

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 94570 / March 31, 2022

INVESTMENT ADVISERS ACT OF 1940
Release No. 5989 / March 31, 2022

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4291 / March 31, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-20395

In the Matter of

Stockman Kast Ryan & Co. LLP;
Ellen S. Fisher, CPA; and
David H. Kast, CPA

Respondents.

**ORDER MAKING FINDINGS,
IMPOSING REMEDIAL
SANCTIONS, AND A CEASE-
AND-DESIST ORDER
PURSUANT TO SECTION 4C OF
THE SECURITIES EXCHANGE
ACT OF 1934, SECTION 203(k)
OF THE INVESTMENT
ADVISERS ACT OF 1940, AND
RULE 102(e) OF THE
COMMISSION'S RULES OF
PRACTICE**

I.

On July 13, 2021, the Securities and Exchange Commission (“Commission”) instituted public administrative and cease-and-desist proceedings pursuant to Section 4C¹ of the Securities Exchange Act of 1934 (“Exchange Act”), Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice² against Stockman Kast Ryan & Co. LLP. (“SKR”), Ellen S. Fisher (“Fisher”), and David H. Kast (“Kast”) (collectively, “Respondents”) (Rel. No. 34-92382).

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 . . . to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct.”

² Rule 102(e)(1)(ii) provides, in pertinent part, that the “Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to a person who is found. . . to have engaged in unethical or improper professional conduct”

II.

In connection with these proceedings, Respondents have 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 them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Making Findings, Imposing Remedial Sanctions, and a Cease-and-Desist Order Pursuant to Section 4C of the Securities Exchange Act of 1934, Section 203(k) of the Investment Advisers Act of 1940, and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offer, the Commission finds that:

A. SUMMARY

This proceeding arises out of audits of six private funds (collectively, the “Funds” or Funds 1-6) by audit firm SKR and audit partners Fisher and Kast. Although SKR’s audit reports stated that the audits were conducted in accordance with Public Company Accounting Oversight Board (“PCAOB”) auditing standards, Respondents engaged in improper professional conduct under Rule 102(e) by failing to conduct the audits in accordance with those standards. These audit failures were in connection with SKR’s engagement by an SEC-registered investment adviser (the “Adviser”), to audit private funds so that the Adviser could comply with Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder (the “Custody Rule”).

Specifically, Fisher, the engagement partner, and SKR failed to obtain sufficient appropriate audit evidence regarding the valuation and existence of certain hard-to-value assets described herein as Level 3 assets.³ Fisher and SKR knew that these assets were hard to value and acknowledged that they were high risk areas of the audit, but they failed to properly assess the risks associated with these complex assets and design and execute an audit response sufficient to address the risks. As such, Fisher and SKR failed to meet PCAOB auditing standards related to audit planning, obtaining sufficient appropriate audit evidence, evaluating audit results, audit documentation, exercising due professional care, and supervision and review.

The engagement quality review conducted by Kast, who was required under PCAOB standards to evaluate significant judgments made by the engagement team and assess the engagement team’s response to significant risks, was deficient because Kast reviewed and approved work papers that failed to obtain sufficient appropriate audit evidence regarding the

³ Financial Accounting Standards Board (“FASB”) Accounting Standards Codification “ASC” 820 sets forth three categories of inputs for use in determining an asset’s fair value. Assets valued using Level 3 inputs are the most difficult to value because they have no readily available market information and are valued using unobservable inputs.

valuation and existence of Level 3 assets and failed to review other required work papers on independence and completion.

The Custody Rule under the Advisers Act, among other things, requires that advisory client assets be maintained with a qualified custodian, and requires client assets to be verified through an annual surprise examination by an independent public accountant. The Adviser, which had custody of investor assets, sought to use the audit exception to the Custody Rule, which required that the funds' financial statements be audited in accordance with U.S. Generally Accepted Auditing Standards ("GAAS") by an independent public accountant that is registered with and subject to regular inspection by the PCAOB (the "audit exception"). *See* 17 C.F.R. § 275.206(4)-2(b)(4). As a result of the above conduct, SKR caused the Adviser's violations of the Custody Rule.

