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Order Instituting Disciplinary Proceedings, Making Findings and Imposing Sanctions

In the Matter of Marcum LLP,

Respondent.

PCAOB Release No. 105-2020-012

September 24, 2020

By this Order, the Public Company Accounting Oversight Board (“Board” or “PCAOB”) is: (1) censuring Marcum LLP (“Marcum,” “Firm,” or “Respondent”); (2) imposing a civil money penalty of \$250,000 on Marcum; (3) prohibiting Marcum, for a period of three years from the date of this Order, from issuing an audit report for an issuer client with substantially all of its operations in the People’s Republic of China; and (4) requiring Marcum to undertake a review of its quality control policies and procedures regarding initial acceptance of, and audits performed for, certain issuer clients.

The Board is imposing these sanctions on the basis of its findings that Marcum violated PCAOB rules and auditing standards in connection with the audits of the financial statements of an issuer (“Issuer”) for the years ended December 31, 2013 and 2014 (“Audits”).

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 against Marcum pursuant to Section 105(c) of the Sarbanes-Oxley Act of 2002, as amended (“Act”), and PCAOB Rule 5200(a)(1).

II.

In anticipation of the institution of these proceedings, and pursuant to PCAOB Rule 5205, Marcum 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 it and the subject matter

of these proceedings, which are admitted, Marcum consents to the entry of this Order Instituting Disciplinary Proceedings, Making Findings and Imposing Sanctions (“Order”) as set forth below.¹

III.

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

A. Respondent

1. **Marcum LLP** is a New York limited liability partnership headquartered in Melville, New York. Marcum is licensed by the New York State Education Department (License No. 067839) and several other states. Marcum is, and at all relevant times was, registered with the Board pursuant to Section 102 of the Act and PCAOB rules. Marcum served as the Issuer’s independent auditor from April 2015 to November 2016.³

B. Other Relevant Entity

2. **Marcum Bernstein & Pinchuk LLP** (“MarcumBP”) is a New York limited liability partnership headquartered in New York, New York. It was formed as a joint venture between Marcum and another registered firm. MarcumBP is licensed by the New York State Education Department (License No. 093038), the Texas State Board of Accountancy (License No. P05632), and the Nevada State Board of Accountancy (License No. PART-0888). MarcumBP is, and at all relevant times was, registered with the Board pursuant to Section 102 of the Act and PCAOB rules. During the Audits, Marcum supervised MarcumBP personnel, who performed auditing procedures regarding the Issuer’s China-based operations and transactions.

¹ 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.

² The Board finds that Respondent’s 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), which provides that certain sanctions may be imposed in the event of: (A) intentional or knowing conduct, including reckless conduct, that results in a violation of the applicable statutory, regulatory, or professional standard; or (B) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

³ Marcum concurrently audited the Issuer’s 2013 and 2014 financial statements, and later audited the 2015 financial statements. Marcum issued a single audit report addressing all three years, which was included in the Issuer’s Form 10-K for the year ended December 31, 2015, filed with the Securities and Exchange Commission in November 2016.

C. Issuer

3. The Issuer was, at all relevant times, a Delaware corporation whose public filings disclosed that it developed and manufactured energy storage systems and related products. At all times relevant to this Order, (1) the Issuer's common stock was registered under Section 12(g) of the Securities Exchange Act of 1934, and (2) the Issuer was an "issuer" within the meaning of Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

4. In 2011, the Issuer became majority owned by a company organized under the laws of Hong Kong ("Controlling Shareholder"). The Issuer later announced plans to manufacture its products in mainland China, and began moving its manufacturing operations from the United States to China in 2012. By the end of 2013, the Issuer was operating primarily from China.

D. Summary

5. Marcum violated PCAOB rules and standards⁴ during the Audits when it failed to perform appropriate procedures regarding significant unusual transactions engaged in by the Issuer. The transactions—between one of the Issuer's wholly-owned Chinese subsidiaries ("Subsidiary") and a Chinese purchasing agent ("Agent")—involved the Subsidiary's transfers of loan proceeds to the Agent as prepayments to buy equipment and materials that the Agent never delivered. The loans were obtained from Chinese lenders for the purpose of making these purchases. While the Agent returned a portion of the prepayments—some in unusual same-day, round-trip transfers—it did not return most of them.

