

ORDER

II.

In anticipation of the 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 is admitted, Respondent consents to the 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. Goracke & Associates is a registered public accounting firm located in La Vista, Nebraska. At all relevant times, the Firm was licensed by the Nebraska Board of Public Accountancy (permit no. 38505). The Firm, formed in 2000, is registered with the Board pursuant to Section 102 of the Act and Board rules.

B. Summary

2. Goracke & Associates prepared the financial statements for a broker-dealer audit client ("Broker-Dealer") for the year ended December 31, 2012. As a result, the Firm was not independent of the Broker-Dealer under auditor independence criteria established by the Commission and made applicable by Exchange Act Rule 17a-5(f)(3)

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 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 (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.



ORDER

to audits of brokers and dealers.⁴ Board inspection staff reviewed aspects of the December 31, 2012 audit of the Broker-Dealer and communicated to the Firm that its preparation of the financial statements had impaired the Firm's independence. Notwithstanding that communication, Goracke & Associates, for the year ended December 31, 2013, again prepared the Broker-Dealer's financial statements and took substantially the same steps to do so as it had the previous year.

3. The Firm audited both sets of financial statements and issued audit reports that the Broker-Dealer included with the financial statements it filed with the Commission. In each of the audit reports, the Firm represented that the audit had been performed in accordance with Generally Accepted Auditing Standards ("GAAS"). Because GAAS requires independence, however, each of those representations violated Rule 17a-5(i), which required the audit report to state whether the audit was made in accordance with GAAS.

C. Respondent Violated a Commission Rule

4. Rule 17a-5(d)(1) requires, among other things, that "[e]very broker or dealer registered pursuant to section 15 of the [Securities Exchange] Act [of 1934] shall file annually, on a calendar or fiscal year basis, a report which shall be audited by an independent public accountant." Rule 17a-5(d)(2) states that "[t]he annual audited report" filed by a registered broker or dealer, among other things, "shall contain a Statement of Financial Condition . . . , a Statement of Income, a Statement of Cash Flows, a Statement of Changes in Stockholders' or Partners' or Sole Proprietor's Equity, and [a] Statement of Changes in Liabilities Subordinated to Claims of General Creditors."

5. Rule 17a-5(e)(1)(i) states: "An audit shall be conducted by a public accountant who shall be in fact independent as defined in paragraph (f)(3) of this

⁴ Exchange Act Rule 17a-5, referenced throughout this Order as "Rule 17a-5," is found at 17 C.F.R. § 240.17a-5. The rule provisions set out herein are those in effect during, and applicable to, the relevant conduct. On July 30, 2013, the Commission adopted certain amendments to Rule 17a-5. See Broker-Dealer Reports, SEC Exchange Act Release No. 34-70073 (July 30, 2013), 78 Fed. Reg. 51910 (Aug. 21, 2013). Among other things, the amendments to Rule 17a-5 require that audits of brokers and dealers be performed in accordance with PCAOB standards, effective for audits of fiscal years ending on or after June 1, 2014. In addition, Rule 17a-5 provides that the auditor must be independent in accordance with Rule 2-01 of Commission Regulation S-X. At the time of the relevant conduct, that requirement was set out in Rule 17a-5(f)(3). It is now set out in Rule 17a-5(f)(1).

ORDER

section herein, and he shall give an opinion covering the statements filed pursuant to paragraph (d)" Rule 17a-5(f)(3) states: "An accountant shall be independent in accordance with the provisions of § 210.2-01(b) and (c) of this chapter."

6. Rule 17a-5(g) requires that "[t]he audit shall be made in accordance with generally accepted auditing standards." Rule 17a-5(i) requires that "[t]he accountant's report shall . . . [s]tate whether the audit was made in accordance with generally accepted auditing standards."

