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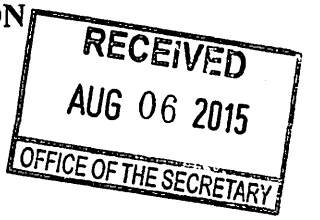
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.



Admin. Proc. File No. 3-16518

In the Matter of the Application of

KABANI & COMPANY, INC.,
HAMID KABANI, CPA,
MICHAEL DEUTCHMAN, CPA,
and
KARIM KHAN MUHAMMAD, CPA

For Review of Disciplinary Action Taken By the

PUBLIC COMPANY ACCOUNTING
OVERSIGHT BOARD

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD'S OPPOSITION TO APPLICATION FOR COMMISSION REVIEW

August 5, 2015

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The Public Company Accounting Oversight Board (Board or PCAOB) hereby opposes the application filed by Kabani & Company, Inc., Hamid Kabani, Michael Deutchman, and Karim Khan Muhammad (Applicants) for review by the Securities and Exchange Commission (Commission or SEC) of sanctions ordered against them in this PCAOB disciplinary proceeding.

INTRODUCTION

In advance of a PCAOB inspection commencing in October 2008, Applicants, a PCAOB-registered public accounting firm (Kabani & Co. or the Firm) and three associated persons of the Firm (Kabani, Deutchman, and Khan), undertook a "wide-spread and resource-intensive effort" to change the Firm's audit documentation to "deceive [the] inspectors" about "the deficiencies in the Firm's audit work papers" for three securities issuers, conduct that constituted an egregious violation of PCAOB Rule 4006, *Duty to Cooperate with Inspectors*, PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*, and Auditing Standard (AS) No. 3, *Audit Documentation*, and warranted strong sanctions. So found the hearing officer's 70-plus-page April 22, 2014 amended initial decision (I.D.) in this case. Index to the Record, Record Document (R.D.) 195. The hearing officer held six days of hearings, received extensive briefing by the parties, and based his findings on a rich record that included audit files, emails, witness testimony, stipulations and admissions, and an 800-plus-page report and testimony of a data forensics expert whose "methodologies were reasonable," "findings were detailed and meticulous," and "conclusions were well-reasoned and well-supported." I.D. 26.

Application of the requirements at issue is straightforward. Rule 4006 states, "Every registered public accounting firm, and every associated person of a registered public accounting firm, shall cooperate with the Board in the performance of any Board inspection." Rule 3100 states, "A registered public accounting firm and its associated persons shall comply with all

applicable auditing and related professional practice standards." One of those auditing standards is AS No. 3. Among its requirements is that audit documentation "contain sufficient information to enable an experienced auditor, having no previous connection with the engagement[]" to "understand the nature, timing, extent, and results of the procedures performed, evidence obtained, and conclusions reached" and to "determine who performed the work and the date such work was completed as well as the person who reviewed the work and the date of such review" (¶ 6); and that a complete and final set of audit documentation "be assembled for retention as of a date not more than 45 days after the report release date" (¶ 15), that no audit documentation "be deleted or discarded after the documentation completion date" (¶ 16), and that any added documentation indicate who added it and when and why it was added (*id.*).

Instead, as the hearing officer found, Applicants engaged in a scheme to—in the words of a Firm employee helping to coordinate the task—"cleanup" audit files of several issuers by adding, altering, and backdating numerous work papers. After learning the Board would conduct an inspection of its files, Kabani instructed Rehan Saeed, a concurring reviewer for the Firm, to review certain audit files and ultimately to focus on those files identified by PCAOB inspectors as the engagements to be reviewed. Saeed reviewed those files and identified multiple problems with them, after which Firm personnel, including Applicants, changed them after the deadline under AS No. 3 had passed for finalizing those files and made the doctored files available to Board inspectors without informing them of the changes. For this wrongdoing, the hearing officer revoked Kabani & Co.'s registration; permanently barred Kabani from associating with a registered public accounting firm and ordered him to pay a $100,000 civil money penalty; barred Deutchman from associating with such a firm, with leave to petition the Board to associate in two years, and ordered him to pay a $35,000 civil money penalty; barred Khan from associating

with such a firm, with leave to petition to associate in 18 months, and ordered him to pay a $20,000 civil money penalty; and censured Applicants.

On January 22, 2015, the Board, after de novo review of the record and review of all petitions for review and motions on appeal, issued a 20-page order summarily affirming under PCAOB Rule 5460(e) the hearing officer's above-noted findings of violations and imposition of sanctions, which was the heart of the case against Applicants, and declining to reach the rest. R.D. 206 at 3, 19. On March 31, 2015, in a further seven-page order, the Board denied motions for reconsideration by Khan and by the other Applicants. That order explained that the motions "consist[ed] primarily of restated arguments that were made before the hearing officer or in their petitions for review, which have already been appropriately rejected." R.D. 209 at 3.

Now on appeal to the Commission, Applicants raise yet again many of the arguments that have already been aired in multiple filings before the hearing officer and the Board and that have already been fully considered and rejected in all their iterations. As Applicants have done throughout the litigation, they also continue to advance shifting, incredible, conflicting, and newly invented excuses to try to explain away the overwhelming evidence against them. And they contrive a host of new procedural arguments that are not only waived but patently baseless.

None of this can obscure that, under the standards governing Commission review of Board sanctions, Applicants "engaged in such acts or practices" or "omitted such acts" as the Board "has found [them] to have engaged in or omitted" by a preponderance of the evidence; such acts or practices "are in violation of" the rules and auditing standards "specified in the [Board's] determination"; and "such provisions are, and were applied in a manner, consistent with the purposes" of the Securities Exchange Act of 1934 and Title I of the Sarbanes-Oxley Act of 2002. *See* 15 U.S.C. 78s(e)(1), 7217(c)(2); *S.W. Hatfield, CPA*, SEC Rel. No. 34-69930, 2013

SEC LEXIS 1954, *4 (July 3, 2013) (applying preponderance standard on review); 68 Fed. Reg. 62,860, 62,861 (Oct. 31, 2003) (SEC order approving PCAOB Rule 3100); 69 Fed. Reg. 31,850, 31,851 (approving PCAOB Rule 4006); 69 Fed. Reg. 52,949, 52,950 (Aug. 30, 2004) (approving AS No. 3). Nor do Applicants provide any basis for a finding that, "having due regard for the public interest and the protection of investors," the sanctions ordered are "not necessary or appropriate in furtherance of [the Sarbanes-Oxley Act] or the securities laws" or are "excessive, oppressive, inadequate, or otherwise not appropriate to the finding or basis on which" they were imposed. *See* 15 U.S.C. 7217(c)(3).

