

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 94410 / March 14, 2022

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4288 / March 14, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20794

In the Matter of

**Halpern & Associates LLC
and Barbara Halpern, CPA,**

Respondents.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 4C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND RULE 102(e) OF THE COMMISSION’S
RULES OF PRACTICE AND NOTICE OF
HEARING**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative proceedings be, and hereby are, instituted against Halpern & Associates LLC and Barbara Halpern (collectively, “Respondents”) pursuant to Section 4C¹ 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:

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:

The Commission may . . . 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.

II.

After an investigation, the Division of Enforcement and the Office of the Chief Accountant allege that:

SUMMARY

1. These proceedings arise out of Respondents' improper professional conduct in their 2015 and 2016 audits of private equity fund ACP X, LLP ("ACP X"), an entity controlled by Laurence Allen ("Allen"). Halpern & Associates, LLC was the auditor for several entities owned and controlled by Allen. In 2019, the Office of the New York Attorney General ("NYAG") charged Allen with defrauding investors in his \$17 million private equity fund, ACP X.³ Allen invested at least 20% of ACP X's funds in securities issued by NYPPEX Holdings, LLC ("Holdings"), the owner of a registered broker dealer that Allen also controlled. Halpern was the engagement partner for the audits of ACP X. Halpern approved the issuance of 2015 and 2016 audit reports for ACP X, which were issued in 2017 and 2018 despite having strong indications that Allen's valuations of Holdings' securities were speculative, based on inflated revenue projections, and used inconsistent inputs.

RESPONDENTS

2. Halpern & Associates LLC ("H&A") is an accounting and auditing firm based in Wilton, Connecticut. H&A was founded in 1982, and became a limited liability company in 2000. It has been registered with the PCAOB since 2004. In addition to serving as an independent auditor to at least one investment company and other entities, H&A provides tax advice and, on a consulting basis, provides financial and operations principal ("FinOp") services to at least four broker-dealers.

³ On February 26, 2021, after a bench trial, the Court in *NYAG v. Allen, et al.*, 452378/201913 (N.Y. Sup. Ct.) held defendant Allen liable for, among other things, violating New York State's Martin Act—by defrauding investors in ACP X, by investing at least \$6 million of ACP X's funds in NYPPEX Holdings, LLC securities, contrary to the terms of ACP X's private placement memorandum ("PPM"). In its written opinion, the Court also found that Allen misappropriated an additional \$3.4 million from ACP X by making impermissible distributions to himself from ACP X, characterized as carried interest. According to the terms of the PPM, those funds should first have been distributed to the limited partners towards the return of capital and next, their preferred return. On October 21, 2021, the Appellate Division of the First Judicial Department of New York affirmed the lower court's judgment. *NYAG v. Allen, et al.*, 198 A.D.3d 531 (1st Dep't 2021).

3. Barbara Halpern (“Halpern”), age 68, of Weston, Connecticut, was the engagement partner, and/or functioned as the engagement partner on ACP X’s 2014, 2015, and 2016 audits. She is currently the managing member and 90% owner of H&A. During the relevant period, Barbara Halpern was a certified public accountant licensed to practice in Connecticut. She has held a Series 27 license since 1998 and a Series 54 license since 1980. In February 2016, she was suspended from appearing in front of the SEC for one year for failing to gather sufficient audit evidence and improperly staffing an audit in *Halpern & Associates LLC and Barbara Halpern, CPA*, Admin. Proc. File No. 3-16399.

OTHER RELEVANT PERSONS AND ENTITIES

4. Laurence Allen (“Allen”), 63 years old, resides in Greenwich, Connecticut. Allen is the managing principal of ACP Investment Group, the investment adviser to ACP X. He is the founder, CEO and managing member of NYPPEX, LLC (“NYPPEX”), a broker-dealer registered with the Commission since 1999. Allen holds Series 3, 5, 7, 24, 63, 65 and SIE licenses.

5. ACP Investment Group, LLC is a Connecticut Limited Liability Company with its principal place of business in Rye Brook, New York. It was registered as an investment adviser with the Commission from June 2018 and terminated its registration in May 2021. It is the investment adviser to, among other private equity funds, ACP X.

6. NYPPEX Holdings, LLC (“Holdings”) owns NYPPEX and is a Delaware Limited Liability Company.

7. ACP X, LP (“ACP X”) is a Delaware limited partnership with its principal place of business in Rye Brook, New York. In 2004, Allen launched ACP X, a private equity fund which was scheduled to wind down by December 31, 2018. Allen represented that ACP X would invest primarily in discounted private equity interests, including interests sourced through NYPPEX. ACP X’s offering documents limited transactions between the affiliated entities, providing that Allen could not “actively participate in the day to day operations” of any of ACP X’s portfolio investments.

