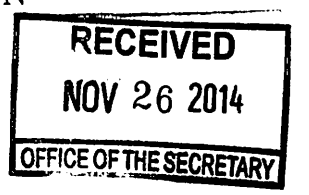
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-15965

In the Matter of

CHILD, VAN WAGONER & BRADSHAW, PLLC, RUSSELL E. ANDERSON, CPA, and MARTY VAN WAGONER, CPA,

Respondents.

DIVISION OF ENFORCEMENT'S INITIAL PRE-HEARING BRIEF

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I. INTRODUCTION

The Division of Enforcement ("the Division") hereby submits its prehearing brief. In this action, the Division seeks cease and desist orders against Child, Van Wagoner & Bradshaw, PLLC ("CVB" or "Respondent"), Russell E. Anderson ("Anderson" or "Respondent") and Marty Van Wagoner ("Van Wagoner" or "Respondent"). The Division contends that the evidence at the hearing will establish violations of Section 10A(a)(1) and (2) of the Securities Exchange Act of 1934 ("Exchange Act") by CVB, aided and abetted and/or caused by Anderson, and violations of Rule 2-02(b)(1) of Regulation S-X by CVB, aided and abetted and/or caused by Anderson. For these direct violations of the federal securities laws, the Division seeks disgorgement and pre-judgment interest against CVB and Anderson jointly and severally, along with separate civil penalties each for CVB and Anderson.

Pursuant to Section 4C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice, the evidence will further establish that CVB, Anderson and Van Wagoner engaged in "improper professional conduct" in the audit work conducted for a Chinese issuer for the year end audits in 2009 and 2010, and it is appropriate under those sections to deny the three Respondents the privilege of appearing or practicing before the Commission. The Respondents' negligent conduct was either 1) a single instance of "highly unreasonable conduct" that resulted in a violation of applicable professional standards in which an accountant knows, or should know, "that heightened scrutiny [was] warranted," or 2) "repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission." See Rule 102(e)(1)(iv)(B)(1) and (2) of Commission's Rules of Practice.

Moreover, the Division's evidence will establish at trial that CVB *willfully* violated and Anderson *willfully* aided and abetted CVB's violations of Section 10A(a)(1) and (2) of the Exchange Act and that CVB violated, aided and abetted and/or caused by Anderson, Rule 2-02(b)(1) of Regulation S-X, and therefore pursuant to Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice provides a second basis for denying CVB and Anderson the privilege of appearing or practicing before the Commission.

This matter concerns improper professional conduct and violations of the federal securities laws by CVB, a Utah-based audit firm formerly registered with the Public Company Accounting Oversight Board ("PCAOB"), and two of the firm's partners, Anderson, a certified public accountant ("CPA"), Van Wagoner, also a CPA, in connection with CVB's audits of the 2009 and 2010 year-end financial statements of Yuhe International, Inc. ("Yuhe" or the "Company"), a China-based issuer whose securities were previously traded on the Nasdaq.[1] During these audits, Anderson was the engagement partner and Van Wagoner served as the firm-designated engagement quality review partner.

In conducting the 2009 and 2010 audits of Yuhe, the Respondents failed to comply with a number of PCAOB Auditing Standards ("PCAOB Standards"). These failures arose in the 2009 audit principally because CVB and Anderson effectively performed *no* audit work of their own and instead relied on the audit work papers of Yuhe's prior auditor which had begun the 2009 audit, but then abruptly resigned without completing it. Even though neither CVB nor Anderson planned, performed, or supervised the prior firm's audit work, they took that firm's work papers,

[1] On October 18, 2013, the Commission filed a civil injunctive action against Yuhe and its Chief Executive Officer ("CEO"), alleging violations of the federal securities laws due to Yuhe's issuance of a series of materially false and misleading statements about a purported business acquisition that, in fact, had never occurred. *SEC v. Yuhe Int'l, Inc. and Gao Zhentao*, Civil Action No. 1:13-CV-01598-RCL (D.D.C., filed Oct. 18, 2013). The complaint also alleges that, in November 2010, while engaged in this deception, Yuhe completed a public offering in the United States that generated net proceeds in excess of $27 million.

performed at best a cursory review of them, and then issued an audit report containing an unqualified opinion on Yuhe's financial statements—all within only approximately three weeks of accepting the Yuhe engagement. In his role as engagement quality reviewer, Van Wagoner knew, or should have known, of these audit deficiencies, and nevertheless gave concurring approval to issue the audit report with an unqualified opinion.

CVB and Anderson also performed a deficient audit of Yuhe in 2010. During planning for the 2010 audit, CVB and Anderson assessed Yuhe as lacking effective internal controls such that no controls reliance could be utilized in performing the audit. Specifically, they documented within CVB's planning work papers that "the auditor is concerned about the risk of material misstatement" due to Yuhe's "inability to perform proper procedures necessary to produce a reliable financial statement." They also noted that Yuhe personnel appeared to lack the experience and ability to create financial statements using accounting principles generally accepted in the United States ("US GAAP"). Yet, despite this assessment, CVB and Anderson failed to implement auditing procedures that would address the risks identified. They performed an audit based upon basic auditing procedures outlined on the audit checklists that the firm used, failed to extend procedures to address the known risk of material misstatement, and relied improperly on management representations. They also failed to provide meaningful direction and supervision to the foreign audit staff CVB hired to perform fieldwork in China (hereafter, "Foreign Audit Staff"). In his role as engagement quality reviewer, Van Wagoner knew, or should have known, of these audit deficiencies, and nevertheless gave concurring approval to issue the audit report with an unqualified opinion.

The actions of CVB and Anderson in 2009 constitute a single instance of highly unreasonable conduct in circumstances in which heightened scrutiny was warranted. Across

both audit years, their actions, along with the actions of Van Wagoner, constitute repeated instances of unreasonable conduct pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice. Each of the Respondents has demonstrated a lack of competence to practice before the Commission. Because of the pervasive and egregious departures from PCAOB Standards, CVB willfully violated, and Anderson willfully aided, abetted, and caused CVB's violations of, Rule 2-02(b)(1) of Regulation S-X. Additionally, in each audit year, CVB and Anderson failed to include audit procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the financial statements of Yuhe, and audit procedures designed to identify related party transactions that would be material to Yuhe's financial statements or otherwise require disclosure therein. By virtue of this misconduct, CVB willfully violated, and Anderson willfully aided, abetted, and caused CVB's violations of, Sections 10A(a)(1) and (2) of the Securities Exchange Act of 1934 ("Exchange Act"). CVB's willful violations of the federal securities laws, and Anderson's willful aiding and abetting of such violations, serve as an additional basis for remedial relief against them pursuant to Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

II. RELEVANT ENTITIES AND PERSONS

A. **Respondent CVB** is a Utah professional limited liability company and public accounting firm that was formerly registered with the PCAOB. Working from two small offices near Salt Lake City, Utah, CVB acted as Yuhe's independent auditor from March 12, 2008 to December 7, 2009, and then again from March 9, 2010 to June 17, 2011. CVB issued audit reports on the financial statements of Yuhe for its fiscal 2008, 2009, and 2010 years. CVB resigned as Yuhe's independent auditor on June 17, 2011, following public disclosure of Yuhe's fraud. At the time of its Yuhe audits, CVB had four audit partners and two non-audit partners.