The Commission should affirm the sanctions ordered by the Board. The record evidence establishes that the misconduct here, which undermined the inspection process through deception, was extraordinarily serious, was marked by a highly culpable state of mind, and was antithetical to the Board's statutory mission to further the public interest in the preparation of informative, accurate, and independent issuer audit reports and to protect the interests of investors, who currently continue to be at risk of audits of public companies by Applicants.

FACTS

As discussed below, the record in this case shows that staff from the PCAOB's Division of Registration and Inspections (DRI) began an inspection of Kabani & Co. on October 20, 2008, during which the Firm purported to provide the inspectors with the work papers of the Firm's audits of the December 31, 2007 financial statements of Issuer A, Issuer B, and Issuer C, three Delaware corporations headquartered, respectively, in China, Hong Kong, and California. Under AS No. 3, the 45-day documentation completion deadline for the Issuer A audit was July 12, 2008; for the Issuer B audit was May 12, 2008; and for the Issuer C audit was May 30, 2008. Ex. J-7 at 3. As determined in this disciplinary proceeding brought in 2012, following an

investigation by the PCAOB's Division of Enforcement and Investigations (DEI), Applicants engaged in an elaborate scheme to conceal from the inspectors deficiencies that existed in the three audit files after those deadlines had already expired.

I. Firm personnel reviewed work paper files for deficiencies and "updated" the files.

Kabani & Co. is a small firm, which in 2008 employed about 20 people, including Kabani, Deutchman, and Khan, in its 2,000-square-foot California office space. R.D. 164 at 1256 (Kabani), R.D. 165 at 1807 (Kabani). At all relevant times, Kabani was the firm's sole shareholder, and Kabani and Deutchman were the Firm's only engagement partners. R.D. 164 at 1253-54, 1257-58 (Kabani). On the three audits at issue here—the 2007 audits of Issuers A, B, and C—Kabani was the engagement partner and Deutchman was the concurring partner. R.D. 115 ¶¶ 43, 44, 62, 63, 74, 75 (stipulations of the Firm, Kabani, and Deutchman). Khan was the most senior person below the partner level on those audits to which he was assigned, which, as pertinent here, was the 2007 audit of Issuer A. R.D. 163 at 729 (Khan).

During 2006-2007, the Firm moved to a paperless system and stored all its audit files electronically, either on its computer servers or on staff laptops, using a software application called Engagement Manager. R.D. 26 ¶ 48 (answer of the Firm, Kabani, and Deutchman); R.D. 44 at 000527 (Kabani affidavit); R.D. 115 ¶¶ 8-9. Kabani found the paperless system to be a "useful facility given [the Firm's] growing Chinese-based practice with staff in our Beijing office able to access client files during the midst of audit procedures." R.D. 44 at 000526.

On June 2, 2008, DRI emailed Kabani and informed him that it intended to inspect the Firm. Hearing Exhibit (Ex.) D-34. On July 14, 2008, DRI informed him that the inspection would commence on October 20, 2008. Ex. J-8. In or around June 2008, Kabani held a meeting of Firm personnel. R.D. 161 at 31-33 (Saeed). He advised those present that a PCAOB

inspection was upcoming, that the PCAOB had noted deficiencies during a prior Firm inspection, that PCAOB rules permitted the correction of certain deficiencies in work paper files, and that Kabani wanted work paper files reviewed to determine whether certain documents were missing. *Id.* at 32-34, 258-59. Kabani said that a junior employee of the Firm (herein referred to as Firm Staffer) would be "driving the project." *Id.* at 34-35. On August 22, 2008, Kabani emailed to Deutchman and Saeed an early iteration of what would become the checklist that Saeed would use in his review of the audit files. Exs. J-9 at 3, DKR-51; R.D. 161 at 52 (Saeed). Kabani himself selected which files Saeed reviewed. R.D. 161 at 38, 153. After the staff meeting, Saeed visited the Firm, and Kabani gave him a list of company names for review. *Id.* at 38; R.D. 162 at 452. Those audit file names are among those specified by Firm Staffer in emails to Saeed about Saeed's work paper reviews. *Id.*

Saeed received his review copy of the audit file for Issuer A (the Firm's largest client) on or around September 14, 2008, and emailed his comments on the file to Khan on September 23, 2008. R.D. 115 ¶ 110; R.D. 161 at 68 (Saeed); Ex. DKR-14 at 1. Khan replied, "Rehan, Thanks for your comments. We will update the files and get back to you." Ex. DKR-14 at 1.

Kabani narrowed the list of files to review once he learned which ones the inspectors wanted to see. On October 12, 2008, minutes after DRI informed Kabani via email of the audits selected for review (including Issuers A, B, and C), Kabani forwarded that email to Firm staff with the following message: "Please note below the clients selected by the PCAOB. We will be working 12 hrs per day, next week, including Saturday and possibly Sunday. Everybody is expected to make arrangement and resolve the personal matters. No exceptions." Ex. J-18.

The next morning, Kabani specifically instructed Saeed in an email, "Since we have been informed by the PCAOB about which clients they will inspect, let's review those clients now."

Ex. J-21. That day, Saeed received by email a copy of the Issuer B file to review. Ex. J-22. Next day, Saeed emailed his comments on that file to Kabani, Deutchman, Firm Staffer, and another staff member noting, "PCAOB Cleanup attached." Ex. J-24. Firm Staffer, copying Kabani and Khan, replied, "Thanks for your hard work on [Issuer B]. We are updating it based on your comments now." Ex. J-28.

