INITIAL DECISION RELEASE NO. 939
ADMINISTRATIVE PROCEEDING
FILE NO. 3-16399

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

In the Matter of HALPERN & ASSOCIATES LLC and BARBARA HALPERN, CPA	INITIAL DECISION January 5, 2016

APPEARANCES: Nicholas Pilgrim and Barry O'Connell for the Division of Enforcement, Securities and Exchange Commission

Robert G. Heim, Meyers & Heim LLP, for Respondents

BEFORE: Cameron Elliot, Administrative Law Judge

SUMMARY

Respondent Barbara Halpern, CPA owns and operates Respondent Halpern & Associates LLC (H&A), an accounting firm in Wilton, Connecticut. Respondents audited the 2009 financial statements of Lighthouse Financial Group, LLC, a now-defunct broker-dealer. Because of Respondents' multiple auditing failures, Lighthouse's 2009 financial statements overstated Lighthouse's net capital by approximately $4.9 million.

This Initial Decision: (1) finds that Respondents H&A and Halpern engaged in improper professional conduct; (2) finds that Respondents caused Lighthouse's violation of Section 17 of the Securities Exchange Act of 1934 (Exchange Act) and Rule 17a-5(d) thereunder; (3) orders Respondents to cease and desist from causing those violations; (4) orders Respondents to disgorge $13,000 in ill-gotten gains, plus prejudgment interest; (5) denies Halpern the privilege of appearing or practicing before the Commission for one year; and (6) censures H&A.

I. INTRODUCTION

A. Procedural Background

The Securities and Exchange Commission commenced this proceeding on February 23, 2015, with an Order Instituting Public Administrative and Cease-and-Desist Proceedings (OIP) pursuant to Sections 4C and 21C of the Exchange Act and Commission Rule of Practice 102(e). Respondents filed their joint Answer on April 3, 2015.

Eight witnesses testified during a hearing held in New York City the week of September 8-11, 2015. The admitted exhibits are listed in the Record Index issued by the Office of the Secretary on December 7, 2015. The Division of Enforcement (Division) and Respondents filed post-hearing briefs, and briefing was complete on November 6, 2015.[1]

B. Summary of Allegations

The OIP alleges as follows: Halpern is the sole owner and president of H&A, an accounting firm that provides auditing and other services to broker-dealers. OIP at 2. Respondents were engaged to audit Lighthouse's financial statements for the year ended December 31, 2009 (2009 Statements), and Halpern served as the engagement partner. *Id.* at 3-4. The 2009 Statements contained three errors: (1) they overstated Lighthouse's assets by incorrectly including approximately $2 million in long securities positions held in accounts at Penson Financial Services, Inc., Lighthouse's clearing broker; (2) they understated Lighthouse's liabilities by omitting approximately $2.3 million owed to Penson; and (3) they applied erroneously low "haircuts," or liquidity discounts, to Lighthouse's assets. *Id.* at 4 & n.3; Tr. 163-64. Respondents rendered an unqualified audit opinion with respect to the 2009 Statements. OIP at 5. In auditing the 2009 Statements, however, Respondents failed to follow Generally Accepted Auditing Standards (GAAS), because they: did not exercise due professional care in planning and performing the audit; did not properly staff and supervise the audit; did not obtain sufficient appropriate audit evidence; and did not exercise professional skepticism in evaluating the audit evidence obtained. *Id.* at 5-6. By these failures, Respondents engaged in at least one instance of highly unreasonable conduct, or repeated instances of unreasonable conduct, and caused the 2009 Statements to be materially inaccurate. *Id.* at 10. Respondents thereby engaged in unreasonable or highly unreasonable conduct within the meaning of Commission Rule 102(e)(1)(iv)(B), and caused Lighthouse to violate Section 17 of the Exchange Act and Rule 17a-5(d) thereunder. *Id.* at 9-11; *see infra* n.2.

In their Answer, Respondents deny most key allegations. *See generally* Answer. They also assert the affirmative defenses of laches and the statute of limitations. *Id.* at 4.

II. FINDINGS OF FACT

The findings and conclusions herein are based on the entire record. All documents and exhibits of record have been fully reviewed and carefully considered. I have determined all facts based on the preponderance of the evidence. *See Steadman v. SEC*, 450 U.S. 91, 102 (1981). I have considered and rejected all arguments, proposed findings, and conclusions that are inconsistent with this Initial Decision.

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[1] Citations to the transcript of the hearing are noted as "Tr. __." Citations to the Division's exhibits are noted as "Div. Ex. __," and citations to Respondents' exhibits are noted as "Resp. Ex. __." The page numbers of certain exhibits are cited to by the last non-zero numerical digits of their Bates numbers. The Division's and Respondents' post-hearing briefs are noted as "Div. Br. __" and "Resp. Br. __," respectively. The Division's and Respondents' reply briefs are noted as "Div. Reply __" and "Resp. Reply __," respectively.

A. Respondents' Background

Halpern resides in Weston, Connecticut, and is sixty-two years old. OIP at 3; Answer at 2; Div. Ex. 15 at 387. She is married and has two grown sons. Div. Ex. 15 at 387. She graduated from Brooklyn College in 1974 with a B.S. in accounting. Tr. 756; Div. Ex. 15 at 389-90. She was first licensed as a certified public accountant (CPA) in 1979, and is currently licensed in Connecticut and New York. Tr. 757; Div. Ex. 15 at 391. She also holds a FINRA Series 27 license, which qualifies her to serve as a financial and operations principal, or FinOp. Tr. 175, 757; Div. Ex. 15 at 391.

Halpern worked as a senior accountant at Oppenheim, Appel, Dixon & Co. from 1974 to 1978, where she met Dan Kanner, who now works at H&A. Tr. 284, 756; Div. Ex. 15 at 392. Between 1978 and 1979, Halpern worked as the controller at JF Eckstein & Co., a brokerage firm. Tr. 756; Div. Ex. 15 at 392. Between 1979 and 1982, Halpern worked as the controller at Emanuel and Co., also a brokerage firm. Tr. 756; Div. Ex. 15 at 391. Halpern founded H&A in 1982. Tr. 756; Div. Ex. 15 at 391. She is currently a member of the New York State CPA Society committee for broker-dealer audits. Tr. 757, 770; Div. Ex. 26 at 74.

H&A currently employs ten persons, and Halpern has been its sole owner since 2009. Tr. 757-58. In December 2009 H&A employed four CPAs, two CPA candidates, two or three bookkeepers, and administrative staff. *Id.* Kanner has been a CPA since 1978 and has been employed at H&A since 2007, initially as a "senior audit person" and since approximately 2008 as H&A's concurring reviewer or engagement quality reviewer, although he has also served as a lead auditor. Tr. 284-86, 319-20. Approximately sixty to sixty-five percent of H&A's practice involves the investment industry, including broker-dealers and hedge funds, and H&A also has a "significant tax practice." Tr. 758-59. In 2009 H&A audited twenty-five to thirty broker-dealers, and it audits approximately the same number today. Tr. 771.

In 2009 and 2010 H&A employed David E. Prunier, H&A's "brokerage expert." Tr. 755, 757. Prunier has a high school education with some community college credits, and has worked at various firms in the securities industry, mainly broker-dealers, since he started his career in 1986. Tr. 341-48. He first met Halpern at Greenwich Partners, where he eventually became director of operations and where Halpern was engaged as auditor. Tr. 343, 347. He worked as the FinOp at two broker-dealers, Greenwich Partners and EX24. Tr. 343-45, 422-23, 425. He worked for H&A part-time before 2009, left to work for a broker-dealer for a time, and returned to H&A full-time in approximately May or June 2009. Tr. 346-48, 359. Prunier understood that his work at H&A would involve being a "rented FinOp," that is, a FinOp for firms that lacked enough work to justify a full-time FinOp. Tr. 348. He also understood that he "would learn hedge fund accounting and help out in the office." Tr. 348. Prunier had experience, prior to working at H&A, in producing documents during broker-dealer audits, and he was "very familiar" with broker-dealer financial statements. Tr. 384, 427, 530. However, he has never dealt with margin trading, he had never done auditing work prior to his employment with H&A, he was "[n]ot really" familiar with GAAS in December 2009, and although he had worked with a clearing broker in the past, he was not familiar with the broker-dealer auditing guidelines issued by the American Institute of Certified Public Accountants, and he had not worked with Penson.

Tr. 345, 348-49, 353-54, 366-67, 376, 384-85, 428, 448-49. He "still, to this day, cannot reconcile payroll." Tr. 369. He was asked to, and did, leave H&A's employ in October 2012. Tr. 418, 755. Prunier testified he was not given an explanation. Tr. 418. During the investigation Halpern testified that Prunier left H&A "to branch out into new areas of the brokerage industry," and that he "was looking to do compliance work." Div. Ex. 26 at 140. Halpern testified at the hearing, however, that Prunier had become "belligerent," tried to harm one of H&A's employees, and had developed "an extremely inflated ego." Tr. 755-56, 890.

Halpern does "everything" at H&A. Tr. 759. She was and continues to be responsible for audits and client relations, and she reviews "everything that leaves the office," including audits and tax returns. Tr. 759. H&A's offices lack separate rooms or cubicles, and Halpern can hear everything said to clients. Tr. 759; *but see* Tr. 328 (Kanner testified that H&A's offices have separate rooms); Tr. 445 (Prunier testified that another employee sat in "[a]nother room over"). Halpern's level of involvement depends on the matter, and in complicated audits she acts as the "active lead." Tr. 760. She ensures H&A's staff is trained, by review of audit techniques each fall, weekly office meetings, and webinars. Tr. 328-29, 759, 760.

The National Association of Securities Dealers (NASD) sanctioned Halpern four times over the course of her career. *See generally* Div. Ex. 38. In 1991, Halpern was censured and fined $1,000 by NASD for "failure to comply with SEC Rule 15c3-1 in that Castleton-Rhodes, Inc. failed to maintain minimum required net capital while conducting a securities business on 12/29/89." Div. Ex. 38 at 524-27. Halpern explained that Castleton-Rhodes' clearing broker mistakenly failed to report a negative account balance, and that Halpern reported it to NASD when she discovered it. Tr. 150-51. Later in 1991, Halpern was censured and fined $2,000 by NASD for "failure to comply with SEC Rule 15c3-1 in that Seidel & [Fasano] failed to maintain minimum required net capital as of September 28, 1990." Div. Ex. 38 at 527-30; Div. Ex. 35. In 1992, Halpern was censured and fined $3,500 by NASD for "failure to comply with SEC Rule 15c3-1 in that Seidel & [Fasano] failed to maintain minimum required net capital as of 12/27/91." Div. Ex. 38 at 531-34; Div. Ex. 36. In 1998, Halpern was fined $20,000, was censured, had her FinOp registration suspended for ninety days, and was "required to requalify by exam as a FinOp" for "failure to comply with [SEC] Rule 15c3-1 in that SFI Investments, Inc. failed to maintain minimum required net capital on five dates during 1995." Div. Ex. 38 at 534-38; Div. Ex. 37. Halpern admits she has received "censures," but testified they were "beyond [her] control," and she denied ever causing a broker-dealer to be out of net capital compliance. Tr. 152-53.

B. H&A's Work With Lighthouse Before the Audit of the 2009 Statements

Lighthouse was an introducing broker in New York City and was registered with the Commission as a broker-dealer from at least 2002 until August 2010. Tr. 33-34; Div. Ex. 24 at 453. H&A served as Lighthouse's auditor from 2002 until August 2010. Tr. 33. In 2007 Lighthouse had approximately fifteen to twenty employees and revenues of approximately $6 million. Tr. 176. By 2009 Lighthouse had more lines of business, including proprietary trading, employed in excess of 100 persons, and reported year-end revenues of approximately $40 million. Tr. 176, 562-63, 780; Div. Ex. 14 at 3535. H&A was aware of Lighthouse's growth. *See* Div. Ex. 9 ("Enormous growth in brokers"); Div. Ex. 18. Because of its growth, between

2007 and 2009 Lighthouse hired a controller, an accounting clerk, and a "human resources individual." Tr. 176-77, 567.

Richard Krill worked in the broker-dealer industry for about twenty years. Tr. 175. He served as the FinOp for several broker-dealers before joining Lighthouse in that role in late 2007. Tr. 175-76. He also served as FinOp of Multitrade, a small broker-dealer in which Lighthouse had invested. Tr. 256. Lighthouse terminated Krill for poor performance in 2009, specifically because he did not accurately and timely process Lighthouse's payroll, but then rehired him that same year and brought on additional employees to assist him, including Nancy Cooper in August 2009 on a part-time basis. Tr. 489, 499, 567-70. On May 19, 2015, based on his conduct while Lighthouse's FinOp, the Commission ordered Krill to cease and desist from committing or causing any violations of Exchange Act Section 17 and Rules 17a-3(a) and 17a-5(a) thereunder, and suspended him for twelve months from associating with a broker-dealer or registered investment company, among other industry segments. Resp. Ex. 11 at 9. I take official notice under 17 C.F.R. § 201.323 that on September 11, 2015, the Commission further ordered Krill to pay disgorgement, prejudgment interest, and civil penalties totaling $50,000. *See Richard Krill*, Exchange Act Release No. 75906, 2015 SEC LEXIS 3792 (Sept. 11, 2015). He paid $25,000 to settle a New York state civil proceeding accusing him of misrepresenting Lighthouse's financial condition. Tr. 250-55; *see* Resp. Ex. 13. He is currently the controller for a real estate management company. Tr. 176.

