

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95958 / September 30, 2022

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4349 / September 30, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21192

In the Matter of

BrookWeiner, LLC;
James E. Schmidt, CPA; and
Sheldon Weiner, 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, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative proceedings be, and hereby are, instituted against BrookWeiner, LLC (“BrookWeiner”), James E. Schmidt, and Sheldon Weiner (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, 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 issued thereunder.

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

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) 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, Respondents consent to the entry of this 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, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds³ that:

A. SUMMARY

1. This proceeding arises out of the 2017 audit of State Funds – Enhanced Ultra-Short Duration Mutual Fund (“State Funds”) by audit firm BrookWeiner, audit engagement partner Schmidt, and engagement quality reviewer Weiner. Respondents engaged in improper professional conduct under Rule 102(e) by failing to conduct the audit in accordance with Public Company Accounting Oversight Board (“PCAOB”) auditing standards.

2. Specifically, Schmidt, the engagement partner, and BrookWeiner failed to (i) exercise due professional care and skepticism, (ii) adequately plan the audit to address significant risks or develop appropriate audit plans or procedures, (iii) adequately train and supervise the engagement team, (iv) prepare adequate audit documentation, (v) obtain sufficient appropriate audit evidence to support the audit opinion, (vi) sufficiently identify, consider, and assess risks of material misstatement and fraud, and (vii) inquire about and perform procedures to assess related parties, relationships, and related-party transactions.

3. The engagement quality review conducted by Weiner, who was required under PCAOB auditing standards to evaluate significant judgments made by the engagement team and assess the engagement team’s response to significant risks, was deficient because Weiner failed to (i) review and inquire about a number of key documents and issues, (ii) evaluate the engagement team’s assessment of, and audit responses to, significant risks, and (iii) evaluate the significant judgments made by the engagement team and the related conclusions reached. In addition, Weiner

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.

³ The findings herein are made pursuant to Respondents’ Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

lacked the competence to perform his engagement quality review because he had no formal training on, or experience auditing, the types of transactions at issue in the audit, and had not received training specific to his role as an engagement quality reviewer.

4. With respect to these failures by BrookWeiner, Schmidt, and Weiner, BrookWeiner's policies and procedures failed to comply with PCAOB quality control standards. BrookWeiner also failed to adhere to PCAOB quality control standards by failing to employ adequate monitoring procedures concerning the State Funds audits.

B. RESPONDENTS

5. BrookWeiner, LLC, was a limited liability company headquartered in Chicago, Illinois, and was a public accounting firm registered with the PCAOB from March 2009 until November 2020, when it withdrew its registration. In January 2022, BrookWeiner merged with another accounting firm that is not registered with the PCAOB.

6. James E. Schmidt, CPA, age 63, is a resident of Oak Forest, Illinois. He worked as an audit partner at BrookWeiner from 2014 through at least 2021. Schmidt was the engagement partner for the 2017 audit of State Funds and had final responsibility over the audit. He has no disciplinary history with the Commission. He has been licensed as a CPA with the state of Illinois since 1990.

7. Sheldon Weiner, CPA, age 76, is a resident of Boca Raton, Florida. He was a founding member of BrookWeiner and served as a partner from 1993 until 2018, when he retired. Weiner was the Engagement Quality Review Partner for the 2017 audit of State Funds. He has no disciplinary history with the Commission. He has been licensed as a CPA with the state of Illinois since 1976.

C. OTHER RELEVANT ENTITIES AND INDIVIDUALS

8. State Funds was a Nevada-based open-end mutual fund registered with the Commission from 2017 through early 2019. State Funds filed a registration statement on Form N-1A that became effective in 2017 and filed an application for deregistration due to liquidation in February 2019. Ofer Abarbanel served as Trustee, President, Chief Executive Officer, Chief Financial Officer, and Chief Compliance Officer of State Funds.

9. New York Alaska ETF Management LLC ("New York Alaska") is a Nevada limited liability company that was registered with the Commission as an investment adviser from 2015 to 2019, when it terminated its registration. New York Alaska was the investment adviser to State Funds. Abarbanel is the owner, Chief Executive Officer, Chief Financial Officer, and Chief Compliance Officer of New York Alaska.

10. Ofer Abarbanel resides in California. At all relevant times herein, Abarbanel exercised full control over State Funds and New York Alaska.

11. Victor Chilelli resides in Delaware. At Abarbanel’s request, Chilelli set up Institutional Syndication LLC (“IS” or the “Counterparty”) to act as a counterparty in purported reverse repurchase transactions with State Funds.