Also on October 14, 2008, Saeed received an email from Firm Staffer (copied to Kabani and Khan) with an updated list of "projects we want you [to] look at," which included the Issuer C audit. Exs. J-28, J-30, J-31. On October 17, 2008, Saeed completed his review of the Issuer C file and emailed comments to Applicants after Firm Staffer had encouraged him to complete his review quickly ("The rest couple days are really critically important to us, we really appreciate if you can finish [Issuer C] today."). Ex. J-31.

Some deficiencies in the files Saeed reviewed were so grave he concluded the audit file did not comport with AS No. 3, as it appeared a complete file had not been assembled within 45 days of issuance of the audit report. *See* Ex. J-24 at 5, item 88; Ex. J-31 at 7, item 88; *see also* R.D. 161 at 167–69, 197-98 (Saeed). Reviewing and correcting the files was a massive effort, consuming hundreds of person-hours, and anxiety levels about the upcoming inspection ran high. *See* I.D. 19, 24 n.150. As Deutchman testified during the investigation, "Everybody was afraid of the inspection. Everybody was terrified of the PCAOB, almost paranoid of the PCAOB." R.D. 166 at 2079; *see* R.D. 161 at 256 (Saeed) ("[I]t looked like a huge project where everyone was working on it, they were working overtime, they were working against the deadlines.").

This "PCAOB cleanup project," as it was referred to in several emails at the time among Applicants, consumed so much of the staff's time over two months that the Firm "could not do much billing" on any paying projects. R.D. 161 at 53 (Saeed). Yet, when questioned in this

case, Applicants denied having any understanding of what that the term "PCAOB Cleanup" meant (R.D. 163 at 826-27, 903 (Khan); R.D. 165 at 1700, 1703 (Kabani); R.D. 166 at 2131, 2134, 2149, 2156-57 (Deutchman)); or asking anyone at the time what it meant (R.D. 165 at 1701 (Kabani)); or even knowing that something called a "PCAOB Cleanup" was occurring (R.D. 163 at 1703 (Kabani)). Khan offered at the hearing that perhaps Firm Staffer "was asking PCAOB to clean something" or "it looks like PCAOB is cleaning something." R.D. 163 at 826.

II. The Firm made the altered files available to inspectors.

On October 20, 2008, the PCAOB inspectors visited the Firm and reviewed, among others, the Issuer A, B, and C audit files. Firm personnel, at Kabani's direction, made those work papers available to the inspectors on laptops. R.D. 115 ¶ 137; R.D. 26 at 33-34; R.D. 101e-f ¶ 133 (Khan stipulations). No one at the Firm informed the inspectors that work papers had been added, deleted, or altered after the documentation completion date. R.D. 165 at 1751 (Kabani); R.D. 166 at 2073-74, 2075 (Deutchman). Nor did anyone at the Firm claim to the inspectors that it "changed the file properties so that the PCAOB could access the requested files" (Applicants' Brief (Br.) 44) or that any electronic files had to be read in conjunction with any supplemental files that existed either in another form or in another location.

III. Saeed left the Firm and contacted the PCAOB.

Saeed stopped working for the Firm in September 2009. R.D. 161 at 256-58 (Saeed). Thereafter, he contacted the PCAOB to voice concerns about the Firm's pre-inspection activities, and gave DEI copies of the audit files he reviewed for Issuers A and B and emails related to his reviews of all three audits. R.D. 161 at 54-58, 79-83, 155, 270 (Saeed). In 2010, DEI launched an investigation, issuing Accounting Board Demands (ABDs) for the audit work paper files for certain clients from April 2007 through April 2010, including Issuers A, B, and C. Exs. J-37 at

7, D-125 at 7. Kabani understood that DEI was requesting the final audit files for the relevant clients, and those are what the Firm produced. R.D. 164 at 1347 (Kabani). In January 2011, DEI determined it could not open the file for Issuer A and requested a replacement copy. Kabani complied without any claim that the substitute file was different from the file given to DRI in 2008 and originally produced to DEI in 2010. Ex. D-148.

IV. The files the Firm produced contained late, unannotated alterations.

Examining the audit files the Firm produced in 2010 and 2011 as the final versions provided to the PCAOB inspectors for the Issuer A, B, and C audits, DEI compared them to the versions Saeed produced. In doing so, as discussed below, DEI discovered that documentation deficiencies identified by Saeed in the earlier files were corrected in the later files and that, as represented in the emails between Saeed and Applicants, considerable "updating" had been done. Some alterations were apparent on the face of the documents: one file bore evidence that auditor "sign-offs" were applied before the underlying documents were actually received and reviewed; another showed that sign-offs were added well after the document completion deadline; and all three files contained specific changes to work papers (such as adjusting balances to tie to other balances) that addressed the particular deficiencies Saeed had identified. Other changes became apparent only after an analysis of the documents' "metadata"—electronically stored information about document properties, such as when and by whom it was created and last modified. That analysis revealed that all three files contained late-added and intentionally backdated documents.

A. Backdated sign-offs

When the Firm conducted its final review of an audit file, the responsible auditors would "sign off" on the individual work papers in Engagement Manager. R.D. 166 at 1915-16 (Kabani). The sign-off date was entered manually by the auditor. *Id.*

The list of work papers for the Issuer A file Kabani provided to DEI reflected June 10, 2008 completion sign-offs by Khan, and June 10, 2008 review sign-offs by Kabani and Deutchman for every work paper in the file. Ex. DKR-4. But several work papers were not completed and reviewed until afterward. Specifically, 13 spreadsheets contain entries recording that the Firm received certain supporting documents (letters from financial institutions confirming account balances) from June 16 through June 24, 2008—after the file supposedly received final sign-off.[1/] At least 10 of the letters themselves bore dates after June 10.[2/] By inputting those false sign-off dates, Applicants made it appear as if their completion and review of the Issuer A work papers occurred before, not after, the June 12, 2008 date on which the Firm released its audit report and Issuer A filed its Form 10-K. Exs. J-7 at 3, D-37, D-63 at 2.[3/]

B. Late sign-offs

The final audit file for Issuer B contains late-added sign-offs. R.D. 165 at 1717-19 (Kabani); R.D. 115 ¶ 145. The work paper list in the Issuer B file sent to Saeed in October 2008 contained electronic sign-offs indicating that most but not all work papers were "Completed"—and no sign-offs indicating the work papers were "Reviewed." *See* Ex. D-17. The final audit file

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1/ *See* Exs. D-251, D-253, D-265, D-276, D-288, D-344, D-409, D-414, D-421, D-425, D-452, D-468, and D-496.