SKR was not independent under the Commission's independence rules set forth in Regulation S-X because a tax partner at SKR served as the trustee or general partner for a number of trusts that invested in eight private funds audited by SKR (Funds 7-14). SKR also lacked independence because it provided bookkeeping services to one fund (Fund 2) for which it also audited the fund's financial statements. Both of these relationships violated the Commission's independence rules for accountants and, because SKR was not independent and did not conduct the audits of the funds in accordance with GAAS, the Adviser could not meet the audit exception and violated the Custody Rule.

B. RESPONDENTS

1. Stockman Kast Ryan & Co., LLP is a Colorado limited liability partnership and accounting firm registered with the PCAOB. SKR has one office headquartered in Colorado Springs, Colorado.

2. Ellen S. Fisher, CPA, age 52, is a resident of Elbert, Colorado. She began working at SKR in 1999 as a senior auditor and became a partner in 2012. She first served on audits of the Adviser's funds in 2011 as senior manager, then as the audit engagement partner from 2014 through at least 2019. She has been a licensed CPA in Colorado since 1998.

3. David H. Kast, CPA, age 69, is a resident of Colorado Springs, Colorado. He was one of the founding partners of SKR in 1995. Kast served as the audit engagement partner on audits of the Adviser's funds from at least 2010 through 2013 and then as the audit engagement quality review ("EQR") partner from 2014 through at least 2017. He has been a licensed CPA in Colorado since 1977.

C. OTHER RELEVANT ENTITIES AND INDIVIDUALS

4. Adviser is an SEC-registered investment adviser incorporated in Colorado that provides investment advisory, financial planning, and estate planning services to high-net-worth clients.

5. Individual 1, age 66, is a resident of Colorado Springs, Colorado. Individual 1 is a tax partner at SKR and was a trustee and general partner for seven trusts or partnerships that invested in eight private funds managed by the adviser and also audited by SKR in 2015.

D. FACTS

Background

6. Between at least January 1, 2015 and December 31, 2016, the Adviser had custody of investor assets invested in the Funds and, as such, was required to comply with the Custody Rule.

7. Among other things, the Custody Rule requires that advisory client assets be maintained with a qualified custodian, and requires client assets to be verified through an annual surprise examination by an independent public accountant. See Advisers Act Rule 206(4)-2(a)(1) and (4). An adviser to a limited liability company or pooled investment vehicle, such as the Adviser, is deemed to have complied with the annual surprise examination requirement if it distributes annual audited financial statements to each member or beneficial owner within 120 days of the end of each fund's fiscal year. See Rule 206(4)-2(b)(4) under the Advisers Act. The audit exception requires that the Funds' financial statements be prepared in accordance with generally accepted accounting principles ("GAAP") and that they be audited in accordance with GAAS for the purpose of expressing an opinion therein.

8. To comply with the audit exception, the Adviser engaged SKR to perform annual audits for the funds for the years ended December 31, 2015 and December 31, 2016, and then distributed audited financial statements to each investor in the funds. According to SKR's audit reports, the audits were performed in accordance with PCAOB auditing standards.

9. In 2015, SKR audited a total of 20 Adviser funds, 11 of which were funds holding Level 3 assets. In 2016, SKR audited a total of nine Adviser funds, seven of which held Level 3 assets. For each year, six of the funds that held Level 3 assets involved audit failures that are the subject of this proceeding. The 12 audits with audit failures at issue in this proceeding are referred to as the "Audits."

10. Fisher worked on the Adviser's audits beginning in 2011 as senior manager, and then as engagement partner beginning in 2014. Kast worked on the Adviser's audits as engagement partner from at least 2010 through 2013 and then as EQR beginning in 2014.

11. In 2015 and 2016, Fisher was the SKR engagement partner on all Fund audits for the Adviser and was ultimately responsible for the Funds' audit engagements and for SKR's audit reports.

12. In 2015 and 2016, Kast was the EQR partner on all Fund audits for the Adviser. As the EQR partner, Kast was responsible for reviewing the audit file and the Fund financial statements. Under the applicable PCAOB standards and GAAS, Kast was responsible for evaluating the significant judgments made by the engagement team, the conclusions reached by the engagement team, and approving the issuance of the audit report.

Failures complying with PCAOB Standards and GAAS

I. General Audit Failures

13. Fisher and SKR failed to conduct the Audits in accordance with PCAOB auditing standards and GAAS in five ways.

(i) SKR and Fisher failed to plan and obtain sufficient audit evidence

14. In each of the Audits, SKR did not perform audit procedures to obtain sufficient appropriate audit evidence regarding the valuation and existence of Level 3 assets at year end. Fisher reviewed and approved audit work papers showing that SKR did not obtain sufficient appropriate audit evidence.

a. Insufficient audit response

15. Fisher and SKR failed to adequately assess the risks of the Audits and appropriately plan the Audits in response to the high risks of these Audits.