D. FACTS

Background

12. All versions of the State Funds prospectus filed with the Commission between 2016 and 2018 provided that the fund would invest in a combination of U.S. Treasury securities and repurchase and reverse repurchase agreements collateralized by U.S. Treasury securities or cash. Abarbanel used a portion of fund assets to invest in U.S. Treasury securities, but did not invest the remaining fund assets in repurchase or reverse repurchase transactions. Instead, Abarbanel routed State Funds’ assets to shell companies under his control, in what amounted to unsecured, related-party lending arrangements.

13. As part of a fraudulent scheme orchestrated by Abarbanel, State Funds misstated its 2017 financial statements by improperly accounting for its transactions with the Counterparty as investments in reverse repurchase agreements, instead of as unsecured loans receivable on its balance sheet. Because State Funds never transferred or received any securities to or from the Counterparty, these transactions were neither repurchase agreements nor reverse repurchase agreements, but instead unsecured loans. The associated reverse repurchase fee income (“Fee Income”) and disclosures were similarly misstated.

14. On June 21, 2021, the Commission filed an emergency civil injunctive action alleging fraud charges against Abarbanel, Chilelli, and a related entity in the United States District Court for the Southern District of New York, captioned *Securities and Exchange Commission v. Ofer Abarbanel, et al.*, Civil Action No. 21-cv-05429 (S.D.N.Y. June 21, 2021). On January 27, 2022, the Commission filed an amended complaint adding charges and additional allegations against Abarbanel and New York Alaska. *Id.* (S.D.N.Y. Jan. 27, 2022). On February 24, 2022, Chilelli consented to entry of a judgment against him. *Id.* (S.D.N.Y. Feb. 24, 2022). Another defendant also consented to a judgment against it, and several relief defendants were dismissed from the litigation, which is ongoing with respect to Abarbanel and New York Alaska. *Id.* (S.D.N.Y. Jan. 31, 2022; May 6, 2022). The litigation is currently stayed pending criminal proceedings against Abarbanel. *United States of America v. Ofer Abarbanel*, Criminal Action No. 21-cr-532 (S.D.N.Y.).

Respondents Failed to Conduct the 2017 Audit of State Funds in Accordance with PCAOB Standards

15. In November 2017, Abarbanel engaged BrookWeiner to audit State Funds’ financial statements for the year ended December 31, 2017.

16. The Respondents failed to detect State Funds’ incorrect accounting for its purported reverse repurchase agreements, overlooked numerous red flags throughout the audit, and improperly deferred to State Funds management. They failed to ask questions, seek documentation, or conduct

sufficient audit procedures to test the purported reverse repurchase agreements and related disclosures in State Funds' financial statements.

17. BrookWeiner failed to conduct the audit of State Funds in accordance with PCAOB standards, and Schmidt and Weiner were responsible for these failures. As discussed below, Respondents failed to demonstrate the necessary due professional care and professional skepticism in the course of the audit.

BrookWeiner and Schmidt Had No Training or Proficiency in Reverse Repurchase Agreements

18. When BrookWeiner accepted the State Funds audit engagement, no member of the engagement team had any formal training on reverse repurchase agreements or experience auditing them. Despite identifying these agreements as a significant risk in the audit, the engagement team sought neither formal training nor consultation with others experienced in these types of transactions. Shortly before BrookWeiner withdrew from the State Funds audit in approximately November 2018, Schmidt acknowledged BrookWeiner's "lack of expertise in this form of investments."

BrookWeiner and Schmidt Did Not Develop Appropriate Audit Plans and Procedures

19. In the initial planning stages of the audit, BrookWeiner and Schmidt identified the purported reverse repurchase agreements as posing a significant risk of material misstatement. Specifically, BrookWeiner and Schmidt identified a high risk of material misstatements by State Funds' management regarding rights and obligations, valuation or allocation, and presentation and disclosures relating to the alleged reverse repurchase agreements. They documented in work papers that it would be critical to understand "all the underlying relationships for income, valuation, and disclosures" with respect to the purported reverse repurchase agreements.

20. Despite identifying this significant risk, BrookWeiner and Schmidt failed to develop audit procedures to assess whether State Funds' financial statements were materially misstated or misleading with respect to the reverse repurchase agreements, and to address the significant risk they had assigned to those transactions.

21. BrookWeiner and Schmidt failed to identify Financial Accounting Standards Board ("FASB") Accounting Standard Codification ("ASC") 860 as the authoritative guidance on accounting for reverse repurchase agreements. Their planned procedures therefore did not require the audit team to assess whether State Funds' transactions qualified as a transfer under ASC 860.⁴

⁴ ASC 860 requires that transactions accounted for as reverse repurchase agreements entail the transfer of non-cash financial assets from the seller to the buyer. State Funds reported \$4,185,000 in reverse repurchase agreements on its financial statements ending December 31, 2017, but it never transferred any non-cash financial assets to the purported buyer.

