UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95959 / September 30, 2022

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4350 / September 30, 2022

ADMINISTRATIVE PROCEEDING
File No. 3-21193

In the Matter of **Berkower LLC;** **Michael G. Mullen, CPA; and** **Maurice Berkower, 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 Berkower LLC ("Berkower"), Michael G. Mullen, and Maurice Berkower (collectively, "Respondents") pursuant to Section 4C[1] of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.[2]

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[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 finds[3] that:

A. SUMMARY

1. This proceeding arises out of the 2018 audit of State Funds – Enhanced Ultra-Short Duration Mutual Fund ("State Funds") by audit firm Berkower, audit engagement partner Mullen, and engagement quality reviewer Maurice Berkower. 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, Mullen, the engagement partner, and Berkower did not (i) exercise due professional care and skepticism, (ii) adequately plan the audit to address potential risks or develop appropriate audit plans or procedures, (iii) obtain sufficient appropriate audit evidence to support the audit opinion, and (iv) inquire about and perform procedures to assess related parties, relationships, and related-party transactions. Mullen, as the engagement partner, also did not adequately supervise the engagement team.

3. The engagement quality review conducted by Maurice Berkower, 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 he did not (i) review and inquire about a number of key documents and issues, (ii) evaluate significant judgments

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> 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.

that relate to engagement planning, including related financial reporting issues and risks, and (iii) evaluate the engagement team's assessment of, and audit responses to, significant risks.

4. Berkower also did not adhere to PCAOB quality control standards.

B. RESPONDENTS

5. Berkower LLC, a limited liability company headquartered in Iselin, New Jersey, is a public accounting firm registered with the PCAOB.

6. Michael G. Mullen, CPA, age 64, is a resident of Cranford, New Jersey. He has worked at Berkower since 2014. Mullen was the engagement partner for the 2018 audit of State Funds and had final responsibility over the audit. He has been licensed as a CPA with the states of New Jersey since 1984, New York since 1997, and Pennsylvania since 2017.

7. Maurice Berkower, CPA, age 70, is a resident of Staten Island, New York. He is the Managing Principal and founder of the firm since approximately 2012. Maurice Berkower was the Engagement Quality Review Partner for the 2018 audit of State Funds. He has been licensed as a CPA with the states of New York since 1975 and New Jersey since 1989.

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 was 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") and North American Liquidity Resources LLC ("NALR") (collectively, the "Counterparties") to act as counterparties 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 related-party lending arrangements.

13. As part of a fraudulent scheme orchestrated by Abarbanel, State Funds misstated its 2018 financial statements by improperly accounting for its transactions with the Counterparties as investments in reverse repurchase agreements, instead of as loans receivable on its balance sheet. Because State Funds never transferred securities to the Counterparties, and received only promissory agreements back from the Counterparties, these transactions were neither repurchase agreements nor reverse repurchase agreements, but instead 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 by 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 Did Not Conduct the 2018 Audit of State Funds in Accordance with PCAOB Standards

15. In December 2018, Abarbanel engaged Berkower to audit State Funds' financial statements for the year ended December 31, 2018.

16. The Respondents did not 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 did not ask questions, seek or prepare adequate documentation, or conduct sufficient audit procedures to test the purported reverse repurchase agreements and related disclosures in State Funds' financial statements.

17. Berkower did not conduct the audit of State Funds in accordance with PCAOB standards, and Mullen and Maurice Berkower were responsible for these failures. As discussed below, Respondents did not demonstrate the necessary due professional care and professional skepticism in the course of the audit.

Berkower and Mullen Did Not Identify Significant Risks or Develop Appropriate Audit Plans and Procedures

18. In the initial planning stages of the audit, Berkower and Mullen did not identify the reverse repurchase agreement transactions as a significant risk in the audit. The purported reverse repurchase agreements were the most complex transactions entered into by State Funds, and accounted for 30% of State Funds' assets and 67% of its income, but were not identified by the Berkower team as a significant risk in the audit plan.

