issuer A's books and records, but did not do so. O'Neal also could have tested the design and operating effectiveness of Issuer A's controls over purchases and tracking of costs associated with a specific contract, yet he did not. As a result, O'Neal failed to obtain sufficient appropriate evidence about whether Issuer A's cost of sales was recorded in the proper period and properly valued or allocated to Issuer A's contracts.²⁵

Revenue

20. As set forth above, Issuer A reported that, for FY 2015, 99% of its reported revenue from solar contracts related to incomplete contracts,²⁶ for which Issuer A used the POC method to estimate revenue. As part of the risk assessment, O'Neal identified that a significant risk of material misstatement and fraud risk existed for revenue. The identified risk specifically related to whether revenue was appropriately recognized in the proper period and properly valued. In particular, O'Neal believed that "timing of revenue" was a significant risk. O'Neal specifically identified a risk of material misstatement associated with estimates used in the POC calculation for incomplete construction contracts.

²⁴ See AS No. 15 ¶ 10.

²⁵ See AS No. 15 ¶ 4.

²⁶ See Issuer A Form 10-K at 21.

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21. In response to these identified risks, O'Neal obtained Issuer A's POC schedule. In addition to the actual costs incurred by Issuer A for each incomplete contract, the POC schedule also contained management's estimates of the progress towards completion to determine estimated revenue for each incomplete contract. As discussed above, O'Neal failed to perform any audit procedures to test the accuracy and completeness of processes and controls concerning the recording, allocation, and classification of the costs recorded in the general ledger.

22. O'Neal also failed to obtain sufficient appropriate evidence that Issuer A's use of the POC method to estimate revenue was in conformity with GAAP.²⁷ Specifically, O'Neal understood that Issuer A lacked the ability to estimate total construction costs—the key to the POC cost-to-cost method. Accordingly, he concluded that Issuer A's use of POC to recognize revenue from solar contracts did **not** reflect a correct application of GAAP.²⁸ Despite this knowledge, he improperly concluded that Issuer A's revenue was recorded in the proper period and was properly valued, in violation of PCAOB standards.²⁹

**Respondents Violated PCAOB Rules and
Standards with Respect to the FY 2017 Audit of Issuer B**

23. The Firm was engaged to audit the financial statements of Issuer B for FY 2017. The Firm issued an audit report, dated July 6, 2018, which was included in Issuer B's Form 10-K filed with the Commission on July 9, 2018.

24. The Firm issued its audit report after obtaining an engagement quality review and concurring approval of issuance from an individual at the Firm. That individual who performed the engagement quality review was an employee of the Firm who was not a partner or another individual in an equivalent position. As a result, the Firm violated AS 1220.

²⁷ See AU § 342.07(c).

²⁸ O'Neal never obtained an understanding of how Issuer A management developed its estimates of progress towards completion. O'Neal performed his own calculation of Issuer A's revenue and compared it against the revenue estimated by Issuer A. O'Neal's calculation was less than one percent different from Issuer A's estimate. But his calculation relied on management's untested representations on the estimated progress toward completion for each incomplete contract.

²⁹ See AS 15 ¶ 4.

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25. O'Neal served as the head of the assurance practice at the Firm. He also served as the engagement partner on the FY 2017 audit of Issuer B. He determined who served as the engagement quality reviewer on the FY 2017 audit of Issuer B.

26. O'Neal knew, or was reckless in not knowing, that he was directly and substantially contributing to the Firm's violation when he improperly allowed an individual at the Firm who was not a partner or another individual in an equivalent position to perform the engagement quality review. As a result, O'Neal violated PCAOB Rule 3502.

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), Thayer O'Neal Company, LLC, and Thomas M. O'Neil, CPA are hereby censured;
- B. Pursuant to Section 105(c)(4)(B) of the Act and PCAOB Rule 5300(a)(2), Thomas M. O'Neal, 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);³⁰
- C. After two (2) years from the date of this Order, Thomas M. O'Neal, CPA may file a petition, pursuant to PCAOB Rule 5302(b), for Board consent to associate with a registered public accounting firm;
- D. Pursuant to Section 105(c)(4)(F) of the Act and PCAOB Rule 5300(a)(6), Thomas M. O'Neal, CPA is required to complete, before filing any petition for Board consent to associate with a registered public accounting firm, forty (40) hours of professional education and training directly related to

³⁰ As a consequence of the bar, the provisions of Section 105(c)(7)(B) of the Act will apply with respect to O'Neal. 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."

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the audits of issuer and broker-dealer financial statements under PCAOB standards (such hours shall be in addition to, and shall not be counted in, the continuing professional education he is required to obtain in connection with any professional license); and

- E. 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 payable by the Firm is imposed. All funds collected by the Board as a result of the assessment of these civil money penalties will be used in accordance with Section 109(c)(2) of the Act. The Firm shall pay this civil money penalty within 10 (ten) 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 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, Attention: Phoebe W. 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

August 21, 2019