16. The valuation of Level 3 assets in the Audits were high risk. Level 3 assets can be difficult to value because they have no readily available market information and are estimated using unobservable inputs.

17. In 2015, SKR identified and assessed the risk of material misstatement and planned audit responses for all Adviser funds collectively. In 2016, SKR identified and assessed the risk of material misstatement and planned audit responses for all funds holding Level 3 assets collectively (and separately from funds holding Level 1 and 2 assets). In 2015, SKR did not perform separate risk identification, assessment, and response procedures for each individual fund and SKR failed to document that the funds with Level 3 assets generally had a risk level above those that did not have Level 3 assets.

18. SKR's work papers for the 2015 Audit failed to identify these Level 3 assets as having a significant risk, including a fraud risk, despite Fisher's knowledge that valuation of Level 3 assets were a significant audit risk and a fraud risk. Kast similarly knew that valuation of Level 3 assets was "high risk in the audit" and was both a significant risk and a fraud risk.

19. SKR's work papers for the 2015 and 2016 Audits also failed to identify that the inherent risk of the Level 3 assets was high, despite Fisher's knowledge that inherent risk related to the valuation of Level 3 assets was high.

20. Accordingly, in both 2015 and 2016, the audit work papers incorrectly documented the risk of material misstatement as moderate, instead of high. Fisher and SKR failed to design audit approaches and procedures to address the high risks they knew were associated with valuation of these Level 3 assets.

21. SKR's audit program also contained no specific procedures to be performed regarding evaluating the appropriateness of valuation models, testing Level 3 inputs, or obtaining and evaluating investment committee minutes and related documentation that included

contemporaneous information regarding the valuation of Level 3 assets.

22. Because SKR and Fisher failed to properly plan and perform audit procedures for the risk of material misstatement associated with the valuation and existence of these Level 3 assets, they also failed to obtain sufficient appropriate audit evidence to provide a reasonable basis for SKR's audit reports.

b. Insufficient audit evidence

23. In each of the Audits, SKR did not perform audit procedures to obtain sufficient appropriate audit evidence regarding the existence of Level 3 assets at year end. SKR's audit program provided that the existence of Level 3 assets should be confirmed, *i.e.* that SKR should obtain sufficient appropriate evidence that those assets exist at the time of the audit. However, Fisher and SKR took no steps to confirm the existence of Level 3 assets or obtain other sufficient appropriate evidence.

24. SKR did not confirm the existence of the Level 3 assets held by any of the Funds or perform sufficient alternative procedures; instead, SKR relied predominantly on the Adviser's representations (in valuation write ups, management representation letters, and made orally). Fisher reviewed and approved the audit work papers showing these failures and Kast signed off on the work papers.

25. SKR's valuation procedures excessively relied on representations from the Adviser without obtaining sufficient corroborating audit evidence and sometimes ignored contradictory evidence inconsistent with the Adviser's valuation determinations.

26. For example, SKR failed to identify that the valuation estimates were not prepared in accordance with GAAP and failed to obtain sufficient audit evidence corroborating management's supporting valuation inputs and assumptions (e.g., at times the Adviser and SKR relied on stale appraisals, consulting reports that were up to nine years old, and unsigned sales agreements).

27. These audit deficiencies contributed to Fisher's and SKR's failure to identify potential misstatements in financial statements for three funds in 2015 (pertaining to 9 separate Level 3 assets), and for two funds in 2016 (pertaining to four Level 3 assets).

(ii) Fisher and SKR failed to properly evaluate audit results

28. In several Audits, SKR did not evaluate management for possible bias and properly identify and evaluate misstatements in the financial statements.

29. Fisher reviewed and approved the SKR audit work papers that failed to perform a retrospective review of accounting estimates and properly evaluate and document whether identified misstatements in Fund 2 in 2016 were material to fund financial statements.

30. During the Audits, SKR identified valuation discrepancies and concluded without adequate evaluation or documentation that these discrepancies were not errors and/or were immaterial to the financial statements.