22. BrookWeiner and Schmidt also failed in their planning work papers to identify reverse repurchase agreements as an area requiring specialized accounting. They failed to assign personnel with the requisite training and proficiency in reverse repurchase agreements.

23. BrookWeiner and Schmidt also demonstrated a lack of professional skepticism towards State Funds' management during the planning process. During the engagement team discussion, which included Schmidt and Weiner, the team documented that there seemed to be "little opportunity for error or fraud," and that "it would be very difficult" for management to perpetrate and conceal fraudulent reporting based on State Funds' internal controls. Instead of exercising professional skepticism in their examination of the reverse repurchase agreements, purported collateral, and related disclosures, BrookWeiner accepted representations by State Funds' management on these issues.

24. As described in further detail below, BrookWeiner and Schmidt also failed to develop and implement sufficient procedures to assess related parties, relationships, and related-party transactions.

BrookWeiner and Schmidt Did Not Understand the Nature of the Transactions

25. BrookWeiner and Schmidt failed to understand that State Funds was transacting in unsecured loans, not reverse repurchase agreements, contrary to its disclosures and statements to investors, and that it had therefore improperly characterized and accounted for those transactions in its financial statements. They failed to ask questions to demonstrate that they understood the transactions that were central to the financial statements they were auditing. They accepted management's representations that the transactions in question were reverse repurchase agreements, even when those representations were contradicted by the documentation they received.

26. BrookWeiner and Schmidt knew that State Funds, which deemed itself the seller-borrower in these transactions, transferred only cash to the Counterparty. They also knew that, despite references in the financial statements to U.S. Treasury securities as collateral, State Funds only received unsecured promissory notes back from the Counterparty. The U.S. Treasury securities allegedly involved in the transactions were never actually transferred.

27. Schmidt and Weiner incorrectly concluded that State Funds' transfer of cash to the counterparty in exchange for a purportedly secured debt agreement could be accounted for as a reverse repurchase agreement. They did not consult the FASB authoritative guidance on accounting for reverse repurchase agreements (ASC 860) before reaching this erroneous conclusion. State Funds' transfer of cash to the Counterparty in exchange for a promissory note constituted unsecured loans that BrookWeiner and Schmidt should have measured at fair value in accordance with ASC 946, *Investment Companies*.

BrookWeiner and Schmidt Failed to Evaluate and Test Key Aspects of the Transactions

28. BrookWeiner and Schmidt documented their understanding of the purported reverse repurchase agreements in a work paper titled "Reverse Repurchase Agreement Memo," which addressed, at a general level, the arrangement between State Funds and its Counterparty. The

memorandum stated that the purported reverse repurchase agreements were based on a standard Global Master Repurchase Agreement (“GMRA”), which incorporated the Annex II Form of Confirmation (“Annex II”), and the Private Placement Memorandums (“PPMs”), which included the purported secured debt agreements that State Funds received from the Counterparty.

29. BrookWeiner and Schmidt failed to perform an independent accounting analysis to determine whether the agreements qualified as reverse repurchase agreements under ASC 860. For example, there is no documented assessment by BrookWeiner and Schmidt of the standard GMRA, Annex II, or PPMs to determine the impact of their terms on the accounting for reverse repurchase agreements. Further, Schmidt did not assess whether State Funds’ transactions qualified as a true sale or a secured borrowing; whether State Funds, as seller/transferor, could transfer cash in lieu of securities to maintain effective control over the transferred financial asset; and whether a counterparty could pledge the securities purportedly sold.

30. BrookWeiner and Schmidt also performed inadequate testing of Fee Income. For the numerous daily Fee Income accrual calculations made during the year on each of the purported reverse repurchase agreements, they recalculated only one day of State Funds’ highly complex fee accrual, failing to document the rationale for doing so. State Funds’ calculation also contained an error that resulted in a higher amount of the “capital gain daily change” for a U.S. Treasury being allocated to the amounts for each purported reverse repurchase agreement. This mistake should have resulted in additional testing by Schmidt, but no additional testing was conducted. In addition, the two largest amounts used in the allocation calculations were not documented and are not traceable to any other work papers.

31. BrookWeiner and Schmidt did not perform any testing of State Funds’ disclosures in the notes to the financial statements, which were false and materially misleading. The work paper for evaluating the consistency of the disclosures indicated that the engagement team tied-out only two items in the notes. None of the disclosures relating to the purported reverse repurchase agreements were referenced back to the actual agreements or other work papers showing support for the disclosures.

32. By way of example, State Funds claimed that the purported reverse repurchase agreements provided the fund with a source of liquidity; this was inaccurate, as State Funds actually reduced its liquidity by sending cash to the Counterparty. However, BrookWeiner and Schmidt asked no questions and performed no testing relating to this misstatement during the audit.