7. GAAS requires auditors to maintain strict independence from their audit clients.⁵ "[I]f an auditor's report states that its audit was in accordance with GAAS when the auditor was not independent, then it has violated Rule 17a-5(i)."⁶

8. Pursuant to Rule 17a-5(f)(3), certain of the Commission's auditor independence criteria described in Rules 2-01(b) and (c) of Regulation S-X⁷ apply to audits of brokers and dealers.⁸ The applicable provisions include Rule 2-01(c)(4), which states in part:

An accountant is not independent if, at any point during the audit and professional engagement period, the accountant provides the following non-audit services to an audit client:

⁵ AU-C Section 200.15-.16, *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance With Generally Accepted Auditing Standards*. References herein to GAAS are to the versions of the auditing standards that were applicable to audits of brokers and dealers at the time of the audit at issue here.

⁶ *Rosenberg Rich Baker Berman & Company*, Exchange Act Release No. 69765, 2013 WL 2898032, at *4 (June 14, 2013).

⁷ 17 C.F.R. Part 210.

⁸ Not all independence criteria described in Rule 2-01(c) apply to audits of brokers and dealers. As the Commission has explained, those audits "are not subject to the partner rotation requirements or the compensation requirements of the Commission's independence rules [Rules 2-01(c)(6) and (c)(8)] because the statute mandating those requirements is limited to issuers," and they "are not subject to the audit committee pre-approval requirements or the cooling-off period requirements for employment [Rules 2-01(c)(7) and (c)(2)(iii)(B)] because those requirements only reference issuers." See Exchange Act Release No. 34-70073 at II.E.



ORDER

(i) *Bookkeeping or other services related to the accounting records or financial statements of the audit client.* Any service, unless it is reasonable to conclude that the results of these services will not be subject to audit procedures during an audit of the audit client's financial statements, including:

...

(B) Preparing the audit client's financial statements that are filed with the Commission or that form the basis of financial statements filed with the Commission

9. The Firm served as the auditor of the Broker-Dealer's December 31, 2012 financial statements, as well as its December 31, 2013 financial statements. At all relevant times, the Broker-Dealer was a "broker" and "dealer," as defined in Section 110 of the Act and PCAOB Rules 1001(b)(iii) and 1001(d)(iii), and was not an "issuer," as defined in Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

10. In February 2013, the Broker-Dealer filed with the Commission a Form X-17A-5 Part III for the year ended December 31, 2012. Included in that filing was an audit report signed by the Firm dated February 5, 2013. That report stated, among other things, that the Firm audited the Broker-Dealer's financial statements "in accordance with auditing standards generally accepted in the United States of America."

11. Firm staff completed an "Engagement Acceptance and Continuance Form" in connection with the audit of the Broker-Dealer's December 31, 2012 financial statements ("2012 Audit"). That form included pre-printed text reading, in part:

The SEC expects accountants to comply with the independence requirements established by the PCAOB, Independence Standards Board, and the accounting profession (the AICPA), as well as the requirements promulgated by the Commission and its staff. The SEC's independence rules are set forth in Rule 2-01 of Regulation S-X. Rule 2-01's general standard of independence requires both the fact and the appearance of independence.

12. Firm staff also completed a work paper titled "Audit Program for General Auditing and Completion Procedures" in connection with the 2012 Audit. The pre-printed text therein included, among other things, a direction to the engagement team to "[o]btain a draft of the financial statements from the client."



ORDER

13. Firm staff obtained from the Broker-Dealer in January and February 2013 various documents including a trial balance as of December 31, 2012; a balance sheet as of December 31, 2012; an income statement for the year ended December 31, 2012; and four Forms X-17A-5 Part IIA—one for each of the four quarters of 2012—that Firm staff understood had been filed by the Broker-Dealer with the Financial Industry Regulatory Authority ("FINRA"), that bore the headers "FOCUS Report (Financial and Operational Combined Uniform Single Report)," and that contained quarterly financial statements.

14. Firm staff used the above documents and other information obtained from the Broker-Dealer to prepare the Statement of Cash Flows for the year ended December 31, 2012, as well as to draft the notes to the Broker-Dealer's December 31, 2012 financial statements, all of which were filed by the Broker-Dealer with the Commission in February 2013.