Lighthouse switched from a July-to-June fiscal year to a January-to-December fiscal year in mid-2009, to "look more established." Tr. 178, 572. Lighthouse considered engaging a "more brand name auditor" because of its growth, but to maintain continuity as it shifted its fiscal year, it again engaged H&A, with which it was otherwise satisfied. Tr. 571-72, 613. As a result, H&A audited Lighthouse for the year ending June 30, 2009, and again six months later for the year ending December 31, 2009. Tr. 178; Div. Ex. 24. Krill was responsible for preparing Lighthouse's year-end financial reports, the audits of which were due sixty days after the end of the reporting period. Tr. 182-84. Krill was also responsible for preparing and filing Lighthouse's monthly Financial and Operational Combined Uniform Single (FOCUS) reports, performing its net capital calculations, and ensuring it met its record keeping and financial reporting obligations. Tr. 184-85, 224-25; *e.g.*, Div. Ex. 24.

One of the difficulties H&A had with Lighthouse involved reconciling account statements from clearing brokers, including Penson, a firm which Halpern testified had "unusual reporting" in previous years. Tr. 121; see Div. Ex. 6 at 19376. After H&A's audit of Lighthouse's June 2008 financial statements, for example, H&A personnel noted in workpapers that for the "next audit" H&A should use "trade date statements or get broker access," rather than using "settlement date/custody reports." Div. Ex. 6 at 19376; *see also* Div. Ex. 5 at 19362. This was a recurring problem where audit confirmations were needed from clearing brokers, because many clearing brokers provided statements on a settlement date basis, but the Commission required reporting on a trade date basis. Tr. 68-69. During the investigation Halpern testified that H&A resolved this difficulty by asking the client for a reconciliation or support for the client's reported trade date balances. Tr. 71; Div. Ex. 26 at 77. But at the hearing she testified initially that H&A asked the clearing broker for a reconciliation. Tr. 70. Only after being impeached with her investigative testimony did Halpern testify that H&A would first ask

the client for a reconciliation, which it would then verify with information from the clearing broker. Tr. 70-72. In any event, Halpern did not consider Lighthouse's reconciliation problem with Penson "insurmountable" or believe that it "presented any kind of risk." Tr. 122.

H&A's difficulties with Lighthouse were especially acute in connection with the June 2009 audit, because Lighthouse's bill retention and record keeping were a "mess." Tr. 35; *see generally* Tr. 491-96. Cooper explained, for example, that Lighthouse was not correctly booking the expenses of Bloomberg terminals, and its contract payroll service was not correctly making payroll deductions. Tr. 487-89, 492, 494-95. Halpern believed these problems were caused by Krill being disorganized and because Lighthouse had moved its offices. Tr. 36. Halpern believed that Krill needed assistance because he was overwhelmed by his duties, and Lighthouse's accounting department "had lost a little bit of control." Tr. 38, 42.

Halpern served as engagement partner for the audit of Lighthouse's June 30, 2009, financial statements. Tr. 47. Lois Amador, a CPA at H&A, had performed the Lighthouse audit for a number of years and was the "lead" on the June 2009 audit. Tr. 47, 469. Kanner participated in the June 2009 audit, but in a capacity so "limited" that he was unaware at the time that the audit resulted in significant adjustments to Lighthouse's financial reports, and that H&A obtained Penson trade date documentation. Tr. 289, 293, 312. According to Halpern, Prunier worked on the audit for "four straight months," and "knew Lighthouse intimately." Tr. 87-88. Prunier, however, had little recollection of participating in the June 2009 audit, and he testified that he merely did "lick-and-tick" work, which involved verifying the accuracy of an income or expense account, verifying the balance on a balance sheet, and matching payments to invoices. Tr. 349-52, 431, 433-34, 469-70; *e.g.,* Resp. Ex. 2 at 128 (of 557 pdf pages). Prunier testified that he was not involved in "tying out Lighthouse's inventory account positions," and he did not recall "tying in the cash balances." Tr. 432, 480-82.

In planning Lighthouse's June 2009 audit, H&A took into account the problem with clearing broker account reconciliations by noting in the planning memorandum: "Get broker access to get statements. Do not send paper settlement date statements." Tr. 142-43; Div. Ex. 18. Although the planning memorandum indicates that Prunier attended the planning meeting on May 1, 2009, Prunier believed he was not present, because he "believe[d] [he] was working somewhere else at the time," and does not remember the meeting. Tr. 359-60; Div. Ex. 18. For the June 2009 audit Amador obtained trade date balances directly from Penson's website, as indicated by the footer on the documents. Tr. 134-35, 142; Div. Ex. 8 at 25754. Halpern agreed at the hearing that "[i]t seems you can get trade date balances" from Penson. Tr. 136-37; Div. Ex. 8. Although Halpern testified that she did not know exactly how the trade date balance documents were obtained, she also testified that Amador had "used screenshots." Tr. 133, 136. H&A's audit team spent three or four days at Lighthouse's offices during the June 2009 audit. Tr. 53. Amador believed in August 2009 that "[w]e are not in good shape with this audit," and that Krill's reconciliations of payroll and fixed assets, among other things, "are more confusing than if we didn't have them." Tr. 49; Div. Ex. 21 at 2132. Krill testified that the number of outstanding items Amador requested of him on August 21, 2009, was more than normal. Tr. 183; Div. Ex. 21.

Although Halpern testified that her concerns in August 2009 were "clarified at the end," there were "significant" audit adjustments, in both number and total value. Tr. 38, 48. One of these adjustments pertained to Krill's overvaluation of Lighthouse's investment in Multitrade by at least about $400,000. Tr. 256-58. Halpern was troubled enough by the audit adjustments that she expressed her concerns directly to Robert Bradley, Lighthouse's COO. Tr. 38-39. Also, H&A sought and received an extension from the Financial Industry Regulatory Authority (FINRA) on the audit deadline to "properly finish [the] audit," which it eventually filed in October 2009. Tr. 40, 45.

C. Planning, Preparation, and Staffing for H&A's Audit of the 2009 Statements

Lighthouse engaged H&A to conduct the audit of the 2009 Statements by letter dated November 20, 2009, and signed by Krill. Div. Ex. 16. H&A's fee was set between $13,000 and $15,000, with a deposit of $8,000. Div. Ex. 16; Resp. Ex. 5. H&A held an audit planning meeting on December 1, 2009, according to a memorandum dated December 31, 2009. Div. Ex. 9. According to the memorandum, four persons attended the planning meeting: Kanner, Prunier, Amador, and Zack Halpern (Z. Halpern), Halpern's son. Tr. 57-58; Div. Ex. 9. Although Halpern testified during the investigation that she attended the meeting, at the hearing she testified that she did not, but that she reviewed the memorandum, "discussed it with those that were there, and [] was satisfied." Tr. 57, 850; Div. Ex. 26 at 63.

According to the memorandum, the meeting attendees reviewed the "last years" audit workpapers and identified four issues from that audit: "[e]normous growth in brokers," a change in equity partnership, poor record keeping, and "many adjustments required." Div. Ex. 9. They identified three issues in the current year: the change in the fiscal year, a change in "management CFO," and an "amended tax return." *Id*. They noted no areas of significant risk of material misstatement, audit notes from the previous year, or unusual accounting procedures used by Lighthouse. *Id*. The memorandum listed a number of risk factors the attendees discussed, but the factors appear to be boilerplate, that is, nothing particular to Lighthouse was listed. *See id.* ("Susceptibility of financial statement to material misstatement . . ."). Audit field work was assigned to Kanner, Z. Halpern, and Prunier; Amador was assigned to "monitor the confirms"; and Prunier was assigned to write the "report," meaning he was to convert Lighthouse's QuickBooks files into financial statements. *See id.*; Div. Ex. 26 at 70. The memorandum did not identify the "lead" auditor, nor did it identify Halpern at all. Div. Ex. 9. The memorandum had "a lot of similarities" to H&A's other audit planning memoranda at the time, because it was based on a "template." Tr. 57.

Prunier could not recall attending the planning meeting, and did not remember discussing the four issues from the previous year prior to the audit of the 2009 Statements. Tr. 355-56, 478. Nor did he remember being told what to expect from Krill, or that a prior audit team member had noted the need to obtain trade date statements rather than settlement date statements, although he admitted he "should have been" aware that the June 2009 audit had problems. Tr. 368, 391, 439-40. By December 2009, Prunier had worked on at most one broker-dealer audit involving proprietary trading. Tr. 350, 412-13. Kanner testified that he did not review the June 2009 audit work papers, and that he was not made aware that Lighthouse had poor record keeping and that

the June 2009 audit had resulted in significant adjustments. Tr. 293-94. Kanner did understand, however, that Lighthouse had grown enormously. Tr. 293.

Halpern could not remember what the planning memorandum's reference to "enormous growth in brokers" meant, and testified that she understood Lighthouse had "contracted." Tr. 37-38, 59. Halpern understood that H&A had encountered difficulties with Krill during the June 2009 audit, that Lighthouse had poor record keeping, and that the June 2009 audit resulted in significant audit adjustments, but she believed that with proper auditing, the increased risk of material misstatement "could be held in abeyance." Tr. 60-61. The only different procedures H&A implemented for the audit of the 2009 Statements, according to Halpern, were "more vouching of the expenses," more extensive testing and tying out of revenues, and review of "cutoffs." Tr. 60.

Prunier, Kanner, and Halpern all had different accounts of their respective roles in the audit of the 2009 Statements. Prunier testified that although his title was "associate," he was "lead" auditor for that audit, and that Kanner maintained a firm-wide "planning spreadsheet," which was distinct from the audit-specific planning memorandum and which listed personnel assignments for each audit. Tr. 472-73, 476, 479. Prunier also testified that he was supervised by both Halpern and Kanner, although Kanner was apparently his first-line supervisor. Tr. 442-43; *e.g.*, Tr. 377-79, 396-97. For instance, when Prunier had trouble tying out the statements from Penson, he informed Kanner, with no result, and he then informed Halpern "unofficially," and Halpern "went to the Lighthouse offices, she nailed [Cooper] down, and we received the Penson screenshots." Tr. 379. Kanner testified that: he was not "personally involved in the December 2009" audit; he did not conduct any field work; he instead acted as the concurring auditor; and he did not supervise Prunier. Tr. 290, 292-94. Kanner characterized Prunier's role as "staff auditor." Tr. 314. Halpern testified that she initially wanted Amador to be the lead auditor, with Halpern reviewing Amador and Kanner reviewing Halpern. Tr. 62. In the end, however, Halpern served as "the lead on the audit," and "was there every step of the way," and Prunier assisted her. Tr. 61. Halpern testified at the hearing, confusingly, that Kanner served as audit manager, without a "specific role" except to act as "concurring partner," and then just moments later testified that he "was up at Lighthouse at least once during that audit," suggesting that Kanner was concurring in his own field work. Tr. 62. During the investigation, however, Halpern testified that Kanner did not go out on the audit. Div. Ex. 26 at 64.

D. General Conduct of the Audit of the 2009 Statements

During the audit, Prunier sought from Krill reconciliations, balance sheet asset confirmations, and evidence to "tie in the inventory," but dealing with Krill was "very frustrating." Tr. 360. Krill's "numbers were moving targets throughout most of the [audit] process." Tr. 366. Prunier was "not sure [he] ever received much at all that was accurate from Mr. Krill." Tr. 361. Two factors exacerbated the audit's difficulty: essentially back-to-back examinations, first by FINRA and then by the Commission, occurring at the same time as H&A's audit and to which Lighthouse gave priority; and "timing pressure" arising from H&A's understanding that FINRA would not grant a filing extension like it had with the June 2009 audit. Tr. 363, 365, 512, 520; *see* Div. Ex. 39; Resp. Ex. 7.

One result of the audit's difficulty was that even though Lighthouse made adjustments to its balance sheet based upon H&A's work, the "books still [didn't] match." Tr. 365; *see* Tr. 377. For instance, on February 23, 2010, the day before H&A issued its audit report, Krill sent Prunier an amended FOCUS report containing numbers that did not match Prunier's balance sheet, apparently because Krill was "not aware of a couple of" adjustments. Tr. 364-65; Div. Ex. 19. Prunier testified that he shared his frustrations with Kanner and, to a lesser extent, with Halpern. Tr. 362, 366.

Prunier sent Penson "the standard confirmation that's sent to everybody," signed by Krill and dated January 6, 2010, which requested Penson account statements for Lighthouse. Tr. 146-47, 191-92, 370; Div. Ex. 4. The confirmation letter was substantively identical to a confirmation letter sent to Penson for the June 2008 audit. Tr. 147; Div. Ex. 4; Div. Ex. 5 at 19367. In particular, the 2010 confirmation letter simply asked for statements "for each of [Lighthouse's] accounts with [Penson] showing security positions and account balances as of December 31, 2009," with no specific request for trade date information. Div. Ex. 4. According to Halpern, there was no need to request trade date information because H&A used the "standard confirmations that were recommended by our society." *See* Tr. 148; *see also* Tr. 371. Prunier was not told to send a confirmation letter specifically seeking trade date information, and testified that he simply "follow[ed] what was done the previous year." Tr. 370, 372.