6. There were fraud risks associated with these significant unusual transactions, particularly the risks that the Subsidiary may have defrauded its lenders by transferring loan proceeds to the Agent and that the Agent may have been an undisclosed related party. But Marcum's engagement team failed to respond appropriately to these fraud risks. First, the team improperly acquiesced to management's deletion of important language from confirmation requests designed to test the Subsidiary's compliance with loan agreements. Second, Issuer management further interfered in the confirmation process by directing a junior member of the engagement team to particular persons at each lender from whom he obtained the lenders' confirmation responses. Finally, the team failed to perform the audit procedures

⁴ There have been changes to the numbering, organization, and, in some cases, content of PCAOB rules and standards since the 2013 and 2014 Issuer audits and the events described in this Order. This Order cites only those rules and standards that were in effect for the 2013 and 2014 audits. Current and archived versions of PCAOB standards are available at www.pcaobus.org/standards.

necessary to resolve inconsistent audit evidence concerning whether the Agent was a related party.

7. By failing to adequately respond to the known fraud risks, Marcum's engagement team breached its duty to perform the Audits with the due professional care and professional skepticism required by PCAOB standards. The team also failed to adequately understand the business rationale (or the lack thereof) for the significant unusual transactions and failed to obtain sufficient appropriate audit evidence to support Marcum's opinion on the Issuer's financial statements.

8. The Firm shares responsibility for the violations of PCAOB standards that occurred during the Audits.⁵ As described below, during the client acceptance process, Marcum became aware of serious risks associated with this audit engagement, particularly relating to the Issuer's operations in China. The Firm assigned a new partner with no experience auditing companies with substantial operations in China, but failed to adequately oversee the performance of the Audits to obtain reasonable assurance that engagement personnel had appropriately responded to the fraud risks and complied with PCAOB standards.

E. The Predecessor Auditor Resigned

9. Marcum accepted the Issuer as a new audit client in April 2015. At that time, the Issuer was seriously delinquent in making its required filings with the Securities and Exchange Commission; its last periodic filing was a Form 10-Q for the 2013 third quarter.

10. When it approved client acceptance, Marcum knew that the Issuer's predecessor auditor had resigned in August 2014. In its resignation letter, the predecessor auditor advised the Issuer that it could not complete the 2013 audit, in part because it had been unable to perform sufficient procedures to determine the completeness of subsequent event transactions that may have occurred in China.

11. As disclosed in a September 2014 Form 8-K filing, the predecessor auditor also advised the Issuer that it had identified several material weaknesses in the Issuer's internal controls over financial reporting, including:

- A failure to implement adequate procedures and controls to ensure accurate and timely communication between the Issuer's subsidiaries in China and its

⁵ See also *John E. Klenner*, PCAOB Release No. 105-2020-013 (Sept. 24, 2020); *Helen R. Liao*, PCAOB Release No. 105-2020-014 (Sept. 24, 2020).

U.S.-based accounting team, which had led to material misstatements identified by the predecessor auditor during the audit process;

- A significant turnover in executive management (four CEOs and three CFOs since 2012) and accounting personnel, which had led to a lack of segregation of duties throughout the company and resulted in a lack of controls to perform a timely review of transactions at an appropriate level of precision; and
- A failure to implement adequate procedures and controls to appropriately evaluate routine and non-routine transactions, which had led to a failure to detect material misstatements identified by the predecessor auditor during the audit process.

12. In March 2015, the Issuer filed a Form 8-K reporting that management had analyzed the internal control issues and material weaknesses identified by its predecessor auditor, and concluded that there was “factual support that such issues and weaknesses existed in 2013.” As a result, the Issuer disclosed that investors should no longer rely on the financial statements in its Form 10-Q for the period ended September 30, 2013.