CVB reported to the PCAOB that, as of 2010, at the time of the conduct under question, it had more than fifty audit clients who were public issuers. CVB ceased to do public audits as of August 1, 2012, when a new firm, Anderson Bradshaw, PLLC, ("Anderson Bradshaw"), also based in Salt Lake City, Utah, filed a Form 4 with the PCAOB to succeed to the registration status of CVB.

B. **Respondent Anderson**, 53 is a resident of West Valley City, Utah, and served as the engagement partner for the 2008, 2009, and 2010 Yuhe audits. As such, he exercised final authority on all significant decisions regarding the engagements. During the time period of the Yuhe audits, Anderson was also the designated "quality control partner" for CVB. Anderson began his accounting career in a family-owned business for which he ultimately became Controller. Anderson then worked as a Branch Controller for another privately-held company before joining a local CPA firm in Salt Lake City for 3 ½ years. Thereafter, he was a self-employed CPA for approximately 18 months before joining CVB as a staff person in January 2006. Prior to CVB, he had limited overall audit experience and no significant public company audit experience. He received a B.A. degree in accounting from the University of Utah in 1984. Anderson holds a CPA license (active) in Utah. He currently is a partner of Anderson Bradshaw.

C. **Respondent Van Wagoner**, 52 is a resident of Eagle Mountain, Utah, who served as the engagement quality review partner for the 2008, 2009, and 2010 Yuhe audits. He started his career at KPMG where he spent 10 years auditing public, private, and not-for-profit companies. After KPMG, Van Wagoner worked for a year and a half in recruiting at both Arthur Anderson and Robert Half, eventually leaving to start his own accounting firm and teach accounting at the University of Utah. In January 2006, he and another CPA started the firm that became CVB. Van Wagoner received a B.A. in accounting and a M.B.A in business

administration from the University of Utah in 1987 and 1988, respectively. He holds a CPA license (active) in Utah. At approximately the time CVB ceased doing public audits in August 2012, Van Wagoner became self-employed as a consultant and as an instructor for graduate level accounting classes of a local university and AICPA and other accounting-related CPE courses. Van Wagoner also does contract work for private company audits.

D. **Baker Tilly International** is an international public accounting firm registered with the PCAOB and headquartered in the United States. Staff in the Baker Tilly China Shanghai Office (hereafter, "Baker Tilly Shanghai") performed the field work in China for the 2008 audit and 2009 quarterly reviews of Yuhe's financial statements. For the 2008 audit, Baker Tilly Shanghai was retained by CVB to perform the China-based fieldwork for the audit. However, in late 2009, Baker Tilly Shanghai was acquired by Grant Thornton, the China member firm of Grant Thornton International ("Grant Thornton"), prompting Yuhe's audit committee to change Yuhe's independent auditor from CVB to Grant Thornton on December 7, 2009. Thereafter, the staff of Grant Thornton—formerly of Baker Tilly Shanghai—commenced the fieldwork for Yuhe's 2009 audit under Grant Thornton's planning and supervision. Within approximately three months, however, Grant Thornton resigned from the engagement, leading Yuhe to engage CVB with three weeks remaining before Yuhe's Form 10-K deadline of March 31, 2010 for fiscal year 2009.

E. **Yuhe International, Inc.** ("Yuhe" or the "Company") is a Nevada corporation whose principal offices are located in Weifang, Shandong Province, China. Yuhe sells day old chicken broilers, *i.e.*, chickens that are bred and raised for meat production, and claims to be the largest supplier of day-old broilers in China. All of Yuhe's operations are carried out in China. According to its December 31, 2010 Form 10-K, Yuhe had total annual revenues of $67.5

million and assets of $131.2 million. Yuhe entered the U.S. securities market in March 2008 through a reverse merger with a Nevada shell corporation. Its common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act, and was traded on the Nasdaq Capital Market. On October 20, 2010, Yuhe completed a registered public offering in the United States of more than four million shares of its common stock at a price of $7 per share, raising approximately $27 million. On July 21, 2011, Nasdaq suspended trading of Yuhe's common stock, and, on December 16, 2011, Nasdaq filed a Form 25 with the Commission to delist the common stock, which is now quoted on OTC Link. On October 17, 2013, the Commission filed a civil action against Yuhe and its CEO, Gao. That matter remains pending.

F. **Foreign Audit Staff** consists of China-based accounting personnel hired by CVB to perform fieldwork for CVB's 2010 audit of Yuhe. These staff members were drawn principally from Tom Chan & Co, a Hong Kong-based firm, as well as individuals who formerly worked for Baker Tilly Shanghai, but whom Grant Thornton had not retained.

III. FACTS

A. Background

CVB was introduced to Yuhe by personnel of Baker Tilly Shanghai, and became Yuhe's independent auditor in March 2008. Thereafter, with Baker Tilly Shanghai conducting virtually all of the fieldwork, CVB audited Yuhe's 2008 financial statements, issuing an audit report containing an unqualified opinion. CVB also served as Yuhe's independent auditor in connection with the Company's initial public filings with the Commission in 2008.

Through Baker Tilly Shanghai personnel, CVB continued its audit work for Yuhe in 2009, and conducted reviews of the Company's financial statements for the first, second, and third quarters of that year. However, in late 2009, Grant Thornton acquired Baker Tilly

Shanghai. Following this acquisition, on December 7, 2009, Yuhe's Audit Committee appointed Grant Thornton as its independent auditor. Under the engagement agreement, Grant Thornton was to perform the 2009 year-end audit and opine on the 2009 financial statements. Thereafter, from December 2009 through February 2010, the individuals who were formerly the Baker Tilly Shanghai personnel working on Yuhe's audits, but now employees of Grant Thornton, planned and performed the Yuhe audit under Grant Thornton's supervision and in accordance with Grant Thornton's audit approach.

During the audit procedures and fieldwork, Grant Thornton identified in Yuhe's books and records, as of February 2010, a related party loan in the amount of approximately $2.7 million between Yuhe and an affiliate, Shandong Yuhe Food Group Co. Ltd ("Shandong Affiliate"), which was 80 percent owned by Yuhe's CEO and Chairman. Although the loan was being paid down, the Company had earlier asserted in a public filing that it would be completely paid off by December 31, 2009. While the existence of the loan would not have prevented Grant Thornton from completing the audit and issuing, if appropriate, an audit report containing an unqualified opinion, the fact that the loan had occurred and was between two entities controlled by Yuhe's CEO and Chairman made the loan similar to the loans extended in the previous year. In the previous year, Yuhe's management concluded that the existence of the loans constituted prohibited transactions under Section 402 of the Sarbanes-Oxley Act of 2002 ("Sarbanes Oxley") and that a material weakness existed over the review and approval of related party loans. If Yuhe's management had reached the same conclusion in 2010, this would likely have led to the disclosure of a continued material weakness as it pertained to the lack of review and approval of related party loans. At this point, on March 5, 2010, Grant Thornton opted to resign from the engagement. Yuhe's March 5, 2010 Form 8-K filing disclosing the resignation stated that Grant

Thornton had resigned because Yuhe had been unable to eliminate the occurrence of related party loans. At the time of Grant Thornton's resignation, its field work on the 2009 audit of Yuhe was incomplete.