(iii) SKR's audit documentation was not in accordance with applicable audit standards

31. In each of the Audits, SKR's audit work papers are replete with documentation deficiencies.

32. SKR's work papers contain various documentation deficiencies that would prevent an experienced auditor from understanding the extent and results of the procedures performed, evidence obtained, and conclusions reached, and whether certain work was reviewed.

33. For example, Fisher and Kast both reviewed and approved the 2015 audit work papers that did not identify the valuation of Level 3 assets as a significant risk, including a fraud risk. Fisher and Kast also both reviewed and approved the 2015 and 2016 audit work papers that incorrectly documented inherent risk and the risk of material misstatement as moderate instead of high. The 2015 audit work papers also did not identify that SKR provided bookkeeping services to a fund that it audited or evaluate whether the services impacted SKR's independence.

(iv) Fisher's supervision and review of the audit engagements was inadequate

34. In each of the Audits, Fisher's supervision and review was inadequate because she reviewed and approved the audit work papers that did not meet PCAOB auditing standards or GAAS and did not support SKR's audit reports. This pervasive failure applies to all of the identified existence and valuation audit failures in this Order.

35. Fisher reviewed and approved the Audits that did not properly evaluate SKR's independence, document the risks of Level 3 assets, adequately respond to the identified risks of Level 3 assets, and obtain sufficient appropriate audit evidence. She also did not perform a retrospective review.

(v) Fisher did not exercise due professional care, including professional skepticism.

36. In each of the Audits, Fisher did not act with due professional care, including professional skepticism, because she did not plan and perform the audits in accordance with PCAOB auditing standards or GAAS, including not corroborating management representations, not obtaining sufficient appropriate audit evidence, and ignoring contradictory information. Again, this applies to all of the existence and valuation audit deficiencies identified in this Order.

37. In each of the Audits, Fisher's deficient conduct caused SKR to issue unqualified audit opinions on the Funds' financial statements for 2015 and 2016 when SKR was not independent and the SKR's audits were not performed in accordance with PCAOB auditing standards and GAAS.

II. Kast's EQR Failures

38. For each of the Audits, Kast failed to conduct his engagement quality reviews in accordance with PCAOB auditing standards and GAAS.

39. Kast approved the 2015 audit risk work papers that did not document valuation of Level 3 assets as a significant risk, including a fraud risk, contrary to his knowledge about the risk level of the valuation of these assets.

40. In both 2015 and 2016, Kast also reviewed and approved the work papers that incorrectly documented the valuation of Level 3 assets as having only moderate inherent risk and risk of material misstatement, contrary to his testimony about the risk level.

41. In both 2015 and 2016, Kast reviewed and approved every investment valuation audit work paper and failed to recognize that SKR did not respond appropriately to the identified risks and did not obtain sufficient appropriate audit evidence supporting its conclusion that Level 3 assets existed and were properly valued.

42. Kast did not review the 2015 and 2016 work papers that contain the auditor independence assessment.

43. Kast also did not review the 2015 and 2016 investment audit programs, which list the procedures that will be performed to obtain sufficient evidence in response to the identified risks.

44. For each of the Audits, Kast's EQR audit failures demonstrate that he did not act with the required due professional care, including professional skepticism.

III. Audit Failures With Respect to Specific Funds and Assets

45. In addition, Respondents failed to comply with PCAOB standards and GAAS in the audit of specific funds. These failures are summarized as follows: (i) the failure to obtain sufficient evidence about the existence of Level 3 Assets, including failing to identify the non-existence of a Level 3 Asset; (ii) the failure to obtain sufficient evidence about the valuation of Level 3 Assets, including evidence related to appraisals, valuation models, contracts, representations and transactions with a related party; (iii) the failure to perform retrospective reviews; and (iv) the failure to properly evaluate misstatements.

SKR was not independent

46. The Adviser relied upon the audit exception to the Custody Rule requiring that financial statements for the Funds be audited by an independent public accountant in accordance with GAAS.

47. For purposes of assessing compliance with the Custody Rule, the Commission looks to whether an accountant is independent under the Commission's independence rules set forth in Regulation S-X, Rule 2-01(b) and (c). *See* 17 C.F.R. § 275.206(4)-2(d)(3). SKR was not independent under these rules for the reasons described below and thus the Adviser violated and was caused to violate the Custody Rule.