FACTUAL ALLEGATIONS

Background

8. From at least 2011 though 2018, H&A provided audit services to Allen and his entities, including ACP X, Holdings, NYPPEX LLC, and ACP Investment Group, LLC. As the principal of H&A and the engagement partner on the audits of Allen’s entities, Halpern oversaw the work conducted on the audits. This order concerns the following audits for ACP X: ACP X 2015 audited financials completed in March 2017, and ACP X 2016 audited financials completed in May 2018. Halpern was either the designated the engagement partner, or functioned as the engagement partner, for ACP X’s 2015 and 2016 audits. The ACP X audits were conducted

pursuant to AICPA Generally Accepted Auditing Standards (“GAAS”). ACP X’s private placement memorandum, given to investors, represented that investors would receive audited financial statements annually.

9. As part of each of the audits at issue, H&A and its staff, including Halpern, among other things, conducted testing, sought confirmations from investors, and interviewed stakeholders in the company.

The Audit Procedures Concerning Holdings’ Valuation

10. For the 2014, 2015, and 2016 audit years, Halpern and other H&A accountants expressed concern to Allen regarding the grossly inflated estimated revenue projections Allen was using to arrive at his valuation of Holdings. Halpern’s and H&A’s concern in fact began as early as 2011 when Halpern began telling Allen to get an independent valuation of Holdings because of the lack of recent sales of Holdings shares to independent third parties. To value Holdings securities, Allen used his own internal analysis of Holdings securities reflected on a one page document entitled “Fair Valuation Analysis” (“FVA”). The FVA referenced Holdings’s past revenues, expenses, and earnings as well as projected future revenues and profits. It lacked an objective basis, ignored material information (including two decades of Holdings’s operating history), and was based on unachievable future revenue and corporate growth. Allen’s projected revenue growth routinely doubled or tripled year-over-year.

11. In communications with Allen, H&A accountants raised concerns about the Holdings revenue projections Allen was providing in support of the valuation. For example, for the 2010 audit, Allen’s projected revenue for 2011 was \$26 million when Holdings’s revenues for the first three quarters of 2011 had only reached approximately \$2.3 million. Allen resisted H&A’s efforts to obtain more audit evidence for the revenue projections and suggested that H&A’s request could lead to a termination of the relationship. That year, Halpern, on behalf of H&A, approved the issuance of the 2010 audit without receiving any additional information.

12. Similarly, for the 2014 audit, Allen’s FVA had projected revenues for Holdings of \$10.5 million for 2015 and \$19.5 million for 2016, even though, as of September 2015, Holdings’s revenues were just under \$1 million. The original 2014 FVA valued Holding securities at \$.76 per share. Allen ultimately agreed to adjust 2015 revenue to \$2.1 million and 2016 revenue to \$7.5 million. He also, however, revised the FVA to include two additional years of projected revenue, \$14.5 million for 2017 and \$24.3 million for 2018. The revised 2014 FVA also valued Holdings securities at \$.76 per share. That year, Halpern, on behalf of H&A, approved the issuance of the 2014 audit despite knowing that the client’s adjustments to the 2015 and 2016 revenue projections had no meaningful impact on the valuation and had simply altered the metrics.

13. Despite knowing that the estimated revenue being used in the FVA had not come close to being met in prior years or would likely not be met, Halpern nevertheless approved the issuance of the audits for years 2015 (which was issued in March 2017), and 2016 (which was

issued in May 2018). Each year, Halpern and H&A raised getting an independent valuation with Allen who refused each year.

14. Halpern was also aware of inconsistencies in the formula Allen was using in the FVA provided to H&A for each audit year.

15. In communications with Allen, H&A accountants raised concerns about inconsistencies in the formula in the FVA noting differences in the holding period, the price/revenue multipliers, and the implied investor discounts in the 2011, 2012, and 2013 audits.

16. For the 2014, 2015, and 2016 audit years, there were similar inconsistencies in the formulas used in the FVA. Despite knowing that the formula used in the FVA used inconsistent metrics, Halpern nevertheless approved the issuance of the audits for years 2014, 2015 and 2016.

VIOLATIONS

Respondents Engaged in Improper Professional Conduct

17. As a result of the conduct described above, Respondents engaged in improper professional conduct. Rule 102(e) of the Commission's Rules of Practice allows the Commission to censure a person or deny the privilege of appearing or practicing before it to any person if it finds that such person has engaged in "improper professional conduct." Exchange Act § 4C(a)(2); Rule 102(e)(1)(ii). In addition, regarding accountants, Rule 102(e)(1)(iv)(B) and Section 4C(b) provide that the following two types of negligent conduct may constitute "improper professional conduct":

(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 know, 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.

18. The applicable professional standards for the ACP X audits were Generally Accepted Accounting Standards ("GAAS"). In the audit planning documents, H&A identified the valuations of Holdings as an area of significant risk of material misstatement. H&A and Halpern failed to adhere to a fundamental auditing standard: the standard that requires an auditor to comply with all relevant ethical requirements relating to financial statement audits, which includes due care (Codification of Statements on Auditing Standards ("AU-C") 200.16). The auditor must also exercise professional judgment in planning and performing an audit (AU-C 200.18), by properly staffing and supervising the audit, (AU-C 220.16 and .17 and AU-C 300.08 and .11), by obtaining sufficient appropriate audit evidence, (AU-C 500A.06), and by maintaining an attitude of professional skepticism, which includes "a questioning mind and a critical assessment of audit evidence[.]" (AU-C 200.14 and 17). In conducting the 2015 and 2016 audits of ACP X, H&A and Halpern failed to perform adequate procedures to determine whether the valuations of Holdings

were correct. H&A and Halpern failed to perform additional audit procedures necessary to resolve their doubts about the reliability of the ACP X valuation analysis, including the accuracy of the revenue projections and the calculations used. As a result, and absent additional procedures performed, H&A and Halpern failed to obtain sufficient appropriate audit evidence to support an unqualified opinion.