19. As a result, Berkower and Mullen did not develop audit procedures to assess whether State Funds' financial statements were materially misstated or misleading with respect to the reverse repurchase agreements.

20. Berkower and Mullen did not assess the Fee Income as a significant risk. The related work paper stated that Fee Income was a "moderate" risk and concluded: "The transaction class is not deemed to have complex accounting issues and is not subject to significant estimates or judgment." The Fee Income was a highly complex calculation that should have been flagged as a significant risk.

21. The failure to identify the reverse repurchase agreements and the Fee Income as significant risks, and to develop an audit plan that accounted for these risks, resulted in insufficient audit procedures.

22. Berkower and Mullen did not identify Financial Accounting Standards Board ("FASB") Accounting Standard Codification ("ASC") 860 as the authoritative guidance on accounting for reverse repurchase agreements. Their planned procedures were inadequate because they did not require the audit team to assess whether State Funds' transactions qualified as a transfer under ASC 860.[4]

23. Berkower and Mullen also failed in their planning work papers to identify reverse repurchase agreements as an area requiring specialized accounting.

24. Furthermore, Berkower and Mullen did not perform certain audit steps during the planning of the audit. Specifically, there were no audit steps included in the planning work papers

[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 $27,205,000 in reverse repurchase agreements on its financial statements ending December 31, 2018, but it never transferred any non-cash financial assets to the purported buyer.

to review the fund's SEC filings nor to inquire from the audit committee or other employees about related party relationships and transactions.

Berkower and Mullen Did Not Understand the Nature of the Transactions

25. Berkower and Mullen did not identify that State Funds was transacting in what amounted to loans, not reverse repurchase agreements, contrary to the disclosures and statements State Funds made to investors, and that State Funds had improperly characterized and accounted for those transactions in its financial statements. In violation of their duty to exercise due professional care and professional skepticism, and to identify, assess, and respond to the risks of material misstatement, they did not ask questions to demonstrate that they understood the transactions that were material 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. Berkower and Mullen knew or should have known that State Funds, which deemed itself the seller-borrower in these transactions, transferred only cash to the Counterparties. In addition, they should have known that despite references in the financial statements to U.S. Treasury securities as collateral, State Funds only received promissory notes back from the Counterparties. The U.S. Treasury securities allegedly involved in the transactions were never actually transferred.

27. For example, Mullen received an email from Abarbanel in December 2018 that stated that, in the reverse repurchase agreements, cash is transferred to the counterparties instead of U.S. Treasuries "in order to save T-Bill purchase & transfer costs." On March 11, 2019, the engagement team sent NALR and IS's managers emails that contained the reverse repurchase agreement confirmations for various purported reverse repurchase agreements with State Funds. The confirmations specifically stated that the U.S. Treasuries were "to be cleared as Securities transfer or a Cash transfer tied to the market value at the respective reverse repo date of US Treasury bills." The auditors did not question why a cash transfer would be included as an option.

28. Berkower and Mullen incorrectly concluded that State Funds' transfer of cash to the Counterparties 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 Counterparties in exchange for a promissory note constituted loans that Berkower and Mullen should have measured at fair value in accordance with ASC 946, *Investment Companies*.

Berkower and Mullen Did Not Evaluate and Test Key Aspects of the Transactions

29. The engagement team documented its understanding of the purported reverse repurchase agreements in a work paper titled "Reverse Repurchase Agreements Process." The two-paragraph work paper stated that State Funds sold securities to the counterparties and received bonds in return, but in reality, State Funds was sending cash and only receiving promissory notes in

return. The work paper, however, did not identify and assess the key transaction documents that comprised the reverse repurchase agreements.