B. CVB's 2009 Yuhe Audit

Yuhe's due date for filing its 2009 Form 10-K with the Commission was March 31, 2010, less than a month after Grant Thornton's resignation. With such a short time before its filing deadline, Yuhe approached CVB to return as its independent auditor and complete the 2009 audit. In early March 2010, Anderson and Van Wagoner, purportedly after meeting with CVB's other partners, made the decision to accept Yuhe's request and engage as Yuhe's auditor for the year end 2009 audit. On March 9, 2010, Yuhe signed its engagement letter with CVB for the 2009 audit.

Instead of performing its own audit of Yuhe, between March 9, 2010 and March 30, 2010, CVB and Anderson undertook the process of obtaining and reviewing Grant Thornton's audit work papers from that firm's short period as Yuhe's auditor.[2] Based on an analysis of CVB's billing records and emails, as well as the testimony of CVB's acting audit manager on the engagement, Sean J. Bryant ("Bryant"), the work of obtaining and reviewing Grant Thornton's work papers fell primarily to Bryant, a senior associate at CVB who was not a CPA and who had limited public company auditing experience outside of what he had acquired working on CVB audits. Bryant's communications about the work papers with staff from the office of the former Baker Tilly Shanghai during March 2010 were entirely by email, and consisted mostly of Bryant

[2] The evidence is unclear how, and by what authority, CVB was able to obtain Grant Thornton's work papers. Email communications between CVB and individuals in the former Baker Tilly Shanghai—then an office of Grant Thornton—seem to suggest that Baker Tilly Shanghai simply supplied them to CVB. It is noteworthy that CVB's engagement letter with Yuhe provided that 44% of the audit fee was to be paid directly to "Baker Tilly China Shanghai Office," even though that office was then a part of Grant Thornton.

making sure he had collected from the former Baker Tilly Shanghai employees all of the work papers created during their fieldwork (as Grant Thornton employees). He did not request that any additional audit procedures be performed, nor did he provide review notes for additional clarification or documentation to be added to the substantive audit procedures. Every aspect of the substantive audit work appears to have been added to CVB's file as it was received; there is no evidence of any new substantive audit procedures being performed after CVB's engagement by CVB, Bryant, Anderson, or anyone in China working under the guise of Baker Tilly Shanghai or Grant Thornton. In effect, Bryant's role was perfunctory—collecting documents, marking items off on a checklist, adding them to a database, and marking them completed. There is no evidence that he or any other personnel of CVB participated in any planning,[3] execution, or oversight of any audit procedures. Bryant's review and follow up consisted of a "check the box" approach to make sure that he had every item required on a checklist.

CVB and Anderson effectively had no role in planning, performing, or supervising the 2009 Yuhe audit, which was done by Grant Thornton during a period when CVB was not engaged in any capacity. Specifically, there is no evidence that CVB or Anderson formulated a specific audit plan or conducted formal audit planning meetings when CVB was initially engaged and performing the quarterly reviews before the former Baker Tilly Shanghai—then owned by Grant Thornton —commenced audit fieldwork. Similarly, CVB and Anderson failed to conduct sufficient inquiry into Yuhe's business, recent developments, accounting policies and procedures, and control risk. Neither CVB nor Anderson participated in or provided the former Baker Tilly Shanghai staff with any direction or guidance on the audit procedures they

[3] This is confirmed by the testimony of Bryant and Anderson who testified that the work performed during the quarterly reviews did not contemplate planning for the year end audit, but consisted only of procedures that CVB and Anderson deemed necessary to comply with interim review standards.

performed, the audit objectives to be accomplished, or the need to maintain proper audit documentation.

It is worth noting that Grant Thornton's audit approach differed significantly from that of CVB and Anderson's audit approach in the 2008 audit (and in the subsequent 2010 audit) because Grant Thornton's audit approach contemplated a controls based reliance which would allow for reduced substantive testing. In 2008 and 2010, CVB and Anderson deemed such reliance on Yuhe internal controls as inappropriate for their audit based on their past experience with Yuhe and Yuhe's control environment. In fact, Anderson and Bryant have testified that they knew in 2009 that they were unable to place any reliance on Yuhe's controls to reduce substantive testing and acknowledged that Grant Thornton's approach was different than their own. Further, in their Wells submission, the Respondents have conceded that they assessed Yuhe's controls as "notoriously weak internal controls typical of Chinese companies." However, when CVB engaged as auditor for Yuhe's 2009 year end audit, CVB and Anderson failed to make any adjustments to the work that had been performed by Grant Thornton in which Grant Thornton had reduced substantive testing based on its assessment of Yuhe's control environment.

Moreover, CVB's billing records—confirmed in sworn testimony as full and accurate records of the time spent on the engagement—indicate that none of the CVB personnel assigned to the Yuhe audit spent significant time on audit related activities. For instance, the billing records show that Bryant's total hours between CVB's engagement and issuance of CVB's audit report on Yuhe totaled less than 58. Billing records also indicate that Anderson did not charge any time to the engagement before March 22, 2010, when he charged only 0.75 hours. The next entry in the timekeeping system by Anderson was for 8.50 hours on March 27, 2010—only three

days before CVB issued its audit report. In all, Anderson recorded a total of only 17.50 hours to the engagement prior to that report's issuance. The same billing records show that Van Wagoner, as engagement quality reviewer, did not begin reviewing work papers until March 29, 2010, when he recorded 2.50 hours of time. The remaining 2.00 hours of time that Van Wagoner recorded were *after* the 6:18 a.m., March 31, 2010 filing of the Yuhe 2009 Form 10-K. Nevertheless, on March 30, 2010, Anderson, with Van Wagoner's concurrence, issued CVB's audit report on Yuhe's financial statements for the 2009 fiscal year with an unqualified opinion.

The Respondents' reliance on the audit fieldwork of another firm that resigned prior to completion of its fieldwork and that was never under the supervision of CVB, as well as their own failure to perform their own audit of Yuhe, was improper and violated several PCAOB Standards,[4] including:

1. Failure to plan and supervise (§§ 311)

Auditing standard AU § 311 requires an auditor to adequately plan and perform the audit and properly supervise assistants. AU § 311.01. Audit planning involves developing an overall strategy for the expected conduct and scope of the audit. The nature, extent, and timing of planning vary with the size and complexity of the entity, experience with the entity, and knowledge of the entity's business. In planning the audit, the auditor should consider, among other matters, the entity's business, accounting policies and procedures, and planned assessed level of control risk. AU § 311.03. Supervision involves directing the efforts of assistants who are involved in accomplishing the objectives of the audit and determining whether those objectives were accomplished. AU § 311.01, .11-.13. Elements of supervision include, among

[4] References to PCAOB Standards in this memorandum are to PCAOB Standards in effect at the time the audit work was performed.

others, instructing assistants, keeping informed of significant problems encountered, and reviewing the work performed. AU § 311.11-.13.

As discussed above, the conduct of Anderson and CVB did not meet this standard. There is no evidence in the work papers that they planned the 2009 audit and they could not have supervised the personnel of the former Baker Tilly Shanghai. Both in testimony and in their Wells submission, they admit as much by claiming their supervision was "retroactive."