2/ *See* Exs. D-249 (dated June 16, 2008), D-250 (showing comment boxes added June 18, 2008), D-270 (showing June 13, 2008 signature date), D-272 (showing June 13, 2008 date-stamp), D-358 (showing June 16, 2008 signature date), D-416 (showing June 24, 2008 signature date), D-426 (dated June 16, 2008), D-469 (showing multiple receivables statements dated June 20, 2008), D-497 (bearing June 20, 2008 fax transmittal date), D-498 (same).

3/ At the hearing, Kabani speculated that the receipt dates on these spreadsheets might have been entered as part of "training," but also testified, "It is very difficult to recall for me what did I do in 2008 for the training. I do not remember right now." R.D. 165 at 1635-38. Applicants no longer make this argument.

reflects sign-offs indicating that all 372 work papers were "Completed" on March 26, 2008 and "Reviewed" by Kabani and Deutchman that day. *See* Ex. D-8; R.D. 165 at 1623-24 (Kabani). The final file bears no notation explaining the date the sign-offs were added, the person who added them, or the reason for doing so after the May 12, 2008 documentation completion date.

C. Altered and added work papers to correct specific deficiencies

There are multiple examples in each of the three audit files of documents added or altered to address specific deficiencies Saeed or other staff identified just before the inspectors arrived.

1. Issuer A

Saeed received his review copy of the Issuer A audit file on or around September 14, 2008 from a Firm employee responsible for audit field work (referred to here as Audit Senior). R.D. 115 ¶ 110; R.D. 161 at 68 (Saeed). Audit Senior emailed Saeed the work papers reflecting post-audit work she had been performing on the file, telling Saeed she was doing so after a discussion with Khan. Ex. DKR-14 at 3. The next day, she emailed Saeed again, copying Khan: "Following a discussion with Karim [Khan], we think we should try to get the work done by 9/20/2008. To avoid the hustle-bustle activities at the last minute (it is such a huge project), Hamid [Kabani] would like you to start review the working Engagement Manager file I sent you last time. The work I did (tying the numbers among subsidiaries' TBs, Lead Schedules and WPs) and incorporated in that file has been changed little and will not be changed much unless more checklists and/or programs should be used." *Id.* at 1.

About a week after receiving the work papers from Audit Senior, Saeed sent her and Khan a review checklist and comments listing deficient and missing audit documentation for the Issuer A audit. Exs. DKR-14 at 1, DKR-12, DKR-51. A comparison between the work papers

that Saeed reviewed and the audit file that Kabani represented to DEI was the file made available to DRI reveals significant changes.

The file provided to Saeed in mid-September contained only 158 documents, four work paper folders, and no supporting work papers for 13 of 38 subsidiaries. Ex. D-14. In contrast, the file provided to DEI contained 1,104 work papers, two additional work paper folders ("Checklists" and "Wrap up"), and 446 supporting work papers for the same 13 subsidiaries. Ex. DKR-4. Moreover, Firm personnel made over 100 specific, identifiable changes to 13 trial balances (*see* R.D. 168 at Ex. B thereto) and to 28 supporting work papers (*see id.* at Ex. C thereto) to address the "disparities" identified by Audit Senior, including removing and revising supporting work papers and adding and altering work paper references. For example, Saeed's version of the Accounts Payable lead schedule for Issuer A subsidiary #11 contains tick-marks indicating "Tied to the Trial Balance" in rows 17-20 and the comment "Not tied" in rows 18-19. *See* Ex. D-579 at 1. Meanwhile, the comment "Not tied" appears nowhere in the document given to DEI, and rows 17-20 contain additional tick-marks indicating "Recomputed" along with references to additional supporting work papers: "F5-1" in row 17, and "F3-1" in row 20. *See* Ex. D-311 at 1. For a complete list of these specific alterations, see R.D. 168 at Exs. B, C thereto. These changes were made after Audit Senior sent Saeed work papers to review—at least six weeks after the July 27, 2008 documentation completion deadline.

2. Issuer B

Saeed received a copy of the Issuer B file to review on October 13, 2008, and returned comments on it the next day to Applicants and Firm Staffer. Ex. J-24. In the file provided to DEI in 2010, Firm staff had made changes to the documents, addressing Saeed's comments.

First, for example, Saeed noted that the file lacked a PX-6 Risk Assessment Summary Form. Ex. J-24 at 1, 4. The final version contains one. Ex. D-658. Minutes of two staff meetings held on October 2 and October 13, 2008 note the need for "Partners" to "create memo for Risk Assessment," which is the PX-6 form here, by a deadline that slipped from October 16 to October 20, 2008. Exs. D-85 at 1, item 10; D-85 at 2, item 4; DKR-27 at 2, item 4. Second, Saeed noted that a PX-14 Supervision, Review, and Approval Form lacked handwritten signatures. Ex. J-24 at 5. The final file contains a version with signatures. Ex. D-661. Third, the file Saeed reviewed contained a management representation letter bearing the date January 25, 2008 and the generic header "Company Header." Exs. D-732, 733. Saeed observed that this date did not match the March 10, 2008 report release date. Ex. J-24 at 5; *see* R.D. 161 at 161-62 (Saeed testifies about the concern underlying that checklist item). The final file contained a letter dated March 10, 2008, on company-specific letterhead, among other changes. Ex. D-660. Additionally, Saeed flagged a discrepancy in the dollar amounts in a liability lead schedule that should have been the same as corresponding figures in the supporting schedule and working trial balance.[4/] The same work papers in the final file bear amounts that do agree.[5/] These additions and alterations were made without noting when, why, and by whom they were made.