19. H&A and Halpern also failed to adhere to auditing standards concerning the reliability of audit evidence (AU-C 500A.07), and the need to obtain audit evidence about the completeness and accuracy of client-produced information used to perform audit procedures (AU-C 500A.09). In conducting the 2015 and 2016 audits for ACP X, H&A and Halpern knew that the valuation provided by the client was not in line with the actual revenues of the company, other trends in the market, or H&A's own analysis. Despite this knowledge, H&A and Halpern failed to maintain an attitude of professional skepticism by failing to make a critical assessment of the audit evidence

20. As a result of the conduct alleged above, H&A and Halpern failed to adhere to GAAS in planning and performing the audits of ACP X's 2015 and 2016 financial statements and preparing the audit reports on those statements. Moreover, those failures occurred in the most critical areas of the audit – the valuation of portfolio assets.

21. Accordingly, H&A and Halpern engaged in improper professional conduct by engaging in at least a single instance of highly unreasonable or, at a minimum, repeated instances of unreasonable conduct within the meaning of of Rule 102(e)(1)(iv)(B).

22. Halpern's improper professional conduct may be attributed to H&A.

III.

In view of the allegations made by the Division of Enforcement and the Office of the Chief Accountant, the Commission deems it necessary and appropriate that public administrative proceedings be instituted to determine:

Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations; and

What, if any, remedial action is necessary and appropriate against Respondents pursuant to Section 4C of the Exchange Act and Rule 102(e) of the Commission's Rules of Practice.

IV.

IT IS ORDERED that a public hearing before the Commission for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed by further order of the Commission, pursuant to Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file Answers to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.220(b).

IT IS FURTHER ORDERED that the Division of Enforcement and Respondents shall conduct a prehearing conference pursuant to Rule 221 of the Commission's Rules of Practice, 17 C.F.R. § 201.221, within fourteen (14) days of service of the Answer. The parties may meet in person or participate by telephone or other remote means; following the conference, they shall file a statement with the Office of the Secretary advising the Commission of any agreements reached at said conference. If a prehearing conference was not held, a statement shall be filed with the Office of the Secretary advising the Commission of that fact and of the efforts made to meet and confer.

If Respondents fail to file the directed Answers, or fail to appear at a hearing or conference after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Respondents by any means permitted by the Commission's Rules of Practice.

Attention is called to Rule 151(b) and (c) of the Commission's Rules of Practice, 17 C.F.R. § 201.151(b) and (c), providing that when, as here, a proceeding is set before the Commission, all papers (including those listed in the following paragraph) shall be filed with the Office of the Secretary and all motions, objections, or applications will be decided by the Commission. The Commission requests that an electronic courtesy copy of each filing should be emailed to APFilings@sec.gov in PDF text-searchable format. Any exhibits should be sent as separate attachments, not a combined PDF.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that notwithstanding any contrary reference in the Rules of Practice to filing with or disposition by a hearing officer, all filings, including those under Rules 210, 221, 222, 230, 231, 232, 233, and 250 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.210, 221, 222, 230, 231, 232, 233, and 250, shall be directed to and, as appropriate, decided by the Commission. This proceeding shall be deemed to be one under the 120-day timeframe specified in Rule of Practice 360(a)(2)(i), 17 C.F.R. § 201.360(a)(2)(i), for the purposes of applying Rules of Practice 233 and 250, 17 C.F.R. §§ 201.233 and 250.

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to provide, pursuant to Rule 100(c) of the Commission's Rules of Practice, 17 C.F.R. § 201.100(c), that the Commission shall issue a decision on the basis of the record in this proceeding, which shall consist of the items listed at Rule 350(a) of the Commission's Rules of

Practice, 17 C.F.R. § 201.350(a), and any other document or item filed with the Office of the Secretary and accepted into the record by the Commission. The provisions of Rule 351 of the Commission's Rules of Practice, 17 C.F.R. § 201.351, relating to preparation and certification of a record index by the Office of the Secretary or the hearing officer are not applicable to this proceeding.

The Commission will issue a final order resolving the proceeding after one of the following: (A) The completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) The completion of briefing on a motion for a ruling on the pleadings or a motion for summary disposition pursuant to Rule 250 of the Commission's Rules of Practice, 17 C.F.R. § 201.250, where the Commission has determined that no public hearing is necessary; or (C) The determination that a party is deemed to be in default under Rule 155 of the Commission's Rules of Practice, 17 C.F.R. § 201.155, and no public hearing is necessary.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Vanessa A. Countryman
Secretary