2. Failure to assess audit risk and materiality (AU § 312)

The auditor should consider audit risk and materiality both in (a) planning the audit and designing auditing procedures and (b) evaluating whether the financial statements taken as a whole are presented fairly, in all material respects, in conformity with generally accepted accounting principles. The auditor should consider audit risk and materiality to obtain sufficient competent evidential matter on which to properly evaluate the financial statements. AU § 312.12.

Neither CVB nor Anderson participated in assessing audit risk or materiality in connection with the 2009 audit because that task was performed by Grant Thornton prior to CVB's engagement. CVB and Anderson simply accepted the assessment of materiality that Grant Thornton had documented without any contemplation of how the amounts were established or if they were appropriate. This is significant due to the extensive number of adjustments required in prior audits, and the assessment of controls that CVB and Anderson believed existed at Yuhe. This is also significant because, as noted above, the audit approach used by Grant Thornton contemplated a "moderate" controls reliance—an approach that both

CVB and Anderson did not deem appropriate for Yuhe in 2008, 2010, or in testimony regarding 2009.[5]

3. Failure to consider fraud (AU § 316) and illegal acts (AU § 317)

Under AU § 316.01, an auditor must plan and perform an audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud. Among other things, members of the audit team should discuss the potential for material misstatement due to fraud. Discussions should include an exchange of ideas or "brainstorming" among the audit-team members, including the auditor with final responsibility for the audit, about how and where they believe the entity's financial statements may be susceptible to material misstatement due to fraud, how management could perpetrate and conceal fraudulent financial reporting, and how assets of the entity could be misappropriated. The auditor should use professional judgment in determining which audit team members should be included in the discussion, but the discussion ordinarily should involve the key members of the audit team. Auditing standards require an auditor to make inquiries of management and others within the entity to obtain their views about the risks of fraud and how those risks are addressed. AU § 316.14-.27.

CVB and Anderson did not adhere to these standards in the 2009 audit of Yuhe. There is no evidence that CVB or Anderson considered the risks of material misstatement due to fraud at Yuhe during the short time between its engagement as auditor and its issuance of the audit report for 2009. Further, there is no evidence that the auditors met to discuss the susceptibility of

[5] Typically, auditing procedures employ three levels of controls reliance. While the terms or designations used among firms to describe these levels vary, they roughly equate to a controls reliance that can be characterized as "High," "Moderate," or "Low." Here, CVB actually had a "none" level of controls reliance, which the firm considered to be a level below "low." Therefore, moving from a "none" controls reliance as CVB and Anderson deemed appropriate in 2008 to a "moderate" controls reliance as used by Grant Thornton was a significant change that should have triggered, in turn, a change in the way that balance sheet items were substantively tested, as well as documentation related to the change by CVB and Anderson.

Yuhe's financial statements to material misstatement due to fraud or inquired of Yuhe management or its employees about fraud. Given these failures, CVB and Anderson did not identify any fraud risks specific to Yuhe, and consequentially did not design sufficient procedures to address risks of fraud.

AU § 317 notes that audit procedures applied for the purpose of forming an opinion on the financial statements may bring possible illegal acts to the auditor's attention. Examples of these procedures include reading minutes; inquiring of the client's management and legal counsel concerning litigation, claims, and assessments; and performing substantive tests of details of transactions or balances. Auditing standards require an auditor to make inquiries of management concerning the client's compliance with laws and regulations, including, where applicable, the client's policies relative to the prevention of illegal acts. AU § 317.08. There is no documentary evidence suggesting any inquiries by CVB or Anderson of Yuhe management concerning Yuhe's polices related to the prevention of illegal acts and compliance with laws and regulations. Here, such inquiries would have been appropriate, given (i) the resignation of the prior auditor; (ii) the continued existence of prohibited loans; (iii) the number and type of audit adjustments included in Grant Thornton's incomplete audit work papers that CVB obtained, which indicated a lack of knowledge within Yuhe of financial reporting practices common to the United States; (iv) the weak or non-existent control environment; and (v) the use of personal bank accounts for Yuhe payments, which would have indicated higher risk at Yuhe and potentially triggered additional procedures and inquiries.

4. Failure to assess risk concerning related parties (AU § 334)

AU § 334 requires an auditor to consider the risks surrounding related party transactions. In so doing, the auditor should obtain an understanding of management responsibilities, the relationship of each component to the total entity, the business purpose served by the various

components of the entity, and the controls over management activities. AU § 334.05. After identifying related party transactions, the auditor should apply the procedures he considers necessary to obtain satisfaction concerning the purpose, nature, and extent of these transactions and their effect on the financial statements. The procedures should be directed toward obtaining and evaluating sufficient competent evidential matter and should extend beyond inquiry of management. Such evidence may include, among others, invoices, executed copies of contracts, and other pertinent documents. AU § 334.09.

CVB and Anderson did not assess or document related party transactions on the financial statements of Yuhe for 2009. Instead, CVB and Anderson relied upon their knowledge of related party relationships from prior years' audits, the results of procedures performed by Baker Tilly Shanghai and reported to CVB and Anderson during the 2009 quarterly reviews, and work performed and assessments made in the incomplete Grant Thornton work papers. CVB and Anderson did not perform their own procedures and did not inquire of management independently as part of their audit, nor is there any evidence that they held discussions with Yuhe's Audit Committee related to this critical audit area. These failures are particularly noteworthy because Yuhe had previously disclosed and designated the loans with its Shandong affiliate as prohibited related party transactions under Section 402 of Sarbanes Oxley. That designation had occurred in a Form10-K/A filed in June 2009 for the year ended December 31, 2008, following the receipt of comment letters to Yuhe from the Commission's Division of Corporation Finance. In that filing, the Company also designated as a material weakness Yuhe's lack of review and approval of related party loans.

Grant Thornton's assessment of internal controls differed greatly from CVB's and Anderson's stated understanding and assessment for Yuhe's 2008 and 2010 audits. Anderson

and Van Wagoner testified that they believed that Yuhe's controls environment was weak and, as a result, no reliance could be placed on controls by Yuhe's auditors. Despite this discrepancy in audit approach, CVB and Anderson did not modify CVB's audit approach or supplement the work papers to explain why no modification was needed. In fact, there is no evidence in the work papers that there was any further contemplation of any known or unknown related party transactions by CVB or Anderson after CVB engaged as the auditor. In short, CVB and Anderson failed to properly assess, obtain competent evidential matter, and document related party transactions and their effect on the financial statements of Yuhe.

5. Failure to perform (or supervise) inventory observation (AU § 331)

AU § 331.01 mandates that the observation of inventories is a generally accepted auditing procedure, and that the independent auditor who issues an opinion when he has not employed them must bear in mind that he has the burden of justifying the opinion expressed. CVB and Anderson did not perform an inventory observation during the 2009 audit of Yuhe because such observation was done by Grant Thornton. Moreover, there is no evidence that CVB and Anderson obtained an understanding of the procedures that were done when Grant Thornton performed the observation. Further, Grant Thornton used a different controls assessment and only performed limited counts based on that assessment. Neither Grant Thornton nor CVB obtained from the Company, calculated, or completed a roll forward of the inventory balance from the observation date to the balance sheet date.

