

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73769 / December 8, 2014

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3604 / December 8, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16300

In the Matter of

**Robert Cooper and
Company, CPA PC,**

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 4C AND 21C
OF THE SECURITIES EXCHANGE ACT
OF 1934 AND RULE 102(e) OF THE
COMMISSION'S RULES OF PRACTICE,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Robert Cooper and Company, CPA PC (“Respondent” or “Cooper”) pursuant to Sections 4C¹ and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.²

¹ Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

² Rule 102(e)(1)(ii) provides, in pertinent part, that:

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds³ that:

A. SUMMARY

This matter concerns violations of the Commission’s auditor independence rules by Cooper. Cooper audited the annual financial statements that were filed with the Commission for twelve broker-dealer audit clients for the fiscal years 2010, 2011, and/or 2012. For the 2011 audit of one of these broker-dealer audit clients, Cooper was not independent under auditor independence criteria established by the Commission and made applicable by Exchange Act Rule 17a-5(f)(3) to audits of brokers and dealers.⁴ As a result of this conduct, Cooper engaged in improper professional conduct, violated the auditor independence rules, and caused the broker-dealer’s failure to file an annual report audited by an independent accountant.

The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in unethical or improper professional conduct.

³ The findings are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

⁴ The provisions of Exchange Act Rule 17a-5 referred to herein are those in effect during, and applicable to, the relevant conduct. On July 30, 2013, the Commission adopted certain amendments to Rule 17a-5. *See* Broker-Dealer Reports, SEC Exchange Act Release No. 34-70073 (July 30, 2013), 78 Fed. Reg. 51910 (Aug. 21, 2013). Among other things, the amendments to Rule 17a-5 require that audits of brokers and dealers be performed in accordance with Public Company Accounting Oversight Board standards, effective for audits of fiscal years ending on or after June 1, 2014. The auditor independence requirement of Rule 2-01 of Regulation S-X applied to broker-dealer audits both before and after the July 30, 2013 amendments. At the time of the relevant conduct, prior to the amendments, that requirement was set out in Rule 17a-5(f)(3). It is now set out in Rule 17a-5(f)(1).

B. RESPONDENT

Respondent Cooper, a professional corporation, is an accounting and auditing firm registered with the Public Company Accounting Oversight Board (“PCAOB”). Cooper has one partner, Robert Cooper, who is located in an office in Chicago, Illinois.

C. FACTS

1. Lack of Independence

a. During fiscal years 2010 through 2012 (the “Relevant Period”), Cooper served as the independent public accountant for twelve broker-dealer audit clients. In connection with the 2011 audit performed for one of its broker-dealer audit clients (“Broker-Dealer A”) during the Relevant Period, Cooper prepared the financial statements and/or notes to the financial statements that were filed with the Commission on Form X-17A-5.

b. During the audit for the fiscal year ended December 31, 2011, Cooper provided Broker-Dealer A with financial statement footnotes from the prior year’s audit that Broker-Dealer A updated and Cooper then reviewed. Cooper also made some suggestions for the grouping of accounts to be incorporated into the financial statements.

c. In February 2012, Broker-Dealer A filed with the Commission a Form X-17A-5 Part III for the fiscal year ended December 31, 2011. Included in that filing is an audit report signed by Cooper and stating, among other things, that Cooper’s audit of Broker-Dealer A was conducted “in accordance with auditing standards generally accepted in the United States.”

2. Violations

a. Section 17(e)(1)(A) of the Exchange Act requires that every registered broker or dealer “annually file with the Commission a balance sheet and income statement certified by an independent public accounting firm, or by a registered public accounting firm if the firm is required to be registered under the Sarbanes-Oxley Act of 2002, prepared on a calendar or fiscal year basis, and such other financial statements (which shall, as the Commission specifies, be certified) and information concerning its financial condition as the Commission, by rule may prescribe as necessary or appropriate in the public interest or for the protection of investors.”

b. Exchange Act Rule 17a-5(e)(1)(i) states: “An audit shall be conducted by a public accountant who shall be in fact independent as defined in paragraph (f)(3) of this section herein, and he shall give an opinion covering the statements filed pursuant to paragraph (d)” Exchange Act Rule 17a-5(f)(3) further states that, for such audits, “[a]n accountant shall be independent in accordance with the provisions of Rule 2-01(b) and (c) of Regulation S-X.”