BrookWeiner and Schmidt Failed to Assess the Purported Collateral

33. BrookWeiner and Schmidt received brokerage statements for accounts held in the name of State Funds’ counterparty, IS, at year-end, which purported to show collateral for the purported secured debt agreements that IS issued to State Funds as part of the reverse repurchase agreements. However, the brokerage statements reflected that the U.S. Treasury securities cited as collateral in State Funds’ financial statements were held on margin, in some cases in accounts with negative margin balances.

34. These statements should have indicated that the U.S. Treasuries were already serving as collateral for margin loans to IS, and State Funds had no legal interest in them. However, BrookWeiner and Schmidt failed to recognize that the purported collateral was being held in margin accounts of IS and did not inquire further into how securities held on margin in a counterparty's brokerage account could serve as collateral for loans by State Funds to the Counterparty. They failed to exercise professional skepticism or perform audit procedures to determine whether these securities could properly secure the debt obligation of the Counterparty to State Funds.

BrookWeiner and Schmidt Failed to Appropriately Audit Related-Party Transactions

35. BrookWeiner and Schmidt failed to inquire about and perform procedures to assess related parties, relationships, and related-party transactions. Although related party procedures were specified in a planning work paper, BrookWeiner and Schmidt did not make inquiries of State Funds management, employees, or the audit committee regarding possible related-party relationships or transactions.

36. Schmidt missed multiple red flags that indicated related-party transactions. BrookWeiner and Schmidt reviewed an October 2017 Private Placement Memorandum from IS that clearly identified Chilelli, General Manager of IS, as the former Deputy Compliance Manager for State Funds as of October 2017 and Portfolio Manager for New York Alaska as of November 2016.

37. Schmidt also failed to review multiple SEC filings by State Funds that designated Chilelli as a former officer, despite receiving a link to all of these filings from Abarbanel. The only SEC filing included in BrookWeiner's work papers was the most recent prospectus as of December 27, 2017, which did not include Chilelli because he departed State Funds in October 2017 to create IS.

38. In addition, BrookWeiner and Schmidt did not ask for any minutes from State Funds' board meetings until just three days before the audit report date. Two other work papers, including the Summary of Board Meeting Minutes, identified Chilelli as one of three "Trust Appointees" during 2017 for State Funds, with the other two appointees being Abarbanel and another officer of State Funds.

39. BrookWeiner and Schmidt knew that, at year-end, the Fee Income for State Funds came entirely from one counterparty, IS, a newly formed single-member LLC, and that State Funds' reported investment performance was vastly higher than its benchmark (5.85% vs. 0.17%). Nonetheless, BrookWeiner and Schmidt failed to inquire about whether IS was an undisclosed related party, and whether Abarbanel could exercise undue influence over it.

BrookWeiner and Schmidt Failed to Ensure Adequate Documentation of the Audits

40. As discussed above, with respect to the work paper used to test the calculation of Fee Income, BrookWeiner and Schmidt failed to document their rationale for recalculating only one day of the highly complex fee accrual, and they did not document the source and explanation for the two largest amounts used in the allocation calculations.

41. In addition, for multiple audit programs, none of the sign-offs on BrookWeiner’s audit procedures reflected the date on which the procedure was completed, even though a column in the audit program specifically designated “Performed by and date.” For some of these procedures, it is therefore not possible to determine the date on which the procedure was performed.

BrookWeiner and Schmidt Failed to Adequately Supervise the Audit

42. BrookWeiner and Schmidt, as the engagement partner, failed to adequately supervise the 2017 audit of State Funds for compliance with PCAOB standards. As described above, they failed to provide reasonable assurance that BrookWeiner personnel had the necessary training and proficiency to perform the audit. Schmidt also inadequately reviewed the work performed by the staff auditor and failed to verify that it was complete and properly documented in the work papers. He improperly evaluated whether the results of the audit work supported the conclusions reached and whether the audit procedures were sufficient to provide reasonable assurance that State Funds’ transactions were reported and disclosed in the financial statements in accordance with U.S. Generally Accepted Accounting Principles (“GAAP”).

43. Schmidt failed to verify whether that the purported reverse repurchase agreements complied with ASC 860, which they did not. Schmidt also did not verify that the disclosures in the notes to State Funds’ financial statements were assessed for accuracy, and did not identify errors in the testing of Fee Income. Nor did he notice that inquiries were not made of management, others within the company, and the audit committee of State Funds’ board regarding related party relationships and transactions and missed clear indications in several documents that related-party transactions had occurred.

Weiner’s Engagement Quality Review Was Deficient

44. As the engagement quality reviewer for BrookWeiner, Weiner failed to demonstrate due professional care. PCAOB standards require an EQR to possess the level of knowledge and competence related to accounting, auditing, and financial reporting required to serve as the engagement partner. AS 1220.05, *Engagement Quality Review*. Among other requirements, the EQR should evaluate significant judgments, the assessment of and responses to significant risks, and support for the conclusions reached.