6. Failure to exercise due professional care (AU § 230)

PCAOB Standards require auditors to exercise due professional care throughout the audit. Due professional care requires that the auditor exercise professional skepticism: an attitude that includes a questioning mind and a critical assessment of audit evidence. The auditor should not

be satisfied with less than persuasive evidence because of a belief that management is honest. AU § 230.01, .07 and .09. Moreover, gathering and objectively evaluating audit evidence requires the auditor to consider the competency and sufficiency of the evidence. Since evidence is gathered and evaluated throughout the audit, professional skepticism should be exercised throughout the audit process. AU § 230.08.

CVB and Anderson failed to exercise due professional care throughout the 2009 Yuhe audit. As noted above, they failed to properly plan, supervise, and perform the audit to provide reasonable assurance of detecting material errors in the financial statements, and failed to exercise due professional care to obtain reasonable assurance that the financial statements were not materially misstated. Van Wagoner, as engagement quality review partner, also failed to exercise due professional care in Yuhe's 2009 audit. As engagement quality reviewer, Van Wagoner had responsibility for reviewing the overall quality of the audit work for the 2009 audit.[6] He was fully aware that CVB and Anderson had not planned, conducted, or supervised an audit of Yuhe and had instead taken, and were relying upon, the work papers of a different audit firm.

7. Failure to obtain sufficient competent evidential matter (AU § 326)

Under the third standard of field work, sufficient competent evidential matter is to be obtained through inspection, observation, inquiries, and confirmations to afford a reasonable basis for an opinion regarding the financial statements under audit. AU § 326.01.

CVB and Anderson did not contribute to the inspection, observation, inquiry, or confirmation processes of the 2009 audit of Yuhe—all of which were done by Grant Thornton.

[6] During the 2009 audit, Van Wagoner was acting as engagement quality reviewer as part of the firm's quality control standards and, hence, his responsibilities in that role are outlined in AU § 230. For the 2010 audit, as discussed below, regulatory responsibilities had changed and Van Wagoner's responsibilities were dictated by Auditing Standard No. 7.

CVB and Anderson did not perform the audit procedures, document in their audit work papers, or articulate through testimony any procedures that were done by them to accept the work of another firm. The work performed by another firm on its own behalf is not sufficient to have allowed CVB and Anderson to meet the criteria of this standard.

8. Failure to document (Auditing Standard No. 3 ("AS 3"))

Audit documentation is the written record of the basis for the auditor's conclusions that provides the support for the auditor's representations in the auditor's report. Audit documentation also is the basis for the review of the quality of the work because it provides the reviewer with written documentation of the evidence supporting the auditor's significant conclusions. Among other things, audit documentation includes records of the planning and performance of the work, the procedures performed, evidence obtained, and conclusions reached by the auditor. AS 3 ¶ 2.

CVB and Anderson failed to properly document the 2009 audit. Specifically they failed to document how they accepted and utilized the work of another firm, how they were able to supervise assistants "retroactively," how audit procedures were performed, how evidence was obtained, and how conclusions were reached.

9. Failure to obtain a reasonable basis for reliance on management representations (AU § 333)

Obtaining representations from management is required for audits performed in accordance with generally accepted auditing standards, as outlined in AU § 333. While such representations are part of the evidence obtained by an independent auditor, they cannot substitute for the application of the auditing procedures needed to afford a reasonable basis for an opinion regarding the financial statements under audit. AU § 333.02.

In the 2009 audit of Yuhe, CVB and Anderson obtained written representations without applying auditing procedures upon which to form a basis for their opinion. Management's representations should serve as a part of the evidence obtained, but in the 2009 audit of Yuhe, CVB and Anderson did not perform any audit work or obtain any evidence on their own. CVB and Anderson did not perform auditing procedures as outlined in the points above sufficient to provide a basis for their reliance on management representations.

C. CVB's 2010 Yuhe Audit

Yuhe engaged CVB to conduct an audit of its 2010 financial statements. In preparation for that audit, CVB and Anderson decided CVB would no longer use personnel from the former Baker Tilly Shanghai for performing audit fieldwork and instead retained the Foreign Audit Staff. In late March 2011, CVB and Anderson completed Yuhe's 2010 audit and issued an audit report containing an unqualified audit opinion on Yuhe's financial statements.

Like the prior year, however, CVB's 2010 audit was deficient in a number of ways and violated a number of PCAOB Standards. CVB and Anderson were involved with certain planning exercises, but then failed to properly design audit procedures to mitigate the risks identified, as explained further below. CVB and Anderson's approach was based upon sending checklists to the Foreign Audit Staff to fill out and return. The substantive work, along with the checklists, were completed and returned to CVB and Anderson in mid to late March 2011, and were added to the audit work paper database and marked completed and reviewed with seemingly no review comments, edits, or input by the CVB engagement team. Although the Foreign Audit Staff was hired by CVB and Anderson, there was a continued lack of oversight, supervision, and involvement in the 2010 audit of Yuhe.

1. Failure to plan and supervise (AU § 311)

As noted above, AU § 311 requires, among other things, that the auditor direct the efforts of assistants and determine whether objectives are accomplished. This includes instructing assistants, keeping informed of significant problems encountered, and reviewing the work performed. The extent of supervision that is appropriate varies based on the situation.

CVB and Anderson did not properly supervise staff throughout Yuhe's 2010 audit. They relied on the Foreign Audit Staff to perform most of the audit fieldwork, and except for participating in a few aspects of planning, appeared to play no substantive role in audit supervision during the audit. Other than a short site visit by a Chinese-speaking CVB employee, Sandra Chen, who was responsible for auditing certain business acquisitions which are further explained below, there were no CVB personnel in China who could have provided supervision. CVB and Anderson forwarded to the Foreign Audit Staff checklists to use without specific instructions, detailed work plans, or appropriate modifications. CVB and Anderson did not provide the Foreign Audit Staff specific guidance on the procedures to be performed, the audit objectives to be accomplished, or the need to maintain proper audit documentation.

For example, CVB and Anderson performed no role in the planning or execution of the inventory observation. This is demonstrated, in part, by Bryant sending an email to the Foreign Audit Staff the night before Yuhe's 2010 Form 10-K was due to be filed, asking: "Did your team observe inventory at 12/31/10? Or, did you just look over the company's count without your own observation?" The Foreign Audit Staff responded that they had taken a count of inventory from December 9, 2010 to December 15, 2010 and had performed a roll forward, and that the roll forward should be included in the working paper file. The Foreign Audit Staff sent a large excel spreadsheet containing individual tabs with all of the substantive work performed. CVB's and Anderson's lack of review and knowledge of the audit file was evident throughout,

including their lack of knowledge of whether an inventory observation had even occurred. This email is indicative of others which show distance and unfamiliarity with the audit procedures performed and a lack of involvement in the planning and execution of all phases of the audit.

2. Failure to assess audit risk and materiality (AU § 312)

Based on prior audits of Yuhe, CVB and Anderson were aware of the lack of effective internal controls at Yuhe. Work papers created by CVB in planning the 2010 audit state:

> The auditor is concerned about the risk of material misstatement do [sic] to the Company's inability to perform proper procedures necessary to produce a reliable financial statement. Company personnel appear to lack the experience and ability to create US GAAP financial statements. This weakness creates questions regarding the Company's effectiveness over disclosure controls and procedures.

In another portion of its work papers, CVB and Anderson noted that "the Company appears to lack the ability to understand its own transactions and account for them properly."