c. Exchange Act Rule 17a-5(g) requires that “[t]he audit shall be made in accordance with generally accepted auditing standards” and Exchange Act Rule 17a-5(i) requires that “[t]he accountant’s report shall . . . [s]tate whether the audit was made in accordance with generally accepted auditing standards.” Generally accepted auditing standards (“GAAS”) require auditors to maintain strict independence from their audit clients; an auditor “must be free

from any obligation to or interest in the client, its management or its owners.” See Statement on Auditing Standard No. 1, Section 220.03. Accordingly, if an auditor’s report states that its audit was performed in accordance with GAAS when the auditor was not independent, then it has violated Exchange Act Rule 17a-5(i). See *In the Matter of Rosenberg Rich Baker Berman & Company and Brian Zucker, CPA*, Exchange Act Release No. 69765 at p. 5 (June 14, 2013).

d. Rule 2-01(c)(4) of Regulation S-X provides that accountants are not independent if, at any point during the audit and professional engagement period, the accountant provides prohibited non-audit services to an audit client. Rule 2-01(c)(4)(i) of Regulation S-X provides that prohibited non-audit services include bookkeeping or other services related to the accounting records or financial statements of the audit client, and defines such services as:

Any service, unless it is reasonable to conclude that the results of these services will not be subject to audit procedures during an audit of the audit client's financial statements, including:

- (A) Maintaining or preparing the audit client's accounting records;
- (B) Preparing the audit client's financial statements that are filed with the Commission or that form the basis of financial statements filed with the Commission; or
- (C) Preparing or originating source data underlying the audit client's financial statements.

e. Rule 2-01(c)(4)(i) of Regulation S-X specifically prohibits an audit firm from preparing an audit client’s financial statements that are filed with the Commission. In this context, preparing financial statements includes but is not limited to: aggregating line items from internal books and records to the financial statements; changing line item descriptions; drafting or editing notes to the financial statements; and converting FOCUS reports or bookkeeping software program reports into financial statements. With respect to the audit of Broker-Dealer A, Cooper engaged in one or more of the above prohibited actions, by drafting or editing the notes.

f. As a result of Cooper’s conduct described above, Cooper was not independent of Broker-Dealer A under the independence criteria established by Rule 2-01(c)(4) of Regulation S-X, which Exchange Act Rule 17a-5 made applicable to the audits of broker-dealer financial statements. As the Commission explained in adopting Rule 2-01(c)(4), providing such services for an audit client “impairs the auditor’s independence because the auditor will be placed in the position of auditing the firm’s work when auditing the client’s financial statements. . . . In addition, keeping the books is a management function, the performance of which leads to an inappropriate mutuality of interests between the auditor and the audit client.” *Revision of the Commission’s Auditor Independence Requirements*, Exchange Act Release No. 43602, at IV.D.4.b(i) (November 21, 2000). See also *Strengthening the Commission’s Requirements Regarding Auditor Independence*, Exchange Act Release No. 47265 (“keeping the books is a management function, which also is prohibited”)(January 28, 2003).

g. Cooper violated Exchange Act Rule 17a-5(i) by representing in its audit report that it had performed the audit of Broker-Dealer A's financial statements in accordance with GAAS when in fact, because of the independence impairment described above, the audit had not been performed in accordance with GAAS.

h. Exchange Act Section 17(a) and Rule 17a-5 require broker-dealers to file annual reports containing financial statements audited by independent public accountants. No showing of scienter is necessary to establish a violation of Exchange Act Section 17(a)(1). *See In the Matter of Orlando Joseph Jett*, Exchange Act Release No. 49366 at n.45 (March 5, 2004) (citing *SEC v Drexel Burham Lambert Inc.*, 837 F. Supp. 587, 610 (S.D.N.Y. 1993); *Stead v. SEC*, 444 F.2d 713, 716-17 (10th Cir. 1971), *cert denied*, 404 U.S. 1059 (1972)).

i. Under Section 21C of the Exchange Act, a person is a "cause" of another's primary violation if the person knew or should have known that his act or omission would contribute to the primary violation. Negligence is sufficient to establish "causing" liability under Section 21C when a person is alleged to have caused a primary violation that does not require scienter. *In re KPMG Peat Marwick*, Exch. Act. Rel. No. 43862 (Jan. 19, 2001), *aff'd*, *KPMG v. SEC*, 289 F.3d 109 (D.C. Cir. 2002).