4/ *See* Ex. J-24 at 4; *compare* Ex. D-753 at 1, row 20, column F ("Other Payable" of $20,237,789.17) *with id.* at 3, row 34, column L ("Other payable" of $5,165,193.17) *and* D-751 at row 40, column F ("Other Payables" of $5,165,193.17).

5/ *Compare* Ex. D-664 at 1, row 20, column F ("Other Payable" of $5,165,193.17) *with id.* at 3, row 34, column L ("Other payable" of $5,165,193.17) *and* D-663 at 2, row 40, column F ("Other Payables" of $5,165,193.17).

3. Issuer C

On October 14, 2008, Saeed received a copy of the Issuer C audit file, and on October 17, 2008, he sent his comments on it to Applicants. Exs. J-28, J-31. In the file the Firm produced to DEI as the same set of work papers given to DRI in 2008, R.D. 115 ¶ 146, two documents appear that Saeed had identified as missing in the version he reviewed: (1) a certain "Certificate of Approval by FIE" (Exs. J-31 at 1, 6, D-765, D-11 at 1; R.D. 161 at 195 (Saeed)); and (2) a PX-6 Risk Assessment Summary Form (Exs. J-31 at 1, 6, D-803, D-11 at 6; R.D. 161 at 196-97.[6/]

Saeed also noted that two documents needed to be corrected. The first was a management representation letter dated March 31, 2008—one month later than the February 28, 2008 date of the audit report. Ex. J-31 at 5; R.D. 161 at 191 (Saeed). The final file contains a management representation letter with a date of February 28, 2008. Ex. D-812 at 1. And he noted that a PX-14 Supervision, Review, and Approval Form lacked handwritten signatures. Ex. J-31 at 7. The final file contains a version with signatures. Ex. D-807. These additions and alterations were made without noting when, why, or by whom they were made.[7/]

[6/] The Firm, Kabani, and Deutchman argued in their pre-hearing brief that this certificate was not added late to the final work papers and was part of the "permanent file," *i.e.*, a file that "has documents that are of a longer duration and of a permanent nature, like incorporating documents, long-term agreements" and similar documents "that would serve or support multiple years of audits." R.D. 178 at 68-69; R.D. 162 at 425 (Saeed). The hearing officer rejected this argument based largely on the lack of evidence to support the existence of such a file. I.D. 64-65, n.342. Applicants no longer make this argument.

[7/] Applicants pressed before the Board the claim that the PX-14 forms for the Issuer B and C files already existed in hard copy and were merely scanned into PDF form and imported into Engagement Manager in October 2008 (*see* R.D. 196 ¶ 28). The Board rejected that argument, noting the lack of "credible evidence proving the existence of the dual audit file system the respondents describe" and that the Issuer C PX-14 form bears evidence of having been intentionally backdated (discussed in detail below): its file-level creation date is October 17, 2008, but its file-level modification date is March 25, 2008. *See* R.D. 206 at 7 n.1; I.D. 64; Ex. D-220 at 87. Applicants no longer make this argument.

D. Metadata reveals other documents that were added late, and some of these were backdated to appear timely.

Evidence from the metadata of the final audit files the Firm produced to DEI shows that, in addition to the previously identified specific examples, many more documents were added after the applicable documentation completion deadlines. Specifically, the Issuer A file contains 54 documents created and/or modified after July 12, 2008. Ex. D-220 at 18, 21 & Ex. 1 thereto. The Issuer B file contains 39 documents created and/or modified after May 12, 2008. Ex. D-220 at 18, 23 & Ex. 4 thereto. And the Issuer C file contains 63 documents created and/or modified after May 30, 2008. Ex. D-220 at 18, 45-46 & Ex. 11 thereto.

Furthermore, all three audit files contain evidence that some work papers were intentionally backdated so they would appear to have been added before the relevant documentation deadlines. DEI's expert termed these "anomalous documents." Ex. D-220 at 16-19; R.D. 164 at 1058-59. In normal computer usage, a document is created, and then if it is subsequently modified, the metadata will show a creation date that is earlier in time and a modified date that is later in time. Ex. D-220 at 10-12. But many of the audit documents the Firm produced bear modification dates that predate their creation dates. Ex. D-220 at 16-19. As described by DEI's expert and found by the hearing officer, this is impossible without someone or something acting on the computer's internal clock. Ex. D-220 at 18; I.D. 28.

The pattern with which these anomalous documents are backdated indicates they are not the result of innocent or accidental file operations. As DEI's expert explained, the simple act of importing or copying a document into the firm's Engagement Manager software would not alter the file-level data he identified as anomalous, because the file-level modification dates are changed only by the native software that opens and edits the document. R.D. 164 at 1068, 1185-

86, 1234. That is, if an Adobe Acrobat document is imported into Engagement Manager, its file-level metadata would be unaffected unless and until someone opened the document with Adobe Acrobat and then edited and saved the document.[8/] The pattern shown by the metadata is that users variously logged in as "Hamid," "Kabani," "Hamid Kabani," "Karim," and "Mohammed" opened a document within its native application, made what was often a nearly invisible change, such as adding a carriage return after the last line in a field of text, and then saved the file, which would have given the document a modified date that matched the computer's clock at the time the file was saved. Ex. D-220; R.D. 168 at Ex. A thereto; R.D. 164 at 1062, 1114-15, 1120-21. That clock was reset to dates to correspond to dates for each of the three separate audits that would dispel any doubt that the audit documentation complied with AS No. 3.

In the Issuer A file, 18 documents are anomalous. *See* D-220 at 16-17, 21-23 & Ex. 1 thereto. The metadata shows that nearly all these documents were created in mid- to late October 2008 but were last modified on computers with clocks set to February 20, 2008, April 29, 2008, and June 10, 2008 (near the April 29, 2008 audit report date and just before the June 12, 2008 Form 10-K filing date). *Id.*

In the Issuer B file, 37 documents are anomalous. *See* D-220 at 23-44 & Ex. 4 thereto. The metadata shows that nearly all these documents were created in August, September, and October 2008 but were last modified on computers with clocks set to March 7 and March 25,

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8/ *See* Ex. D-220 at 22 ("Absent either document operations on a mis-set computer system clock or direct metadata alteration (such as with a software metadata tool), documents do not have file-level Last Modified timestamps earlier than their file-level Created timestamps."). Merely opening and then closing the document, without making any change, would not change the Last Modified date. R.D. 164 at 1120-21.