Despite these assessments, CVB and Anderson's approach to the audit consisted mostly of a perfunctory completion of checklists, certain substantive testing procedures in the field by the Foreign Audit Staff, followed by a review of those checklists by CVB and Anderson in Utah, and did not include a proper consideration of risk and materiality.

3. Failure to consider fraud (AU § 316) and illegal acts (AU § 317)

Unlike the 2009 Yuhe audit, CVB and Anderson held a fraud risk discussion in planning the 2010 audit. However, like the 2009 audit, CVB and Anderson still failed to properly consider fraud and modify and extend audit procedures based on such considerations. As noted above, CVB and Anderson documented during the fraud risk discussion concerns about the risk of material misstatement due to Yuhe's inability to perform proper procedures necessary to produce reliable financial statements. CVB and Anderson also documented the use of personal

bank accounts to transact company business and noted that "auditor should use in-house audit procedures to verify that accounts are in fact controlled by the Company and that no personal funds are intermingled with business," but they failed to properly consider the impact of such transactions on their audit. In response to this risk, CVB and Anderson assigned two Hong Kong based individuals on the Foreign Audit Staff to address the risk. However, neither CVB nor Anderson supervised the procedures carried out by these two individuals. In fact, as was later discovered and is discussed below, the funds intended for the business acquisition that did not occur, were funneled ultimately to the personal bank account of the Company's CEO, which apparently was being used for Company business.

4. Failure to assess risk concerning related parties (AU § 334)

CVB and Anderson relied on discussions with Yuhe management conducted by the Foreign Audit Staff and evidence supplied by Yuhe management in obtaining an understanding of related party transactions. At the same time, however, CVB and Anderson had assessed as part of audit planning that management was unaware of the rules and regulations governing related party transactions under US GAAP. The prior year's issues with related party transactions and CVB and Anderson's knowledge of management's lack of understanding of the rules and regulations governing related party transactions under US GAAP should have prompted heightened scrutiny during the audit. CVB and Anderson did not extend auditing procedures to independently verify the information provided to them, and in fact, CVB and Anderson did not *directly* perform any audit procedures around related parties, but instead depended on Foreign Audit Staff to identify risks and determine a response to them without CVB or Anderson providing supervision or oversight.

5. Failure to exercise due professional care (AU § 230)

At every stage of the 2010 audit, CVB, Anderson, and Van Wagoner failed to exercise due professional care. CVB and Anderson failed to appropriately modify auditing procedures based upon the risks presented. CVB and Anderson relied on management and the Foreign Audit Staff to provide the assertions and evidence that were used throughout the audit. Yuhe's lack of internal controls, use of cash and personal bank accounts in conducting business affairs, history of errors and material weaknesses, risk of management override, and lack of US GAAP knowledge, as well as CVB and Anderson's documented knowledge of these issues should have resulted in extended procedures designed to address the risks as well as heightened professional skepticism. Van Wagoner's role in the 2010 audit, as also outlined by the requirements of Auditing Standard No. 7 *Engagement Quality Review* ("AS 7"), discussed below, required that he review the audit planning process, the assessment of materiality, and the consideration and assessment of audit risk. Van Wagoner failed to exercise due professional care in carrying out his role for the 2010 Yuhe audit.

6. Failure to obtain sufficient competent evidential matter (AU § 326) and failure to properly document (AS 3)

Audit work papers indicate that CVB personnel did not play a significant role in any phase of the 2010 audit other than the audit of the acquisitions which was later determined to contain the fraudulent business acquisition subsequently disclosed by the Company. CVB and Anderson relied on the contracted individuals in Hong Kong and Shanghai comprising of the Foreign Audit Staff to carry out the audit and modify the nature, timing, and extent of substantive testing. Neither CVB nor Anderson adequately reviewed or provided oversight during any phase of the testing. CVB and Anderson failed to properly participate in the inspection, inquiry, observation, or confirmation phases of the audit and had little to no basis for their opinion regarding Yuhe's 2010 financial statements.

CVB and Anderson failed to document their basis for issuing an audit report in 2010 or to properly identify and document the arrangement between themselves and the Foreign Audit Staff.

7. Failure to obtain a reasonable basis for reliance on management representations (AU § 333)

In the 2010 audit of Yuhe's financial statements, CVB and Anderson obtained written representations without applying the auditing procedures necessary to form a basis for their opinion. CVB and Anderson continued to rely on management, despite having identified management as not having the skills necessary to properly account for the Company's transactions under US GAAP. The Company continued to require numerous audit adjustments from their books to US GAAP financials, all of which were identified by the Foreign Audit Staff and by Sandra Chen in auditing the accounting for the fraudulent acquisitions. Yuhe's management lacked the ability, by CVB and Anderson's own admission within their work papers, to provide reliable representations about the accuracy of management's US GAAP financial reporting.

8. Engagement Quality Review (AS 7)

AS 7 was effective for audits of year ends beginning on or after December 15, 2009, and as such was applicable to the 2010 Yuhe audit. Under AS 7, the engagement quality reviewer should evaluate the significant judgments made by the engagement team and the related conclusions reached in forming the overall conclusion on the engagement and preparing the engagement report. AS 7, ¶ 9. The engagement quality reviewer should evaluate the significant judgments that relate to engagement planning, including the consideration of the firm's recent engagement experience with the company and risks identified in connection with the firm's client, the consideration of the company's business, recent significant activities, and related

financial reporting issues and risks, and the judgments made about materiality and the effect of those judgments on the engagement strategy. AS 7, ¶ 10. To evaluate such judgments and conclusions, the engagement quality reviewer should, to the extent necessary to satisfy the requirements, hold discussions with the engagement partner and other members of the engagement team and review documentation. In an audit, the firm may grant permission to the client to use the engagement report only after the engagement quality reviewer provides concurring approval of issuance. AS 7, ¶ 13.

Van Wagoner failed to fulfill the requirements of AS 7 for Yuhe's 2010 audit. Specifically, the work papers do not evidence any communications between the audit team and Van Wagoner throughout the year as part of the planning or during the audit process. Even the emails among team members show that the vast majority of Van Wagoner's communications appear perfunctory and lacking in substantive information or commentary. There is no evidence that he reviewed or evaluated the audit planning process, the assessment of materiality, or the consideration and assessment of fraud risks in a manner that would have fulfilled professional responsibilities. Indeed, CVB billing records confirm Van Wagoner's lack of involvement. Van Wagoner billed fewer than seven hours of work for the entire 2010 audit. Each of those hours relating to the 2010 audit was charged in the 48 hours leading up to the Company's filing of its Form 10-K.

D. Yuhe's Public Offering and Fraud

On June 2, 2010, Yuhe filed its Form S-3 Registration Statement and Prospectus with the Commission, which became effective on June 23, 2010. On October 19, 2010, Yuhe filed its Preliminary Prospectus Supplement, and, on October 20, 2010, it filed its Final Prospectus Supplement. CVB's audit report for 2009 was included in those filings, as each incorporated

Yuhe's 2009 Form 10-K.[7] From October 20, 2010 to November 2, 2010, Yuhe conducted a public offering, selling 4.14 million newly issued shares of common stock at a price of $7.00 per share, and receiving net proceeds in excess of $27 million.

