INITIAL DECISION RELEASE NO. 1391
ADMINISTRATIVE PROCEEDING
FILE NO. 3-18994

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of	:	
	:	
JOSEPH S. AMUNDSEN, CPA,	:	INITIAL DECISION
MICHAEL T. REMUS, CPA, and	:	December 5, 2019
MICHAEL REMUS CPA	:	

APPEARANCES: Richard G. Primoff and Alix Biel for the Division of Enforcement, Securities and Exchange Commission

Respondent Joseph S. Amundsen, CPA, *pro se*

Peter Ginsberg of Sullivan & Worcester, LLP, for Respondents Michael T. Remus, CPA, and Michael Remus CPA

BEFORE: Carol Fox Foelak, Administrative Law Judge

SUMMARY

This Initial Decision (ID) sanctions Michael T. Remus, CPA, and Michael Remus CPA (collectively, Remus),[1] and Joseph S. Amundsen, CPA, for violations of the auditor independence requirements in fourteen audits of broker-dealers where Amundsen's daughter was the financial and operations principal (FINOP). The ID imposes cease-and-desist orders; suspends Remus from appearing or practicing before the Securities and Exchange Commission for one year; and orders Remus to disgorge $56,227, and Amundsen, $7,000.

[1] Since the firm Michael Remus CPA is effectively the *alter ego* of Michael T. Remus, CPA, "Remus" will be referred to as "he" or "him." Unless Michael T. Remus or the Remus firm is specified, "Remus" refers to both Respondents collectively.

I. INTRODUCTION

A. Procedural Background

The Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on February 8, 2019, pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice. On April 25, 2019, the Commission ordered that a hearing be convened before an Administrative Law Judge on June 17, 2019. *Joseph S. Amundsen, CPA*, Exchange Act Release No. 85717, 2019 SEC LEXIS 974, at *3. The undersigned held a two-day hearing in New York City on June 17 and 18, 2019. The Division of Enforcement called five witnesses, from whom evidence was taken, including one expert witness and Respondents Joseph S. Amundsen and Michael T. Remus.[2] Respondents did not call any additional witnesses.

The findings and conclusions in this ID are based on the record. Official notice pursuant to 17 C.F.R. § 201.323 is taken of the Commission's public official records and of Financial Industry Regulatory Authority, Inc. (FINRA), Public Company Accounting Oversight Board (PCAOB), and American Institute of Certified Public Accountants (AICPA) records as well. *See Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *1 n.1 (Apr. 18, 2013), *pet. denied*, 575 F. App'x 1 (D.C. Cir. 2014). Preponderance of the evidence was applied as the standard of proof. *See Steadman v. SEC*, 450 U.S. 91, 97-104 (1981). All arguments and proposed findings and conclusions that are inconsistent with this ID were considered and rejected.

B. Allegations and Arguments of the Parties

This case concerns annual reports required of broker-dealers by the Exchange Act that were prepared by Remus, who engaged Amundsen as the Engagement Quality Reviewer (EQR). The OIP alleges that Remus engaged Amundsen as the EQR on fourteen audits of seven broker-dealers in 2015 and 2016; that Amundsen had been enjoined since 1983 from appearing or practicing before the Commission in any way; that his daughter was the FINOP of the broker-dealers responsible for preparing the reports being audited; and that Remus was aware of the familial relationship, which violated auditor independence requirements. The Division urges that Respondents be ordered to cease and desist from further violations; that Remus be barred from appearing or practicing before the Commission; that Remus be ordered to disgorge $57,227, and Amundsen, $7,000 – the fees that they received for the audits.

Remus acknowledges that he erred, but points to an otherwise unblemished thirty-one year career in auditing and urges that no additional discipline be ordered beyond the emotional and professional damage that he has experienced as a result of his violation. Amundsen urges that the proceeding be dismissed. Respondents emphasize that there was no financial inaccuracy

[2] Citations to the transcript are noted as "Tr. __." Citations to exhibits offered by the Division, Amundsen, and the Remus Respondents are noted as "Div. Ex. __," "Amundsen Ex. __," and "Remus Ex. __," respectively.

alleged in the financial reports that they audited – no re-audit, material misstatement, request for recalculation, or adjustment. Remus acknowledges that he was aware of the familial relationship but argues that he was unaware that it violated auditor independence requirements and unaware of Amundsen's disciplinary history, as well. Amundsen argues that there was no conflict of interest, noting that a *partner* in an accounting firm – who has a financial interest in the revenues from the engagement under review – can be an EQR and that such an interest presents a greater potential for conflict of interest than a father-daughter relationship.

II. FINDINGS OF FACT

A. Relevant Individuals and Entities

1. Remus

Michael T. Remus, CPA, has been a certified public accountant (CPA) since 1988. Tr. 35, 140. Until this proceeding, he has never been subjected to sanction or discipline. Tr. 140-42. He is essentially the only employee of the Remus firm, although his son, also a CPA, helps out from time to time. Tr. 141. Remus first audited public companies in approximately 1992, and broker-dealers are the only public companies that he audits. Tr. 142. He also audits private companies and prepares tax returns. Tr. 142-43.