F. Background of the Significant Unusual Transactions in China

13. As Marcum knew, the Issuer’s predecessor auditor had resigned due, in part, to its concerns about certain transactions that had occurred between the Subsidiary and its Agent in 2013 and 2014. During the Audits, Marcum’s engagement team identified these and certain other transactions—described in the work papers as “significant cash disbursements to [the Agent]”—as significant unusual transactions.⁶

14. These transactions stemmed from an August 2013 cooperation agreement in which the Agent agreed to act as the Subsidiary’s agent for purchasing equipment and raw materials.⁷ The equipment and raw materials were needed to fulfill commitments made by another Chinese subsidiary of the Issuer in a 2012 agreement with two Chinese municipal

⁶ PCAOB standards describe significant unusual transactions as “significant transactions that are outside the normal course of business for the entity, or that otherwise appear to be unusual given the auditor’s understanding of the entity and its environment.” AU § 316.66.

⁷ According to a client-prepared memo in Marcum’s audit documentation, “[The Agent]’s business is that of being a purchasing agent for inventory, equipment, or anything else a company needs to purchase . . . [The Agent] requires an upfront prepayment from clients to place orders for them . . . [The Agent] then makes an arbitrage profit on the timing difference between when prepayment is received and when the money is actually paid out to vendors.”

governments. Under that agreement, the other subsidiary agreed to construct a production plant on land to which it had been granted use rights by one municipal government. Both municipal governments agreed to purchase electric-powered buses from that subsidiary, which was not in the business of manufacturing or selling electric buses.

15. The significant unusual transactions involved the Subsidiary's transfers to the Agent of the proceeds of loans obtained purportedly to help finance the equipment and raw material purchases. The transactions took two forms: (a) prepayments to the Agent for goods that were never delivered; and (b) round-trip cash transfers. Details of these transactions were set forth in a client-prepared memo included in the audit documentation. Those details—which were known to the engagement team during the Audits—are summarized below.

i. Prepayments to the Agent for Goods Never Delivered

16. In 2013 and 2014, the Subsidiary issued purchase orders ("POs") to the Agent to procure production-line equipment and raw materials for the total purchase price of approximately \$63 million.⁸ To help finance those purchases, the Subsidiary borrowed \$17.2 million from a Chinese rural credit cooperative ("Credit Co-op") in 2013 and \$20.9 million from a local Chinese bank ("Bank") in 2014. The loan agreements with the Credit Co-op and the Bank (collectively, "Lenders") restricted the Subsidiary's use of the proceeds to equipment and raw material purchases, as well as construction costs. The Subsidiary submitted the POs to the Lenders to show that the proceeds were being used in accordance with the loan agreements.

17. When the Lenders released the borrowed funds, the Subsidiary transferred all of the loan proceeds to the Agent, purportedly as prepayments for the equipment and raw material purchases. In one instance, the prepayment was almost double what the Subsidiary then owed the Agent under the PO terms. The Agent, which never delivered any goods, eventually returned portions of the prepayments to the Subsidiary.

18. In the fall of 2014, the Subsidiary and the Agent cancelled their cooperation agreement and the POs. Although the Agent agreed to refund \$27.5 million of prepayments (representing the balance of the loan proceeds purportedly still held by the Agent),⁹ the Agent

⁸ For purposes of this Order, all transactions originally denominated in Chinese Yuan have been converted into U.S. Dollars, which have been approximated using the then-current Chinese Yuan to U.S. Dollar exchange rate.

⁹ The Subsidiary had prepaid the Agent a total of \$38.1 million from funds it borrowed from the Lenders. By the time the POs were cancelled, the Agent had returned a net amount of \$10.6 million to the Subsidiary.

did not return any of that money. Instead, a Chinese company affiliated with the Issuer (“Affiliate”)¹⁰ agreed to settle the Agent’s obligation to return the \$27.5 million by delivering electric buses of equivalent value to the Subsidiary. Later, the Affiliate (an electric bus manufacturer) and the Controlling Shareholder delivered buses to the Subsidiary. The buses were then purchased by the two Chinese municipal governments under their agreement with the Issuer’s other Chinese subsidiary.

ii. Same-Day, Round-Trip Cash Transfers

19. As described in Marcum’s audit documentation, even after the cooperation agreement and the POs were cancelled, the Subsidiary continued to send loan proceeds to the Agent. In these transactions, however, the Agent did not retain the proceeds. Instead, it immediately returned them to the Subsidiary.