2008 (near the March 10, 2008 audit report date and just before the March 27, 2008 Form 10-KSB filing date). *Id.*

In the Issuer C file, 37 documents are anomalous. *See* D-220 at 45-55 & Ex. 11 thereto. The metadata shows that nearly all these documents were created in late June and late September 2008 but were last modified on computers with clocks set to March 28, March 29, April 7, and April 8, 2008 (near the February 28, 2008 audit report date and just before the April 15, 2008 Form 10-K filing date). *Id.*

DEI's expert noted that the "consistency of [the] intervening period" between the created and modified dates of each set of files, combined with the pattern of "content-neutral changes" to the anomalous documents (hidden line returns, for example), makes it "probable that the Anomalous Documents were modified on intentionally backdated machines." Ex. D-220 at 51.[9/]

ARGUMENT

A wealth of evidence and well-reasoned sanctions determinations support the hearing officer's findings that DEI proved by a preponderance of the evidence (*see* PCAOB Rule 5204(a)) that Applicants, in an egregious manner, breached their duty to cooperate with a PCAOB inspection, in violation of PCAOB Rule 4006, and violated PCAOB Rule 3100 by failing to comply with fundamental audit documentation requirements of AS No. 3, and his

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[9/] Defense counsel, after consulting with the substitute expert who was observing DEI's expert's testimony, suggested during cross-examination that the clocks may have been reset not to backdate audit files but to skirt a software feature that would disable a free demonstration version of the program after some trial period had expired. *See* R.D. 164 at 1116-17. DEI's expert noted that this hypothetical would likely violate the software's licensing agreement but that anyway most software no longer depends on a local computer clock to determine whether the trial period has ended. *Id.* at 1117. Applicants advance no such theory here.

imposition of substantial sanctions for those violations. After de novo review, the Board summarily affirmed. R.D. 206 at 3, 19. The Commission should affirm the sanctions.

Applicants' brief, skimming over the surface of the extensive and weighty evidence against them and unsupported by any detailed, on-point factual or legal analysis, sketches broad, far-flung arguments, none of which withstands scrutiny. In one set of arguments, Applicants challenge the sufficiency of the evidence of their violations. Specifically, they attempt to create confusion about which files Saeed reviewed and why (Br. 17-18), whether the Issuer A file produced to DEI in 2011 was final (Br. 43-44), whether Applicants could possibly have made certain late additions to that file (Br. 2 n.2, 41-42), and when the AS No. 3 deadline for that audit expired (Br. 16 n.6), as well as claiming that the burden of proof was shifted to them because their ill-founded attacks on the evidence were not credited (Br. 17-18) and that none of Saeed's testimony about the work he did in 2008 should be believed (Br. 4, 17). All these arguments have been repeatedly rejected for good reason. In another set of arguments, Applicants object to the proceeding on procedural grounds. Br. 1-2, 5-6, 20, 25-36, 39-43, 51. Most of these claims are raised for the first time now and so are waived; all lack support in the law, the record, or both. Finally, Applicants challenge the sanctions. Br. 3, 5, 20-25, 48-52. Their arguments fail under Commission precedent and, unlike the careful, thorough, and well-founded determinations made in imposing the sanctions, do not reflect the extremely serious circumstances of this case. We address in detail below the litany of arguments, all meritless, made in Applicants' brief.

I. Applicants' Challenges to the Sufficiency of the Evidence Have No Merit.

A. Saeed was reviewing final audit files, not draft files.

Applicants' far-fetched claim that the work papers Saeed reviewed in September and October 2008 were "non-final" work papers that he was reviewing as part of an internal "quality

control" exercise (Br. 17-18) is contradicted by the record. The evidence plainly shows that Saeed was reviewing the final files of audits selected by DRI so that deficiencies could be fixed before the inspectors arrived. *See, e.g.*, pp. 4-17.

For example, Applicants' claim flatly contradicts Kabani's investigative testimony that he engaged Saeed to inspect final work papers, not non-final versions. R.D. 165 at 1652, 1654-55. Moreover, Firm emails contain multiple references to work papers, and to review of them by Saeed, but not a single reference to the files being non-final. Also, the checklist Saeed used to review the work papers contained the item, "Completion of WP files within 45 days of issuance of Report." Ex. J-24 at 5, item 88; J-31 at 7, item, 88; R.D. 161 at 167-69, 197-98 (Saeed). It would have been nonsensical for Saeed to review files for finality if Kabani knew they were not final. Indeed, Applicants have never offered any rational explanation for why Kabani would have tasked Saeed—in the two months preceding a PCAOB inspection that was consuming large amounts of staff time and energy—with reviewing superceded files for deficiencies that Kabani himself, as engagement partner, had supposedly already identified and corrected. *See* R.D. 165 at 1615-16, 1657-58, 1804 (Kabani); R.D. 166 at 2036-37 (Kabani).

Applicants' argument also fails to account for why Kabani would have wanted Saeed to narrow the focus of a "quality control inspection" of non-final files to those audits identified by DRI as having been selected for inspection, and it fails to explain how Saeed's review, which was limited to comparing the files against the checklist of items he was instructed to look for, is consistent with identifying areas for meaningful quality control improvement.

Applicants' claim that Saeed was reviewing non-final files is further undercut by their competing, equally incredible, and now-abandoned claim that Audit Senior, who was using Saeed's comments to address the deficiencies in the Issuer A file, "was being trained to

accounting and trial balance concepts." R.D. 196 at 50. Kabani testified he did not know at the time whether Audit Senior was performing a training exercise with Issuer A's documentation, R.D. 166 at 2027, and Deutchman, responsible for Firm training, stated during investigative testimony not that she undertook her work because she was performing a training exercise, but because "[f]or some reason" she "decided on [her] own volition" she wanted to do it and that he "d[id]n't know what they're doing this for." R.D. 166 at 2128. Applicants have also abandoned their competing claim, offered during investigative testimony, Ex. KR-102 at 7, that Firm Staffer was inexperienced and made a mistake in sending Saeed non-final files—which directly contradicts their argument that Firm Staffer "was assigned" the task of "providing non-final Engagement Manager versions of audit files" for Saeed's quality control exercise. R.D. 26 at 22.