2. Joseph S. Amundsen

Amundsen is a CPA licensed in New York and California. Tr. 186. In 1983 he was enjoined from violating the antifraud provisions and from appearing or practicing before the Commission. Div. Ex. 23; *SEC v. Amundsen*, No. 83-cv-711 (N.D. Cal. Feb. 15, 1983).[3] He lost his accounting licenses as a result of the injunction but was relicensed in about 2000. Tr. 194. He disputes the validity of the injunction and accuses the SEC of bad faith. Tr. 187-92, 222, 229. He was also barred by FINRA from association with any FINRA member firm. Div. Ex. 54; Joseph Stanley Amundsen BrokerCheck Report, *available at* http://brokercheck.finra.org (last visited Nov. 25, 2019). He disputes the bar and says that he surrendered his FINRA licenses voluntarily. Tr. 191, 204, 222. In upholding the bar, the Commission described his failure to disclose the injunction and license revocation on numerous Forms U-4 as "egregious." *Joseph S. Amundsen*, 2013 SEC LEXIS 1148, at *50.[4]

[3] Several subsequent court orders in this matter are in evidence as Div. Exs. 23-29. On May 13, 2019, the court found him in contempt for violating the 1983 injunction and deferred consideration of any penalties until the completion of this administrative proceeding. Div. Ex. 29; *SEC v. Amundsen*, No. 83-cv-711, ECF No. 139.

[4] On August 25 and November 12, 2014, Amundsen sought reconsideration from the Commission of its 2013 order upholding the FINRA bar, which the Commission denied. *Joseph S. Amundsen*, Exchange Act Release No. 74015, 2015 SEC LEXIS 101, at *1-2 (Jan. 8, 2015). He also made several filings with the Court of Appeals, which denied his motion to recall its mandate on August 5, 2019, and denied his motion for reconsideration of that ruling on

After regaining his accounting license, Amundsen passed the Series 27 exam and became a FINOP for broker-dealers for several years, until FINRA barred him.

3. Stephanie Murray

Stephanie Murray is Amundsen's daughter. Tr. 204, 285. She worked for her father as a bookkeeper and helping with his tax practice. Tr. 205. He taught her about the accounting business and about preparing tax returns, and she helped recruit tax clients. Tr. 205, 305-07. She worked for him for seven or eight years as an accountant and took several courses in accounting. *Id.* Then she passed the Series 27 exam and became a FINOP. Tr. 205, 208, 303. Amundsen introduced her to some of his broker-dealer clients. Tr. 207, 309-10. After FINRA barred Amundsen, she became FINOP of several broker-dealers that Remus audited for which Amundsen had been FINOP – Arjent LLC (n/k/a McBarron), Fox Chase Capital Partners LLC, Profor Securities LLC, Thomas P. Reynolds Securities Ltd., and CapFi Partners, LLC.[5] Tr. 210-12, 311-13. She was FINOP at these firms during the time at issue.[6] Tr. 313-21. Her duties included reconciling bank statements; making net capital computations; preparing FOCUS reports; having supervisory authority over financial operations, recordkeeping, and the general ledger; making available various records including ledgers, securities positions, and bank statements to the firm or regulators; providing the financial statements and related records to the auditor. Tr. 325-32. During this time she also bore and was raising four children. Tr. 235, 340.

4. FINOP, EQR

The FINOP is responsible for a broker-dealer's compliance with applicable net capital, recordkeeping, and other financial and operational rules, including the preparation and accuracy of financial reports submitted to a securities industry regulatory body, as provided in FINRA Rule 1022(b) (superseded by FINRA Rule 1220(a)(4) on October 1, 2018). Tr. 37, 49-51; Div. Ex. 98. The EQR[7] of an audit evaluates the significant judgments and conclusions of the engagement team in order to determine whether to provide concurring approval of the engagement report, as provided in PCAOB Auditing Standard (AS) No. 7. Tr. 143-44; Div. Ex. 41. The EQR must be an associated person of a registered public accounting firm and may be an

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September 5, 2019, in an Order, which also directed the Clerk "to accept no further submissions from petitioner in this closed case." *Amundsen v. SEC*, No. 13-1252 (D.C. Cir. Sept. 5, 2019).

[5] She also became FINOP at two additional broker-dealers that Remus audited where Amundsen had not been FINOP – Allegro Securities LLC and Race Rock Capital LLC. Tr. 212.

[6] The last of the audits at issue, that of Thomas P. Reynolds for fiscal year-end 2015, was filed with the Commission on May 24, 2016. Div. Ex. 14 at 2.

[7] The EQR concept superseded the previous concurring partner review concept in 2009. *See* Div. Ex. 41 (PCAOB Release No. 2009-004); Tr. 98-99. Amundsen is of the view that this requirement was intended to put sole practitioners out of business. Tr. 258, 275.

individual from outside the firm. Tr. 82; AS No. 7(3). The EQR must be independent of the company being audited. Tr. 82-83; 43-44; AS No. 7(6).

B. Amundsen as EQR for Remus

Remus became acquainted with Amundsen when Amundsen became FINOP at Thomas P. Reynolds Securities, which was an existing client. Tr. 149. He hired Amundsen to be his EQR in 2014. Tr. 153. He paid Amundsen $500 for each EQR engagement. Tr. 247-48.