20. In September 2014, the Subsidiary secured a \$7.3 million draw from its then existing line of credit with the Credit Co-op. The Subsidiary sent the borrowed funds from its Credit Co-op account to the Agent in two transfers (\$6.6 million and \$0.7 million). In each transaction, the Agent returned all of the money the same day, but not to the Subsidiary’s account at the Credit Co-op. The Agent instead sent the money to the Subsidiary’s account at a different financial institution.

21. Later that fall, the Subsidiary executed a new loan agreement with the Credit Co-op in the principal amount of \$17.1 million. After the money was released and deposited into its Credit Co-op account, the Subsidiary sent the entire amount to the Agent, and the Agent returned the funds the same day to a Subsidiary account elsewhere.

iii. Management Representations about the Significant Unusual Transactions

22. During the Audits, management of the Issuer and the Controlling Shareholder made certain representations to Marcum’s engagement team about the purported business rationale for the significant unusual transactions. Management represented that the POs had been submitted to the Lenders in order to secure release of the borrowed funds, and that the funds (including those round-tripped back to the Subsidiary) were transferred to the Agent to show the Lenders that the proceeds were being used in accordance with the loan agreements.

¹⁰ The Issuer and the Affiliate were under common control of the Controlling Shareholder, which held a majority of the Issuer’s shares and wholly owned the Affiliate. The Issuer disclosed the Affiliate and the Controlling Shareholder as related parties in its Form 10-K. See FASB Accounting Standards Codification (“ASC”) 850-10-20, *Related Party Disclosures* (glossary definitions of “affiliate,” “control,” and “related parties”).

23. However, management also represented that the transfers of borrowed funds to the Agent were mere formalities. According to management, the Lenders did not care whether the Subsidiary procured from the Agent or some other party, as long as the loan proceeds were used to purchase the equipment and raw materials specified in the POs and the loan agreements (management represented that the goods were eventually purchased from other sources for a better price). In addition, management represented that the Agent was not a related party and that the transactions with the Agent did not have to be disclosed as related party transactions in the Issuer's financial statements.

G. Marcum Violated PCAOB Standards in Connection with the Audits

i. Relevant Provisions of PCAOB Standards

24. 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.¹¹ 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.¹² Among other things, PCAOB standards require the auditor to plan and perform audit procedures to obtain sufficient appropriate audit evidence to provide a reasonable basis for his or her opinion on the financial statements.¹³

25. PCAOB standards also require the auditor to exercise due professional care, including professional skepticism, in planning and performing the audit.¹⁴ Because of the characteristics of fraud, the auditor's exercise of professional skepticism is important when considering fraud risks,¹⁵ including fraud risks associated with significant unusual transactions.

26. Under PCAOB standards, Marcum was required to gain an understanding of the business rationale for the significant unusual transactions between the Subsidiary and the

¹¹ See PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*; PCAOB Rule 3200T, *Interim Auditing Standards*.

¹² See AU § 508.07, *Reports on Financial Statements*.

¹³ See Auditing Standard ("AS") No. 15, *Audit Evidence*, ¶ 4.

¹⁴ See AU § 230.07, *Due Professional Care in the Performance of Work* ("Professional skepticism is an attitude that includes a questioning mind and a critical assessment of audit evidence.").

¹⁵ See AU § 316.13, *Consideration of Fraud in a Financial Statement Audit*.