In response to the confirmation letter, Penson sent Lighthouse's account statements, reported based on settlement date. Tr. 77-78; Div. Ex. 26 at 81, 87, 90; *see* Div. Ex. 1 at 3290-343. This necessitated reconciliation between the Penson account statements and Lighthouse's balance sheet, which was reported on a trade date basis. Tr. 70, 79; Div. Ex. 26 at 76-77.

Prunier first told Kanner of his trouble "[tying] out the Penson statements," and then told Halpern, who offered to help. Tr. 379. Halpern testified that she considered obtaining historical data from the clearing broker to be an acceptable "alternative" reconciliation procedure. Tr. 806. One method to implement this alternative procedure involved obtaining direct online access to the broker's account; this method was followed for the June 2009 audit, and Halpern acknowledged during the hearing that "Penson was able to generate trade date reports." *See* Tr. 78, 143; Div. Ex. 8; *see also* Tr. 189-90 (Krill testified that Lighthouse had electronic access to its Penson account records). Halpern rejected that method because she did not "prefer" it. Tr. 143; *see* Tr. 382.

Another method Halpern claims to have considered was requesting Penson reconciliations through Lighthouse. She testified during the investigation that she asked Krill, "towards the end of the audit," to call Penson and "get us reports tying in settlement to trade date," even though she was not surprised when Penson declined to do so. *See* Div. Ex. 26 at 79-80. She initially testified during the investigation that "Penson said they could not produce the reports." *Id.* at 79. She later testified during the investigation that she sat next to Krill when he called someone at Penson on speakerphone about one week before the audit report issued, and that she "overheard" what was said, but then just moments later she testified that she participated in the conversation. Tr. 119-20.

During the hearing, by contrast, Halpern testified that she asked Cooper to call Penson and request "trade date activity," that Cooper called Penson in Halpern's presence, not on speakerphone, and that Cooper told Halpern that "they could not get the information." Tr. 120, 806, 818-22. Cooper recalled contacting Penson to obtain reconciliations, but only after the audit was completed. Tr. 505, 513-14. Specifically, she recalled contacting Penson and being told that Penson's reports were "not suitable for reconciliation," in approximately May 2010, when she was working on responses to the Commission's examination requests. Tr. 514-15; Div. Ex. 39. Krill, too, recalled contacting Penson during the Commission's "investigation," but he did not recall "contacting Penson with Ms. Halpern." Tr. 215.

Another available alternative reconciliation procedure was "vouching subsequent settlement statements" to determine whether pending trades explained differences between settlement date data and trade date data. Tr. 382, 682-83; Div. Ex. 34 at 40. Prunier was not familiar with vouching as an alternative procedure, and testified that H&A did not discuss that procedure as an option. Tr. 382-83. During the investigation Halpern agreed that vouching subsequent statements "would have been a good procedure to follow," but did not know whether it had been done. Div. Ex. 26 at 104-05. During the hearing she testified that she had, in fact, "exhausted all possible alternatives," and that vouching would have been too time-consuming. Tr. 807; *see also* Tr. 383-84 (Prunier also testified that it would have been too time-consuming).

Halpern denied that there was time pressure to complete the audit of the 2009 Statements, because the due date was March 1, 2010, and the audit was completed on February 24, 2010. Tr. 879. She also testified that she was unaware at the time of Lighthouse's FINRA examination in late 2009 and early 2010, even though Prunier was aware of the examination at the time. Tr. 363-64, 822. The FINRA examination did not catch the error in Lighthouse's net capital calculation. Tr. 586-87. Halpern testified that Lighthouse did not provide the FINRA examination findings to H&A, and Krill could not remember whether Lighthouse did or not. Tr. 247-48, 810-11. Krill agreed that if the findings had not been provided to H&A, Lighthouse would have violated the assertion in its management representation letter to H&A that there had been "no communications from regulatory agencies concerning noncompliance with or deficiencies in financial reporting practices." Tr. 247-48; Resp. Ex. 6.

E. The Screenshots

Halpern and Prunier eventually visited Lighthouse's offices and obtained two documents that Prunier labeled the "Penson Screen Shot" and the "Penson Screen Print" (collectively, Screenshots). Tr. 111-12, 379, 386, 398; *see* Div. Exs. 2A, 2B. Halpern understood the first document to be a "back office report" reflecting "trade date positions"; it was also referred to as a "position report" and "inventory screenshot[]." Tr. 112, 388, 841. She understood the second document to be a "money line report" reflecting balances in various accounts Lighthouse had with Penson. Tr. 801-02. Both documents have Prunier's initials on each page, near the date "2/1/10." *See generally* Div. Exs. 2A, 2B; Tr. 395. The audit work papers do not record how these documents came into H&A's possession, although Prunier noted on the Penson confirmation letter that the Penson statements were "not used because they are on a settlement date basis. Client provided us with screenshots of trade date reports showing balances and positions." Tr. 297; Div. Ex. 4.

The Penson Screen Shot purported to list the securities holdings in each of five accounts, divided into holdings with a negative balance and holdings with a positive balance. *E.g.*, Div. Ex. 2A at 3231 (showing holdings for account 91lf0800). The date "12/31/2009" appears on each page, but there is otherwise no indication of either the trade date or the settlement date of any particular transaction, or whether the Penson Screen Shot information is reported on the basis of either date. *See generally* Div. Ex. 2A. Prunier used the Penson Screen Shot to "[v]erify the balances on the balance sheet" by "match[ing]" the numbers on Lighthouse's balance sheet to the totals on the Penson Screen Shot. Tr. 388, 396; *compare* Div. Ex. 2 at 3228 *with* Div. Ex. 2A. The totals with a negative balance generally matched to the "SMV," or short market value, balance sheet entries, and the totals with a positive balance generally matched to the "LMV," or long market value, balance sheet entries. *See* Tr. 392-93, 396; *compare* Div. Ex. 2 at 3228 *with* Div. Ex. 2A. Prunier's initials appear next to certain entries, suggesting that Prunier checked some of the prices listed on the Penson Screen Shot. *See* Tr. 450; *e.g.*, Div. Ex. 2A at 3231 ("price verified on BigCharts.com"). However, Halpern could not recall H&A performing any procedure to confirm that the Penson Screen Shot was a complete list of Lighthouse's proprietary accounts with Penson, and Prunier denied performing any such procedure. Tr. 98, 393. Halpern made the decision to use the Penson Screen Shot without any further testing. Tr. 397.

The details of the overstatement of long securities positions are not entirely clear from the record. *See* Div. Br. at 5 (asserting without citation that the Penson Screen Shot "overstated the quantity values of fifteen securities"). For instance, the page of the Penson Screen Shot for account 9lf00106 showed holdings in that account of $175,484.40, which matched the holdings in that account as recorded on the balance sheet. *Compare* Div. Ex. 2A at 3236 *with* Div. Ex. 2 at 3228. Most of the balance was attributable to a single trade, involving 295,000 shares of NILTO. *See* Div. Ex. 2A at 3236. The true account holdings, which were available from Penson in December 2009 and which showed Lighthouse's holdings in consolidated form on December 31, 2009, revealed a balance in the account of negative $3,076.04, on both a settlement date and a trade date basis. *See* Div. Ex. 3 at 3; Stipulations at 1. The actual NILTO trade involved only 7,000 shares, and the discrepancy between it and the NILTO trade listed on the Penson Screen Shot appears to have been the principal reason the holdings in account 9lf00106 were overstated. *See* Div. Ex. 3 at 3. That is, the overstatement in that account was apparently not caused by whatever trades took place between the settlement date and the trade date.

The Penson Screen Print purported to list the balances in six accounts, including account 11981727, which held funds in five different currencies. Div. Ex. 2B. The date "12/31/2009" appears at the top of the page, and two columns contain "T/D balance" in their titles, suggesting that they represented the trade date balance. *Id.* Each "Account Type Description" was either "Cash" or "General Margin," and all balances were positive, with a bottom line balance of $2,346,393.18. *Id.* The actual December 31, 2009, statement from Penson listed balances in account 11981727 in thirteen currencies, mostly negative, with a "Grand Total" balance of negative $22,305.28. Div. Ex. 12 at 199-201. And the actual January 31, 2010, statement – which Halpern agreed would have issued in time to have been considered as audit evidence – showed a Grand Total balance of negative $282,491.33. Tr. 125; Div. Ex. 11 at 33. H&A obtained a copy of Lighthouse's actual December 31, 2009, Penson statement during its audit of the 2009 Statements, and therefore knew that Lighthouse's year-end account balance (at least on

a settlement date basis) was negative because of negative balances in multiple individual accounts. Tr. 128-32; Div. Exs. 10, 12.

According to Halpern, any credit balances "did not exist on the trial balance, and we had no reason to believe they should be." Tr. 32, 116-17. That is, the Penson Screen Print "did not include negative balances," nor did Lighthouse's balance sheet reflect any negative balances, or what Halpern called the "credit balances"; she only learned as a result of the Commission's examination that there should have been a second page listing the credit balances. Tr. 31-33; Div. Ex. 26 at 114. But H&A obtained Lighthouse's actual December 31, 2009, statement, which included both positive and negative balances, and placed a copy in its audit work papers. Div. Ex. 1 at 3266-68. Halpern admitted that "someone on the engagement team was aware" of the difference between the Grand Total balance and the Penson Screen Print balance. Tr. 117. Halpern herself expected money line reports to "reflect both positive and negative balances," although she did not recall thinking it odd that the Penson Screen Print lacked negative balances. Div. Ex. 26 at 110, 112.

Prunier testified that there was no discussion during the audit about the significant difference between the Grand Total balance and the Penson Screen Print balance. Tr. 416. Halpern testified that H&A "assumed that the account was flattened between settlement date and trade date," but that, to her knowledge, the audit team did not review the January 2010 statement to confirm that flattening. Tr. 117, 125-26. In fact, Prunier reviewed the January 2010 statement, but he "just found a number that worked" and overlooked the credit balances, a practice he admitted was "in error." Tr. 401-02. Halpern also testified that H&A "tried contacting Penson" to confirm the assumption about flattening, but that "Penson told us we could not get the historic information," and that the Penson Screen Print was "deemed sufficient" audit evidence. Tr. 117-18, 127.

The record contains strikingly different accounts of the provenance of the Screenshots. Prunier testified that: he, Halpern, and Cooper were in a room; Halpern was "over [Cooper's] shoulder" and watched Cooper log onto "the system"; the "system" was either a dedicated Penson system (like a Bloomberg terminal) or "password-permitted access"; the Screenshots were handed to him by Halpern while in the room; and he could not recall whether he received both Screenshots at the same time. Tr. 385-88, 397-99, 457. Prunier was confident that he obtained the Penson Screen Shot while he was in the room with Halpern and Cooper, but he could not recall where the Penson Screen Print came from. Tr. 457-58. Although he initially testified that he "assum[ed] they were all obtained at the same time," he later testified that his two different notations on the two different documents suggested that he did not receive them at the same time. Tr. 398, 457-58. Prunier did not inquire about or overhear how the Screenshots were generated from "the system," because he "was getting a 'get out of jail free' card" and "was happy to take what was given to [him] and throw it in there." Tr. 385-87.

Cooper was not sure she ever saw the Screenshots during the audit of the 2009 Statements, and remembered meeting Prunier during the audit, but only vaguely recalled one meeting with Halpern. *See* Tr. 497, 506-07. Cooper also did not recall knowing the user names and passwords for online access to Lighthouse's Penson accounts. Tr. 505-06.

During the investigation, when asked why trade date information was not obtained from Penson as it was for the June 2009 audit, Halpern stated, "I don't have an answer." Div. Ex. 26 at 132. She testified regarding the Penson Screen Print that: Lighthouse queried Penson and asked for a money line report; Prunier "was standing next to [Krill] when he printed it out of the screen"; the audit team did nothing to reconcile the Penson Screen Print with the Penson account statements beyond unsuccessfully requesting a reconciliation from Penson; and the audit team did not document any audit steps taken to determine if the Penson Screen Print covered all of Lighthouse's proprietary accounts at Penson. *Id.* at 98-99, 106-07, 117, 141. She testified that the Penson Screen Prints had always been accurate in the past, and that she had no reason to assume anything was missing from them, so H&A did no testing of them other than for dollar-denominated pricing. *Id.* at 96-97.

Halpern testified regarding the Penson Screen Shot that she believed "Richard Krill prepared it," because it differed slightly from the corresponding document used in the June 2009 audit. Div. Ex. 26 at 135. Halpern testified that she could not remember when she learned Prunier was next to Krill when Krill generated the screenshots, but that "it was told to [her] by Mr. Prunier." *Id.* at 141. Halpern was not concerned that the form of the December 2009 "Penson" reports differed from the June 2009 "Penson" reports. *Id.* at 138-39.