On each of the EQR engagements at issue, on the "Supervision, Review, and Approval Form," Amundsen checked "Yes" to this Item: "I possess the competence, independence, integrity, and objectivity to perform the engagement quality review (EQR)." Tr. 251; Div. Exs. 15-18, 21 at Engagement Quality Review Item 35; Div. Exs. 19-20 at Engagement Quality Review Item 2. Amundsen also signed a memorandum directed to Remus confirming his independence with respect to his engagements for the 2015 year end for several Remus clients at which his daughter was FINOP – Allegro, Race Rock, CapFi, Profor, Fox Chase, and McBarron – and representing that he was aware of the independence standards of the AICPA and PCAOB. Tr. 272-77; Div. Ex. 33. However, Amundsen was unaware that the PCAOB or the Commission considers the EQR a member of the audit team and that a nondependent child is considered a "close relative" for independence purposes; he did not consult anyone or any rules concerning this.[8] Tr. 257-71, 274-76, 284-88.

The suggestion that Amundsen actually did Murray's FINOP work is unproven.[9] However, he took a keen interest in her career and well-being. She has referred individuals to him for tax services. Tr. 220. When the owner of CapFi fired her, Amundsen told him and his wife that he would no longer do their taxes. Tr. 225-29; Div. Ex. 35. Amundsen became involved in negotiations with the owner of Fox Chase concerning Murray's fees. Tr. 232-34. When Murray was home-bound due to pregnancy, Amundsen picked up documents from Profor's office and brought them to her; he discontinued this when the firm put the documents online and she could access them that way. Tr. 234-37, 240-41.

Remus learned of the 1983 injunction against Amundsen in approximately 2010 or 2011. Tr. 54-56. He understood that at the time of the 2015 and 2016 audits at issue (for year-end 2014

[8] The AICPA Code of Professional Conduct (Section 92.04) defines "Close relative" as "a parent, sibling, or nondependent child." Div. Ex. 64 at 32. Likewise Regulation S-X defines "close family members" to include "nondependent child." 17 C.F.R. § 210.2-01(f)(9); *see* 17 C.F.R. § 240.17a-5(f)(1) (incorporating Regulation S-X requirements).

[9] *But see* Div. Ex. 26 (Amundsen's July 26, 2018, filing in *SEC v. Amundsen*, 83-cv-0711, ECF No. 98), which includes the following in the description of his work history: "2011 through current registered CPA doing taxes. Briefly worked for daughter helping her with her FINRA FINOP work, and as a review partner for broker dealer audits (2014 and 2015)." Amundsen explained that this was before the bar became final. Tr. 222. It is found that helping her preceded his EQR work.

and 2015), pursuant to AS No. 7, EQRs were required to review financial statements and related engagement reports; that Amundsen – by being paid for the review as an independent contractor – became an associated person of the auditing firm; and that the EQR had to have independence. Tr. 80-83; Div. Ex. 41. He knew that Murray was the FINOP for the firms at issue for which he engaged Amundsen as EQR, and that Amundsen was her father. Tr. 83-85, 100. The audit reports included Remus's representation that they were conducted in accordance with PCAOB standards and a representation by Amundsen that he was independent. Tr. 86-90; Div. Exs. 1-21. FINRA had recommended that Remus hire an EQR that was not barred by FINRA, but did not say that he could not do so. Tr. 96-98, 154-59; Div. Ex. 32; Remus. Ex. 20. Remus was not aware at the time that the fact that Murray, as Amundsen's nondependent child, was FINOP at the audit clients meant that Amundsen was not independent. Tr. 100, 106. He did not consult anyone at the Commission, the PCAOB, or FINRA or consult any rules on whether this was a prohibited relationship for independence purposes. Tr. 112-13. Remus was paid approximately $56,227 for the fourteen audits. Tr. 135-37; Div. Ex. 87.[10]

Remus replaced Amundsen as EQR for the year-end 2016 audits. Tr. 137-38.

C. Expert Testimony[11]

Douglas R. Carmichael, CPA, PhD, testified for the Division. Tr. 343-423; Div. Ex. 51. He is a professor of accountancy at Baruch College. Tr. 344. His past experience includes working at the AICPA, setting auditing and other professional standards. Tr. 344. He was the first chief auditor of the PCAOB when it was formed in 2003, where he was in charge of writing professional standards, including auditing, independence, quality control standards, and the basic rule on independence, PCAOB Rule 3520. Tr. 345. He was accepted as an expert in PCAOB, Commission, and AICPA rules on ethics and independence. Tr. 350, 355. With reference to the fourteen audits at issue, he opined that Amundsen, as father of the person preparing the financial statements in an accounting role and a financial oversight role, was not independent, and that for *independence* purposes the EQR is regarded the same as an engagement partner on the audit and would have to comply with the same independence requirements. Tr. 357-58. Div. Ex. 51 at 2-4.

[10] Div. Ex. 87 is copies of checks and a bank statement showing payment for some of the audits at issue; the amounts paid, minus two duplicate checks, total $44,848. Div. Ex. 87 has no evidence of payment for the year-end 2015 audits of Arjent, Thomas P. Reynolds, Profor, or Race Rock. Remus testified that he was paid the same for the year-end 2015 as for the year-end 2014 audits of Thomas P. Reynolds, Profor, and Race Rock. Tr. 135-37. Including those payments, the total is $56,227. No evidence was presented concerning payment for the year-end 2015 audit of Arjent.