30. The work paper also stated that in order for New York Alaska "to ensure the credit of those bonds, they have obtained a lien on the assets of those entities and those entities deposit US Treasuries into accounts in their own name at reputable brokers." As discussed in paragraphs 35–36 below, however, any lien that New York Alaska purportedly held on the Counterparties' assets was unenforceable. The Counterparties deposited the U.S. Treasuries purportedly pledged to New York Alaska into margin accounts. Some of those accounts had margin deficits at year end, meaning the broker lent money to the Counterparties, and the Counterparties pledged their assets as collateral for the loans. Even those accounts without margin deficits were in the complete control of the Counterparties, who could have withdrawn cash from the accounts at any time, at their sole discretion, leaving the Treasury securities leveraged and pledged as collateral for the resulting margin loans.

31. Most importantly, Berkower and Mullen did not 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 Berkower and Mullen of the transaction documents to determine the impact of their terms on the accounting for reverse repurchase agreements. Further, the engagement team 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.

32. Berkower and Mullen also performed inadequate testing of Fee Income. To test the fees received from the purported reverse repurchase agreements, the engagement team created a work paper meant to recalculate the total interest income from reverse repurchase agreements and U.S. Treasuries, and tie the number back to the financial statements, but the document simply listed values from the income statement, and it contained no actual calculations. The engagement team never performed a calculation to determine whether any of these figures were calculated correctly by management.

33. Berkower and Mullen did not perform any testing of State Funds' disclosures in the notes to the financial statements, which were false and materially misleading. They did not compare the disclosures relating to the purported reverse repurchase agreements to the actual agreements or other work papers.

34. By way of example, State Funds claimed in the notes to the financial statements that the purported reverse repurchase agreements provided the fund with a source of liquidity. Had State Funds engaged in reverse repurchase agreements in a manner consistent with its disclosures, selling U.S. Treasury securities in exchange for cash, this may have been true. But because State Funds actually sent cash to the Counterparties and received only promissory notes in return, the opposite was actually true; State Funds reduced its liquidity through these lending transactions. However, Berkower and Mullen asked no questions and performed no testing relating to this misstatement during the audit.

Berkower and Mullen Did Not Assess the Purported Collateral

35. Berkower and Mullen received brokerage statements for accounts held in the name of State Funds' counterparties, which purported to show collateral for the debt agreements that the Counterparties 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 in margin accounts, some of which had negative margin balances – meaning that the securities were pledged as collateral to the brokerage firms holding the accounts.

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

Berkower and Mullen Did Not Appropriately Audit Related-Party Transactions

37. Berkower and Mullen did not sufficiently inquire about and perform procedures to assess related parties, relationships, and related-party transactions. They did not discover that State Funds and its Counterparties were related parties because they were under the common control of Abarbanel. Although they identified related parties as a possible risk, Berkower and Mullen only performed a cursory review to identify possible party relationships or transactions. Although the engagement team did ask Chilelli and Abarbanel about related parties, both lied to them, denying the related-party relationship between State Funds and its Counterparties. Berkower and Mullen did not make inquiries of the other State Funds officer, the audit committee, or service providers such as the fund administrator regarding possible related-party relationships or transactions or to take any other steps to test the accuracy and completeness of Chilelli and Abarbanel's representations.

38. Berkower and Mullen missed multiple red flags that indicated likely related-party transactions. For example, they received a 2018 Private Placement Memorandum from IS that identified Chilelli, General Manager of IS, as the former Deputy Compliance Manager for State Funds (through October 2017) and Portfolio Manager for New York Alaska (through November 2016). It was apparent from documents collected through the audit that Chilelli founded IS and entered into agreements with State Funds just weeks after leaving his Deputy Compliance Manager position at State Funds, but Berkower and Mullen did not probe the relationship between IS and State Funds or whether the transactions between them were really at arms-length.