45. Like BrookWeiner and Schmidt, Weiner had no training in or experience auditing reverse repurchase agreements, and had no training specific to his role as an engagement quality reviewer.

46. Weiner did not participate in the audit planning process beyond an initial discussion about the engagement, and he did not evaluate the significant judgments and related conclusions made by the engagement team. Weiner did not consider State Funds’ transactions as requiring special attention or presenting unusual risk, did not review the engagement team’s risk assessment work paper that identified the purported reverse repurchase agreements as a significant risk, and did not recall reviewing documentation to evaluate whether the engagement team appropriately responded to risks.

47. Weiner failed to review and inquire about numerous key documents and issues, including all of the reverse repurchase work papers and whether the team performed an accounting analysis to determine whether the purported reverse repurchase agreements were accounted for and disclosed correctly.

Violations

48. 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 accountant.

49. 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.

50. As set forth in more detail below, Respondents engaged in repeated violations of PCAOB standards including in areas that, for reasons stated in ¶¶ 15–47 above, indicated a lack of competence, as well as at least a single instance of highly unreasonable conduct that, for reasons stated in ¶¶ 28–39 and 44–47 above, warranted heightened scrutiny.

Failure to Exercise Due Professional Care (AS 1015)

51. PCAOB standards require due professional care in the planning and performance of an audit. AS 1015.01, *Due Professional Care in the Performance of Work*. Due professional care concerns what the independent auditor does and how well he or she does it. AS 1015.04. Auditors must exercise professional skepticism, which is “an attitude that includes a questioning mind and a critical assessment of audit evidence” and “should not be satisfied with less than persuasive evidence because of a belief that management is honest.” AS 1015.07, .09.

52. As a result of BrookWeiner and Schmidt’s conduct described above, each failed to exercise due professional care in the 2017 audit of State Funds.

Training and Proficiency of the Independent Auditor (AS 1010)

53. PCAOB standards require that audits be performed by persons having adequate technical training and proficiency, with training that is adequate in technical scope. AS 1010.01, .03. Through training and experience, auditors should have the ability “to consider objectively and to exercise independent judgment with respect to the information recorded in books of account or otherwise disclosed by [their] audit[s].” AS 1010.05.

54. As a result of BrookWeiner and Schmidt’s conduct described above, each failed to provide reasonable assurance that the 2017 State Funds audit was conducted by auditors with adequate technical training and proficiency.

Failure to Engage in Adequate Audit Planning (AS 2101)

55. PCAOB standards establish the requirements regarding planning an audit. AS 2101, *Audit Planning*. “Planning the audit includes establishing the overall audit strategy for the engagement and developing an audit plan, which includes, in particular, planned risk assessment procedures and planned responses to the risks of material misstatement.” AS 2101.05. When developing the audit strategy and plan, the auditor should evaluate whether certain matters are important to the company’s financial statements, including matters relating to the company’s business, organization, operating characteristics, and risks. AS 2101.07. The auditor should establish an overall strategy that sets the scope, timing, and direction of the audit and guides the development of the audit plan. AS 2101.08.

56. As a result of BrookWeiner and Schmidt’s conduct described above, each failed to engage in adequate audit planning in the 2017 audit of State Funds.

Failure to Identify and Assess Risks of Material Misstatement (AS 2110)

57. PCAOB standards require that auditors obtain an understanding of the company and its environment to understand the events, conditions, and company activities that might reasonably be expected to have a significant effect on the risks of material misstatement, which includes the company’s selection and application of accounting principles, including related disclosures. AS 2110.07, *Identifying and Assessing Risks of Material Misstatement*. Obtaining an understanding of the nature of the company includes understanding the company’s organizational structure and management personnel and key customer relationships. AS 2110.10.

58. As a result of BrookWeiner and Schmidt’s conduct described above, each failed to identify and assess the risks of material misstatements in the 2017 audit of State Funds.

Failure to Have Adequate Responses to the Risks of Material Misstatement (AS 2301)

59. PCAOB standards establish requirements regarding designing and implementing appropriate responses to the risks of material misstatement. AS 2301.01, *The Auditor’s Responses to the Risks of Material Misstatement*. In responding to the assessed risks of material misstatement, the auditor should evaluate the company’s selection and application of significant accounting principles. AS 2301.05.d. Once an auditor has assessed risks of a material misstatement, particularly fraud risks, they should exercise “professional skepticism in gathering and evaluating audit evidence,” which may include “obtaining sufficient appropriate evidence to corroborate management explanations or representations concerning important matters.” AS 2301.07.