During the hearing, Halpern testified that she "believe[d]" the Screenshots were printed out and furnished to her in two separate meetings. Tr. 111. Halpern testified that Krill used his password to log onto the Penson website, printed the Penson Screen Shot, and handed its pages to Halpern and Prunier, while they were all in Krill's office. Tr. 95, 106, 111. Halpern could not recall exactly what she saw on Krill's screen, but she remembered seeing Krill bringing up the "report" in a "Penson website." Tr. 96-97. She initially testified that she saw a Penson logo at the top of the page, but moments later testified that she could not recall "whether the screen I was looking at had Penson at the top of it at that point"; the Penson Screen Shot has no Penson logo on any page. Tr. 96-97; Div. Ex. 2A. Halpern did not ask Krill what steps he took to obtain the information on the Penson Screen Shot. Tr. 98, 106.

As for the Penson Screen Print, Halpern understood that Krill had queried a "money line report" on the Penson website, which she believed was a website menu option, but she did not inquire further to confirm her understanding. Tr. 109-10. She saw Krill "going to the Penson website, logging in, putting in his password," bringing up the Penson Screen Print, and choosing "Report." Tr. 111, 114. She believed at the time that the Penson Screen Print was a Penson document, but eventually learned that Krill had created it himself. Tr. 114-16. Krill's office was not large, but Halpern estimated that she saw Krill's computer screen while standing behind him and from a distance "approximately from here to where the stenographer" sat during the hearing (a distance in excess of about ten feet). Tr. 110-11.

When her prior inconsistent testimony was pointed out to her – specifically, that she previously had not testified that she was in the room with Krill – Halpern's explanation was non-responsive: "I was with Prunier at various times, yes. I cannot say exactly which documents came, whether it was the position report or the money line report. But I was in the office with Prunier." Tr. 111-12. She later speculated that "[p]erhaps I thought it was better to discuss

where [Prunier] was standing . . . because I felt he was closer to Mr. Krill." Tr. 871. Strangely, she did not think her prior testimony contradicted her hearing testimony. Tr. 872-73.

Robert V. Castro, CPA, testified as Halpern's expert witness. Tr. 707-08; Resp. Ex. 14. Castro referred to the Penson Screen Shot as "back office reports." Tr. 752-53. Halpern testified next, in her own defense, and for the first time in the hearing referred to the Screenshots as "back office reports," which were documents she relied on as audit evidence numerous times. Tr. 796, 842, 885. She opined that Prunier's failure to take note of the negative balance in one of Lighthouse's accounts, which Prunier admitted was an error, was not an error because he "was comparing a settlement date report with a trade date report." Tr. 401-02, 800. She "believe[d]" she visited Lighthouse on February 3, 2010, and "requested the screenshots" on that date; however, every page of the Penson Screen Shot has a "2/1/10" date next to Prunier's initials (although on the first two pages the date was written over). Tr. 867, 877-78; Div. Ex. 2A. She testified that she asked Cooper to obtain trading activity from Penson only after H&A received the Screenshots. Tr. 882.

Krill testified that: Penson provided online access, with no dedicated terminal; he created both Screenshots from information provided by Penson using Excel spreadsheets; and he provided the Screenshots to H&A personnel. Tr. 189, 191, 193, 195, 197, 200, 234. He expected H&A to "confirm" the Penson Screenshot data with Penson. Tr. 200, 212, 239-40, 269. He did not recall "being asked to participate [in] obtaining reconciling documentation to explain the difference between a negative settlement balance on account statements versus trade date reports," nor did he recall downloading the information in the Penson Screen Shot in his office in Halpern's presence, or explaining the documents to any particular H&A auditor. Tr. 217, 236, 272-73.

Krill created the Penson Screen Shot, which he characterized as an "[i]nventory summary," by downloading information from Penson's website. Tr. 235-36, 263. He prepared it using a spreadsheet. Tr. 263. Krill calculated the U.S. dollar values; they were not provided by Penson. Tr. 266. Krill was "pretty positive," but had no specific memory, that he provided H&A both the first page of the Penson Screen Shot and the underlying supporting documents that came directly from Penson, "based on doing it – you know, as many times as I have." Tr. 270-71, 274. Neither the summary (Div. Ex. 2 at 3228) nor the supporting schedule (Div. Ex. 2 at 3231-43) in the Penson Screen Shot contain the Penson website URL. Tr. 236.

Krill created documents that looked like the Penson Screen Print "at least two or three times per week" in support of "daily net capital computations." Tr. 202-03. On a monthly basis, Krill: printed and downloaded Penson account statements containing both trade date and settlement date information; downloaded the information to a spreadsheet that omitted and renamed certain columns and totals and non-Lighthouse accounts; converted foreign currency values to U.S. dollar values using Penson's currency converter and added the title "Lighthouse Financial Group/Penson Money Line"; and calculated a total balance, which he divided between Lighthouse's deposit and its margin account "cash." Tr. 202-05, 209-210; Div. Exs. 2B, 13A. Krill intended the final document to be a "summary page showing all the trade date balances that the firm had as of any given point in time." Tr. 208. The Penson Screen Print is such a summary page, dated December 31, 2009. Tr. 209; Div. Ex. 2B.

Krill learned, as a result of the Commission's investigation of his conduct, that the Penson Screen Print was not a complete record of Lighthouse's accounts at Penson as of December 31, 2009. Tr. 212. He agreed that the reason the Penson Screen Print contained no negative account balances was that the downloaded account statement was "filtered" to exclude any negative balances, and that he could not "recall even giving [the filter] a second glance." Tr. 212-13, 803. The filtering information was contained on the printed version of Lighthouse's account statement, but was omitted from the Penson Screen Print. Tr. 803; Div. Ex. 13 at 378. The Penson website URL, which appeared on the printed version of the Penson account statement, was also not carried over into Krill's spreadsheet. Tr. 751; *compare* Div. Ex. 13 at 376 *with* Div. Ex. 13 at 378.

F. The Checklists

Halpern testified that as part of the planning process for both the June and December 2009 Lighthouse audits, the audit team used various "checklists that are approximately 150 pages." Tr. 768, 785. Halpern oversaw the creation and filling out of these checklists as part of the audit planning process. Tr. 768-69. The December 2009 Lighthouse audit planning process checklists (the Checklists) contain sections encompassing numerous aspects of the auditing process. Tr. 784-85; Resp. Ex. 15.

These sections include the "Client Engagement Acceptance and Continuation Checklist," which Halpern testified involves "analyz[ing] what's going on with the clients, with the industry, the firm personnel, [and] . . . the integrity of management." Tr. 784; Resp. Ex. 15 at 2. Also included in the Checklists is the "Illustrative Planning Program," which Halpern stated requires her to "assign the appropriate personnel, make sure that we're independent, [and] obtain a clear understanding of the business environment." Tr. 785; Resp. Ex. 15 at 10. Halpern testified that the "Internal Control Questionnaire for Brokers and Dealers" involves a memorialization of inquiries with Lighthouse employees about "procedures within the company to determine if [Lighthouse's] internal control procedures supported management's assertions or presented possibilities for material misstatements." Tr. 785-86; Resp. Ex. 15 at 20. Other sections contained in the Checklists include the "Fraud Risk Assessment Form," "Inquiries of Management and Others about the Risks of Fraud," a checklist for audited financial statements, "Disclosure Requirements for Financial Statements of NonPublic Businesses," "Audit Program and Engagement Control-Audit," and the "Audit Review and Approval Form." Tr. 787-91; Resp. Ex. 15 at 41, 53, 68, 72, 98, 117.

On cross and redirect, Halpern clarified that instead of creating new checklists for every audit, "we do tend to [photocopy] checklists from previous audits, put them in the binders, and then update them both with dates and in current events." Tr. 825-26, 879. She described this as a "time-saving factor," admitted that she could not state that "every piece of writing on those sheets is mine," and asserted that this form of preparation for the Checklists "did [not] impact the substance of the information." Tr. 879-80. She also claimed, inconsistently with her testimony given moments earlier, that the method of photocopying a prior audit's checklist and replacing the dates was actually more time-intensive, because of the effort involved in "re-reading everything and making all the appropriate changes." Tr. 880. However, the Checklists contain

numerous pages where it appears, from the visible erasure marks, that the only things that were updated from the June 2009 audit checklists were the dates, which were changed to reflect the December timeframe. *See* Resp. Ex. 15 at 1, 2, 20, 33, 41, 51, 53, 56, 68, 71-72, 115-16; *see also id.* at 40 (showing a February 2009 planning meeting date that was apparently unchanged from the June audit). In fact, it is unclear if anything aside from the dates was changed from the June 2009 checklists.

G. The Haircut Calculation

Exchange Act Rule 15c3-1(c)(2)(vi), entitled "Securities Haircuts," requires adjustments to a broker's net capital computation to account for illiquidity. *See* 17 C.F.R. § 240.15c3-1(c)(2)(vi); Tr. 164. Some categories of securities, such as commercial paper and Canadian debt obligations, receive haircuts specific to their categories; the default haircut for all other securities is defined in Rule 15c3-1(c)(2)(vi)(J). *See generally* 17 C.F.R. § 240.15c3-1(c)(2)(vi). There is also a haircut for, broadly speaking, "Undue Concentration" of holdings in one issuer. *See* 17 C.F.R. § 240.15c3-1(c)(2)(vi)(M). The broker's net capital is determined by deducting the total haircut, along with other adjustments, from the broker's net worth. *See* 17 C.F.R. § 240.15c3-1(c)(2).

It is undisputed that the haircut calculation for the 2009 Statements was erroneous. Tr. 163. One error was evident on the worksheet that Krill prepared. Tr. 159-60, 218-19. Specifically, instead of including "15 percent of the market value of the greater of [Lighthouse's] long or short positions" in the haircut, as required, Krill included fifteen percent of the market value of the lesser of its long or short positions. Tr. 159-60, 219; Div. Ex. 20; 17 C.F.R. § 240.15c3- 1(c)(2)(vi)(J). This resulted in a haircut that was approximately $375,000 smaller than it should have been. *See* Div. Ex. 20 (($4.1 million - $1.6 million) x .15 = $375,000). A second error arose from Krill's lack of awareness that haircuts were required on "foreign denominated cash balances." Tr. 220; *see* Div. Ex. 20. The Screenshots showed that Lighthouse held substantial foreign denominated cash balances. Div. Ex. 2A at 3242; Div. Ex. 2B. Overall, the 2009 Statements applied a total haircut of approximately $440,000, which contributed (by that amount) to the overstatement of Lighthouse's net capital. Tr. 158, 162-63; Div. Ex. 14 at 3539; Div. Ex. 34 at 28 & nn.57-58.

Halpern agreed that the first error "should have been caught" during H&A's audit. Tr. 163. Krill testified that he "would have" provided H&A with his haircut calculation worksheet, because it would have been part of the audit, and that he did not perform the calculation using software offered by "Len Bolls." Tr. 220-21. H&A, however, has no work papers reflecting "what work was done, if any, in calculating the haircuts," and Halpern does not recall whether she reviewed Krill's worksheet. Tr. 156-59.

Although she had not "studied" the issue, when she gave her investigative testimony Halpern was aware that Lighthouse's haircuts had been understated, and believed that the understatement was caused by inaccurate or incomplete security positions. Div. Ex. 26 at 122-23. Halpern also "believe[d] [H&A] recalculated [the haircuts] based on the security position as we knew it." Div. Ex. 26 at 121. By the time of the hearing, Halpern "believe[d] that there are documents missing reflecting whatever work was done on the haircuts," and that they were

missing because the paper copies were taken apart and copied "many, many times" over the past several years. Tr. 839-40. Halpern initially testified that she "believe[d] that [H&A] looked at the Len Bolls report" for some parts of the haircut calculations, but she "cannot find the work paper that relates to the haircuts recalculation." Tr. 156. A few days later, however, after Krill testified that he had not used Len Bolls software for the haircut calculation, Halpern testified that she was not "under the impression" that Len Bolls had been consulted in auditing the 2009 Statements. Tr. 220-21, 839. Astoundingly, she did not "necessarily" consider the haircut errors to be material because they were "close to the materiality range," even though they substantially exceeded the audit's "about $320,000" materiality threshold. Tr. 883. Kanner did not work on the haircut calculations, nor did he remember reviewing them, and Prunier was not questioned about them during the hearing. Tr. 313, 334, 890.

H. Aftermath

Lighthouse filed the 2009 Statements on February 28, 2010. Stipulations at 2. The 2009 Statements "materially overstated Lighthouse's long securities positions and materially understated Lighthouse's payables owed to brokers." Stipulation re: Materiality. Halpern agreed that the 2009 Statements had incorrect security positions and "credit balances that were not reflected on Lighthouse's trial balance." Tr. 31; Div. Ex. 26 at 83. Halpern agreed that, specifically, the 2009 Statements overstated Lighthouse's assets by approximately $2.3 million and understated its liabilities by omitting approximately $2.3 million owed to Penson. Tr. 33. These two errors, combined with the erroneous haircut calculation, resulted in an overstatement of Lighthouse's net capital by approximately $4.9 million. *See* Div. Ex. 34 at 6, 27-28. H&A nonetheless issued unqualified opinions regarding both Lighthouse's financial position and its internal controls. *See* Div. Ex. 14 at 3533, 3547.