[11] To the extent that the expert's evidence does not lead to findings of fact, it will be summarized here and referred to as appropriate in the Conclusions of Law section of this Initial Decision.

III. CONCLUSIONS OF LAW

The OIP charges Respondents, CPAs, with primary or secondary violations of Exchange Act Section 17(a) and rules regarding broker-dealers' reporting obligations and, pursuant to Exchange Act Section 4C, 15 U.S.C. § 78d-3; and Rule 102(e)(1)(ii), (iii), 17 C.F.R. § 201.102(e)(1)(ii), (iii), with improper professional conduct.[12] The allegations are based on the alleged lack of independence of the audit team that conducted fourteen audits of seven broker-dealers in 2015 and 2016 in that EQR Amundsen's daughter was FINOP at the broker-dealers and that Remus knew this. Specifically, the OIP alleges that the Remus firm violated Exchange Act Rules 17a-5(g) and (i) by conducting audits that were not in accord with PCAOB standards and by causing the broker-dealers to file reports that represented that they were; that Michael T. Remus and Amundsen willfully aided and abetted and/or caused the firm's violations; that Respondents caused the broker-dealers to violate Exchange Act Section 17(a) and Rule 17a-5(f) when the broker-dealers submitted annual reports to the Commission that included a report by an accountant that was not independent; that Respondents engaged in unprofessional conduct within the meaning of Rule 102(e)(1)(ii); and that Michael T. Remus and Amundsen are subject to sanctions under Rule 102(e)(1)(iii). As discussed below, it is concluded that all charges are proven.

A. Rule 102(e)(1)(iii) and Exchange Act Section 17(a)

Rule 102(e)(1)(iii) provides for sanctions against accountants who "have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder." A finding of willfulness does not require an intent to violate, but merely an intent to do the act which constitutes a violation. *See Wonsover v. SEC*, 205 F.3d 408, 413-15 (D.C. Cir. 2000); *see also Steadman v. SEC*, 603 F.2d 1126, 1135 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981); *Arthur Lipper Corp. v. SEC*, 547 F.2d 171, 180 (2d Cir. 1976); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). Respondents are variously charged with willfully aiding and abetting and/or causing violations of Exchange Act Section 17(a) and/or Rules 17a-5(f), (g), and/or (i).

[12] Exchange Act Section 4C, which was added by the Sarbanes-Oxley Act, codified Rule 102(e), which had been in existence for many years, and provided specific statutory authority for its provisions. *See* Pub. L. No. 107-204, § 602, 116 Stat. 745, 794 (2002). Because of this history and the precedent concerning Rule 102(e), the discussion herein will cite Rule 102(e) rather than the nearly identical provisions of Exchange Act Section 4C. "It is well established that when Congress revisits a statute giving rise to a longstanding administrative interpretation without pertinent change, the congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress." *CFTC v. Schor*, 478 U.S. 833, 846 (1986) (internal quotation marks omitted); *see Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change . . . [and] where, as here, Congress adopts a new law incorporating sections of a prior law, Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute." (internal citations omitted)).

Exchange Act Section 17(a) and Rules thereunder require broker-dealers to file annual reports with the Commission. The requirement that reports be filed carries with it the obligation that those filings be accurate. *Cf. SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978).

As required by 17 C.F.R. § 240.17a-5(d)(1)(i)(C), (2)(i), financial statements included with the annual reports must be prepared in accordance with GAAP and must be audited by an independent accountant. Pursuant to 17 C.F.R. § 240.17a-5(f)(1), the report and qualifications of the independent accountant must comply with 17 C.F.R. § 210.2-01.[13] *See* 17 C.F.R. § 210.2-01(b), (c) (defining independent accountant). The Commission considers auditor independence to be extremely important. *See KPMG Peat Marwick LLP*, Exchange Act Release No. 43862, 2001 SEC LEXIS 98, at *49 n.51 (Jan. 19, 2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002).

Aiding and Abetting; Causing

For "aiding and abetting" liability under the federal securities laws, three elements must be established: (1) a primary or independent securities law violation committed by another party; (2) awareness or knowledge by the aider and abettor that his or her role was part of an overall activity that was improper; and (3) that the aider and abettor knowingly and substantially assisted the conduct that constitutes the violation. *See Graham v. SEC*, 222 F.3d 994, 1000 (D.C. Cir. 2000); *Russo Sec. Inc.*, Exchange Act Release No. 39181, 1997 SEC LEXIS 2075, at *16-17 & n.16 (Oct. 1, 1997). A person cannot escape aiding and abetting liability by claiming ignorance of the securities laws. *See Sharon M. Graham*, Exchange Act Release No. 40727, 1998 SEC LEXIS 2598, at *29 n.33 (Nov. 30, 1998), *pet. denied*, 222 F.3d 994 (D.C. Cir. 2000). The knowledge or awareness requirement can be satisfied by recklessness when the alleged aider and abettor is a fiduciary or active participant. *See Ross v. Bolton*, 904 F.2d 819, 824 (2d Cir. 1990). That is, it must be established that a respondent either acted with knowledge or that he "encountered 'red flags,' or 'suspicious events creating reasons for doubt' that should have alerted him to the improper conduct of the primary violator," or there was a danger so obvious that he must have been aware of it. *Howard v. SEC*, 376 F.3d 1136, 1143 (D.C. Cir. 2004).