60. As a result of BrookWeiner and Schmidt’s conduct described above, each failed to have adequate responses to the risks of material misstatements in the 2017 audit of State Funds.

Failure to Have Adequate Consideration of Fraud in a Financial Statement Audit (AS 2401)

61. PCOAB standards set forth that “because of the characteristics of fraud, the auditor’s exercise of professional skepticism is important when considering the fraud risks. The auditor should conduct the engagement with the mindset that recognizes the possibility that a material misstatement due to fraud could be present, regardless of any past experience with the entity and regardless of the auditor’s belief about management’s honesty and integrity. Furthermore, professional skepticism requires an ongoing questioning of whether the information and evidence obtained suggests that a material misstatement due to fraud has occurred.” AS 2401.13, *Consideration of Fraud in a Financial Statement Audit*.

62. As a result of BrookWeiner and Schmidt’s conduct described above, each failed to have adequate consideration of fraud in the 2017 audit of State Funds.

Failure to Identify Related Parties (AS 2410)

63. PCAOB standards include audit procedures that should be considered for determining the existence of related parties and for identifying transactions with related parties. AS 2410.04–.07, *Related Parties*. Auditors must obtain sufficient appropriate audit evidence to determine whether related parties and relationships and transactions with related parties have been properly identified, accounted for, and disclosed. AS 2410.02. Auditors should inquire of management and others within the company regarding, among other things, the names of the company’s related parties during the period under audit, the nature of any relationships, and transactions entered into with its related parties during the period under audit and the terms and business purposes (or lack thereof) of such transactions. AS 2410.05–.06. Auditors should also inquire of the audit committee, or its chair, regarding the audit committee’s understanding of the company’s relationships and transactions with related parties that are significant to the company. AS 2410.07. The PCAOB standards require auditors to evaluate whether the company has properly identified related parties, relationships, and/or transactions by performing procedures to test the accuracy and completeness of such identifications, taking into account the information gathered during the audit. AS 2410.14.

64. As a result of BrookWeiner and Schmidt’s conduct described above, each failed to obtain sufficient and appropriate audit evidence pertaining to related parties and transactions with related parties in the 2017 audit of State Funds.

Failure to Obtain Sufficient Appropriate Audit Evidence (AS 1105)

65. PCAOB standards define audit evidence as “all the information, whether obtained from audit procedures or other sources, that is used by the auditor in arriving at the conclusions on which the auditor’s opinion is based.” AS 1105.02, *Audit Evidence*. This evidence consists of information that supports and corroborates management’s assertions about financial statements or internal control over financial reporting and information that contradicts such assertions. *Id.* PCAOB standards require an auditor to “plan and perform audit procedures to obtain sufficient appropriate audit evidence to provide a reasonable basis for his or her opinion.” AS 1105.04. To be

appropriate, audit evidence must be both relevant and reliable. AS 1105.06. An auditor should evaluate whether the information produced by the company is sufficient and appropriate by performing procedures to test its accuracy and completeness and should resolve inconsistencies in information between sources. AS 1105.10, .29.

66. As a result of BrookWeiner and Schmidt's conduct described above, each failed to obtain sufficient and appropriate audit evidence to support the conclusions in BrookWeiner's audit opinion in the 2017 audit of State Funds.

Failure to Adequately Supervise the Audit Engagement (AS 1201)

67. Under PCAOB standards, it is the responsibility of the engagement partner to provide proper supervision of the work of the engagement team and of compliance with PCAOB auditing standards. AS 1201.03, *Supervision of the Audit Engagement*. Supervisory activities include reviewing work of the engagement team to evaluate whether: (a) work was performed and documented; (b) objectives of the procedures were achieved; and (c) the results of the work support the conclusion reached. AS 1201.05.c. To determine the extent of supervision necessary for an engagement team, the engagement partner should take into account: (a) the nature of the company, including size and complexity; (b) the nature of the assigned work for each engagement team member; (c) the risks of material misstatement; and (d) the knowledge, skill, and ability of each engagement team member. AS 1201.06.

68. As a result of BrookWeiner and Schmidt's conduct described above, each failed to adequately supervise the work of the engagement team for the 2017 audit of State Funds.

Failure to Prepare Adequate Audit Documentation (AS 1215)

69. PCAOB standards require an auditor to document the procedures performed, evidence obtained, and conclusions reached with respect to relevant financial statement assertions in conducting an audit or interim review. AS 1215, *Audit Documentation*. The documentation should (a) demonstrate that the engagement complied with PCAOB standards, (b) support the basis for the auditor's conclusions concerning every relevant financial statement assertion, and (c) demonstrate that the underlying accounting records agreed or reconciled with the financial statements. AS 1215.05. Further, audit documentation must clearly demonstrate that the work was in fact performed and "must contain sufficient information to enable an experienced auditor, having no previous connection with the engagement (a) to understand the nature, timing, extent, and results of the procedures performed, evidence obtained, and conclusions reached, and (b) to determine who performed the work and the date such work was completed as well as the person who reviewed the work and the date of such review." AS 1215.06.