On December 31, 2009, and January 4, 2010, Yuhe filed Forms 8-K announcing that on December 24, 2009, it had entered into an agreement with Waifang Dajiang Corporation ("Dajiang") to purchase thirteen breeder farms for an aggregate price of approximately $15.2 million (the "Dajiang Acquisition"). Prior to the acquisition, Yuhe owned only fourteen breeder farms, which meant the acquisition would increase Yuhe's capacity by 60%. From January 2010 through June 2011, in press releases and filings with the Commission, Yuhe provided numerous updates concerning the status of the acquired farms. However, in June 2011, a self-described investment research company that had a short position in Yuhe securities published reports questioning whether the Dajiang Acquisition had actually occurred. Yuhe did not immediately admit to the fraud, but instead responded by issuing press releases and purported evidence to rebut the allegations. On June 17, 2011, however, Yuhe hosted a conference call during which Yuhe disclosed for the first time that the Dajiang Acquisition had never been completed and that the funds had, instead, been placed in a private account controlled by the CEO. On the same day shortly after the conference call, CVB resigned as Yuhe's independent auditor, stating that reliance should no longer be placed on its previously issued audit report for 2010. The audit report for 2009 was not withdrawn because, as Anderson explained in testimony, he did not believe that the financial statements for 2009 were materially incorrect.

[7] The Registration Statement and Prospectus Supplements incorporated Yuhe's 2009 Form 10-K and amended 10-K, the Form 10-Qs for the first and second quarters of 2010, the Form 8-Ks filed May 17, July 19, and October 15, 2010, and all other Commission reports subsequently filed by Yuhe prior to the termination of the offering.

IV. LEGAL DISCUSSION

A. Improper Professional Conduct under Rule 102(e)(ii)

Rule 102(e)(1)(ii) of the Commission's Rules of Practice provides that the Commission may deny to any person the privilege of practicing before it as an accountant, if that person is found to have engaged in improper professional conduct. Rule 102(e)(1)(iii) provides the Commission may deny to any person the privilege of practicing before it as an accountant, if that person is found to have willfully violated any provision of the federal securities laws. Sections 4C(a)(2) and (3) of the Exchange Act, respectively, provide for the same authority. Improper professional conduct under Rule 102(e)(1)(ii) may be intentional or reckless. It can also be one of two types of negligent conduct: a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances for which heightened scrutiny is warranted; or repeated instances of unreasonable conduct, each resulting in violations of applicable professional standards that indicate a lack of competence.[8]

Anderson, the engagement partner, was responsible for ensuring that CVB's audits of Yuhe's 2009 and 2010 financial statements met applicable professional standards. As detailed at length above, he failed in this regard, as CVB's audits of Yuhe were not conducted in accordance with PCAOB Standards. Instead, under Anderson's leadership, CVB failed during two audit years to properly plan and supervise the audit, obtain evidential matter, assess audit risk, exercise due professional care, consider fraud and illegal acts, assess risk concerning related parties, and properly document its audit work. In 2009, Anderson's conduct constitutes a single instance of highly unreasonable conduct as his decision to accept the incomplete work of another firm that

[8] The term "applicable professional standards" refers broadly to promulgated accounting and auditing standards. References in Commission rules and staff guidance and in the federal securities laws to GAAS or to specific standards under GAAS, as they relate to issuers, should be understood to mean the PCAOB Standards plus any applicable rules of the Commission.

was not under his supervision and use that work as CVB's own was tantamount to conducting no audit at all. Anderson's experience with Yuhe should have led him to exercise heightened scrutiny since he had firsthand knowledge of Yuhe's lack of financial reporting competence and clear knowledge of the Company's weak internal controls. Across both audit years, his multiple audit failures constitute repeated instances of unreasonable conduct and support relief against him and CVB under Rule 102(e)(1)(ii). As discussed below, by virtue of these audit deficiencies, Anderson *willfully* aided and abetted CVB's *willful* violations of Sections 10A(a)(1) and (2) of the Exchange Act. CVB also willfully violated Rule 2-02 of Regulation S-X, and Anderson *willfully* aided and abetted CVB's *willful* violation of Rule 2-02 of Regulation S-X. Such *willful* violations and *willful* aiding and abetting of the violations also supports relief against Anderson and CVB under Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

In addition, it is appropriate to grant relief under Rule 102(e) against CVB. Relief against CVB comports with the Commission's guidance on when firms should be charged for the actions of individual partners, *see* Supplemental Commission Minute *In the Matter of Lester Witte & Co. and John P. Shea* (Jan. 8, 1981), and allows for the imposition, as appropriate, of prospective relief on CVB.

For both Yuhe audits, Van Wagoner was designated by the firm as engagement quality reviewer and had responsibility for evaluating the significant judgments made by the engagement team and the related conclusions reached in forming the overall conclusion on the engagement and in preparing the engagement report. Van Wagoner failed in this role because he was aware in 2009 that CVB and Anderson had not, in fact, audited Yuhe and were instead relying on audit work that they had not planned, performed, or supervised. Van Wagoner also failed in this role during CVB's 2010 audit of Yuhe. Van Wagoner testified that he could not recall any of the

required discussions. In addition, there is no evidence that Van Wagoner actually reviewed CVB and Anderson's planned audit approach prior to the time of audit report issuance. Further, emails between and among audit team members do not document Van Wagoner's involvement throughout the planning and execution of the fieldwork. His only involvement appears after the audit was completed and the file was ready for sign off. Similarly, there is no evidence of Van Wagoner's review being substantive and allowing for professional and competent input and approval of the assessment and response to audit and fraud risks. While Van Wagoner did check the boxes for electronic review on relevant work papers, that review was performed and documented at the time of or after the report issuance. By reviewing work papers, Van Wagoner should have known that the audit team's planning was inadequate. There is no evidence and no documentation within the audit work papers that Van Wagoner questioned the decision to issue the audit report or had discussions with the audit team or audit partner regarding their planning. Van Wagoner's actions constitute failures to exercise due professional care during both audit years and further constitute repeated instances of unreasonable conduct that supports the conclusion that he should not be allowed to practice before the Commission under Rule 102(e)(1)(ii).

B. CVB Violated Sections 10A(a)(1) and (2) of the Exchange Act and Anderson Willfully Aided, Abetted, and Caused CVB's Violations

Sections 10A(a)(1) and (2) of the Exchange Act require that each audit of the financial statements of an issuer by a registered public accounting firm must include, in accordance with Generally Accepted Auditing Standards ("GAAS"), procedures designed to detect illegal acts and identify related party transactions that are material to the financial statements. No showing of scienter is necessary to establish a violation of Section 10A. *SEC v. Solucorp Indus., Ltd.*, 197 F. Supp. 2d 4, 10 (S.D.N.Y. 2002) (addressing violation of 10A(b)); *see also In the Matter of*

Patrizio & Zhao LLC and Xinggeng Zhao, CPA, 2013 WL 5427905, at *10, Rel. No. 34-70562 (Sept. 30, 2013) (citing *Solucorp*, noting that scienter is not necessary, and finding in settled matter that firm and partner violated Section 10A(a)(2) of the Exchange Act). Moreover, as a partner acting on behalf of the firm, Anderson's conduct can be imputed to CVB. *See SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1096-97 nn.16-18 (2d Cir. 1972).

