

ORDER

Respondent consents to entry of this Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions ("Order") as set forth below.²

III.

On the basis of Respondent's Offer, the Board finds that:³

A. Respondent

1. Brian D. Donahue, CPA, age 61, of Highlands, New Jersey, is a certified public accountant licensed by the New Jersey State Board of Accountancy (License No. 20CC01355000). On June 14, 2016, the Board issued an Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions, *In the Matter of Donahue Associates LLC and Brian D. Donahue, CPA*, PCAOB Release No. 105-2016-020 ("2016 Bar Order"). At all relevant times, Donahue 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. Relevant Firm

2. Leigh J Kremer CPA ("Firm") is a sole proprietorship organized under the laws of the state of New Jersey with a headquarters in Monmouth Beach, New Jersey. On November 4, 2014, 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 New Jersey State Board of Accountancy (License No. 20CB00717000).

C. Summary

3. This matter concerns Donahue's violations of the Act and PCAOB rules by becoming an "associated person" of the Firm during the pendency of a Board order barring Donahue from associating with a registered public accounting firm.⁴ In exchange for Donahue's referral to the Firm of two issuer and ten broker-dealer audit clients, the

² 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.

³ The Board finds that Respondent's conduct described in this Order meets the condition set out in Section 105(c)(5)(A) of the Act, which provides that certain sanctions may be imposed in the event of intentional or knowing conduct, including reckless conduct, that results in a violation of the applicable statutory, regulatory, or professional standard.

⁴ Neither the Board nor the Securities and Exchange Commission ("Commission") consented to Donahue's association, as would have been required for the association to comply with the Act and the Board's rules.

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Firm paid Donahue a percentage of the audit fees that it collected from those clients after the issuance of the 2016 Bar Order. Section 2(a)(9)(A) of the Act, *Definitions: Person Associated with a Public Accounting Firm*, and PCAOB Rule 1001(p)(i), *Definitions of Terms Employed in Rules: Person Associated with a Public Accounting Firm*, each define an associated person of a registered public accounting firm to include anyone who, "in connection with the preparation or issuance of any audit report . . . shares in the profits of, or receives compensation in any other form from, that firm." Thus, Donahue's receipt of a portion of the Firm's issuer and broker-dealer audit fees resulted in Donahue becoming an associated person of the Firm, in violation of Section 105(c)(7)(A) of the Act, *Effect of Suspension: Association with a Public Accounting Firm*, PCAOB Rule 5000, *General*, and PCAOB Rule 5301(a), *Effect of Sanctions: Effect on Persons*.⁵

D. Respondent Violated the Act and PCAOB Rules

4. On June 14, 2016, the Board issued the 2016 Bar Order, with Donahue's consent. The 2016 Bar Order resulted from the Board's findings that Donahue and his accounting firm, Donahue Associates LLC, violated PCAOB rules and standards in connection with audits of three issuer clients and violated Section 10A(b)(2) of the Securities Exchange Act of 1934 in connection with the audit of one issuer client. Among other things, the 2016 Bar Order barred Donahue 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), with a right to petition for Board consent to associate with a registered public accounting firm after one year.

5. Section 105(c)(7)(A) of the Act and PCAOB Rule 5301(a) prohibit a suspended or barred individual from willfully becoming or remaining associated with a registered public accounting firm without Board or Commission consent. Section 2(a)(9)(A) of the Act and PCAOB Rule 1001(p)(i) define an associated person of a registered public accounting firm to include anyone who, "in connection with the preparation or issuance of any audit report . . . shares in the profits of, or receives compensation in any other form from, that firm." Accordingly, the note to Rule 5301(a) specifies that a suspended or barred individual "may not, in connection with the preparation or issuance of any audit report . . . share in the profits of, or receive compensation in any other form from, any registered public accounting firm." Furthermore, PCAOB Rule 5000 requires registered firms and their associated persons to "comply with all Board orders to which the firm or person is subject."

6. Donahue and the Firm recognized that the 2016 Bar Order would preclude Donahue from participating in issuer or broker-dealer audits, and they decided to negotiate a "buy-out" by the Firm of Donahue's issuer and broker-dealer audit clients. Donahue and the Firm ultimately agreed that Donahue would refer to the Firm two of his

⁵ All references to PCAOB rules and standards are to the versions of those rules and standards in effect at the time of the relevant conduct.

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issuer audit clients and ten of his broker-dealer audit clients in exchange for receiving a series of payments made pursuant to a formula based on a percentage of the audit fees that the Firm collected from those clients. With respect to the issuer audit clients, the Firm agreed to pay Donahue 70% of the audit fees it collected for auditing the issuers' 2016 financial statements and 50% of the audit fees it collected for auditing their 2017 financial statements. With respect to the broker-dealer audit clients, the Firm agreed to pay Donahue 75% of the audit fees it collected for auditing the broker-dealers' 2016 financial statements. Between September 7, 2016 and October 6, 2017, the Firm made a series of payments to Donahue in accordance with this agreement.

7. In receiving payments from the Firm based on a percentage of the Firm's issuer and broker-dealer audit fees, Donahue became an associated person of the Firm despite the bar that the Board had imposed against him. Specifically, Donahue's receipt of those payments constituted "shar[ing] in the profits of, or receiv[ing] compensation in any other form from" a registered public accounting firm "in connection with the preparation or issuance of any audit report." As a result, this conduct violated Section 105(c)(7)(A) of the Act and PCAOB Rule 5301(a). Furthermore, Donahue, by willfully becoming an associated person of the Firm in contravention of the bar set forth in the 2016 Bar Order, violated PCAOB Rule 5000.

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), Brian D. Donahue, CPA is hereby censured;
- B. Pursuant to Section 105(c)(4)(B) of the Act and PCAOB Rule 5300(a)(2), Brian D. Donahue, 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);⁶

⁶ As a consequence of the bar, the provisions of Section 105(c)(7)(B) of the Act will apply with respect to Donahue. 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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- C. After five (5) years from the date of this Order, Brian D. Donahue, CPA may file a petition, pursuant to PCAOB Rule 5302(b), for Board consent to associate with a registered public accounting firm; and
- D. 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 Brian D. Donahue, 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. Donahue shall pay this civil money penalty within ten (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 Donahue 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

July 24, 2018