70. As a result of BrookWeiner and Schmidt's conduct described above, each failed to prepare adequate audit documentation in the 2017 audit of State Funds.

Failure to Provide Adequate Engagement Quality Review (AS 1220)

71. PCAOB standards require an EQR to possess the level of knowledge and competence related to accounting, auditing, and financial reporting required to serve as the engagement partner. AS 1220.05, *Engagement Quality Review*. To evaluate significant judgments and related conclusions, an EQR should hold discussions with the engagement partner and engagement team and review documentation. AS 1220.09. PCAOB standards require that an EQR evaluate the significant judgments that relate to engagement planning and risks identified with the firm's client acceptance process. AS 1220.10. The EQR should also evaluate the engagement team's assessment of, and audit responses to, significant risks identified by the engagement team, including fraud risks, and other significant issues identified by the EQR. *Id.* Review of documentation should specifically include the engagement completion document. *Id.* In an audit, the EQR should evaluate whether the engagement documentation reviewed indicates that the engagement team responded appropriately to significant risks, and supports the conclusions reached. AS 1220.11. An EQR may provide concurring approval of issuance only if, after performing the review required by AS 1220 with due professional care, he or she is not aware of a significant audit deficiency, such as a failure by the engagement team to obtain sufficient appropriate audit evidence in accordance with the standards of the PCAOB. AS 1220.12.

72. As a result of BrookWeiner and Weiner's conduct described above, each failed to adequately conduct the engagement quality review in the 2017 audit of State Funds.

Failure to Adhere to the Quality Control Standards (QC 20, QC 30, and QC 40)

73. PCAOB Quality Control Section 20, *System of Quality Control for a CPA Firm's Accounting and Auditing Practice* ("QC 20"), states, "[p]olicies and procedures should be established to provide the firm with reasonable assurance that the work performed by engagement personnel meets applicable professional standards, regulatory requirements, and the firm's standards of quality." QC 20.17. QC 20 also states that a firm should communicate these policies and procedures to its personnel in a manner that provides reasonable assurance that these policies and procedures are understood and complied with. QC 20.23.

74. In addition, PCAOB Quality Control Section 30, *Monitoring a CPA Firm's Accounting and Auditing Practice* ("QC 30"), states, "[m]onitoring procedures taken as a whole should enable the firm to obtain reasonable assurance that its system of quality control is effective." QC 30.03.

75. Finally, PCAOB Quality Control Section 40, *The Personnel Management Element of a Firm's System of Quality Control- Competencies Required by a Practitioner-in-Charge of an Attest Engagement* ("QC 40"), states that a firm's policies and procedures should be designed to provide a firm with reasonable assurance that "work is assigned to personnel having the degree of technical training and proficiency required in the circumstances," and that "such individuals possess the kinds of competencies that are appropriate given the circumstances of individual client engagements." QC 40.02–03.

76. As a result of BrookWeiner's conduct described above, BrookWeiner's policies and procedures with respect to (i) exercising due professional care; (ii) adequately supervising, training, and ensuring the proficiency of personnel involved in the audit; (iii) adequately planning the audit; (iv) identifying, assessing, and responding to risks of material misstatement and fraud; (v) obtaining sufficient appropriate audit evidence, including with respect to related parties; (vi) preparing adequate audit documentation; and (vii) providing an adequate engagement quality review, failed to comply with QC Sections 20, 30, and 40.

Findings

77. Based on the foregoing, the Commission finds that BrookWeiner, Schmidt, and Weiner 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.

Undertakings

BrookWeiner, Schmidt, and Weiner have undertaken to complete the following actions:

78. BrookWeiner, Schmidt, and Weiner shall cooperate fully with the Commission with respect to this proceeding and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party. BrookWeiner's cooperation shall include, but is not limited to, using reasonable efforts to secure the attendance and truthful statements or testimony of any current partner, agent, or employee of BrookWeiner at such times and places as the staff requests upon reasonable notice. In addition, BrookWeiner's, Schmidt's, and Weiner's cooperation shall include, but is not limited to, (i) promptly and fully cooperating by taking any steps necessary to render documents or records produced by BrookWeiner, Schmidt, and Weiner admissible in any U.S. court proceedings, which may include, without limitation, providing business-records certifications requested by the Commission; (ii) accepting service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appointing Paul Gamboa, Esq., Partner at Gordon & Rees Scully Mansukhani, One North Franklin Street, Suite 800, Chicago, IL 60606, as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waiving the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses BrookWeiner's, Schmidt's, and Weiner's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consenting to personal jurisdiction over BrookWeiner, Schmidt, and Weiner in any United States District Court for purposes of enforcing any such subpoena.