Here, CVB willfully violated Sections 10A(a)(1) and (2) in connection with both the 2009 and 2010 Yuhe audits by failing to have adequate audit programs and procedures in place that were designed to detect Yuhe's illegal acts and identify material related party transactions. As described in detail above, in 2009, CVB failed to adhere to the relevant PCAOB Standards when it abdicated its responsibilities and simply adopted Grant Thornton's work. Moreover, even if this were allowed, CVB violated the relevant PCAOB Standards when it based its audit on Grant Thornton's incomplete work. CVB similarly violated Section 10A(a)(1) and (2) in connection with the 2010 Yuhe audit. Even though the audit team had concerns about Yuhe's ability to produce reliable financial statements and concerns over Yuhe's internal controls, there is no evidence or documentation to suggest that CVB expanded procedures in a proper manner to respond to the risks that were identified. Yuhe's management and its documented lack of knowledge of financial reporting policies in the United States in and of itself should have triggered extended procedures to ensure that illegal acts and violations of U.S. federal securities laws had not occurred. Similarly, as to the identification of related party transactions, CVB relied upon its knowledge of related party relationships from prior years' audits and on representations made by management to the Foreign Audit Staff. CVB failed to properly expand and modify procedures based on an appropriate level of professional skepticism for a company with a history of material weaknesses in the area of related party transactions. Additionally,

CVB, in its own work papers, states in multiple places that management cannot properly account for its own books and records. However, CVB impermissibly relies on management repeatedly to provide it with assertions and evidence without independent testing or verifying that evidence.

The elements required to establish aiding and abetting liability for violations of the federal securities laws are: (1) primary violations of the provisions charged, (2) substantial assistance by the aider and abettor of the conduct that constituted the violations, and (3) that the assistance was provided with the requisite scienter which may be satisfied by showing that the aider and abettor knew of, or recklessly disregarded, the wrongdoing and his or her role in furthering it. *Brendan E. Murray*, IAA Rel. No. 2809, 2008 WL 4964110, *5 (Nov. 21, 2008) (opinion of the Commission); *Graham v. SEC*, 222 F.3d 994, 1000 (D.C. Cir. 2000). A respondent who aids and abets a violation also is a cause of the violation under the federal securities laws. *Sharon M. Graham*, Exch. Act. Rel. No. 40727, 1998 WL 823072, at n.35, aff'd, 222 F.3d 994 (D.C. Cir. 2000).

Here, Anderson, as engagement partner, knew or was highly reckless in not knowing that CVB failed to have adequate audit programs and procedures in place that were designed to detect Yuhe's illegal acts and identify material related party transactions in connection with the 2009 and 2010 Yuhe audits. As such, Anderson willfully aided, abetted, and caused CVB's violations of Sections 10A(a)(1) and (2) of the Exchange Act. *See In the Matter of KPMG LLP*, Rel. No. 34-51574 at n.5., AAER 2234 (April 19, 2005); *In the Matter of Horton & Co.*, Initial Decision Rel. 208 at Part III.A. (July 2, 2002) ("willfulness does not require intent to violate, but merely an intent to do the act which constitutes a violation."), Rel. No. 34-43498, AAER 1339 (Oct. 31, 2000).

C. CVB Willfully Violated and Anderson Willfully Aided, Abetted, and Caused CVB's Violations of, Rule 2-02 of Regulation S-X

Rule 2-02(b)(1) of Regulation S-X requires an accountant's report to state "whether the audit was made in accordance with generally accepted auditing standards." "[R]eferences in Commission rules and staff guidance and in the federal securities laws to GAAS or to specific standards under GAAS, as they relate to issuers, should be understood to mean the standards of the PCAOB plus any applicable rules of the Commission." *See* SEC Release No. 34-49708 (May 14, 2004). "Thus, an auditor violates Regulation S-X Rule 2-02(b)(1) if it issues a report stating that it had conducted its audit in accordance with PCAOB Standards when it had not." *In re Andrew Sims*, CPA, Rel. No.34-59584, AAER No. 2950 (Mar. 17, 2009).

CVB issued an audit report on Yuhe's 2009 and 2010 financial statements stating that it had conducted its audits in accordance with PCAOB Standards. CVB's audits, however, were not conducted in accordance with PCAOB Standards, and in fact, the 2009 audit was not conducted by CVB at all. As such, CVB willfully violated Rule 2-02(b)(1) of Regulation S-X. Moreover, as the engagement partner with ultimate responsibility for Yuhe's audits, Anderson knew or was highly reckless in not knowing that CVB had not conducted its audit in accordance with PCAOB Standards. Accordingly, Anderson willfully aided, abetted, and caused CVB's violations of Rule 2-02(b)(1).

V. RELIEF REQUESTED

Rules 102(e)(1)(ii) and (iii) of the Commission's Rules of Practice and Sections 4C(a)(2) and (3) of the Exchange Act authorize the Commission to enter an order censuring a person, or denying, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who the Commission finds has engaged in improper professional conduct or willfully violated the federal securities laws. Section 21C of the Exchange Act authorizes the Commission to

enter an order requiring any person that violated, or is about to violate, any provision of the act, or any rule or regulation thereunder, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Moreover, Sections 21B(e), 21C(e), and 21B(a)(2), of the Exchange Act allow the Commission to enter an order requiring disgorgement including prejudgment interest, on a joint and several basis, and impose a penalty.[9]

Here, the Division seeks a cease and desist order, along with an order banning the Respondents from practicing before the Commission pursuant to Rule 102(e). In addition, against CVB and Anderson jointly and severally, the Division seeks disgorgement of the audit fees that Respondents received for the 2009 and 2010 audits of Yuhe, along with prejudgment interest thereon. The Division also seeks separate civil penalties each from CVB and Anderson.

VI. CONCLUSION

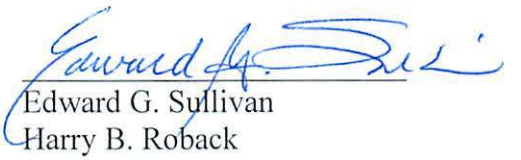
As set forth in this prehearing brief and as the evidence will establish at trial, (i) CVB violated, and Anderson aided, abetted, and/or caused CVB's violations of Section 10A(a)(1) and (2) of the Exchange Act; and (ii) CVB violated, and Anderson aided, abetted, and/or caused CVB's violations of Rule 2-02(b)(1) of Regulation S-X, which constitute direct violations of the federal securities laws. For these violations, the Commission seeks a cease and desist order, disgorgement with prejudgment interest, on a joint and several basis, against CVB and Anderson. Separate civil penalties should also be imposed against CVB and Anderson.

Further, CVB, Anderson and Van Wagoner 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. And order suspending the three Respondents from appearing or practicing before the Commission is appropriate. CVB also *willfully* violated and Anderson *willfully* aided

[9] Penalties related to causing violations are only available in connection with conduct which occurred subsequent to the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which, here, includes the audit of Yuhe's 2010 financial statements.

and abetted violations of Section 10A(a)(1) and (2) of the Exchange Act and further violated Rule 2-02(b)(1) of Regulation S-X and Rule 102(e)(1)(iii) of the Commission's Rules of Practice provides a second basis against CVB and Anderson for denying them the privilege of appearing or practicing before the Commission.

Respectfully submitted, this 25th day of November, 2014.



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