The Commission's examination of Lighthouse continued until at least July 2010. Tr. 512. On May 17, 2010, a Commission examiner, Margaret Lett, asked Cooper to "indicate where the negative balances in [Penson account #1191727] have been included on the balance sheet." Tr. 512; Div. Ex. 39 at 2. Cooper called Penson about the issue and was told that Penson's reports were "not suitable for reconciliation by a broker-dealer." Tr. 513-14. In response to Cooper's inquiry, Krill wrote a description of his monthly procedure, in which he stated that "there are NO negative balances" on the balance sheet. Div. Ex. 13 at 371. At some point in May 2010, Lett pointed out to Lighthouse that it had a "problem with the [net capital] computation." Tr. 543. Cooper could not remember informing H&A of the problem, but she remembered meeting with Halpern in the summer of 2010. Tr. 521, 544-45.

In July 2010 Lett informed Cooper that Lighthouse was "out of net capital." Tr. 518-19. Lighthouse's own investigation revealed that Lighthouse had been out of net capital compliance each month of 2010. Tr. 517-18; *see* Tr. 595. In fact, it was "substantially out of net capital compliance" by several million dollars. Tr. 591, 595. Halpern was quickly informed of the Commission's findings, and did not know that the Penson Screen Print was incomplete until then. Tr. 29-30, 592-93, 885-86. Lighthouse stopped doing business shortly thereafter, and filed for bankruptcy in December 2010. Tr. 591, 595-97, 887; Div. Ex. 26 at 49. The bankruptcy trustee eventually sued H&A, claiming that H&A "caused [Lighthouse's] bankruptcy," and

H&A settled the matter in July 2013 with a payment to the trustee by H&A's insurance carrier but without admitting liability. Div. Ex. 26 at 51-55.

I. Expert Testimony

1. Division's Expert

Harris L. Devor, CPA, testified as the Division's expert witness. Tr. 619; Div. Ex. 34. He has been an accountant and auditor for forty-two years. Div. Ex. 34 at 3. He graduated from Temple University in 1973 with a bachelor's degree in business administration, and began his career at Price Waterhouse, where he eventually became an audit manager. Tr. 621; Div. Ex. 34, Ex. 1. He moved to Laventhol & Horwath in 1981 as an audit manager, and became a partner there in approximately 1984. Tr. 621; Div. Ex. 34, Ex. 1. While at Laventhol & Horwath, he was a concurring partner on four or five broker-dealer audits, and he was never accused of perpetrating or being involved with fraud. Tr. 624-25, 649-50. He left Laventhol & Horwath in 1990 and has been a shareholder with Shechtman Marks Devor PC since then, where he performs auditing and litigation support services. Tr. 650; Div. Ex. 34 at 3 & Ex. 1. He has provided expert opinions and expert testimony in over twenty cases in the last four years, and served as an expert witness in multiple high-profile matters in the last fifteen years, including a pending case pertaining to Pricewaterhouse Coopers' audit of "the largest feeder fund into Madoff." Tr. 648-50; Div. Ex. 34, Exs. 1, 2. Most of his recent expert testimony has related to large companies accused of misreporting financial statements and auditing firms accused of failing to perform GAAS-compliant audits. Tr. 648. Some of his expert opinions have been rejected in part or accorded no weight, for various reasons. Tr. 628-31.

Devor opined on three questions: (1) whether the 2009 Statements accorded with Generally Accepted Accounting Principles (GAAP) and Commission regulations; (2) whether Lighthouse's net capital computation in the 2009 Statements was accurate; and (3) whether Respondent's audit of the 2009 Statements accorded with GAAS. Div. Ex. 34 at 4. As to the first and second questions, he opined that the 2009 Statements materially misstated Lighthouse's financial condition, and therefore were not presented in conformity with GAAP, and that the net capital calculation was erroneous. Div. Ex. 34 at 4-6. His opinion was based on the overstatement of Lighthouse's securities owned, understatement of sums due to Penson, and understatement of securities sold but not yet purchased. Div. Ex. 34 at 6. It was also based on the understatement of the haircut used in the net capital calculation. Div. Ex. 34 at 27-28. According to Devor, these misstatements were material because they resulted in an overstatement of assets by approximately 8.8%, an understatement of liabilities by approximately 18%, and a misstatement of net worth resulting in a material misstatement of net capital. Div. Ex. 34 at 7.

The bulk of Devor's expert report explains his opinion that Respondents failed to conduct the audit of the 2009 Statements in accordance with GAAS. Div. Ex. 34 at 7-28. According to Devor, Respondents "did not ensure that the audit was sufficiently planned and performed by qualified individuals," as required by AU § 210, because Prunier "did not have the competencies required to be tasked with auditing inventory and margin accounts for a broker dealer." Div. Ex. 34 at 12, 31. Respondents did not obtain sufficient appropriate audit evidence pertaining to

Lighthouse's account balances, in violation of AU § 326. Div. Ex. 34 at 19. Respondents did not provide sufficient detail in their workpapers to afford reviewers a clear understanding of the work performed, in violation of AU § 339. Div. Ex. 34 at 17, 19. Respondents did not exercise professional skepticism and due professional care because they did not adequately review and consider prior audit workpapers, in violation of AU § 311. Div. Ex. 34 at 23-24. In total, Devor identified violations of eleven specific standards. Div. Ex. 34 at 31.

2. Respondent's Expert

Castro testified as Respondents' expert witness. Tr. 708; Resp. Ex. 14. He has over thirty-four years of audit, tax, and business advisory experience, including over twenty years of experience in the broker-dealer industry. Resp. Ex. 14 at 1. He joined the firm now called BDO USA, LLP, in 1980, became a partner there in 1991, and retired in June 2011. *Id.* at 1-2. In 1994 BDO named him its first managing director of BDO's Financial Services Group, its largest specialty group, where he supervised over 100 professionals performing accounting, audit, tax, and regulatory and business advisory services for financial services clients. *Id.* at 1-2. He worked briefly at another auditing firm in 2012, and now operates a small startup company. *See* Tr. 709-10. He has taught at the City University of New York, and currently teaches intermediate and advanced accounting as an adjunct professor at Hofstra University. Resp. Ex. 14 at 2. He has provided expert testimony in two other matters, in 2013 and 2014. *Id.* at 3.

Castro reviewed only a limited amount of evidence before finalizing his expert report: the OIP and Answer, the Wells notice issued to Respondents and Respondents' Wells submission (neither of which are in evidence), Penson account statements, and the Screenshots. Tr. 711; Resp. Ex. 14 at 4. He also had conversations with Halpern. Resp. Ex. 14 at 4; *see* Tr. 729. He reviewed Halpern's investigative testimony and spoke with Kanner, but only after submitting his expert report. Tr. 718, 729. Castro's opinion addressed three questions: (1) whether H&A's use of alternative procedures to confirm Lighthouse's account balances was consistent with GAAS; (2) whether H&A properly staffed the audit of the 2009 Statements; and (3) whether H&A obtained sufficient evidence in connection with the confirmation of Lighthouse's account balances. Resp. Ex. 14 at 3. Castro's written opinion also stated that H&A exercised appropriate professional skepticism in connection with the audit of the 2009 Statements, but only in a section heading, with no explanation; I accord it little weight. *See id.* at 3, 6; Tr. 745-46, 752-53. Castro considered the materials he reviewed sufficient to answer the questions presented to him, because he was not asked to opine on "the audit taken as a whole." Tr. 712, 749-50. Castro expressed no opinion on Lighthouse's haircut calculation.

According to Castro, because Lighthouse's statements were not sufficient to allow H&A to confirm Lighthouse's account balances, H&A "evaluated alternative ways of confirming the positions of Lighthouse's proprietary accounts under" GAAS Section 330 (AU § 330). Resp. Ex. 14 at 6. Castro opined, in summary, that H&A's use of a report generated from the Penson website was consistent with "[i]ndustry practice," was "a reasonable exercise of [H&A's] judgment in employing alternative procedures," and was consistent with GAAS. *Id.* at 6-7. Although Castro did not explicitly answer the third question presented – whether H&A obtained sufficient evidence – because he opined that the procedure actually followed was consistent with

GAAS, I construe his opinion regarding alternative procedures as implicitly answering the third question in the affirmative. *See generally id.* at 4-7.

Castro also opined that H&A properly staffed the audit of the 2009 Statements. *See* Resp. Ex. 14 at 4-6. Castro found that it was "not unreasonable for [Prunier] to be part of the audit team and to have a role in confirming Lighthouse's account balances." *Id.* at 6. He also asserted that Prunier's role in the audit was "irrelevant," because Halpern ultimately reviewed Prunier's work. Tr. 739. His opinion was based on various questionable assumptions, including that Lighthouse had never had any prior problems with its audits, that Kanner was "involved" in the audit, and that Halpern saw Krill log onto Penson's website. Resp. Ex. 14 at 5; Tr. 742.

III. CONCLUSIONS OF LAW

A. Lighthouse Violated Exchange Act Section 17(a)(1) and Rule 17a-5(d) Thereunder, and Respondents Caused Lighthouse's Violations

Exchange Act Section 17(a)(1) and Rule 17a-5(d) thereunder require registered broker-dealers to annually file financial statements that include a net capital computation and that have been audited by an independent public accountant.[2] *See* 15 U.S.C. § 78q(a)(1); 17 C.F.R. § 240.17a-5(d). Such financial statements must be accurate, because they serve as "a keystone of surveillance of brokers and dealers by [Commission] staff and by the security industry's self-regulatory bodies." *Orlando Joseph Jett*, 57 S.E.C. 350, 396 (2004) (internal quotation marks omitted). The parties have stipulated that Lighthouse's 2009 Statements "materially overstated Lighthouse's long securities positions and materially understated Lighthouse's payables owed to brokers." Stipulation re: Materiality. Respondents concede that Lighthouse "did commit a primary violation by virtue of its incorrect net capital calculations." Resp. Br. at 38. Lighthouse therefore violated Exchange Act Section 17(a)(1) and Rule 17a-5(d) thereunder by filing inaccurate financial statements on February 28, 2010.

Respondents' liability for causing Lighthouse's violation of the Exchange Act requires proof that: (1) Lighthouse committed a primary violation; (2) Respondents were a cause of that violation; and (3) Respondents knew or should have known that their acts would contribute to Lighthouse's violation. *See* 15 U.S.C. § 78u-3(a); *Robert M. Fuller*, Exchange Act Release No. 48406, 2003 WL 22016309, at *4 (Aug. 25, 2003). Because H&A issued an unqualified audit opinion, and because Halpern signed it, H&A and Halpern "engaged in an act that contributed to [Lighthouse's] primary violation." *Gregory M. Dearlove*, Exchange Act Release No. 57244,

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[2] The Division, both in its briefs and the OIP, has alleged that Respondents caused Lighthouse's violations of Exchange Act Rule 17a-5(a), rather than Rule 17a-5(d). Rule 17a-5(a) relates to monthly and quarterly reports, which are not at issue here; Rule 17a-5(d) pertains to audited annual reports, which are. However, Respondents have always been aware that the alleged violations pertained to their work on Lighthouse's annual report. *See* OIP at 2, 4-5, 10; Div. Br. at 1 (Respondents caused to be filed a "materially inaccurate annual audited report,"), Resp. Br. at 1 ("Division's allegations concern the 2009 year-end audit of Lighthouse[]"). Accordingly, the Division's scrivener's error is immaterial, and this Initial Decision assesses Respondents' liability for causing a violation of Exchange Act Section 17(a)(1) and Rule 17a-5(d) thereunder.

2008 WL 281105, at *31 (Jan. 31, 2008), *pet. denied*, 573 F.3d 801 (D.C. Cir. 2009). Halpern was aware, and therefore H&A was aware, that the 2009 Statements had to be audited in accordance with GAAS. *See* Tr. 34-35, 769-70; *see Raymond J. Lucia Cos., Inc.*, Investment Advisers Act of 1940 (Advisers Act) Release No. 4190, 2015 WL 5172953, at *12 (Sep. 3, 2015) (individual's state of mind is imputed to entity she controls). If these standards were not met, and Respondents' failure to meet them was at least negligent, then Respondents "should have known that [their] deficient audit would contribute to [Lighthouse's] primary violation," and are therefore liable for causing Lighthouse's violations. *Dearlove*, 2008 WL 281105, at *31; *KPMG Peat Marwick LLP*, 54 S.E.C. 1135, 1175 (2001), *pet. denied*, 289 F.3d 109 (D.C. Cir. 2002). As discussed below, I find that Respondents' audit of the 2009 Statements was highly unreasonable, or at a minimum, negligent. Respondents therefore caused Lighthouse's violations of Exchange Act Section 17(a)(1) and Rule 17a-5(d) thereunder.