Agent.¹⁶ In gaining that understanding, the standards set forth several factors requiring consideration, including whether the form of the transactions was overly complex and whether the transactions involved previously unidentified related parties.¹⁷

27. PCAOB standards also required Marcum to evaluate whether the business rationale (or the lack thereof) for the significant unusual transactions suggested that they may have been entered into to engage in, among other things, fraudulent financial reporting.¹⁸ Misstatements arising from fraudulent financial reporting involve intentional misstatements or omissions of amounts or disclosures in financial statements.¹⁹ The engagement partner knew that material misstatements due to fraud could have arisen from the significant unusual transactions if, among other things, (1) the Subsidiary had defrauded its Lenders through those transactions, or (2) the Agent was a previously unidentified related party.

28. As described below, Marcum violated these and other PCAOB standards in performing the Audits.

ii. Marcum Knew that Management had Interfered in Audit Procedures Designed to Test Compliance with Loan Agreements

29. To assess whether the Subsidiary's transfers of loan proceeds to the Agent violated the agreements with its Lenders, Marcum's engagement team decided to send customized confirmation requests to the Lenders.²⁰ The customized requests included specific factual details of the Subsidiary's dealings with the Agent. Among other things, the requests detailed that: (a) the Subsidiary used POs issued to the Agent to secure release of borrowed funds; (b) the Subsidiary disbursed the loan proceeds to the Agent; (c) the Agent returned certain of the funds to the Subsidiary; (d) the POs were cancelled; and (e) the Subsidiary never purchased any goods from the Agent. The requests asked the Lenders to confirm in writing that they were aware of these facts and that the Subsidiary had nonetheless complied with the loan agreements.

¹⁶ See AU § 316.66.

¹⁷ See AU § 316.67.

¹⁸ AU § 316.66.

¹⁹ AU § 316.06.

²⁰ See AU § 330.08, *The Confirmation Process*, which addresses confirming the terms of unusual or complex transactions that are associated with high levels of inherent and control risk; see also AU § 330.25 ("auditor should consider requesting confirmation of the terms of unusual agreements or transactions").

30. An audit director at MarcumBP in China was instructed to obtain in-person, written responses to the customized confirmation requests from the Lenders. But before he had an opportunity to obtain the Lenders' confirmation responses, the MarcumBP director informed the engagement partner and the engagement quality review ("EQR") partner that Issuer management had unilaterally approached the Lenders about the requests, and that, according to management, the Lenders would not confirm the requests as written. Management then revised the confirmation requests by deleting all details about the Agent transactions. The MarcumBP director forwarded the client-revised requests to the engagement partner and the EQR partner, telling them that management believed the Lenders were willing to confirm the requests as revised. In an emailed response to the director, the engagement partner wrote that "[i]t appears that we are removing all of the information that is critical to the confirmation process"

31. Despite the engagement partner's objections to the client-revised confirmation requests and without his authorization, the MarcumBP director dispatched a junior staff member to the Lenders with the revised requests. An Issuer employee accompanied the junior staff member and directed him to a particular respondent at each Lender from whom he obtained written confirmations on the client-revised requests.²¹ When meeting with the Lender respondents, the junior staff member also orally reviewed with them the specific details about the Agent transactions that had been deleted from the original confirmation requests. Although the Lenders purportedly were unwilling to confirm knowledge of those specific details in writing, the Lenders' respondents orally acknowledged the details and stated that they did not present a loan compliance issue. The MarcumBP junior staff member contemporaneously documented the oral acknowledgements, which were then summarized in the work papers.

32. After he received the responses to the client-revised confirmations, the engagement partner again objected, informing the MarcumBP director that those "confirmations were not approved by Marcum." Because "all of the [Agent] transaction information was removed from the confirmations," the engagement partner said the revised requests did not "satisfy the requirement for which we were requesting the original

²¹ Under PCAOB standards governing the confirmation process, the auditor should direct a confirmation request to "a third party who the auditor believes is knowledgeable about the information to be confirmed." AU § 330.26. The standards use the term "respondent" to refer to the third-party recipient of a confirmation request. See AU § 330.27.

confirmations.”²² Nevertheless, after conferring with Issuer’s management, the engagement partner ultimately accepted the Lender respondents’ confirmations on the client-revised requests, together with the oral acknowledgments documented by the junior staff member. The engagement partner failed to exercise due professional care and professional skepticism when he relied on the Lender respondents’ written confirmation responses and oral acknowledgments as evidence of the Subsidiary’s compliance with its loan agreements.²³