15. Firm staff provided the Broker-Dealer with a draft Statement of Cash Flows and draft notes to the financial statements on February 2, February 13, and February 20, 2013 for management approval.

16. Following the 2012 Audit, Board inspection staff conducted a review of certain aspects of the 2012 Audit. On October 22, 2013, the Firm received a comment form issued by Board inspection staff in connection with that review. The comment form set out the staff's finding that the Firm had failed to maintain auditor independence under Rule 2-01(c)(4)(i) of Regulation S-X because it had prepared the Statement of Cash Flows and the notes to the financial statements of the Broker-Dealer.

17. On January 13, 2014, Firm staff sent an email to the Firm's broker-dealer clients highlighting certain aspects of the Commission's regulation of registered broker-dealers and of the Board's oversight of broker-dealer audit firms. That email characterized the PCAOB as "focused" on the preparation of broker-dealer financial statements, including notes; quoted that portion of Rule 2-01(c)(4) of Regulation S-X identifying the preparation of financial statements filed with the Commission as a prohibited non-audit service; and noted that Firm staff as part of their audit procedures would "need to document that you prepared the entire financial statement including footnotes and supplementary schedules."

18. On January 22, 2014, Firm staff emailed a quarterly "PCAOB Newsletter"/"Broker-Dealer Quarterly Update" to its broker-dealer clients. The newsletter reported that the Commission had finalized amendments to broker-dealer reporting rules, described at length the auditor independence criteria set out in Rule 2-01 of Regulation S-X (including the prohibition against preparing financial statements filed with the Commission), and stated:



ORDER

The amendments do not change the independence requirements. However, the SEC's announcement contains a reminder that broker-dealers and their independent public accountants must comply with the independence requirements of Rule 2-01 of Regulation S-X. . . .

. . . .
Small broker dealers may need to hire a second accounting firm to prepare the statement of cash flows and the footnotes to the financial statements in order to meet the independence requirements of Rule 2-01 of Regulation S-X.

19. On January 27, 2014, Firm staff sent yet another email to the Firm's broker-dealer clients concerning auditor independence. That email stated in part: "Please make sure that you have made arrangements for 2014 to fully prepare your financial statement[s] including the statement of cash flows and footnotes. Alternatively you can hire a second accounting firm to perform that function."

20. In February 2014, the Broker-Dealer filed with the Commission a Form X-17A-5 Part III for the year ended December 31, 2013. Included in that filing was an audit report signed by the Firm dated February 17, 2014. That report stated, among other things, that the Firm audited the Broker-Dealer's financial statements "in accordance with auditing standards generally accepted in the United States of America."

21. In connection with the audit of the December 31, 2013 financial statements ("2013 Audit"), Firm staff again completed an "Engagement Acceptance and Continuance Form." That work paper contained the same pre-printed text as the previous year's version, including the same reference to "[t]he SEC's independence rules . . . set forth in Rule 2-01 of Regulation S-X."

22. In January and February 2014, Firm staff obtained from the Broker-Dealer in connection with the 2013 Audit substantially the same types of documents obtained the previous year in connection with the 2012 Audit.

23. Firm staff used the above documents and other information obtained from the Broker-Dealer to prepare the Statement of Cash Flows for the year ended December 31, 2013, as well as to draft the notes to the Broker-Dealer's financial statements, all of which were filed by the Broker-Dealer with the Commission in February 2014.

24. Firm staff prepared the Statement of Cash Flows, and the notes to the financial statements, for the year ended December 31, 2013 notwithstanding the Firm's receipt on October 22, 2013 of the Board inspection staff's comment form noting that



ORDER

the Firm's preparation of the Broker-Dealer's Statement of Cash Flows and financial statement notes for the previous year had impaired the Firm's independence.

25. Firm staff provided the Broker-Dealer with a draft Statement of Cash Flows and draft notes to the financial statements on February 18, February 19, and February 20, 2014 for management approval.