For "causing" liability, three elements must be established: (1) a primary violation; (2) an act or omission by the respondent that was a cause of the violation; and (3) the respondent knew, or should have known, that his conduct would contribute to the violation. *Robert M. Fuller*, Exchange Act Release No. 48406, 2003 SEC LEXIS 2041, at *13-14 (Aug. 25, 2003), *pet. for review denied*, 95 F. App'x 361 (D.C. Cir. 2004). A respondent who aids and abets a violation also is a cause of the violation under the federal securities laws. *See Graham*, 1998 SEC LEXIS 2598, at *29 n.35. Negligence is sufficient to establish liability for causing a primary violation that does not require scienter. *See KPMG*, 2001 SEC LEXIS 98, at *82.

The Remus firm is accountable for the actions of its responsible officers – in this case, its owner and *alter ego*, Michael T. Remus. *See C.E. Carlson, Inc. v. SEC*, 859 F.2d 1429, 1435

[13] Part 210 of 17 C.F.R. (17 C.F.R. §§ 210.1-.12) is also known as Regulation S-X.

(10th Cir. 1988); *A.J. White & Co. v. SEC*, 556 F.2d 619, 624 (1st Cir. 1977). A company's state of mind may be imputed from that of individuals controlling it. *See SEC v. Blinder, Robinson & Co. Inc.*, 542 F. Supp. 468, 476 n.3 (D. Colo. 1982) (citing *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1096-97 nn.16-18 (2d Cir. 1972)).

B. Violations

Exchange Act Rule 17a-5(g) requires the "independent public accountant engaged by the broker or dealer to provide . . . reports" based on examination of specified financial reports and statements required of broker-dealers. Exchange Act Rule 17a-5(i) specifies the required content of the independent public accountant's reports, including a statement as to "whether the examinations or review, as applicable, were made in accordance with standards of the [PCAOB]." The audit reports at issue included such a representation, but the Remus firm was not independent because Amundsen was the EQR and his daughter was FINOP – a "close family member . . . in an accounting role or financial reporting oversight role" at the audit clients. *See* 17 C.F.R. § 210.2-01(c)(2)(ii); *see also* 17 C.F.R. § 210.2-01(f)(9) (defining "close family members" to include "nondependent child"). As EQR, Amundsen was a covered person of the Remus firm for independence purposes and a member of its audit engagement team. 17 C.F.R. § 210.2-01(f)(7), (f)(11). Thus, the Remus firm violated Exchange Act Rules 17a-5(g) and (i). Michael T. Remus and Amundsen aided and abetted and caused these violations. Each was an active participant in the audit reports as engagement partner or EQR and each either knew, or was at least reckless in his lack of awareness, that his role was part of an overall activity that was improper, and each knowingly and substantially assisted the conduct that constitutes the violation through his work as engagement partner or EQR. Since Michael T. Remus and Amundsen willfully aided and abetted the violations of Rules 17a-5(g) and (i), they engaged in conduct as proscribed by Rule 102(e)(1)(iii).

The broker-dealers filed annual reports pursuant to Exchange Act Rule 17a-5(d) that included a representation pursuant to Rule 17a-5(f) of the independence of its public accountant. Since that statement in the fourteen reports at issue was false, the broker-dealers violated Rule 17a-5(f). For the reasons set forth above, Respondents caused the violations by the same actions that violated or aided and abetted violations of Exchange Act Rules 17a-5(g) and (i).

C. Rule 102(e)(1)(ii)

Rule 102(e)(1)(ii) provides for sanctions against accountants who "have engaged in . . . improper professional conduct." "With respect to persons licensed to practice as accountants, 'improper professional conduct' under Rule 102(e)(1)(ii) . . . means [i]ntentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards . . . ." 17 C.F.R. § 201.102(e)(1)(iv)(A).

1. Recklessness

The Commission defines recklessness the same as recklessness under the antifraud provisions (for the purpose of consistency in the federal securities laws; "professional standards" are not fraud-based). Thus, recklessness is "an extreme departure from the standards of ordinary

care, . . . which presents a danger of misleading buyers or sellers that is either known to the [actor] or is so obvious that the actor must have been aware of it." Amendment to Rule 102(e) of the Commission's Rules of Practice, 63 Fed. Reg. 57164, 57167 (Oct. 26, 1998) (Rule 102(e) Amendment). It is "a lesser form of intent," "not merely a heightened form of ordinary negligence." *Id.* (internal citations and quotation marks omitted).