48. Respondents failed to communicate to the Adviser relationships and services that may reasonably be thought to bear on independence as required by PCAOB Rule 3526. These failures constitute improper professional conduct.

I. Trustee Relationship

49. Rule 2-01(c) sets forth non-exclusive circumstances where accountants are not considered independent. Rule 2-01(c)(1) provides that:

An accountant is not independent if, at any point during the audit and professional engagement period, the accountant has a direct financial interest or a material indirect financial interest in the accountant's audit client such as (i) Investments in audit clients. An accountant is not independent when: ... (C) The accounting firm, **any covered person** in the firm, or any of his or her immediate family members, **serves as voting trustee of a trust, or executor of an estate, containing the securities of an audit client**, unless the accounting firm, covered person in the firm, or immediate family **member has no authority to make investment decisions for the trust or estate**. (Emphasis added.)

50. Rule 2-01(f)(11)(iv) defines a covered person in the firm to mean "the following principals, shareholders, and employees of an accounting firm: . . . (iv) any other partner, principal, or shareholder from an 'office' of the accounting firm in which the lead audit engagement partner primarily practices in connection with the audit."

51. Individual 1 also was a "covered person" because he was a partner in the same office as Fisher, the lead engagement partner in charge of the audits for the Adviser funds. Individual 1 did not serve on the audit engagement team.

52. In 2015, Individual 1, an SKR partner, was a trustee and/or a member of the management committee for seven trusts or partnerships that had invested in eight Adviser funds audited by SKR and had authority to make investment decisions for the trusts/partnerships. The management committees met quarterly beginning in 2015. Individual 1's role as trustee for entities that invested in some of the Adviser funds impacted SKR's independence for the 2015 audits.

53. As the engagement partner, it was Fisher's responsibility to ensure that all such potential conflicts were identified and resolved for independence purposes.

54. The audit team performed no specific audit procedures to capture relevant relationships to analyze and confirm SKR's independence.

55. As a result, SKR was not independent under Regulation S-X, Rule 2-01(c).

II. Bookkeeping Services

56. Rule 2-01(c)(4) provides that an accountant is not independent, if, at any point during the audit and professional engagement period, the accountant provides the following non-audit services to an audit client:

(i) *Bookkeeping or Other Services Related to the Accounting Records or Financial Statements of the Audit Client*. 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; ... (C) Preparing or originating source data underlying the audit

client's financial statements.

57. SKR provided bookkeeping services to Adviser's Fund 2 in 2015 and 2016 when Fund 2 was also audited by SKR in those years.

58. SKR's accounting services department created and maintained the accounting records underlying the financial statements audited by SKR.

59. Specifically, SKR's accounting services department entered transactions into QuickBooks; performed bank reconciliations; and sent the Adviser the year-end QuickBooks file and/or the general ledger exported from QuickBooks that the Adviser used to prepare the fund financial statements.

60. After receiving the QuickBooks file and/or the general ledger from SKR, the Adviser made journal entries to record the Level 3 assets at fair value. The Adviser then used that general ledger to prepare the fund financial statements, including the final balance sheet and income statements. The audit engagement team then audited the final Fund 2 financial statements based in part on the general ledger prepared by SKR. The Adviser paid SKR monthly for "bookkeeping services."

61. It was Fisher's responsibility to ensure that all such potential conflicts were identified and resolved for independence purposes.

62. The audit team performed no specific audit procedures to capture relevant relationships and services and to evaluate and confirm SKR's independence.

63. Fisher was aware of SKR's bookkeeping relationship in 2015.

64. In 2016, Fisher reviewed and approved a memo in the work papers concerning the bookkeeping that incorrectly concluded the bookkeeping relationship did not impair SKR's independence.

65. Under Rule 2-01(c)(4), SKR's bookkeeping services provided to Fund 2 impaired SKR's independence.

66. PCAOB Rule 3526 required SKR to communicate to the Adviser all relationships and services that may reasonably be thought to bear on SKR's independence. However, SKR told the Adviser there were none for the 2015 and 2016 audits.

Violations

67. As a result of the conduct described above, Respondents engaged in improper professional conduct within the meaning of Section 4C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice. Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) provide, in pertinent part, that the Commission may censure or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to any person who is found by the Commission to have engaged in improper professional conduct. Exchange Act 4C(b) and Rule 102(e)(1)(iv) of the Commission's Rules of Practice define

improper professional conduct with respect to persons licensed to practice as accountants.