Moreover, admissions Khan made in his answer strongly support DEI's case with respect to Issuer A and undermine Applicants' several manufactured excuses. Khan—the person responsible for coordinating the work paper review on the Issuer A audit, an in-charge responsible for AS No. 3 compliance, and the staff member who spent more time than any other U.S. individual on the audit—stated that: (1) as of August 17, 2008—three weeks after the July 27, 2008 documentation completion date—"the final set of WPs was not assembled for retention into EM [Engagement Manager]" (R.D. 27 at 10); (2) starting on August 18, 2008 "we finally had some time to look at files whether or not transferred to EM" (*id.* at 7); (3) "[Audit Senior] tried to locate all final versions of WPs and WPs which were not transferred to EM by searching through the net work drive and by coordinating with [another staff person] at the [Beijing Office] of Kabani International" (*id.* at 9); and (4) though no new work papers were created, work papers "were either replaced with the final set of WPs" or were "transferred to EM" (*id.*). Khan's

answer confirms that Saeed and Audit Senior were not reviewing non-final work papers for training or quality control purposes but rather for the purpose of assembling final work papers.[10/]

B. The Issuer A file produced to DEI in 2011 was the final version.

Applicants claim that, after producing the final Issuer A file in June 2010, but upon learning DEI could not open it, and finding its copy was also corrupted, the Firm in February 2011 sent DEI a non-final, superseded copy of those work papers. Br. 43-44; *see* R.D. 178 at 49-51; R.D. 207 at 10-11, 14. This argument, too, is contradicted by the record. During the investigation, Kabani testified that the work papers he had produced to DEI just days earlier in February 2011 were the same ones the inspectors reviewed.[11/] The file itself also bears evidence that it is the final file. Electronic sign-offs dated June 10, 2008 appear on all work papers, and Kabani stated in his answer and in hearing testimony that those sign-offs were applied "when the entire file was assembled." R.D. 26 ¶ 48; R.D. 166 at 1913-14. And the work paper list for the Issuer A file (Ex. DKR-4) displays a red checkmark over every document icon, reflecting that all of the work papers are "read-only"—locked from any further changes. R.D. 164 at 1221-22, 1242 (DEI expert); R.D. 166 at 2084-85 (Deutchman). Deutchman testified it was typical for Firm work papers to be made "read-only" when the audit file was put into final condition. *Id.*

[10/] Applicants' brief nowhere attempts to disavow Khan's answer, as he ineffectually did before the Board (*see* R.D. 206 at 11-12).

[11/]
Q So, is it fair to conclude that with respect to the documents that we demanded from you, the Enforcement Division, related to the files that the inspectors reviewed?
A Correct.
Q You produced to us the same exact thing that you made available to the inspectors with the exception of updating those outdated checklists; is that correct?
A That is correct.

R.D. 164 at 1362-63 (Kabani); *accord id.* at 1365.

Kabani understood he was obligated to provide DEI with final versions of the audit files requested in the Board's ABDs, *see* Ex. J-37; R.D. 165 at 1772-73 (Kabani), and he confirmed that every other issuer audit file he produced to DEI was the final version, R.D. 164 at 1347. Yet he did not advise the Board of the supposed non-finality of the file in the February 8, 2011 cover letter accompanying the disk (Ex. D-148);[12/] in communications on February 8-9, 2011 with DEI (through his attorney) about whether DEI could open the new file (Ex. J-42); when Kabani certified to DEI on February 11, 2011 that he and the Firm had "produced all of the documents and information" in their possession "demanded in ABDs" issued in April 2010 (Ex. D-152); or during the two days of investigative testimony he gave on February 17-18, 2011, during which Kabani was repeatedly shown examples of the very work papers he had sent just days earlier and supposedly knew to be non-final (*see* R.D. 164 at 1371-72, 1376-78, 1381-82, 1387-90).

In short, Applicants never suggested that the Issuer A file given to DEI was a non-final file until it became expedient for them to do so. This is not a defense but a fabrication, and it should be rejected. *See S.W. Hatfield, CPA*, PCAOB Rel. No. 105-2009-003 at 4 (Feb. 8, 2012) (finding "ample reason not to credit" respondent's self-serving testimony on a certain point, given respondent's failure during investigation and in response to charging letter to make any such claim "even though he had ample opportunity and motive to do so"), *aff'd*, SEC Rel. No. 34-69930, 2013 SEC LEXIS 1954, *44 (July 3, 2013) ("[m]ost telling is Applicants' repeated failure during the investigatory stage of these proceedings" to make that claim).

Applicants try to rehabilitate this argument by asserting that "even the developer of the [software], Thomson Reuters, indicated that they believe the two files, one which could be

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12/ That letter incorrectly bears the date of January 7, 2011. *See* R.D. 115 ¶ 153; R.D. 164 at 1352-56 (Kabani).

opened by the PCAOB staff and the one that could not be opened, were different files," with "different sizes and different names." Br. 50. Their effort fails. First, Applicants point to no evidence in the record that Thomson Reuters made any such statement. Second, Applicants already made a similar attempt to differentiate the two files before the hearing officer, and DEI addressed it in its briefing by pointing out that "the .trp file name of the file saved to a DVD and sent to [DEI] in February 2011 is identical to the .trp file name of the file saved to a DVD and sent to [DEI] in June 2010." R.D. 168 at 43 & n.83; *see also* Ex. D-220 at 6-7. In fact, Kabani & Co., Kabani, and Deutchman stipulated to this on March 21, 2013. R.D. 115 ¶¶ 150, 155. Third, DEI's expert explained in his report that any size difference between a corrupt and non-corrupt file "is not a reliable indication that the contents of the pre-corrupt version were more or less extensive than those of the second file." Ex. D-220 at 20.