26. As a result of the Firm's conduct—both in preparing the Statement of Cash Flows and notes to the financial statements for the year ended December 31, 2012 before being notified by Board inspection staff that such preparation impaired its independence, and in preparing the Statement of Cash Flows and notes to the financial statements for the year ended December 31, 2013 after that notification—the Firm was not independent of the Broker-Dealer under the independence criteria established by the Commission in Rule 2-01(c)(4) of Regulation S-X, which Rule 17a-5 made applicable to the audits of the Broker-Dealer's financial statements. As the Commission explained in adopting Rule 2-01(c)(4), providing such services for an audit client "impairs the auditor's independence because the auditor will be placed in the position of auditing the firm's work when auditing the client's financial statements. . . . In addition, keeping the books is a management function, the performance of which leads to an inappropriate mutuality of interests between the auditor and the audit client."⁹

27. The Firm violated Rule 17a-5(i) by representing in its audit reports that it had performed the audits of the Broker-Dealer's December 31, 2012 financial statements and December 31, 2013 financial statements in accordance with GAAS when in fact, because of the independence impairments described above, the audits had not been performed in accordance with GAAS. Those violations constituted violations of 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.

⁹ *Revision of the Commission's Auditor Independence Requirements*, Exchange Act Release No. 43602 (November 21, 2000) at IV.D.4.b(i).

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), the Firm is 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 \$20,000 is imposed upon the Firm. 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. The Firm shall pay this civil money penalty within ten (10) days of the issuance of this Order by (1) wire transfer pursuant to instructions provided 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.
- C. Pursuant to Section 105(c)(4)(G) of the Act and PCAOB Rule 5300(a)(9), the Firm, should the Board grant any future application of the Firm for registration, is required:
 - 1. within ninety (90) days from the date the Board grants any future application of the Firm for registration ("Future Registration Date"), to establish policies and procedures, or revise and/or supplement existing policies and procedures, for the purpose of providing the Firm with reasonable assurance of compliance with applicable independence requirements, including those requirements of Rule 2-01 of Regulation S-X applicable to an SEC Registered Broker-Dealer Engagement (defined to mean an engagement to provide a report—whether an audit report, an

ORDER

examination report, or a review report—required under paragraph (d)(1)(i)(C) of Rule 17a-5, as amended);

2. within ninety (90) days from the Future Registration Date, to establish a policy of ensuring training, whether internal or external, on an annual or more frequent regular basis, concerning applicable independence requirements, including those requirements of Rule 2-01 of Regulation S-X applicable to an SEC Registered Broker-Dealer Engagement, of any Firm audit personnel who participate in any way in the planning or performing of any SEC Registered Broker-Dealer Engagement;

3. within ninety (90) days from the Future Registration Date and before the Firm's commencement of any SEC Registered Broker-Dealer Engagement, to ensure training pursuant to the policy described in paragraph C(2) above on at least one occasion;

4. to provide a copy of this Order—

a. within thirty (30) days from the Future Registration Date, to all audit personnel employed by, or associated with (as defined in PCAOB Rule 1001(p)(i)), the Firm as of the Future Registration Date,

b. within thirty (30) days from the Future Registration Date, to any client of the Firm as of the Future Registration Date for which the Firm has performed or has been engaged to perform an SEC Registered Broker-Dealer Engagement,

c. before the commencement of any SEC Registered Broker-Dealer Engagement, to any future client for which the Firm is engaged within three (3) years of the date of this Order to perform such an engagement; and

5. 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) through C(4)(b) 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 Future Registration Date. The Firm shall also submit such additional evidence of and information

ORDER

concerning compliance as the staff of the Division of Enforcement and Investigations may reasonably request.

- D. Pursuant to Section 105(c)(4)(C) of the Act and PCAOB Rule 5300(a)(3), the Firm, should the Board grant any future application of the Firm for registration, is prohibited from accepting any new SEC Registered Broker-Dealer Engagement clients for a period of one year from the date of this Order.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

July 9, 2015