B. Respondents Engaged in Improper Professional Conduct under Rule 102(e)(1)

The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it to any person found to have engaged in improper professional conduct. 15 U.S.C. § 78d-3(a)(2); 17 C.F.R. § 201.102(e)(1)(ii). Improper professional conduct, as alleged, means: (1) a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should have known, that heightened scrutiny is warranted; or (2) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission. 17 C.F.R. § 201.102(e)(1)(iv)(B); *see* OIP at 9. The highly unreasonable standard is an intermediate one, higher than ordinary negligence but lower than recklessness. *See James Thomas McCurdy, CPA*, 57 S.E.C. 277, 294 (2004), *pet. denied*, 396 F.3d 1258 (D.C. Cir. 2005). Heightened scrutiny is warranted when matters are important, or when there is heightened risk. *See id.* at 294-95. For instance, heightened scrutiny has been found warranted where the transactions at issue were material. *See Wendy McNeeley, CPA*, Exchange Act Release No. 68431, 2012 WL 6457291, at *8-9 (Dec. 13, 2012). Two or more separate instances of unreasonable conduct occurring within one audit qualify as repeated instances of unreasonable conduct. *See* Amendment to Rule 102(e) of the Commission's Rules of Practice, Exchange Act Rel. No. 40567, 65 Fed. Reg. 57164, 57169 (Oct. 26, 1998) ("'Repeated instances' means more than once."); *see also Ernst & Young LLP*, Initial Decision Release No. 249, 2004 WL 824099, at *53 (Apr. 16, 2004), *finality notice*, Exchange Act Release No. 49615, 2004 WL 885243 (Apr. 26, 2004). Negligent deviations from GAAS are unreasonable. *Marrie v. SEC*, 374 F.3d 1196, 1203 (D.C. Cir. 2004); *Dearlove*, 573 F.3d at 805.

1. Heightened Scrutiny was Warranted

In planning and conducting the audit of the 2009 Statements, heightened scrutiny was warranted, and the warning signals were clear to Respondents. Respondents were aware that Lighthouse had rapidly expanded in a few years, growing from twenty to over 100 employees and from $6 million in revenue to approximately $40 million, while also adding a proprietary trading business; to the extent Halpern's testimony suggests otherwise, I do not credit it. Tr. 176, 562-63, 780; Div. Ex. 9; Div. Ex. 14 at 3535; Div. Ex. 18. Respondents also knew that

Lighthouse's FinOp, Krill, had a history of failing to adequately perform his duties, which included preparing documents and keeping records for Lighthouse's audits. Tr. 36-39, 42, 568-70. In fact, during the June 2009 audit, Krill failed to timely provide documents that had been promised, and the asset reconciliations he did provide were so confusing that Amador believed they actually detracted from her ability to perform the audit. Div. Ex. 21 at 2132. Respondents knew of Krill's deficiencies, and Halpern even discussed the subject with Lighthouse's COO. Tr. 38-39. Moreover, due in part to Krill's failings, the June 2009 Lighthouse audit was so problematic that H&A requested and received a rare extension from FINRA and only finished the audit in October 2009. Tr. 35-36, 40, 43, 45-46. The June 2009 Lighthouse audit itself required numerous audit adjustments, including a single adjustment of over $400,000. Tr. 38, 48, 256-58.

In particular, Respondents knew that prior Lighthouse audits had repeatedly encountered issues because account statements from Lighthouse's clearing brokers would be provided on a settlement date basis, rather than the trade date basis required by the Commission. Tr. 68-69, 121; Div. Ex. 5 at 19362; Div. Ex. 6 at 19376. The settlement date and trade date account statements "usually always" differed and needed to be reconciled. Tr. 131. Halpern admitted that the verification of Lighthouse's balances at its clearing brokers was a material issue. Tr. 84-85.

Respondents argue that their relationship with Lighthouse dates back to 2002, that they "had not had any prior uncorrected problems with their audits," and that "no red flags were present during" the audit of the 2009 Statements. Resp. Br. at 34. In fact, numerous red flags were evident during the audit of the 2009 Statements, and before. Moreover, Respondents' prior relationship with Lighthouse, including the June 2009 audit, should have made it all the more obvious to Respondents that heightened scrutiny was warranted. Respondents argue that all of Krill's mistakes had been caught and corrected by Respondents during the June 2009 audit. Resp. Reply. at 7. Even assuming that was true, the fact that so many mistakes had occurred in the first place meant heightened scrutiny was merited.

2. Respondents Engaged in Highly Unreasonable Conduct

In the face of the warning signals described, Respondents' conduct during the audit of the 2009 Statements was highly unreasonable.

a. Respondents Did Not Properly Plan the Audit of the 2009 Statements

Despite knowledge of Lighthouse's massive growth in size and complexity, Krill's deficiencies, and the problems with the June 2009 audit, Respondents failed to properly plan the audit of the 2009 Statements. It is unclear whether a planning meeting was actually held, who attended, and what was discussed. An audit planning memorandum exists, but is unlikely to be accurate. The memorandum listed Prunier as attending the meeting, but he testified that he had no recollection of attending such a meeting. Tr. 355-56; Div. Ex. 9. Halpern, despite claiming otherwise in her investigative testimony, admitted at the hearing that she did not attend, nor is she listed on the memorandum as attending. Tr. 57-58, 850; Div. Ex. 9; Div. Ex. 26 at 63. The audit planning memorandum claimed that the audit team discussed "last years papers," but

Kanner, who Halpern claimed ran the meeting, testified that he had never reviewed the June 2009 audit, nor been made aware of the numerous problems that had arisen during that audit. Tr. 57-58, 293-94, 772; Div. Ex. 9. Prunier likewise testified that he had not been informed of H&A's prior problems with Lighthouse and Krill prior to beginning the audit of the 2009 Statements. Tr. 355-58, 368. Halpern also admitted that much of the audit planning memorandum consisted of boilerplate lifted from prior memorandums. Tr. 57. No one signed the memorandum except Halpern, who did not attend the meeting. Tr. 57; Div. Ex. 9.

Even assuming that a planning meeting for the audit of the 2009 Statements was held, it is still evident Respondents failed to properly plan the audit. When they began the audit, both Kanner and Prunier were unaware of the numerous problems that had arisen in the June 2009 audit. Tr. 293-94, 355-58, 368. That audit required numerous adjustments, necessitated an extension from FINRA, and revealed serious deficiencies in recordkeeping at Lighthouse. The fact that Kanner and Prunier were not informed of any of this before beginning the audit of the 2009 Statements is baffling, and rises above simple negligence to encompass highly unreasonable conduct.

In their briefs, Respondents claim that the planning meeting was held, that it was headed by Kanner, and that the June 2009 audits were discussed. Resp. Br. at 37; Resp. Reply at 7. But if that were true, it would not explain why Kanner testified that he was never made aware of the problems with the June 2009 audit. Respondents claim that Kanner's role at the meeting was not to discuss Lighthouse but to ensure that GAAS was being met, and that it was Amador's function to discuss the previous Lighthouse audits. Resp. Reply at 7. Respondents also argue that the June 2009 audits had just been finalized weeks earlier, and therefore, they were "well aware of the nature of Lighthouse's business and the potential risks that it posed." *Id.* at 8. But again, if those two statements were true, it would not explain why both Prunier and Kanner testified that they were not made aware of the issues arising from the June 2009 audit.

b. Respondents Did Not Properly Staff the Audit

Respondents engaged in highly unreasonable conduct by staffing Prunier and giving him extensive responsibility over key elements of the audit of the 2009 Statements. The parties dispute whether Prunier was the "lead auditor." Div. Br. at 14; Resp. Reply at 10. Prunier referred to himself as such, but Respondents claim that he was merely "self-aggrandizing," and that his role was to serve as a middleman and gather information for the true lead auditor, Halpern. Tr. 353; Resp. Br. at 21. Regardless of Prunier's title, it is clear that he had a sizable role in the audit of the 2009 Statements. His initials appear extensively throughout the audit work papers, indicating the depth of his involvement. *See* Tr. 395, 410; *see also*, *e.g.*, Div. Ex. 1 at 3148, 3153-63, 3166-93, 3206-12, 3214-24, 3228-31, 3233-64, 3272-88, 3344-55, 3357-3417, 3419-41, 3443-45. Significantly, his role involved verifying the Penson margin statements and inventory balances, which Halpern admitted were critical areas of the audit. Tr. 84-85.

Prunier was not fit to fill that role. He had not been an auditor before joining H&A. Tr. 87-89. He was not familiar with GAAS at that time. Tr. 353. Nor was he familiar with guidance issued by the American Institute of CPAs concerning the auditing of broker-dealers. Tr. 354. No one at H&A tested his knowledge of GAAS before assigning him to work on the

audit. Tr. 353-54. Nor had he been told by Kanner or Halpern to become knowledgeable with GAAS before participating in the audit. Tr. 353. While he had worked on prior audits with H&A, he described his role in those audits as largely nothing more than basic "lick and tick" work. Tr. 350-52, 431-32. Prior to the audit of the 2009 Statements, he had never audited an account involving margin balances. Tr. 376. Prunier was, in short, completely unsuited to perform the tasks he performed during the audit.

Respondents claim that Prunier received training while at H&A and that his work was reviewed and supervised by both Halpern and Kanner. Resp. Br. at 18, 20; Resp. Reply at 10, 12. But the claim that Prunier received training is not supported by documentary evidence and is contradicted by Prunier's own testimony. Tr. 336-37, 353-54. As for the supposed supervision, Kanner testified that his supervision was limited to a "topside cursory review" of work papers that did "not involve getting into detail," and that he did not supervise Prunier's work. Tr. 291-92. Halpern claimed that she supervised Prunier's work, and her signature is found above his initials on many pages of the audit work papers. *See, e.g.*, Div. Ex. 1 at 3148, 3157. But both she and Prunier testified that Halpern would often have someone else, including Prunier, sign her name on audit work papers. Tr. 154, 410, 812-13. Halpern claims she would always review work material before ordering someone to sign for her. Tr. 154, 812-13. Regardless, it is unclear whether Halpern's purported review was meaningful, and the fact that she often did not bother to sign her own name would suggest, at best, a cursory review. Furthermore, if Prunier's work actually received the substantive review claimed by Respondents, it is difficult to understand why his serious errors in verifying Lighthouse's accounts went undetected.

Respondents also argue that Prunier never made any "audit judgments" and that he was only included in the audit of the 2009 Statements due to his "expertise in the brokerage industry." Resp. Br. at 19; Resp. Reply at 11. The first claim is plainly incorrect. Prunier made numerous audit judgments, many of them mistaken, in attempting to reconcile the account values in the Penson statements and the Screenshots with those in the Lighthouse balance sheets. The second claim is irrelevant. Prunier performed significant audit duties during the audit of the 2009 Statements, and no amount of brokerage industry expertise could make up for his lack of audit experience.

c. Respondents Did Not Properly Verify Lighthouse's Financial Statements

Respondents also engaged in highly unreasonable conduct in attempting to reconcile Lighthouse's financial statements with Penson's account statements. Respondents were aware that clearing brokers, like Penson, often produced account statements showing Lighthouse's holdings based on settlement date values. H&A was also aware that the Commission required Lighthouse's reporting to reflect trade date values, and settlement and trade date values "usually always" differed. Tr. 131. In the past, H&A had resolved this problem by obtaining a reconciliation of the values from the client. But by the June 2008 audit, H&A staff was recommending that in the "next audit," they should resolve the issue by obtaining from the clearing broker "trade date statements or get[ting] broker access." Div. Ex. 6 at 19376. This advice was apparently followed during the June 2009 audit, because work papers from that audit include trade date statements from Penson. Tr. 414; Div. Ex. 8.

Instead of following that practice, Respondents placed Prunier, with no auditing experience and no knowledge of how this issue had been resolved during the June 2009 audit, in charge of the "critical" task of verifying the Lighthouse holdings listed on Penson's account statements. Tr. 84-85, 376, 414-15. And Respondents did not inform Prunier that Penson's account statements were based on settlement date values, rather than trade date values. Tr. 358. Respondents also failed to instruct Prunier to specifically request trade date values from Penson. Tr. 358, 369-70. As a result, when Prunier received Penson's account statements, based on settlement date values, and attempted to reconcile them with Lighthouse's draft balance sheet, based on trade date values, he spent hours trying and failing to tie the numbers together. Tr. 377, 380-81. When Prunier informed Kanner and Halpern about his difficulties, neither suggested that he obtain trade data reports directly from Penson. Tr. 382. Instead, Halpern directed him to use the Screenshots to verify Lighthouse's financial statements. Tr. 379.

In contrast to most of the other relevant facts in this proceeding, the evidence of how the Screenshots were created and furnished to Respondents is almost entirely testimonial, and necessitates careful consideration of witness credibility. Cooper had a generally good demeanor, and it is entirely plausible that, as a part time consultant, she would not have had access to Penson's website. I therefore credit her testimony that she was unsure whether she was even aware of the Screenshots until after the audit of the 2009 Statements had concluded. Tr. 505-07. And I infer – contrary to Halpern's investigative testimony – that Cooper did not know how the Screenshots were created or furnished to Respondents.

Prunier sometimes provided non-responsive answers, but otherwise possessed a matter-of-fact demeanor and displayed no hostility or evasiveness. I credit his testimony that it was Halpern, and not him, who primarily dealt with either Krill or Cooper when the Screenshots were printed; such testimony is consistent with Halpern's hearing testimony and not inconsistent with Krill's and Cooper's. However, Prunier had little reason to pay close attention at the time the Screenshots were created, because he considered them a "'get out of jail free' card," and so his general lack of firsthand knowledge of their creation and forwarding is understandable, if regrettable. Tr. 385-87. I therefore do not otherwise credit his testimony on this issue, to the extent it is inconsistent with my other findings, and in particular I do not credit his testimony that it was Cooper who printed the Screenshots for Halpern.