33. Management’s interference raised serious questions about whether the confirmation responses obtained by the junior staff member were reliable evidence of the Subsidiary’s compliance with its lending agreements. Management’s deletion of information about the Agent transactions from the written requests was particularly suspect in light of the round-trip cash transfers, whose structure suggested a possible motive to conceal from the Credit Co-op the Agent’s returns of loan proceeds. In each round-trip transfer, the Subsidiary sent the loan proceeds from its account at the Credit Co-op to the Agent, who returned them the same day to a Subsidiary account at a different financial institution. The engagement team never obtained audit evidence to support a legitimate business rationale for the round-trip transfers.

34. In addition, management’s direction of the MarcumBP junior staff member to particular individuals at each Lender raised serious questions about whether the confirmation requests had been directed to respondents with the appropriate competence, knowledge, motivation, objectivity, and freedom from bias as to the Issuer.²⁴ In such cases, “the auditor should consider whether there is sufficient basis for concluding that the confirmation request is being sent to a respondent from whom the auditor can expect the response will provide meaningful and appropriate evidence.”²⁵ But Marcum’s engagement team failed to adequately evaluate whether the respondents were capable of providing meaningful and appropriate evidence of the Subsidiary’s compliance with its loan agreements.

²² As a result of management unilaterally approaching the Lenders and changing the confirmation requests, the engagement team had failed to maintain control over the confirmation requests and responses as required by PCAOB standards. *See* AU § 330.28.

²³ *See* AU § 330.15 (“Professional skepticism is important in designing the confirmation request, performing the confirmation procedures, and evaluating the results of the confirmation procedures.”); *see also* AU § 230.07 and .09; AU § 316.13.

²⁴ *See* AU § 330.27.

²⁵ *Id.*

35. By relying on the Lender respondents' confirmation responses and oral acknowledgments as evidence of the Subsidiary's compliance with the loan agreements, Marcum failed to obtain sufficient appropriate audit evidence of the Subsidiary's compliance with the loan agreements and failed to adequately evaluate the business rationale (or the lack thereof) for the significant unusual transactions with the Agent.²⁶

iii. Marcum Failed to Obtain Sufficient Appropriate Evidence to Determine Whether the Transactions with the Agent Involved a Previously Unidentified Related Party

36. During the Audits, Marcum identified and assessed related party transactions as a risk of material misstatement due to fraud. In identifying the risk, the team noted that "management might have [the] intention to omit or conceal significant and unusual related party transactions." They also assessed the risk of material misstatement as high for "related party transactions without proper approval or business rationale[,] and not properly or adequately disclosed."

37. Although management represented that the Agent was not a related party, the engagement partner was aware of contradictory audit evidence. For example, he reviewed audit evidence that caused him to question whether the Issuer's Controlling Shareholder had the ability to control or significantly influence the Agent's management or operating policies, which, if true, would render the Agent a related party of the Issuer.²⁷ He also knew that the Agent and the Controlling Shareholder had engaged in transactions as "longtime business partners."

38. To evaluate whether the Agent and the Controlling Shareholder were related parties, Marcum's engagement team requested, among other things, details of the transactions between the two parties. In lieu of the transaction details, management provided excerpts of the Controlling Shareholder's audited financial statements, which did not disclose the Agent as a related party.²⁸ But reading excerpts of the Controlling Shareholder's audited financial

²⁶ See AS No. 15; AU § 316.66 and .67.

²⁷ If the Controlling Shareholder also controlled the Agent, the Agent would be an affiliate, and therefore a related party, of the Issuer. See ASC 850-10-20 (glossary definitions of "affiliate," "control," and "related parties"). In that case, U.S. GAAP would have required the Issuer to disclose the Subsidiary's transactions with the Agent, which were material to the Issuer's financial statements. See ASC 850-10-50.