An auditor does not guarantee that financial statements are free of material misstatement. An auditor's "responsibility [is] to plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud." AU § 110.02.[14] Further, recklessness is more than a misapplication of accounting principles; the Division must prove that Respondents' "accounting practices were so deficient that the audit amounted to no audit at all, or an egregious refusal to see the obvious, or to investigate the doubtful, or that the accounting judgments . . . were such that no reasonable accountant would have made the same decision if confronted with the same facts;" reasonable accountants can differ, and evidence indicating that questioned accounting decisions were reasonable negates an attempt to establish scienter. *See In re Worlds of Wonder Sec. Litig.*, 35 F.3d 1407, 1426 (9th Cir. 1994) (quoting *SEC v. Price Waterhouse*, 797 F. Supp. 1217, 1240 (S.D.N.Y. 1992)); *accord In re Software Toolworks Inc.*, 50 F.3d 615, 627 (9th Cir. 1994) ("The mere publication of inaccurate accounting figures, or a failure to follow GAAP, without more, does not establish scienter." (citations and internal quotation marks omitted)). Violations of GAAP or auditing standards in themselves do not constitute recklessness. *See Chill v. Gen. Elec.*, 101 F.3d 263, 270 (2d Cir. 1996) ("Allegations of a violation of GAAP provisions or SEC regulations, without corresponding fraudulent intent, are not sufficient . . . .").

2. Applicable Professional Standards

Applicable professional standards include GAAP, Auditing Standards, the AICPA Code of Professional Conduct, and Commission Regulations. *See* Rule 102(e) Amendment, 63 Fed. Reg. at 57166.

D. Improper Professional Conduct

The Division argues that the audits at issue did not comply with professional standards in that Respondents did not comply with auditing standards pertaining to independence. Thus, the Division argues, Respondents engaged in improper professional conduct. Respondents' arguments that there is no inaccuracy in the financial statements included in the reports are relevant to the question of sanctions, but not to the question of violation in view of the Commission's strict policy on independence.

As concluded above, when the Remus firm provided an Independent Auditors' Report for the broker-dealer reports at issue, Respondents were not independent within the meaning of

[14] "AU" refers to an auditing standard among the Generally Accepted Auditing Standards published by the AICPA and in effect before the current PCAOB standards. AU § 110.02 was current at the time at issue.

Regulation S-X. Michael T. Remus and Amundsen knew, or in the alternative, were each reckless in not knowing, that Respondents were not independent, for the reasons discussed above. Michael T. Remus's state of mind was attributed to the Remus firm. It is concluded that Respondents' lack of independence was improper professional conduct within the meaning of Rule 102(e)(ii).

IV. SANCTIONS

The Division requests that: (1) Respondents be ordered to cease and desist from violations of Exchange Act Rule 17a-5; (2) Remus be denied the privilege of appearing or practicing before the Commission for not less than five years;[15] (3) Respondents be ordered to disgorge ill-gotten gains – $7,000 by Amundsen and $57,227 by Remus – plus prejudgment interest; and (4) Amundsen and Remus each be ordered to pay significant Tier 2 civil penalties.[16] Respondents request that the proceeding be dismissed. For the reasons discussed below, Respondents will be ordered to cease and desist from violations of Exchange Act Rule 17a-5; the Remus Respondents will be denied the privilege of appearing or practicing before the Commission for one year; and disgorgement – of $7,000 by Amundsen and $56,227 by Remus – will be ordered. No civil penalties will be ordered.

When the Commission determines administrative sanctions, it considers:

> [T]he egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

Steadman v. SEC, 603 F.2d at 1140.[17] The Commission also considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. *Marshall E. Melton*, Investment Advisers Act of 1940 Release No. 2151, 2003 SEC LEXIS 1767, at *5 (July 25, 2003). Additionally, the Commission considers the extent to which the sanction will

[15] The Division states that it does not request that Amundsen be barred from appearing or practicing before the Commission pursuant to Rule 102(e) since he is already barred. *See SEC v. Amundsen*, No. 83-cv-711 (N.D. Cal.). Rule 102(e) also provides censure as a sanction, but the Division did not request that Amundsen be censured.

[16] The Division urges a total penalty of $138,565 for each, or, alternatively, using a different metric to calculate the penalty, $174,713 for each.

[17] The Commission considers the *Steadman* factors, which it has long applied in other administrative proceedings, in Rule 102(e) proceedings against CPAs, as well. *See Michael C. Pattison, CPA*, Exchange Act Release No. 67900, 2012 SEC LEXIS 2973, at *23 & n.34 (Sept. 20, 2012); *accord Thomas D. Melvin, CPA*, Exchange Act Release No. 75844, 2015 SEC LEXIS 3624, at *8 & n.16 (Sept. 4, 2015).

have a deterrent effect. *Schield Mgmt. Co.*, Exchange Act Release No. 53201, 2006 SEC LEXIS 195, at *35 & n.46 (Jan. 31, 2006).

Remus stresses that there are no allegations of inaccurate values on the financial statements, and Amundsen does, as well. These facts mitigate the egregiousness of the independence violation to some extent. Independence, however, is a crucial concept in auditing and in requirements for financial statements filed by public corporations with the Commission. It could not be clearer that the Commission does not accept as independent an audit team that includes quality review by a close family member of the client's FINOP.