Krill's testimony generally was straightforward, non-evasive, and given with a neutral demeanor. Krill testified that rather than printing them out directly from the Penson website, he created the Screenshots in Microsoft Excel using information he obtained from the Penson website. Tr. 193-99. This included creating at least one column and converting foreign currencies into dollar denominations; the entire process took hours. Tr. 194, 198-99. Krill's testimony is corroborated by documentary evidence. The Screenshots have the appearance of documents prepared by him, rather than documents directly generated from Penson's website. Values listed in the same column are not aligned. *See* Div. Ex. 2A (second column from left). Headings and the text contained in certain columns are cut off. *See id.* (headings and third, fourth, and fifth columns from left). Furthermore, the Screenshots bear only some resemblance to the actual Penson account statements obtained directly from Penson's website. *Compare* Div. Ex. 2A and 2B *with* Div. Ex. 3 and 8. The Penson account statements printed from Penson's website show a visible URL at the bottom of each page, but the Screenshots do not. *See* Div.

Exs. 2A, 2B, 3, 8.

I have credited Halpern's testimony on other matters, but her testimony regarding the Screenshots was not always believable. She was impeached multiple times on multiple points pertaining to the Screenshots, and she changed her overall account of events between her investigative testimony and her hearing testimony. Also, although her demeanor was frequently good, she was at times evasive, non-responsive, and unnecessarily hostile. Halpern (and to some extent Prunier) described a process by which Krill: (1) logged on to a computer of some kind; (2) directly obtained the Penson Screenshot and Penson Screen Print from Penson; and (3) gave both documents to either Halpern or Prunier. Halpern's account of the first and last steps of the process is plausible and, because Krill did not testify that he gave the Screenshots to Halpern or Prunier, not inconsistent with Krill's account. However, I credit Krill's version of events over Halpern's regarding the second step of the process. Krill's version is corroborated and inherently reasonable, whereas Halpern's is both uncorroborated and inconsistent with the documentary evidence, and as noted, Halpern was not always a believable witness.

I therefore do not credit Halpern's testimony that Krill obtained the Screenshots directly from a Penson website. Halpern may have believed that at the time, but she was clearly mistaken. And her mistake was highly unreasonable, rather than merely unreasonable. Upon receiving the Screenshots from Krill, an employee Respondents knew had provided them with inaccurate records before, and with plain indicia that the Screenshots did not come directly from Penson, Respondents should have verified that the Screenshots accurately reflected Lighthouse's account balances. Krill expected as much, testifying that he believed Respondents would "review [the Screenshots] . . . ask any questions, [and] try to obtain any back up." Tr. 195.

Instead, Respondents applied no scrutiny to the Screenshots before relying heavily upon them to verify Lighthouse's financial statements. Prunier admitted that he "questioned nothing," because "[his] boss allowed it," and the Screenshots seemingly resolved his difficulties in reconciling the Lighthouse balance sheet and Penson account statements. Tr. 386-87. Prunier further testified that he never took any steps to confirm with Penson that the Screenshots were accurate. Tr. 393-94, 397, 409. This lack of scrutiny was particularly inappropriate because Prunier admitted that he never "received much at all that was accurate from Mr. Krill." Tr. 361. Halpern also failed to verify the contents of the Screenshots. She testified that she "accepted [the Screenshots] as the full inventory." Tr. 98. Respondents argue that reliance on the Screenshots was appropriate because they "looked the same as reports from any other clearing firm." Resp. Reply at 14. But that claim is debunked by the very example they cite in support, which looks nothing at all like the Screenshots. *Id.* (citing Resp. Ex. 1 at 3246).

Halpern also claimed that she attempted to verify the Screenshots, but again her testimony was inconsistent. During the investigation, she claimed that she requested Krill provide her with reconciliations explaining the differences between the Penson trade and settlement date figures, but that Krill was unable to provide them, so he called Penson, and was told that Penson too could not provide the requested reconciliations. Div. Ex. 26 at 101. However, at trial, Halpern claimed that she and Cooper together called Penson, requesting reconciliations between trade and settlement dates, and was told directly by Penson that they could not provide them. Tr. 81-82. But Cooper had no recollection of calling Penson until after

the audit of the 2009 statements was completed. Tr. 505. And Penson was able to produce account statements with trade date values listed, on which H&A had relied during the June 2009 audit. Tr. 414; Div. Exs. 3, 8. If Cooper's request to Penson had occurred as Halpern testified at the hearing, it is likely she would have received exactly what she had requested.

Respondents' highly unreasonable behavior extended beyond their failure to even attempt to verify the accuracy of the Screenshots. Respondents also failed to properly use the Screenshots to confirm the amounts in Lighthouse's balance sheets. This task was left to the inexperienced Prunier, who did little more than match numbers between the documents. For instance, the Penson Screen Print lists a number next to "margin" that Prunier matched to the same number listed as "Penson Margin" on Lighthouse's balance sheet. Tr. 395-96, 399-400; s*ee* Div. Ex. 1 at 3144; Div. Ex. 2B. But his understanding of what was actually being represented in the Screenshots and balance sheets was lacking. Instead, Prunier mostly tried to find numbers on the Screenshots that would match with a number on the balance sheet, describing the process as "trying to make these statements work for me somehow . . . I just found a number that worked for me." Tr. 401. He further explained that "I was overwhelmed and frustrated . . . when I found numbers that matched, I grabbed them, thinking if I could break it down into something logical and work out the rest." Tr. 402. When he encountered numbers on the Screenshots that he could not tie in to a number on the balance sheet, he ignored them. Tr. 404. Respondents also ignored and failed to resolve contradictions between the Screenshots and the Penson statements that were valued by settlement date. As an example, for account number 11981727, the Penson Screen Print showed entries that totaled to a balance of approximately 2.3 million dollars. Div. Ex. 2B. Yet Penson statements valued by settlement date showed the value of the same account as negative 22,305.28 dollars. Div. Ex. 10. Respondents were aware of this enormous discrepancy in value, but simply "assumed the account was flattened between settlement date and trade date." Tr. 117.

d. Respondents Did Not Properly Examine the Haircut Calculations

Finally, Respondents engaged in highly unreasonable conduct by failing to review and discover Krill's incorrect computation of Lighthouse's financial haircuts. Halpern agreed that the haircut calculation "has an error . . . [a]nd I would agree with you that the error should have been caught." Tr. 163. She also acknowledged that "an auditor exercising due care" would have caught the error in the haircut calculations. Tr. 160. Respondents' error rises above simple negligence, both because they failed to exercise due care in reviewing the haircut calculations made by Krill, who they knew was unreliable and made frequent mistakes, and because the audit work papers show they did not review the haircut calculation at all. In their briefs, Respondents argue that their ability to defend against this claim was hampered because they misplaced the audit work papers related to their work on the haircut calculations. Resp. Br. at 35. But the audit work papers are otherwise voluminous and reasonably well organized, and the math error in the calculations was rather obvious. The most reasonable explanation for the lack of documentary evidence of work on the haircut calculations is that Respondents did no such work.

3. Respondents engaged in repeated instances of unreasonable conduct

In the alternative, Respondents' conduct constitutes repeated instances of unreasonable

conduct.

4. Respondents' highly unreasonable conduct or repeated instances of unreasonable conduct violated applicable professional standards

An auditor "plans, conducts, and reports the results of an audit in accordance with [GAAS]." AU § 150.01. The ten basic GAAS standards are listed in AU § 150.02, with detailed explanations of those standards following in subsequent sections. Both parties' experts offered opinions on whether Respondents' conduct violated GAAS standards. Devor concluded that Respondents violated numerous GAAS standards. *See* Div. Ex. 34 at 28-40. Castro, with a more limited focus, concluded that Respondents properly staffed the audit of the 2009 Statements, and that their reliance on "alternative methods" to verify the Screenshots was proper under GAAS. Resp. Ex. 14 at 4-7.

Respondents contend that Devor is not a reliable witness because of his limited experience in auditing broker-dealers, because some of his prior expert opinions were rejected, and because he worked at an accounting firm involved in a number of auditing scandals. Resp. Br. at 22-23. I disagree. Devor's report and testimony demonstrate a comprehensive review of the relevant evidence and comprehensive knowledge of the applicable GAAS provisions. The fact that over a decade ago some of his expert opinions were rejected is of little significance. And Devor had no involvement in the auditing scandals of his former employer. Tr. 622-24, 649-50. I therefore accord his opinion considerable weight.

However, I place little weight on Castro's expert report and testimony. Castro's report is only seven pages long, and his actual opinion, consisting of little more than cursory recitations of Respondents' arguments, is only slightly more than three of those pages, and does not even address the haircut calculation. Resp. Ex. 14 at 4-7. Furthermore, there is no reason to believe he had adequate grounds to form his opinion. Prior to drafting his report, Castro had spoken to no relevant individuals about the audit except for Halpern. Tr. 729-30. He never reviewed Halpern's investigative testimony. Tr. 731-32. He never reviewed the work papers for the audit of the 2009 Statements. Tr. 711.

Accordingly, I find that Respondents' conduct violated the following GAAS standards:[3]

a. Failure to Exercise Due Professional Care

The third general standard requires that "the auditor must exercise due professional care in the performance of the audit and the preparation of the report." AU § 230.01. Due professional care requires that "auditors should be assigned to tasks and supervised commensurate with their level of knowledge, skill, and ability so that they can evaluate the audit evidence they are examining." AU § 230.06. Respondents violated this standard when they

[3] The Division alleges that Respondents violated numerous GAAS provisions, including many that were not charged in the OIP. I only consider the GAAS provisions and sections charged in the OIP, which are: AU §§ 230.01, .06-08; §§ 326.01, .08-10, .13; and § 330.04, .31, .34. *See* OIP at 5-8, 10.

assigned Prunier, an individual with almost no auditing experience, to audit the critical areas of Penson's account balances and inventory, and provided him with cursory or non-existent supervision.

"Due professional care [also] requires the auditor to exercise *professional skepticism* . . . [which] is an attitude that includes a questioning mind and a critical assessment of audit evidence." AU § 230.07. Furthermore, an auditor must "consider the competency and sufficiency of the evidence. Since evidence is gathered and evaluated throughout the audit, professional skepticism should be exercised throughout the audit process." AU § 230.08. Respondents also violated this standard by failing to exercise professional skepticism regarding, or consider the sufficiency or accuracy of, the Screenshots.

b. Failure to Obtain Sufficient Appropriate Audit Evidence

The third standard of field work requires that "the auditor must obtain sufficient appropriate audit evidence by performing audit procedures to afford a reasonable basis for an opinion regarding the financial statements under audit." AU § 326.01. The "reliability of audit evidence is influenced by its source and by its nature and is dependent on the individual circumstances under which it is obtained." AU § 326.08. Generally, audit evidence is more reliable "when it is obtained from knowledgeable independent sources outside the entity," and internally generated audit evidence is more reliable "when the related controls imposed by the entity are effective." *Id.* The Screenshots were not obtained from independent sources. Instead, Respondents received them from a client with a disorganized accounting department and a mistake-prone FinOp. Therefore, under these general guidelines, the Screenshots bore indicia of unreliability and should have been treated with greater scrutiny.

Furthermore, when considering audit evidence, "the auditor should consider the reliability of the information . . . including . . . their preparation and maintenance where relevant." AU § 326.09. If the auditor relies on client-generated evidence, the auditor "should obtain evidence about the accuracy and completeness of the information . . . [which] needs to be sufficiently complete and accurate." AU § 326.10. And most of all, "the auditor must not be satisfied with audit evidence that is less than persuasive." AU § 326.13. Respondents failed on all these counts. They never considered how the Screenshots were generated beyond Halpern's mistaken assumption that they were printed directly from the Penson website. They relied on the Screenshots while never attempting to obtain evidence concerning their accuracy or completeness. And they allowed themselves to be satisfied with the Screenshots, which contained indicia of unreliability, as well as numbers they made no effort to understand. Accordingly, Respondents violated the third standard of field work.

c. Failure to Obtain Proper Confirmation

"Confirmation is the process of obtaining and evaluating a direct communication from a third party in response to a request for information," and the process includes "designing the confirmation request" and "communicating the confirmation request to the appropriate third party." AU § 330.04. Respondents' letters to Penson, requesting account balances, were confirmation letters, and should have been adapted to the particular circumstances of the audit.

In designing a confirmation request, an auditor should consider factors such as "prior experience on the audit or similar engagements," AU § 330.16, and "information from prior years' audits." AU § 330.23. Respondents failed to obtain proper confirmation from Penson, because their confirmation letters did not request trade date balances, even though requesting trade date balances had been recommended during the June 2008 audit and trade date balances had been used during the June 2009 audit.

C. Respondents' Affirmative Defenses Are Meritless

Respondents raised the affirmative defenses of laches and the statute of limitations in their Answer, although they do not discuss them in their posthearing briefs. *See* Answer at 4. Laches is not a defense to a government enforcement action to protect the public interest. *United States v. Angell*, 292 F.3d 333, 338 (2d Cir. 2002); *United States v. Philip Morris, Inc.*, 300 F. Supp. 2d 61, 72 (D.D.C. 2004); *SEC v. Toomey*, 866 F. Supp. 719, 725 (S.D.N.Y. 1992). The relevant statute of limitations, 28 U.S.C. § 2462, requires an action to be brought within five years of the date when a claim first accrues, that is, when there is a "complete and present cause of action." *Gabelli v. SEC*, 133 S. Ct. 1216, 1220 (2013) (internal citation omitted). Claims of improper professional conduct and "causing" liability, based on auditing misconduct, are complete and present no earlier than the date the auditor renders her audit opinion. *See Russell Ponce*, 54 S.E.C. 804, 824 (2000), *pet. denied*, 345 F.3d 722 (9th Cir. 2003); *see also Michael J. Marrie, CPA*, Initial Decision Release No. 191, 2001 WL 1130957, at *22-23 (Sep. 21, 2001) ("the Commission's 'claim first accrued' when Marrie certified C&L's unqualified audit report, thereby giving up the ability to take further corrective action"), *rev'd on other grounds*, Exchange Act Release No. 48246, 2003 WL 21741785 (Jul. 29, 2003), *rev'd*, 374 F.3d 1196 (D.C. Cir. 2004). H&A issued its unqualified audit report, signed by Halpern, on February 24, 2010, and the OIP issued on February 23, 2015. OIP; Div. Ex. 14 at 3533. Respondents have thus failed to prove their affirmative defenses.

IV. SANCTIONS

The Division requests a cease-and-desist order, disgorgement and prejudgment interest, and permanent denial of the privilege of appearing or practicing before the Commission (practice bar). Div. Br. at 50-57.

A. The Public Interest

When considering whether an administrative sanction serves the public interest, the Commission considers the factors identified in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981): the egregiousness of the respondents' actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondents' assurances against future violations, the respondents' recognition of the wrongful nature of his or her conduct, and the likelihood that the respondents' occupation will present opportunities for future violations (*Steadman* factors). *See Altman v. SEC*, 666 F.3d 1322, 1329 (D.C. Cir. 2011); *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *22 (Feb. 13, 2009), *pet. denied*, 592 F.3d 173 (D.C. Cir. 2010). Other factors the Commission has considered include the age of the violation (*Marshall E. Melton*, 56 S.E.C. 695, 698 (2003)), the degree of harm to investors and the marketplace resulting from the violation

(*id.*), the extent to which the sanction will have a deterrent effect (*see Schield Mgmt. Co.*, 58 S.E.C. 1197, 1217-18 & n.46 (2006)), whether there is a reasonable likelihood of violations in the future (*KPMG Peat Marwick LLP*, 54 S.E.C. at 1184), and the combination of sanctions against the respondent (*id.* at 1192). *See also WHX Corp. v. SEC*, 362 F.3d 854, 859-61 (D.C. Cir. 2004). The Commission weighs these factors in light of the entire record, and no one factor is dispositive. *KPMG Peat Marwick LLP*, 54 S.E.C. at 1192; *Gary M. Kornman*, 2009 SEC LEXIS 367, at *22.

Respondents' audit of the 2009 Statements was shoddily planned, improperly staffed, and relied heavily on documents that were never fully understood or verified and that were given to them by a person they knew to be unreliable. This conduct was egregious and violated numerous professional standards, including many that were not charged in the OIP.[4] Respondents' conduct was highly unreasonable, or, at the very least, negligent. By failing to detect Lighthouse's net capital problems, their misconduct contributed to Lighthouse's bankruptcy and thereby harmed Lighthouse's brokerage customers. Nor have Respondents recognized the wrongfulness of their conduct or provided sincere assurances against future misconduct. While Halpern has admitted erring in failing to catch the mistakes in the haircut calculation, Respondents persist in claiming that their errors related to the Penson accounts were due to fraud conducted by Lighthouse's management. *See* Resp. Br. at 17. That unsubstantiated claim demonstrates an obliviousness to the crucial role auditors play in detecting and preventing fraud, as well as a lack of recognition of wrongful conduct. *See ZPR Investment Mgmt., Inc.*, Advisers Act Release No. 4249, 2015 WL 6575683, at *29 & n.142) (Oct. 30, 2015) (attempts to shift blame are indicia of respondent's failure to take responsibility for his actions). Respondents are still practicing as auditors, thereby presenting opportunities for future violations. And the combination of sanctions imposed will have a deterrent effect.

Respondents argue that their proven wrongful conduct only involved one audit. Resp. Br. at 39. This is true, though Halpern has previously been sanctioned multiple times by FINRA's predecessor. *See* Div. Ex. 38. Respondents also argue that no known audit issues have arisen since the audit of the 2009 Statements and that new business practices have been implemented which make it extremely unlikely that the misconduct at issue will be repeated. Resp. Br. at 39. But the Division correctly points out that Respondents' misconduct was only revealed because of a Commission investigation, and in any event Respondents' failure to commit more misconduct is not a mitigating factor. Div. Reply at 47. And there is no evidence that Respondents' new business practices were implemented specifically in response to the auditing failures at issue, as opposed to new regulatory requirements, such as the implementation of EQR procedures. *See* Tr. 325.

To be sure, the violations are not recent. On balance, however, the public interest factors weigh in favor of imposing significant sanctions against Respondents. I decline to impose civil monetary penalties against either Respondent because the Division has not requested them.

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[4] Though it does not form the basis of my findings on liability, I note that Respondents likely also violated the following GAAS provisions: AU §§ 210, 311, 312, 318, 333, and 339. *See* Div. Ex. 34 at 28-40.

B. Cease-and-Desist Order

Exchange Act Section 21C authorizes the Commission, after finding that a person has violated a provision of that Act and its regulations, to impose a cease-and-desist order on any person that was "a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation." *See* 15 U.S.C. § 78u-3(a). The Commission requires some likelihood of future violation before imposing such an order. *KPMG Peat Marwick LLP*, 54 S.E.C. at 1185. However, "a finding of [a past] violation raises a sufficient risk of future violation," because "evidence showing that a respondent violated the law once probably also shows a risk of repetition that merits our ordering [her] to cease and desist." *Id.*

As established above, Lighthouse violated Exchange Act Section 17(a)(1) and Rule 17a-5(d) thereunder, and Respondents caused this violation due to acts they knew or should have known would contribute to the violation. Respondents' prior violation and current occupation indicate a likelihood of future violations. The public interest factors weigh in favor of a cease-and-desist order, and such order will therefore be imposed.

C. Disgorgement

Disgorgement is authorized in this case by Exchange Act Section 21C(e). *See* 15 U.S.C. § 78u-3(e); OIP at 11. Disgorgement is an equitable remedy that requires a violator to give up wrongfully obtained profits causally related to the proven wrongdoing. *See SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1230-32 (D.C. Cir. 1989). The amount of the disgorgement need only be a reasonable approximation of profits causally connected to the violation. *See Laurie Jones Canady*, 54 S.E.C. 65, 84 n.35 (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). Once the Division shows that its disgorgement figure reasonably approximates the amount of unjust enrichment, the burden shifts to Respondent to demonstrate that the Division's disgorgement figure is not a reasonable approximation. *Guy P. Riordan*, Securities Act of 1933 (Securities Act) Release No. 9085, 2009 WL 4731397, at *20 (Dec. 11, 2009), *pet. denied*, 627 F.3d 1230 (D.C. Cir. 2010). The standard for disgorgement is but-for causation and has nothing to do with the public interest; in essence, disgorgement is always in the public interest. *Jay T. Comeaux*, Securities Act Release No. 9633, 2014 WL 4160054, at *3 & n.18, *5 (Aug. 21, 2014). The combination of sanctions also does not affect disgorgement. *Id.* at *4 n.32.

It is undisputed that H&A was paid at least $13,000 for the audit of the 2009 Statements. Resp. Ex. 5. The ultimate fee is unclear from the record, and could have been as high as $15,000, according to the engagement letter. *Id.*; Div. Ex. 26 at 62. Disgorgement of the proven minimum fee of $13,000 will be ordered, with prejudgment interest to run from March 1, 2010, the first day of the month after Respondents completed their improper audit. *See* 17 C.F.R. § 201.600(a). Respondents will be held jointly and severally liable, because Halpern controlled H&A. *See Timbervest, LLC*, Advisers Act Release No. 4197, 2015 WL 5472520, at *18 (Sep. 17, 2015) (joint and several liability found appropriate because individual respondents controlled the institutional respondent).

D. Rule 102(e) Sanctions

Rule of Practice 102(e) authorizes in this case a permanent bar, temporary suspension, or censure. 17 C.F.R. § 201.102(e). The Division seeks to permanently bar Respondents from practicing before the Commission. Div. Br. at 51-56. In assessing the need for a practice bar, the Commission considers the public interest factors, including deterrence. *See Steven Altman*, Exchange Act Release No. 63306, 2010 WL 5092725, at *19 (Nov. 10, 2010), *pet. denied*, 666 F.3d 1322; *Michael C. Pattison, CPA*, Exchange Act Release No. 67900, 2012 WL 4320146, at *7-8 (Sep. 20, 2012). I have already determined that, under these factors, Respondents' misconduct merits significant sanctions.

However, Respondents' misconduct, while serious, occurred in a single audit. Respondents have continued to audit companies since 2009 apparently without incident and have implemented at least one new PCAOB-mandated procedure that may prevent repeats of their prior errors. Resp. Br. at 38-39. Rule 102(e) sanctions are not intended to punish, but to protect the public from future reckless or negligent conduct by professionals who practice before the Commission, and to encourage more rigorous compliance with auditing standards in future audits. *McCurdy v. SEC*, 396 F.3d 1258, 1264-65 (D.C. Cir. 2005).

A permanent bar for Respondents would be inconsistent with Commission precedent and, given the circumstances of this case, punitive. *See, e.g.*, *Wendy McNeely, CPA*, Exchange Act Release No. 68431, 2012 WL 6457291 (Dec. 13, 2012) (suspending Respondent from appearing or practicing before the Commission for six months after a finding of highly unreasonable conduct); *Dearlove*, 2008 WL 281105 (suspending Respondent for four years after a finding of multiple instances of unreasonable conduct in one audit); *James Thomas McCurdy, CPA*, Exchange Act Release No. 49182, 2004 WL 210606 (Feb. 4, 2004) (suspending Respondent for one year after a finding of highly unreasonable conduct). Instead, a one year suspension for Halpern is appropriate.

I decline to bar or suspend H&A, but will censure it. The combination of a censure, cease-and-desist order, and disgorgement are sufficient in the public interest. Prohibiting H&A from performing broker-dealer audits, and thereby indirectly sanctioning H&A's other employees for the mistakes of Halpern and Prunier, would be unduly punitive. In particular, Kanner and Amador are apparently capable of properly performing H&A's audit work during the pendency of Halpern's suspension.

V. RECORD CERTIFICATION

Pursuant to 17 C.F.R. § 201.351(b), I certify that the record includes the items set forth in the record index issued by the Commission's Office of the Secretary on December 7, 2015.

ORDER

It is ORDERED, pursuant to Section 21C of the Securities Exchange Act of 1934, that Respondents Halpern & Associates LLC and Barbara C. Halpern, CPA shall cease and desist

from causing any violations or future violations of Section 17(a)(1) of the Securities Exchange Act of 1934 and Rule 17a-5(d) thereunder.

It is FURTHER ORDERED, pursuant to Section 21C(e) of the Securities Exchange Act of 1934, that Respondents shall disgorge $13,000, plus prejudgment interest on that amount, calculated from March 1, 2010, to the last day of the month preceding the month in which payment of disgorgement is made. Prejudgment interest shall be calculated at the underpayment rate of interest established under Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), and shall be compounded quarterly. *See* 17 C.F.R. § 201.600.

It is FURTHER ORDERED, pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice, Barbara C. Halpern, CPA, is denied the privilege of appearing or practicing before the Commission as an accountant for one year.

It is FURTHER ORDERED, pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice, Halpern & Associates LLC is censured.

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/about/offices/ofm.htm; or (3) by certified check, bank cashier's check, or United States postal money order made payable to the Securities and Exchange Commission and hand-delivered or mailed to the following address along with a cover letter identifying the Respondent and Administrative Proceeding No. 3-16399: Enterprises Services Center, Accounts Receivable Branch, HQ Bldg., Room 181, AMZ-341, 6500 South MacArthur Blvd., Oklahoma City, Oklahoma 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 Initial Decision shall become effective in accordance with and subject to the provisions of Rule 360 of the Commission's Rules of Practice, 17 C.F.R. § 201.360. Pursuant to that Rule, a party may file a petition for review of this Initial Decision within twenty-one days after service of the Initial Decision. A party may also file a motion to correct a manifest error of fact within ten days of the Initial Decision, pursuant to Rule 111 of the Commission's Rules of Practice, 17 C.F.R. § 201.111. 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 Initial Decision 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 motion to correct a manifest error of fact or the Commission determines on its own initiative to review the Initial Decision as to a party. If any of these events occur, the Initial Decision shall not become final as to that party.

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Cameron Elliot
Administrative Law Judge