68. Under Section 4C(b) and Rule 102(e)(1)(iv)(B), the term “improper professional conduct” means one of two types of negligent conduct: (1) a single instance of highly unreasonable conduct in circumstances for which heightened scrutiny is warranted; or (2) repeated instances of unreasonable conduct that indicate a lack of competence.

69. The audit failures of SKR, Fisher, and Kast constitute repeated instances of unreasonable conduct throughout the audits discussed above and also satisfy the single instance of highly unreasonable conduct standard as there were multiple single instances of highly unreasonable conduct since the audit of Level 3 assets warranted heightened scrutiny.

70. Further, questions regarding an auditor’s independence always warrant heightened scrutiny. *See* Final Rule: Amendment to Rule 102(e) of the Commission’s Rules of Practice, Release Nos. 33-7593; 34-40567; 35-26929; 39-2369; IA-1771; IC-23489; File No. S7-16-98) (“Because of the importance of an accountant’s independence to the integrity of the financial reporting system, the Commission has concluded that circumstances that raise questions about an accountant’s independence always merit heightened scrutiny.”).

71. As detailed above, the Adviser was required to comply with the Custody Rule or to satisfy its provisions by meeting an exception to it. During 2015 and 2016, the Adviser attempted to comply with this rule by relying on the audit exception. The Adviser failed to qualify for the Audit Exception because SKR did not conduct the Audits in accordance with GAAS and was not independent. As a consequence, the Adviser violated the Custody Rule and the Respondents caused the Adviser’s violations of the Custody Rule.

Findings

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

73. Based on the foregoing, the Commission finds that Fisher, Kast, and SKR caused Adviser’s violations of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents’ Offers.

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

A. Fisher, Kast, and SKR shall cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rule 206(4)-2 thereunder.

B. SKR is hereby censured.

C. Ellen Fisher and David Kast are denied the privilege of appearing or practicing before the Commission as accountants.

D. After two years from the date of the Order, Fisher may request that the Commission consider Fisher's reinstatement by submitting an application to the attention of the Office of the Chief Accountant.

E. After one year from the date of the Order, Kast may request that the Commission consider Kast's reinstatement by submitting an application to the attention of the Office of the Chief Accountant.

F. In support of any application for reinstatement to appear and practice before the Commission as a preparer or reviewer, or a person responsible for the preparation or review, of financial statements of a public company to be filed with the Commission, other than as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Exchange Act, Respondent shall submit a written statement attesting to an undertaking to have Respondent's work reviewed by the independent audit committee of any public company for which Respondent works or in some other manner acceptable to the Commission, as long as Respondent practices before the Commission in this capacity and will comply with any Commission or other requirements related to the appearance and practice before the Commission as an accountant.

G. In support of any application for reinstatement to appear and practice before the Commission as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934 ("Exchange Act"), as a preparer or reviewer, or as a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission, Respondent shall submit a statement prepared by the audit committee(s) with which Respondent will be associated, including the following information:

1. A summary of the responsibilities and duties of the specific audit committee(s) with which Respondent will be associated;
2. A description of Respondent's role on the specific audit committee(s) with which Respondent will be associated;
3. A description of any policies, procedures, or controls designed to mitigate any potential risk to the Commission by such service;
4. A description relating to the necessity of Respondent's service on the specific audit committee; and
5. A statement noting whether Respondent will be able to act unilaterally on behalf of the Audit Committee as a whole.

H. In support of any application for reinstatement to appear and practice before the Commission as an independent accountant (auditor) before the Commission, Respondent must be associated with a public accounting firm registered with the Public Company Accounting Oversight Board (the "PCAOB") and Respondent shall submit the following additional information:

1. A statement from the public accounting firm (the “Firm”) with which Respondent is associated, stating that the firm is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002;
2. A statement from the Firm with which the Respondent is associated that the Firm has been inspected by the PCAOB and that the PCAOB did not identify any criticisms of or potential defects in the Firm’s quality control system that would indicate that Respondent will not receive appropriate supervision; and
3. A statement from Respondent indicating that the PCAOB has taken no disciplinary actions against Respondent since seven (7) years prior to the date of the Order other than for the conduct that was the basis for the Order.