Respondents' conduct was egregious and recurrent fourteen times over two years, until Remus replaced Amundsen as EQR after 2016. The conduct involved a reckless degree of scienter by both Remus and Amundsen. While scienter is not an element of a violation of Exchange Act Rules 17a-5(g) and (i), which are strict liability provisions, the standard of recklessness is well-developed in securities law. Often cited is *SEC v. Steadman*, 967 F.2d 636, 641-42 (D.C. Cir. 1992), in which the court held that recklessness satisfied the scienter element of the antifraud provisions of the securities laws defining it as "not merely a heightened from of ordinary negligence," but an "extreme departure from the standards of ordinary care, . . . which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it." The Commission has adopted this definition of recklessness in defining improper professional conduct of accountants in 17 C.F.R. § 201.102(e) even though such professional standards are not fraud based, for the purpose of consistency in the federal securities laws. Rule 102(e) Amendment, 63 Fed. Reg. at 57164, 57167.

Respondents' occupations may provide opportunities for future violations. However, Remus, who previously had an almost thirty-year unblemished record, has recognized the wrongful nature of the conduct and made assurances against future violations. Amundsen has done neither, sincerely believing himself to be the victim of overzealous enforcement. The FINRA bar and injunction, however, may limit his opportunities for future violations. The violations are relatively recent. There was no direct financial harm to clients. Further, as the Commission has often emphasized, the public interest requires consideration of not only those specifically affected by a respondent's conduct but also the public-at-large, the welfare of investors as a class, and standards of conduct in the securities business generally.

A. Cease and Desist

Exchange Act Section 21C authorizes the Commission to issue a cease-and-desist order against a person who "is violating, has violated, or is about to violate" any provision of the Exchange Act or rules or who "is, was, or would be a cause of the violation." Whether there is a reasonable likelihood of such violations in the future must be considered. *KPMG*, 2001 SEC LEXIS 98, at *101. Such a showing is "significantly less than that required for an injunction." *Id*. at *114. In determining whether a cease-and-desist order is appropriate, the Commission considers the *Steadman* factors quoted above, as well as the recency of the violation, the degree of harm to investors or the marketplace, and the combination of sanctions against the respondent. *See WHX Corp. v. SEC*, 362 F.3d 854, 859-61 (D.C. Cir. 2004); *KPMG*, 2001 SEC LEXIS 98, at

*116. Applying these considerations as discussed above, a cease-and-desist order as to each Respondent is appropriate.

B. Rule 102(e)

A one-year suspension of Remus is an appropriate sanction combined with the other sanctions ordered and consistent with Commission precedent.[18] Because of Michael T. Remus's role in the Remus firm, the same sanction against each is appropriate.

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[18] *See Wendy McNeely, CPA*, Exchange Act Release No. 68431, 2012 SEC LEXIS 3880 (Dec. 13, 2012) (suspending for six months CPA who failed to comply with professional standards regarding related party receivables that were actually misappropriations in audit of private company and related fund); *Gregory M. Dearlove, CPA*, Exchange Act Release No. 57244, 2008 SEC LEXIS 223 (Jan. 31, 2008) (bar with right to reapply after four years and cease and desist order; CPA caused violations of reporting and recordkeeping provisions and accepted management representations as to billions of dollars of related party payables, receivables, and contingent debt); *James Thomas McCurdy, CPA*, Exchange Act Release No. 49182, 2004 SEC LEXIS 221 (Feb. 4, 2004) (suspending for one year CPA who failed to obtain sufficient evidence regarding collectability of a receivable that was 25% of an investment company's assets); *Barry C. Scutillo*, Exchange Act Release No. 48238, 2003 SEC LEXIS 1777 (July 28, 2003) (ordering a bar with right to reapply after three years; CPA failed to comply with professional standards regarding a purported mining company's valuation of its assets consisting almost entirely of questionable Russian CDs and mining properties); *Russell Ponce*, Exchange Act Release No. 43235, 2000 SEC LEXIS 1814 (Aug. 31, 2000) (ordering a bar with right to reapply in five years and cease-and-desist order; CPA violated antifraud provisions, lacked independence due to unpaid fees, changed properly expensed costs to capitalize them based solely on management representations, and inflated value of intangible asset); *Robert D. Potts, CPA*, Exchange Act Release No. 39126 1997 SEC LEXIS 2005 (Sept. 24, 1997), *aff'd*, 151 F.3d 810 (8th Cir. 1998) (suspending concurring partner for nine months; accounting for asset not in accord with GAAP and contrary to documentary evidence in file he reviewed); *Bill R. Thomas*, Accounting and Auditing Enforcement Release No. 192, 1988 SEC LEXIS 1119 (May 27, 1988) (barring, permanently, CPA who violated antifraud provisions, owned stock in firm he audited, and concealed this from his employer, a national accounting firm); *Gary L. Jackson*, Accounting and Auditing Enforcement Release No. 85, 1986 SEC LEXIS 2230 (Jan. 21, 1986) (barring, permanently, CPA who aided and abetted firm's filing of materially false reports and knowingly accepted firm's valuation of worthless mining claims and of an asset based on a sham transaction with no economic substance); *Russell G. Davy*, Accounting and Auditing Enforcement Release No. 53, 1985 SEC LEXIS 1748 (Apr. 15, 1985) (barring, permanently, CPA who violated antifraud provisions, accepted management representations about sham transactions despite red flags and ignored information that he actually knew); *Ernst & Ernst*, Accounting Series Release No. 248, 1978 SEC LEXIS 1451 (May 31, 1978) (suspending engagement partner for one year, audit manager, for three months, and censuring CPA firm; materially false and misleading financial statements contained sham and improperly accounted for acquisitions, and respondents lacked independence in repeated dependence on management representations concerning significant information despite red flags).

