

ORDER

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 Making Findings and Imposing Sanctions ("Order") as set forth below.

III.

On the basis of Respondent's Offer, the Board finds that:^{2/}

A. Respondent

1. Peter C. O'Toole, 43, of West Roxbury, Massachusetts, is a certified public accountant who is licensed under the laws of the Commonwealth of Massachusetts (license no. 17005). At all relevant times and beginning in 2006, O'Toole was a partner in the Boston, Massachusetts office of Ernst & Young LLP ("E&Y") and 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). E&Y removed O'Toole from the audit engagement team for the "Company," as defined below in paragraph four, in June 2010, and separated O'Toole from employment in September 2010 (effective September 30, 2010).

B. Summary

2. E&Y has been the independent auditor for the Company since May 4, 2002. E&Y issued an audit report expressing an unqualified opinion on the Company's September 30, 2009 financial statements. Respondent was the engagement partner for the audit of the Company's September 30, 2009 financial statements ("Audit"), and had served as the engagement partner for the Company's audits since 2005. Respondent supervised the members of the Audit engagement team, including Darrin G. Estella, an

^{2/} The findings herein are made pursuant to the Respondent's Offer and are not binding on any other person or entity in this or any other proceeding. The sanctions that the Board is imposing in this Order may be imposed only if a respondent's conduct meets one of the conditions set out in Section 105(c)(5) of the Act, 15 U.S.C. § 7215(c)(5). The Board finds that Respondent's conduct described in this Order meets the condition set out in Section 105(c)(5)(A), which provides that such 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.



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E&Y senior manager,^{3/} and Jacqueline A. Higgins, an E&Y manager.^{4/} Respondent had overall responsibility for ensuring his supervisees' compliance with PCAOB rules and auditing standards relating to the Audit.

3. This matter concerns Respondent's violations of PCAOB rules and auditing standards. Respondent repeatedly violated both Rule 4006, *Duty to Cooperate with Inspectors*, and Auditing Standard No. 3 ("AS3"), *Audit Documentation*. Respondent improperly created, added, and backdated a working paper in advance of the Board's inspection of the Audit. Others under his supervision and authorization improperly created, added, and backdated other working papers in advance of the Board's inspection. Respondent, and others supervised and authorized by him, provided misleading documents and information to the Board, in violation of Rule 4006. This conduct also violated AS3 because the documents added to the working papers did not indicate the dates that documents were added to the working papers, the names of the persons preparing the additional documentation, and the reason for adding the documentation months after the documentation completion date.

C. Respondent Violated PCAOB Rules and Auditing Standards

4. The Company is an "issuer" as that term is defined in Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii). In April 2010, the Board inspected E&Y's audit of the Company's September 30, 2009 financial statements.

5. PCAOB rules require that an associated person of a registered public accounting firm "shall cooperate with the Board in the performance of any Board inspection."^{5/} This cooperation obligation "includes an obligation not to provide misleading documents or information in connection with the Board's inspection processes."^{6/} PCAOB rules also require that associated persons of registered public

^{3/} See Darrin G. Estella, CPA, PCAOB Release No. 105-2011-004 (Aug. 1, 2011).

^{4/} See Jacqueline A. Higgins, CPA, PCAOB Release No. 105-2010-008 (Dec. 3, 2010) (Board order imposing sanctions and making findings relating to Higgins's conduct in same subject matter as this Order).

^{5/} PCAOB Rule 4006, *Duty to Cooperate with Inspectors*.

^{6/} Drakeford & Drakeford, LLC, PCAOB Release No. 105-2009-002 (June 16, 2009) ¶ 8. See also Gately & Associates, LLC, SEC Release No. 34-62656 at 22-23 (Aug. 5, 2010) (sustaining Board finding that respondents failed to cooperate with Board inspection).

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accounting firms comply with the Board's auditing standards.^{7/} Among other things, PCAOB auditing standards require that an auditor make certain written disclosures if the auditor adds audit working papers after the documentation completion date.^{8/} As detailed below, Respondent violated PCAOB rules and auditing standards when he and others supervised and authorized by him: (1) improperly created, added, and backdated audit working papers; and (2) provided misleading audit documentation to the Board in connection with the Board's inspection of the Audit.

The Audit

6. E&Y audited the Company's September 30, 2009 financial statements. E&Y's audit report was dated November 23, 2009. The audit report expressed an unqualified opinion and stated that the Audit was conducted in accordance with PCAOB standards. The audit report stated that the Company's September 30, 2009 financial statements presented fairly, in all material respects, the Company's financial position, results of operations, and changes in net assets in conformity with U.S. Generally Accepted Accounting Principles ("GAAP"). The audit report was included in the Company's annual report filed with the U.S. Securities and Exchange Commission ("Commission") on November 27, 2009.

7. The audit report release date for the Audit was November 24, 2009.^{9/} The documentation completion date, therefore, was January 8, 2010.^{10/} While information may be added to the working papers after the documentation completion date, the new documentation must disclose the date the information was added, the person preparing the additional documentation, and the reason for adding the information to the working papers after the documentation completion date.^{11/}

^{7/} See PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*.

^{8/} See AS3 ¶ 16.

^{9/} See *id.* ¶ 14 (defining report release date as "date the auditor grants permission to use the auditor's report in connection with the issuance of the company's financial statements").

^{10/} See *id.* ¶ 15 (defining documentation completion date as "a date not more than 45 days after the report release date").

^{11/} *Id.*

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Steps Taken in Advance of the Board's Inspection

8. On March 30, 2010, the Board notified E&Y that the Board's Division of Registration and Inspections ("Board's Inspection Division") would inspect the Audit. The Act "requires the Board to conduct a 'continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons . . . with [the Act], the rules of the Board, the rules of the Commission, or professional standards.'"^{12/}

9. On or before March 31, 2010, Respondent, Estella, and Higgins were notified that the Audit would be inspected by the Board's Inspection Division. Field work for the inspection was scheduled to commence the week of April 19, 2010.

10. On or before March 31, 2010, Respondent, Estella, and Higgins each had received an email in which E&Y expressly instructed the members of the Audit engagement team that no modifications, additions, or deletions should be made to the working papers of the Audit in preparation for the Board's inspection.

Respondent and Others Reviewed the External Working Papers

11. On or about March 31, 2010, Respondent directed an E&Y staff person on the Company audit engagement team to retrieve the hard copy external working papers for the Audit ("external working papers"). The staff person retrieved the external working papers from the Records Center in E&Y's Boston office, and placed the working papers in a conference room in E&Y's Boston office.

12. On or about April 5, 2010, Respondent, Estella, and Higgins began working together in this conference room, in the course of preparing for the upcoming Board inspection. Respondent directed Estella and Higgins to review the external working papers. On April 6, 2010, Respondent and Estella were informed that the Board's sole area of focus for the Inspection would be "securities valuation."

Respondent and Estella Created and Backdated a Working Paper

13. After review of the external working papers, Respondent told Estella that a document needed to be created summarizing work that Respondent and Estella asserted was done during the Audit concerning the valuation of one of the Company's investments in another company's common and convertible preferred shares (the

^{12/} Gately & Associates, LLC, SEC Release No. 34-62656 at 2 (Aug. 5, 2010) (quoting Section 104(a) of the Act).

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"Asset"). Respondent and Estella understood that the valuation of the Asset was the most significant issue in the Audit, and that the audit work related to the valuation of the Asset could be an area of focus for the Board during the upcoming inspection. Respondent and Estella decided to create a document summarizing work that Respondent and Estella asserted was done during the Audit concerning the valuation of the Asset, and to add this document to the external working papers.

14. With Respondent's knowledge, Estella called an E&Y staff person, who was not a member of the Company Audit engagement team, into the conference room containing the external working papers, asked the staff person to give Estella the staff person's laptop, and asked the staff person to leave the conference room. Estella inserted a flash drive into the laptop. The flash drive contained a form document. Estella used the form to draft a memorandum regarding audit work related to the valuation of the Asset ("H10.3 Working Paper"). Respondent reviewed the draft document on the laptop and made revisions. Estella then printed out the final version of the H10.3 Working Paper. In an effort to limit any electronic record of the creation of the H10.3 Working Paper, Estella did not save the memorandum on the laptop, or on the flash drive. Estella threw away the flash drive and returned the laptop to the staff person.

15. Respondent and Estella, at Respondent's direction, backdated the final version of the H10.3 Working Paper to November 24, 2009, despite the fact that it was created in April 2010, in order to make it appear that the working paper had been created at the time of the Audit. Estella, with Respondent's knowledge and authorization, added the H10.3 Working Paper to the external working papers. In violation of AS3, the H10.3 Working Paper did not indicate the date it was added to the working papers, the person preparing the additional documentation, or the reason for adding the additional information to the working papers three months after the documentation completion date.

16. At the time of this conduct, Respondent understood that he was violating E&Y policy on audit documentation as well as professional auditing standards.

Respondent Authorized Others Improperly To Alter, Add, and Backdate Working Papers

17. Based on her review of the external working papers, Higgins identified for Respondent and Estella certain documents she believed were not in the external working papers about which the Board's Inspection Division might inquire. Respondent thereafter authorized others under his supervision improperly to alter, add, and backdate documents in the external working papers. Those documents were: (1) a "Review Procedures Memorandum;" (2) a newly created document which tied-out the

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final financial statements; (3) the Average Forward Foreign Currency Contracts Calculation working paper; and (4) an HH6.8 Working Paper that compiled three checklists obtained after the documentation completion date and in advance of the inspection.

The Misleading Engagement Profile

18. Before inspection field work began, E&Y produced to the Board a document entitled Public Company Accounting Oversight Board 2010 Inspection Period Engagement Profile ("Engagement Profile"). Estella drafted the Engagement Profile, and Respondent reviewed the document and provided revisions to it.

19. One of the questions in the Engagement Profile stated: "Have there been any changes made to the audit documentation subsequent to the documentation completion date [?] If yes, please explain the nature of the changes below, and provide a summary log of when the changes were made." In reply to this question, Respondent and Estella represented that "[n]o changes [had] been made."

20. At no point in time did Respondent disclose to the Board's Inspection Division that the Respondent, Estella, and Higgins had, in fact, improperly created, added, and backdated documents in the external working papers, months after the documentation completion date, and shortly before the inspection.

Misleading Documents Provided to the Board During the Board's Inspection

21. Field work for the Board's inspection took place during the week of April 19, 2010. During field work, E&Y made the external working papers available to the Board's inspectors, including the improperly added documents which were placed in the external working papers shortly before the Board's inspection. Respondent did not advise the inspectors that any of these documents were improperly added to the external working papers in April 2010.

22. Respondent understood that the Board's inspectors could request and receive copies of working papers from the Audit. During field work, Board inspectors requested copies of certain external working papers, including certain of the late-added documents. On April 22, 2010, Higgins emailed to a Board inspector copies of the H10.3 Working Paper and the HH6.8 Working Paper. Respondent did not disclose to the Board that these documents were improperly added to the external working papers in April 2010.

23. On May 21, 2010, the Board issued an inspection comment form to E&Y ("Comment Form"). By May 24, 2010, Respondent had received a copy of the

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Comment Form. The Comment Form discussed the audit work related to the valuation of the Asset. The Comment Form quoted directly from the backdated H10.3 Working Paper.

24. At no time, however, did Respondent disclose to the Board's Inspection Division that the document the Comment Form was quoting was improperly backdated, and that it was improperly added to the external working papers in April 2010, just before the Board's inspectors began their field work.

25. As a result of the conduct described above, Respondent violated Rule 4006, *Duty to Cooperate with Inspectors*, and AS3, *Audit Documentation*.

IV.

In view of the foregoing, and to protect the interests of investors and further the public interest in the preparation of informative, fair, 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)(B) of the Act and PCAOB Rule 5300(a)(2), Peter C. O'Toole, 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);
- B. After three (3) years from the date of this Order, Peter C. O'Toole may file a petition, pursuant to PCAOB Rule 5302(b), for Board consent to associate with a registered public accounting firm; and
- C. Pursuant to Section 105(c)(4)(D) of the Act and PCAOB Rule 5300(a)(4), a civil money penalty in the amount of \$50,000 is imposed. 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. Peter C. O'Toole 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 Peter C. O'Toole as a respondent in these proceedings, sets forth the title and PCAOB Release number of these proceedings, and

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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: J. Gordon Seymour, General Counsel and Secretary, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington, D.C. 20006.

ISSUED BY THE BOARD.

/s/ J. Gordon Seymour

J. Gordon Seymour
Secretary

August 1, 2011