I. In support of any application for reinstatement, Respondent shall provide documentation showing that Respondent is currently licensed as a certified public accountant (“CPA”) and that Respondent has resolved all other disciplinary issues with any applicable state boards of accountancy. If Respondent is not currently licensed as a CPA, Respondent shall provide documentation showing that Respondent’s licensure is dependent upon reinstatement by the Commission.

J. In support of any application for reinstatement, Respondent shall also submit a signed affidavit truthfully stating, under penalty of perjury:

1. That Respondent has complied with the Commission suspension Order, and with any related orders and undertakings, or any related Commission proceedings, including any orders requiring payment of disgorgement or penalties;
2. That Respondent undertakes to notify the Commission immediately in writing if any information submitted in support of the application for reinstatement becomes materially false or misleading or otherwise changes in any material way while the application is pending;
3. That Respondent, since the entry of the Order, has not been convicted of a felony or a misdemeanor involving moral turpitude that would constitute a basis for a forthwith suspension from appearing or practicing before the Commission pursuant to Rule 102(e)(2);
4. That Respondent, since the entry of the Order:
 - (a) has not been charged with a felony or a misdemeanor involving moral turpitude as set forth in Rule 102(e)(2) of the Commission’s Rules of Practice, except for any charge concerning the conduct that was the basis for the Order;
 - (b) has not been found by the Commission or a court of the United States to have committed a violation of the federal securities laws, and has not been enjoined from violating the federal

securities laws, except for any finding or injunction concerning the conduct that was the basis for the Order;

(c) has not been charged by the Commission or the United States with a violation of the federal securities laws, except for any charge concerning the conduct that was the basis for the Order;

(d) has not been found by a court of the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, or any bar thereof to have committed an offense (civil or criminal) involving moral turpitude, except for any finding concerning the conduct that was the basis for the Order; and

(e) has not been charged by the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, civilly or criminally, with having committed an act of moral turpitude, except for any charge concerning the conduct that was the basis for the Order.

5. That Respondent's conduct is not at issue in any pending investigation of the Commission's Division of Enforcement, the PCAOB's Division of Enforcement and Investigations, any criminal law enforcement investigation, or any pending proceeding of a State Board of Accountancy, except to the extent that such conduct concerns that which was the basis for the Order.

6. That Respondent has complied with any and all orders, undertakings, or other remedial, disciplinary, or punitive sanctions resulting from any action taken by any State Board of Accountancy, or other regulatory body.

K. Respondent shall also provide a detailed description of:

1. Respondent's professional history since the imposition of the Order, including

(a) all job titles, responsibilities and role at any employer;

(b) the identification and description of any work performed for entities regulated by the Commission, and the persons to whom Respondent reported for such work; and

2. Respondent's plans for any future appearance or practice before the Commission.

L. The Commission may conduct its own investigation to determine if the foregoing attestations are accurate.

M. If Respondent provides the documentation and attestations required in this Order and the Commission (1) discovers no contrary information therein, and (2) determines that Respondent truthfully and accurately attested to each of the items required in Respondent's affidavit, and the Commission discovers no information, including under Paragraph J, indicating that Respondent has violated a federal securities law, rule or regulation or rule of professional conduct applicable to Respondent since entry of the Order (other than by conduct underlying Respondent's original Rule 102(e) suspension), then, unless the Commission determines that reinstatement would not be in the public interest, the Commission shall reinstate the respondent for cause shown.

N. If Respondent is not able to provide the documentation and truthful and accurate attestations required in this Order or if the Commission has discovered contrary information, including under Paragraph J, the burden shall be on the Respondent to provide an explanation as to the facts and circumstances pertaining to the matter setting forth why Respondent believes cause for reinstatement nonetheless exists and reinstatement would not be contrary to the public interest. The Commission may then, in its discretion, reinstate the Respondent for cause shown.

O. If the Commission declines to reinstate Respondent pursuant to Paragraphs K and L, it may, at Respondent's request, hold a hearing to determine whether cause has been shown to permit Respondent to resume appearing and practicing before the Commission as an accountant.

P. SKR shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$96,384.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Q. Fisher shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$25,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

R. Kast shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$10,000.00 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay 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:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard

Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying SKR, Ellen Fisher, or David Kast as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Jason Burt, Associate Regional Director, Denver Regional Office, 1961 Stout St., Suite 1700, Denver, CO 80294.

Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Vanessa A. Countryman
Secretary