C. Disgorgement

Exchange Act Section 21C(e) authorizes disgorgement of ill-gotten gains from Respondents. Disgorgement of ill-gotten gains is "an equitable remedy designed to deprive a wrongdoer of his unjust enrichment and to deter others from violating the securities laws." *Montford & Co. v. SEC*, 793 F.3d 76, 84 (D.C. Cir. 2015) (quoting *SEC v. First City Fin. Corp*., 890 F.2d 1215, 1230 (D.C. Cir. 1989)). "Thus, 'disgorgement need only be a reasonable approximation of profits causally connected to the violation.'" *Id*. (quoting *First City Fin. Corp*., 890 F.2d at 1231); *see SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1192 n.6 (9th Cir. 1998) (holding disgorgement amount only needs to be a reasonable approximation of ill-gotten gains); *Laurie Jones Canady*, Exchange Act Release No. 41250, 1999 SEC LEXIS 669, at *38 n.35 (Apr. 5, 1999) (quoting *SEC v. First Jersey Secs., Inc.*, 101 F.3d 1450, 1475 (2d Cir. 1996)), *pet. denied*, 230 F.3d 362 (D.C. Cir. 2000). It returns the violator to where he would have been absent the violative activity. Remus was paid at least $56,227 for the fourteen audits, and Amundsen was paid $7,000 for his EQR work on those audits. Thus, disgorgement of those sums plus prejudgment interest will be ordered.

D. Civil Money Penalty

Exchange Act Section 21B(a)(2) authorizes the Commission to impose civil money penalties in a proceeding instituted under Section 21C against a person who is violating or has violated, or was the cause of the violation of, any provision of the Exchange Act or rules. In this proceeding the combination of other sanctions ordered in this proceeding against Remus are sufficient in light of the *Steadman* factors and as deterrence, and no penalty will be ordered. Likewise, the sanctions ordered in this proceeding against Amundsen are sufficient when account is taken of the pending proceeding against Amundsen in the U.S. District Court for the Northern District of California, which, having found him in contempt, will order appropriate relief after the completion of this proceeding.

V. RECORD CERTIFICATION

Pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b), it is certified that the record includes the items set forth in the record index issued by the Secretary of the Commission on October 25, 2019.

VI. ORDER

IT IS ORDERED that, pursuant to Section 21C of the Exchange Act, JOSEPH S. AMUNDSEN, CPA, MICHAEL T. REMUS, CPA, and MICHAEL REMUS CPA CEASE AND DESIST from violations of Exchange Act Rule 17a-5.

IT IS FURTHER ORDERED that, pursuant to Section 4C of the Exchange Act and Rule 102(e) of the Commission's Rules of Practice, MICHAEL T. REMUS, CPA, and MICHAEL REMUS CPA ARE DENIED the privilege of appearing or practicing before the Commission for one year.

IT IS FURTHER ORDERED that, pursuant to Section 21C of the Exchange Act, MICHAEL T. REMUS, CPA, and MICHAEL REMUS CPA, JOINTLY AND SEVERALLY, DISGORGE $56,227 plus prejudgment interest and JOSEPH S. AMUNDSEN, CPA, DISGORGE $7,000 plus prejudgment interest. Prejudgment interest is computed at the rate established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), compounded quarterly, pursuant to 17 C.F.R. § 201.600(b). Pursuant to 17 C.F.R. § 201.600(a), prejudgment interest is due from June 1, 2016, through the last day of the month preceding which payment is made.

Payment of disgorgement and prejudgment interest shall be made no later than twenty-one days following the day this Initial Decision becomes final, unless the Commission directs otherwise. Payment shall be made in one of the following ways: (1) transmitted electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request; (2) direct payments from a bank account via Pay.gov through the SEC website at http://www.sec.gov/ofm; or (3) by certified check, United States postal money order, bank cashier's check, or bank money order, payable to the Securities and Exchange Commission – such payment .

A payment by certified check, United States postal money order, bank cashier's check, or bank money order shall include a cover letter identifying the Respondent[s] and Administrative Proceeding File No. 3-18994, and shall be delivered to: Enterprises Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Bld., Oklahoma City, OK 73169. A copy of the cover letter and instrument of payment shall be sent to the Commission's Division of Enforcement, directed to the attention of counsel of record.

This ID shall become effective in accordance with and subject to the provisions of 17 C.F.R. § 201.360, pursuant to which a party may file a petition for review of this ID within twenty-one days after service of the ID. A party may also file a motion to correct a manifest error of fact within ten days of the ID, pursuant to 17 C.F.R. § 201.111(h). If a motion to correct a manifest error of fact is filed by a party, then a party shall have twenty-one days to file a petition for review from the date of the undersigned's order resolving such motion to correct a manifest error of fact. The ID will not become final until the Commission enters an order of finality. The Commission will enter an order of finality unless a party files a petition for review or a motion to correct a manifest error of fact or the Commission determines on its own initiative to review the ID as to a party. If any of these events occur, the ID shall not become final as to that party.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge