

ORDER

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 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.³

III.

On the basis of Respondents' Offers, the Board finds that:⁴

A. Respondents

1. Leigh J Kremer CPA 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).

2. Leigh J. Kremer, CPA, age 56, of Red Bank, New Jersey, is a certified public accountant licensed by the New Jersey State Board of Accountancy (License No. 20CC01637900). Kremer is, and at all relevant times was, the sole partner of the Firm. He is, and at all relevant times 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. Other Relevant Individual

3. Brian D. Donahue, CPA ("Donahue"), 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").

³ 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.

⁴ The Board finds that Respondents' 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.

ORDER**C. Summary**

4. This matter concerns the Firm's violations of the Act and PCAOB rules by permitting Donahue to become an "associated person" of the Firm during the pendency of a Board order barring Donahue from associating with a registered public accounting firm.⁵ In exchange for Donahue's referral to the Firm of two issuer and ten broker-dealer audit clients, the 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, the Firm's payment to Donahue of a portion of its 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*, and PCAOB Rule 5301(b), *Effect of Sanctions: Effect on Registered Public Accounting Firms*.

5. Additionally, the Firm failed to comply with AS 1220, *Engagement Quality Review* (formerly, Auditing Standard No. 7), by failing to obtain an engagement quality review and concurring approval of issuance in connection with the Firm's audit and review of an exemption report for one broker-dealer client.⁶

6. With respect to Donahue's association with the Firm during the pendency of his bar and the failure to obtain an engagement quality review, Kremer took or omitted to take actions knowing, or recklessly not knowing, that his acts and omissions would directly and substantially contribute to the Firm's violations of Section 105(c)(7)(A) of the Act, PCAOB Rule 5301(b), and AS 1220, in violation of PCAOB Rule 3502, *Responsibility Not to Knowingly or Recklessly Contribute to Violations*.

⁵ 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.

⁶ 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. 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* (Jan. 2017).

ORDER**D. Respondents Violated the Act and PCAOB Rules and Standards****The Firm Allowed Donahue to Become an Associated Person**

7. 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 ("Exchange Act") 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.

8. Section 105(c)(7)(A) of the Act and PCAOB Rule 5301(b) prohibit a registered public accounting firm that knows, or in the exercise of reasonable care should know, of a suspension or bar from permitting the suspended or barred individual to associate with the 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(b) specifies that a registered public accounting firm may not permit a suspended or barred individual, "in connection with the preparation or issuance of any audit report, to . . . share in the profits of, or receive compensation in any other form from, such firm."

9. Respondents and Donahue 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. Respondents and Donahue ultimately agreed that Donahue would refer to the Firm two of his 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, Kremer, on behalf of the Firm, made a series of payments to Donahue in accordance with this agreement.

10. In paying Donahue a percentage of its issuer and broker-dealer audit fees, the Firm allowed Donahue to become 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

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or issuance of any audit report." As a result, this conduct violated Section 105(c)(7)(A) of the Act and PCAOB Rule 5301(b).

The Firm Failed to Obtain an Engagement Quality Review

11. Wolf A. Popper, Inc. ("Wolf Popper") was, at all relevant times, a New York corporation with a principal place of business in New York, New York. Wolf Popper's public filings disclose that, during 2016, it was engaged in the business of introducing transactions of its clients on a fully disclosed basis to a clearing member/broker-dealer. At all relevant times, Wolf Popper was a "broker" and "dealer," as defined in Sections 110(3) and (4) of the Act and PCAOB Rules 1001(b)(iii) and (d)(iii).

12. AS 1220.01 requires an engagement quality review and concurring approval of issuance in connection with an audit conducted pursuant to PCAOB standards. This requirement also applies to the review of statements made by a broker-dealer in an exemption report prepared pursuant to Exchange Act Rule 17a-5.⁷ A firm may not grant its client permission to use its engagement report until after an engagement quality reviewer provides concurring approval of issuance.⁸

13. The Firm audited Wolf Popper's June 30, 2016 financial statements and reviewed the statements made by Wolf Popper in its exemption report for fiscal year 2016. Prior to the issuance of the 2016 Bar Order, the Firm arranged for Donahue to act as the engagement quality reviewer for the audit and review. Because the Board issued the 2016 Bar Order before the Firm completed its audit and review of Wolf Popper, Donahue did not perform an engagement quality review. Nor did the Firm arrange for anyone else to perform an engagement quality review. Instead, the Firm issued its audit report and exemption review report for Wolf Popper, both of which were filed with the Commission, without obtaining an engagement quality review and concurring approval of issuance. As a result, the Firm violated AS 1220.

Kremer Contributed to the Firm's Violations

14. PCAOB Rule 3502 prohibits an associated person of a registered public accounting firm from taking or omitting to take an action knowing, or recklessly not knowing, that the act or omission would directly and substantially contribute to a violation by the 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 Commission issued under the Act or professional standards.

⁷ AS 1220.01.

⁸ AS 1220.13; AS 1220.18C.

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15. Kremer, the sole partner of the Firm, had overall responsibility for ensuring that the Firm complied with PCAOB rules and standards. Kremer knew, or was reckless in not knowing, that he was directly and substantially contributing to the Firm's violations of Section 105(c)(7)(A) of the Act, PCAOB Rule 5301(b), and AS 1220. As a result, Kremer violated 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), Leigh J Kremer CPA and Leigh J. Kremer, CPA are hereby censured;
- B. Pursuant to Section 105(c)(4)(A) of the Act and PCAOB Rule 5300(a)(1), the registration of Leigh J Kremer CPA is revoked;
- C. After three (3) years from the date of this Order, Leigh J Kremer CPA may reapply for registration by filing an application pursuant to PCAOB Rule 2101;
- 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 \$10,000 is imposed upon Leigh J Kremer 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. Leigh J Kremer CPA 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 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.
- E. Pursuant to Section 105(c)(4)(B) of the Act and PCAOB Rule 5300(a)(2), Leigh J. Kremer, CPA is barred from being an associated person of a

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registered public accounting firm, as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i);⁹ and

- F. After three (3) years from the date of this Order, Leigh J. Kremer, 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

July 24, 2018

⁹ As a consequence of the bar, the provisions of Section 105(c)(7)(B) of the Act will apply with respect to Kremer. 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."