39. In addition, Berkower and Mullen did not consider that all of the IS Fee Income for the 2018 fiscal year, which was approximately 57% of Fee Income reported by State Funds, was computed using pricing rates from documents based on a November 2, 2017 agreement with IS, which became effective very soon after Chilelli left State Funds and founded IS. This fact should have also caused Berkower and Mullen to ask more questions about the relationship between IS and

State Funds and the nature of the transactions between them. Berkower and Mullen also did not review SEC filings by State Funds that designated Chilelli as a former officer.

40. Berkower and Mullen knew that, at year-end, the Fee Income for State Funds came entirely from the two Counterparties, both single-member LLCs formed just days before entering into the transactions with State Funds. Neither of these LLCs met the requirements for counterparties that State Funds had described in its prospectus. They also knew that State Funds' reported investment performance was vastly higher than its benchmark (5.85% vs. 0.17%). Nonetheless, Berkower and Mullen did not exercise due care and professional skepticism when they disregarded red flags and did not sufficiently inquire about whether the Counterparties were undisclosed related parties, and whether Abarbanel could exercise undue influence over them.

Berkower and Mullen Did Not Adequately Supervise the Audit

41. Berkower and Mullen, as the engagement partner, did not adequately supervise the 2018 audit of State Funds for compliance with PCAOB standards. As described above, Mullen inadequately reviewed the work performed by the engagement team and did not determine 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").

42. Mullen did not verify whether the purported reverse repurchase agreements complied with ASC 860, which they did not. Mullen also did not verify that the disclosures in the notes to State Funds' financial statements that pertained to the purported reverse repurchase agreements were assessed for accuracy, and did not notice that there was no actual testing of Fee Income. Nor did he notice that inquiries were not made of other employees or the audit committee of State Funds' board regarding related party relationships and transactions. Mullen did not identify that the engagement team missed clear indications that related-party transactions may have occurred, and did not verify that corrective action, in the form of appropriate inquiry, was taken during the audit. Finally, Mullen did not notice that the U.S. Treasuries that purportedly secured the debt agreements were held in margin accounts, and he did not verify that copies or abstracts of the transaction documents, both significant agreements, were included as audit documentation.

Maurice Berkower's Engagement Quality Review Was Deficient

43. As the engagement quality reviewer ("EQR") for Berkower, Maurice Berkower did not 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.

44. Maurice Berkower did not sufficiently evaluate the significant judgments and related conclusions made by the engagement team. For example, he did not question the engagement team's and Mullen's assessment that the reverse repurchase agreements or Fee Income were not significant risks, despite numerous factors suggesting otherwise.

45. In December 2018, Maurice Berkower received an email from Abarbanel providing an example of how a purported reverse repurchase transaction worked. In the email, Abarbanel explained that the fund transferred cash, rather than securities, "to save T-Bill purchase & transfer costs." Maurice Berkower forwarded the email to members of the engagement team in December 2018 and again in March 2019. He did not question this information or assess whether it contradicted information in the fund's disclosures and in the internal memoranda prepared by the team.

46. Maurice Berkower also did not sufficiently review and inquire about a number of 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

47. 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.

48. 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.

49. As set forth in more detail below, Respondents engaged in repeated violations of PCAOB standards including in areas that, for reasons stated in paragraphs 15–46 above, indicated a lack of competence, as well as at least a single instance of highly unreasonable conduct that, for reasons stated in paragraphs 29–40 and 43–46 above, warranted heightened scrutiny.

Failure to Exercise Due Professional Care (AS 1015)

50. 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.

51. As a result of Berkower and Mullen's conduct described above, each failed to exercise due professional care in the 2018 audit of State Funds.

Failure to Engage in Adequate Audit Planning (AS 2101)

52. 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.

53. As a result of Berkower and Mullen's conduct described above, each failed to engage in adequate audit planning in the 2018 audit of State Funds.

Failure to Identify Related Parties (AS 2410)

54. 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.

55. As a result of Berkower and Mullen's conduct described above, each failed to obtain sufficient and appropriate audit evidence pertaining to related parties and transactions with related parties in the 2018 audit of State Funds.