²⁸ The Controlling Shareholder's financial statements were audited by a firm unaffiliated with Marcum or MarcumBP.

statements was not an adequate response to this fraud risk,²⁹ particularly in light of inconsistent evidence suggesting that the Agent was a possible related party. By failing to perform the audit procedures necessary to resolve the inconsistent audit evidence,³⁰ the engagement partner again failed to exercise due professional care, including professional skepticism, in performing the Audits. Consequently, Marcum failed to obtain sufficient appropriate evidence to determine whether the significant unusual transactions with the Agent were related party transactions and, if so, to satisfy itself concerning the adequacy of the Issuer's disclosures in its financial statements.³¹

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), Marcum 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 \$250,000 is imposed upon Marcum 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. Marcum 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 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 Marcum 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

²⁹ Among other things, the engagement team had no basis for knowing what procedures may have been performed by the Controlling Shareholder's auditor to identify related parties and related party transactions.

³⁰ See AS No. 15 ¶ 29.

³¹ See AS No. 15; AU § 334.01 and .11, *Related Parties*.

Secretary, Attention: Phoebe Brown, Secretary, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington, D.C. 20006; and

- C. Pursuant to Sections 105(c)(4)(C), (F), and (G) of the Act and PCAOB Rules 5300(a)(3), (6), and (9), the Board orders that:
1. Issuance of Audit Reports for SEC Issuers in China: For a period of three years from the date of this Order, Marcum LLP shall not issue an audit report for an issuer client with substantially all of its operations in the People's Republic of China.
 2. Review by Marcum LLP: Within the period specified in paragraph C.3 below, Marcum LLP shall review and evaluate the following:
 - a. Marcum LLP's quality control policies and procedures related to initial acceptance of issuer clients and engagements to ensure that the Firm appropriately considers the risks associated with performing audit services for certain "higher-than-normal-risk" issuer clients. Solely for purposes of the undertakings in this Order, a "higher-than-normal risk" issuer client refers to a newly-accepted issuer client (i) whose former auditor issued an adverse, qualified, or other opinion or disclaimer described in 17 CFR § 229.304(a)(1)(ii); (ii) that had a disagreement with its former auditor as described in 17 CFR § 229.304(a)(1)(iv); or (iii) whose former auditor advised it of any of the matters described in 17 CFR § 229.304(a)(1)(v); and
 - b. Marcum LLP's quality control or other policies and procedures to provide the Firm with reasonable assurance that its engagement personnel comply with PCAOB standards in performing audit services for "higher-than-normal risk" issuer clients, including policies and procedures regarding: (i) the assignment of appropriately qualified engagement partners and engagement quality review partners to such audits; (ii) the circumstances in which engagement personnel are required to seek consultation on accounting and auditing matters arising from such audits; and (iii) the mechanisms by which the Firm oversees such audits to ensure compliance with PCAOB standards.

3. Reporting: Within one year of the date of this Order, Marcum LLP shall submit a written report to the Director of the Division of Enforcement and Investigations summarizing the review and evaluation of the areas specified in paragraph C.2 above (“Report”). The Report shall describe any modified or additional policies or procedures adopted or to be adopted by Marcum LLP or, if Marcum LLP concludes no such modifications or additions should be adopted, a detailed explanation of why the Firm believes changes are not warranted. In addition, Marcum LLP shall submit any additional information and evidence concerning the Report, the information in the Report, and Marcum LLP’s compliance with this Order as the staff of the Division of Enforcement and Investigations may reasonably request.

4. Certificate of Implementation: Within eighteen months of the date of this Order, Marcum LLP’s head of quality assurance shall certify in writing (“Certificate of Implementation”) to the Director of the Division of Enforcement and Investigations that Marcum LLP has implemented all of the modifications and additions to its policies and procedures that were described in the Report. The Certificate of Implementation shall provide written evidence of the Firm’s adoption of such modifications and additions in narrative form, identify the actions taken to implement such modifications and additions, and be supported by exhibits sufficient to demonstrate implementation. The Firm shall also submit such additional evidence of, and information concerning, implementation as the staff of the Division of Enforcement and Investigations may reasonably request.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

September 24, 2020