j. Cooper caused Broker-Dealer A to violate Exchange Act Section 17(a) and Rule 17a-5. Cooper, an audit firm registered with the PCAOB and operated by a Certified Public Accountant, knew or should have known that its conduct, including incorrectly stating in an audit report that the audit was conducted in accordance with GAAS, contributed to Broker-Dealer A's violations of Exchange Act Section 17(a) and Rule 17a-5.

k. Rule 102(e) of the Commission's Rules of Practice allows the Commission to censure a person if it finds that such person has engaged in "improper professional conduct." Exchange Act § 4C(a)(2); Rule 102(e)(1)(ii). Rule 102(e) defines improper professional conduct, in part, as: "[a] single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which the registered public accounting firm or associated person knows, or should know, that heightened scrutiny is warranted." Exchange Act § 4C(b)(2); Rule 102(e)(1)(iv)(B).

l. Questions regarding an auditor's independence always warrant heightened scrutiny. *See* Amendment to Rule 102(e) of the Commission's Rules of Practice, 63 Fed. Reg. 57,164, 57,168 (Oct. 26, 1998) (codified at 17 C.F.R. Part 201). The Commission has defined the "highly unreasonable" standard as:

an intermediate standard, higher than ordinary negligence but lower than the traditional definition of recklessness used in cases brought under Section 10(b) of the Exchange Act and Rule 10b-5 of the Exchange Act. The highly unreasonable standard is an objective standard. The conduct at issue is measured by the degree of the departure from professional standards and not the intent of the accountant.

Id. at 57,167; *see also In the Matter of Ernst & Young LLP*, Admin. Proc. File No. 3-10933, SEC Initial Decision Release No. 249, at 60 (Apr. 16, 2004).

m. Based on the conduct set forth above, Cooper engaged in highly unreasonable conduct that resulted in a violation of applicable professional standards when it knew or should have known that heightened scrutiny was required.

3. Findings

a. Based on the foregoing, the Commission finds that Cooper engaged in improper professional conduct pursuant to Exchange Act Section 4C(a)(2) and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

b. Based on the foregoing, the Commission finds that Cooper committed a violation of Exchange Act Rule 17a-5(i) and caused one broker-dealer's violations of Section 17(a) and Rule 17a-5 promulgated thereunder.

4. Respondent's Remedial Efforts and Cooperation

In determining to accept the Offer, the Commission considered the remedial acts undertaken by Respondent and the cooperation afforded the Commission staff. As part of its remediation, Cooper has already implemented or begun to implement some of the Undertakings listed below.

5. Undertakings

Cooper undertakes:

a. within ninety (90) days from the date of the Order, to establish written policies and procedures, or to revise and/or supplement existing written policies and procedures, for the purpose of providing Cooper with reasonable assurance of compliance with applicable independence requirements, including those requirements of Rule 2-01 of Regulation S-X applicable to an SEC Registered Broker-Dealer Engagement (defined to mean an engagement to provide a report – whether an audit report, an examination report, or a review report – required under Exchange Act Rule 17a-5(d)(1)(i)(C), as amended);

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

c. within ninety (90) days from the date of the Order and before Cooper's commencement of any SEC Registered Broker-Dealer Engagement (or, where Cooper by the date of this Order has already commenced but not completed such an engagement, before

Cooper's release of its report), to ensure training pursuant to the policy described in paragraph (5)(b) above has been provided on at least one occasion;

d. to provide a copy of the Order –

(i) within thirty (30) days from the date of the Order, to all audit personnel employed by, or associated with (as defined in PCAOB Rule 1001(p)(i)), Cooper as of the date of the Order; and

(ii) within thirty (30) days from the date of the Order, to any client of Cooper as of the date of the Order for which Cooper has performed or has been engaged to perform an SEC Registered Broker-Dealer Engagement; and

e. to certify in writing to Stephen L. Cohen, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549-5553, Cooper's compliance with paragraphs 5(a) through 5(d)(ii) above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. Cooper shall submit such certification within one hundred twenty (120) days from the date of the Order. Cooper shall also submit such additional evidence of and information concerning compliance as the staff of the Division of Enforcement may reasonably request.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Cooper's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Cooper is hereby censured.

B. Cooper shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-5 promulgated thereunder.

C. Cooper shall comply with the undertakings enumerated in Section (III)(C)(5) above.

By the Commission.

Brent J. Fields
Secretary