Failure to Obtain Sufficient Appropriate Audit Evidence (AS 1105)

56. 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 in 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.

57. As a result of Berkower and Mullen's conduct described above, each failed to obtain sufficient and appropriate audit evidence to support the conclusions in Berkower's audit opinion in the 2018 audit of State Funds.

Failure to Adequately Supervise the Audit Engagement (AS 1201)

58. 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.

59. As a result of Berkower and Mullen's conduct described above, each failed to adequately supervise the work of the engagement team for the 2018 audit of State Funds.

Failure to Provide Adequate Engagement Quality Review (AS 1220)

60. 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.

61. As a result of Berkower and Maurice Berkower's conduct described above, each failed to adequately conduct the engagement quality review in the 2018 audit of State Funds.

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

62. 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.

63. 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.

64. 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.

65. As a result of Berkower's conduct described above, Berkower's policies and procedures with respect to (i) exercising due professional care; (ii) adequately supervising 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

66. Based on the foregoing, the Commission finds that Berkower, Mullen, and Maurice Berkower 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

Berkower has undertaken to complete the following actions:

67. Within ten (10) business days after the entry of this Order, Berkower shall issue a firm-wide announcement describing this case and providing a copy of this Order.

68. Retain, within sixty (60) days after the entry of this Order, at its own expense, an independent consultant ("Independent Consultant") not unacceptable to the staff of the Commission, to review and evaluate Berkower's quality controls and policies and procedures for all audits of SEC registrants regarding the following (hereinafter referred to as "Berkower's Policies"):

a. staffing and supervision of engagement personnel;

b. audit planning;

c. risk assessment, including the consideration of fraud and evaluating the company's selection and application of significant principles;

d. the exercise of due professional care and professional skepticism in the planning and performance of the audit;

e. obtaining sufficient appropriate audit evidence;

f. the identification of related parties and related party transactions and the appropriate disclosures thereof;

g. the confirmation process, including obtaining and evaluating evidence from third parties and determining whether further testing is required;

h. performing engagement quality reviews; and

i. adequate audit documentation, including work paper sign-off and retaining copies or abstracts of significant contracts or agreements.

69. The Independent Consultant shall assess the foregoing areas to determine whether Berkower's Policies are adequate and sufficient to provide reasonable assurance of compliance with all relevant Commission regulations and relevant audit standards and rules.

70. Berkower shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to its own files, books, records, and personnel as reasonably requested for the review.

71. Require that the Independent Consultant issue a report, within sixty (60) days of being retained, summarizing the review and recommending changes to Berkower's Policies, if any, to provide reasonable assurance of compliance with all relevant Commission regulations and relevant audit standards and rules.

72. Adopt all recommendations in the report of the Independent Consultant; provided, however, that within thirty (30) days after the Independent Consultant serves that report, Berkower shall in writing advise the Independent Consultant and the Commission staff of any recommendations that it considers to be unnecessary, unduly burdensome, impractical, or costly. With respect to any recommendation that Berkower considers unnecessary, unduly burdensome, impractical or costly, Berkower need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose. As to any recommendation on which Berkower and the Independent Consultant do not agree, such parties shall attempt in good faith to reach an agreement within thirty (30) days after Berkower serves the written advice. In the event Berkower and the Independent Consultant are unable to agree on an alternative proposal, Berkower will abide by the determinations of the Independent Consultant.

73. Require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Berkower, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Berkower, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

74. The report by the independent consultant will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the report could discourage cooperation, impede pending or potential government investigations or undermine the objectives of the reporting requirement. For these reasons, among others, the report and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) is otherwise required by law.

75. Within two years of entry of this Order, Berkower shall ensure that each audit professional who performs audits of SEC registrants has completed a minimum of 24 hours of audit-related training. The audit-related training shall cover the topics specified above in paragraph 68 with an emphasis on the need to follow policies, procedures, and professional standards at all times, even when faced with client pressure. The audit-related training requirement may be fulfilled by completing courses conducted in accordance with the applicable state boards of accountancy.