79. In determining whether to accept the Offers, the Commission has considered this undertaking.

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. BrookWeiner, James E. Schmidt, and Sheldon Weiner are hereby denied the privilege of appearing or practicing before the Commission as an accountant.

B. After two years from the date of the Order, James E. Schmidt may request that the Commission consider his reinstatement by submitting an application to the attention of the Office of the Chief Accountant.

C. After one year from the date of the Order, Sheldon Weiner may request that the Commission consider his reinstatement by submitting an application to the attention of the Office of the Chief Accountant.

D. 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, Respondents Schmidt and/or Weiner shall submit a written statement attesting to an undertaking to have work by Respondents Schmidt and/or Weiner reviewed by the independent audit committee of any public company for which Respondents Schmidt and/or Weiner work or in some other manner acceptable to the Commission, as long as Respondents Schmidt and/or Weiner practice 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.

E. 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, Respondents Schmidt and/or Weiner shall submit a statement prepared by the audit committee(s) with which Respondents Schmidt and/or Weiner will be associated, including the following information:

1. A summary of the responsibilities and duties of the specific audit committee(s) with which Respondents Schmidt and/or Weiner will be associated;
2. A description of Respondents Schmidt's and/or Weiner's role on the specific audit committee(s) with which Respondents Schmidt and/or Weiner 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 Respondents Schmidt's and/or Weiner's service on the specific audit committee; and
5. A statement noting whether Respondents Schmidt and/or Weiner will be able to act unilaterally on behalf of the Audit Committee as a whole.

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

1. A statement from the public accounting firm (the "Firm") with which Respondents Schmidt and/or Weiner are 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 Respondents Schmidt and/or Weiner are 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 Respondents Schmidt and/or Weiner will not receive appropriate supervision; and
3. A statement from Respondents Schmidt and/or Weiner indicating that the PCAOB has taken no disciplinary actions against Respondents Schmidt and/or Weiner since seven (7) years prior to the date of the Order other than for the conduct that was the basis for the Order.

G. In support of any application for reinstatement, Respondents Schmidt and/or Weiner shall provide documentation showing that Respondents Schmidt and/or Weiner are currently licensed as certified public accountants ("CPA") and that Respondents Schmidt and/or Weiner have resolved all other disciplinary issues with any applicable state boards of accountancy. If Respondents Schmidt and/or Weiner are not currently licensed as CPAs, Respondents Schmidt and/or Weiner shall provide documentation showing that their licensure is dependent upon reinstatement by the Commission.

H. In support of any application for reinstatement, Respondents Schmidt and/or Weiner shall also submit a signed affidavit truthfully stating, under penalty of perjury:

1. That Respondents Schmidt and/or Weiner have 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 Respondents Schmidt and/or Weiner undertake 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 Respondents Schmidt and/or Weiner, since the entry of the Order, have 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 Respondents Schmidt and/or Weiner, since the entry of the Order:
 - (a) have 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) have not been found by the Commission or a court of the United States to have committed a violation of the federal securities laws, and have 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) have 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) have 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) have 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 Respondents Schmidt's and/or Weiner'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 Respondents Schmidt and/or Weiner have 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.

I. Respondents Schmidt and/or Weiner shall also provide a detailed description of:

1. Respondents Schmidt's and/or Weiner'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 Respondents Schmidt and/or Weiner reported for such work; and

2. Respondents Schmidt's and/or Weiner's plans for any future appearance or practice before the Commission.

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

K. If Respondents Schmidt and/or Weiner provide the documentation and attestations required in this Order and the Commission (1) discovers no contrary information therein, and (2) determines that Respondents Schmidt and/or Weiner truthfully and accurately attested to each of the items required in Respondent Schmidt's and/or Weiner's affidavit, and the Commission discovers no information, including under Paragraph J, indicating that Respondents Schmidt and/or Weiner have violated a federal securities law, rule or regulation or rule of professional conduct applicable to Respondents Schmidt and/or Weiner since entry of the Order (other than by conduct underlying Respondents Schmidt's and/or Weiner'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.

L. If Respondents Schmidt and/or Weiner are 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 Respondents Schmidt and/or Weiner to provide an explanation as to the facts and circumstances pertaining to the matter setting forth why Respondents Schmidt and/or Weiner believe cause for reinstatement nonetheless

exists and reinstatement would not be contrary to the public interest. The Commission may then, in its discretion, reinstate Respondents Schmidt and/or Weiner for cause shown.

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

By the Commission.

Vanessa A. Countryman
Secretary