76. Berkower's managing partner shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Virginia Rosado-Desilets, Assistant Director, Division of Enforcement, U.S. Securities and Exchange Commission, 100 F Street NE, Washington DC, 20549, with a copy to the Office of Chief Counsel of the Enforcement Division, at the same address, no later than sixty (60) days from the date of the completion of the undertakings.

77. All Respondents (Berkower, Mullen, and Maurice Berkower) 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. Berkower'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 Berkower at such times and places as the staff requests upon reasonable notice. In addition, Respondents' 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 Respondents 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 Mary Hansen, Esq., Partner at Duane Morris LLP, 30 South 17th Street Philadelphia, PA 19103, 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 Respondents' travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consenting to personal jurisdiction over Respondents in any United States District Court for purposes of enforcing any such subpoena.

78. Deadlines for procedural dates shall be counted in calendar days, unless otherwise specified. If the last calendar day falls on a weekend or a federal holiday, the next business day shall be considered to be the last day.

79. In determining whether to accept the Offer, the Commission has considered these undertakings.

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. Respondent Berkower is hereby censured.

B. Michael G. Mullen and Maurice Berkower are denied the privilege of appearing or practicing before the Commission as accountants.

C. After two years from the date of the Order, Michael G. Mullen may request that the Commission consider his reinstatement by submitting an application to the attention of the Office of the Chief Accountant.

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

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

F. 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 Mullen and/or Maurice Berkower shall submit a statement prepared by the audit committee(s) with which Respondents Mullen and/or Maurice Berkower will be associated, including the following information:

1. A summary of the responsibilities and duties of the specific audit committee(s) with which Respondents Mullen and/or Maurice Berkower will be associated;

2. A description of Respondents Mullen's and/or Maurice Berkower's role on the specific audit committee(s) with which Respondents Mullen and/or Maurice Berkower 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 Mullen's and/or Maurice Berkower's service on the specific audit committee; and

5. A statement noting whether Respondents Mullen and/or Maurice Berkower will be able to act unilaterally on behalf of the Audit Committee as a whole.

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

1. A statement from the public accounting firm (the "Firm") with which Respondents Mullen and/or Maurice Berkower 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 Mullen and/or Maurice Berkower 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 Mullen and/or Maurice Berkower will not receive appropriate supervision; and

3. A statement from Respondents Mullen and/or Maurice Berkower indicating that the PCAOB has taken no disciplinary actions against Respondents Mullen and/or Maurice Berkower since seven (7) years prior to the date of the Order other than for the conduct that was the basis for the Order.

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

I. In support of any application for reinstatement, Respondents Mullen and/or Maurice Berkower shall also submit a signed affidavit truthfully stating, under penalty of perjury:

1. That Respondents Mullen and/or Maurice Berkower 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 Mullen and/or Maurice Berkower 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 Mullen and/or Maurice Berkower, 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 Mullen and/or Maurice Berkower, 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 Mullen's and/or Maurice Berkower'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 Mullen and/or Maurice Berkower 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.

J. Respondents Mullen and/or Maurice Berkower shall also provide a detailed description of:

1. Respondents Mullen's and/or Maurice Berkower'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 Mullen and/or Maurice Berkower reported for such work; and

2. Respondents Mullen's and/or Maurice Berkower's plans for any future appearance or practice before the Commission.

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

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

M. If Respondents Mullen and/or Maurice Berkower 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 K, the burden shall be on Respondents Mullen and/or Maurice Berkower to provide an explanation as to the facts and circumstances pertaining to the matter setting forth why Respondents Mullen and/or Maurice Berkower 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 Mullen and/or Maurice Berkower for cause shown.

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

By the Commission.

Vanessa A. Countryman
Secretary