Applicants also now argue, for the first time, that yet another software glitch may be to blame. Their brief asserts that "the PCAOB's metadata evidence is based upon replacement files that were provided to the PCAOB as a courtesy after the PCAOB advised Appellants that it was having difficulty accessing the Firm's JPEG files. Appellants produced evidence that the software used to store the Firm's work papers became corrupted and so the Firm and its staff interfaced with the Firm's IT and changed the file properties so that the PCAOB could access the requested files." Br. 43-44; *see* Br. 25. But only one of the files provided to DEI was ever "unreadable"—the Issuer A file that Kabani gave to DEI in response to ABDs in April 2010. That entire file could not be opened, so Kabani provided a replacement file to DEI in 2011, as discussed above. If Applicants are now suggesting that, in order to provide DEI with this file, they had to convert documents from one file type to another, that is a novel theory unsupported by any evidence. Indeed, it flatly contradicts the evidence, for if their claim were true, the

documents in the Issuer A file would all bear 2011 modification dates, when they had to supposedly "convert" the files and produce replacements. But there are no metadata dates later than 2008 in any of the three issuer files. If Applicants are suggesting instead that, when visiting the Firm in 2008, the inspectors found they could not access certain documents, that, too, is unsupported by the record and facially implausible—for there is no reason why a JPEG file on the Firm's own laptops would be unreadable on its own computers.

The "example" of this supposedly innocent file conversion glitch that they offer as an "Appendix" (Br. 45) does not help their claim. Although Applicants neglect to identify the documents "incorporated by this reference," the three work papers appear to be print-outs of two bank balance confirmation letters and one accounts receivable confirmation letter in the Issuer A file the Firm provided to DEI in 2011, which are admitted exhibits D-325, D-326, and D-327. The metadata for the .jpg versions of these work paper files were examined by DEI's expert, and their creation and modification dates are shown as April 28, 2008 (within the 45-day window for this issuer) and unremarkable. *See* Ex. D-220 at Ex. 1 thereto, PCAOB 20459 at lines PK-353 to PK-355. The associated PDF versions of the files also appear in the expert's report, and these files' metadata show similarly unremarkable creation and modification dates—April 28, 2008. *See* Ex. D-220 at Ex. 1 thereto, PCAOB 20460 at lines PK-362, PK-364, PK-367. To the extent Applicants attempt to offer as the last two pages of their "Appendix" a newly created, conflicting metadata table, the source of their data is entirely unknown, unexplained, and untimely.[13/]

13/ *See Scott E. Wiard*, SEC Rel. No. 34-50393, 2004 SEC LEXIS 2112, *10 n.16 (Sept. 16, 2004) (failure to sufficiently explain why materials not offered in proceeding below defeats motion to adduce); *Sidney C. Eng*, SEC Rel. No. 34-40297, 1998 SEC LEXIS 1633, *24 & n.17 (Aug. 3, 1998) ("'a respondent cannot be permitted to gamble on one course of action and, upon

Significantly, however, this belatedly contrived "example" directly contradicts Applicants' argument that the Issuer A file examined by the expert and discussed in this case was not the final version of the file. For why would a non-final file bear evidence of last-minute file conversions to address a problem inspectors had in viewing certain documents? The Commission should reject Applicants' multiple attempts, recrafted by each successive attorney they retain, to manufacture defenses that are not borne out by the record or by logic.

C. Applicants' assertion that it would have been impossible to make certain additions to the Issuer A file is unavailing.

In another attempt to undercut the evidence showing that Applicants made late alterations to the Issuer A file, Applicants claim it would have been impossible to create or add "900 new work papers in September and October 2008 in such a way that those tie to 2007 audited balances after filing first two quarterly reviews" Br. 2 n.2; *see* Br. 41-42. The attempt fails.

First, there is detailed evidence that late alterations were made to a considerable number of those work papers. *See, e.g.*, pp. 4-8, 11-12, 15-17. Second, Applicants simply assume that all 900 documents presented the purported "tie back" problem. Third, their claim of inability to "reconcile [quarterly] numbers backwards" for the 2007 work papers ignores the fact that precisely because the Firm was performing ongoing quarterly review work for Issuer A, it would have had access to the company information it needed to substantiate the annual audit figures.

At no point in their brief do Applicants claim that in September and October 2008 they were merely moving complete files from one place to another. Such a claim would be inconsistent with their present insistence that they made no changes to any final work paper files

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an unfavorable decision, to try another course of action'") (quoting *David T. Fleischman*, SEC Rel. No. 34-8187, 1967 SEC LEXIS 560, *8 (Nov. 1, 1967)).

as part of the file "cleanup."[14/] The fact remains that, regardless of whether the 900 documents were newly created or imported, there is no reading of AS No. 3 that would have permitted Applicants under the circumstances of this case to backdate signoffs and wait until September 2008 to finish assembling the final file and correct deficiencies without including the proper notations to track the work they were doing on the file and instead hiding their efforts.[15/]

D. Applicants' attempt to create confusion about the Issuer A audit documentation completion date is an unsupported and irrelevant distraction.

Applicants claim the hearing officer "overlooked" that the AS No. 3 documentation deadline for Issuer A should be extended because the issuer filed an amended annual report on July 3, 2008. Br. 16 n.6. This is inaccurate, first because the hearing officer was in fact aware of the amended filing when he found the Issuer A deadline was July 27, 2008 (I.D. 12, 31, n.180), and second because it badly misapprehends AS No. 3, which requires the auditor to assemble, within 45 days of the audit report release date, a complete and final set of audit documentation for the work supporting that report. Any new audit work performed for the amended filing would then need to be documented and assembled within 45 days of the audit report release date for the amended filing. An amended filing by an issuer does not open up the entire audit file to

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14/ Applicants previously made an argument, not made here, that electronic files in Engagement Manager were merely part of a larger collection of final audit files that included some unidentified (and unproduced) bank of hard copy files. *See, e.g.*, R.D. 178 at 67; R.D. 196 at 22. The hearing officer and Board rejected that argument, noting the evidence of document alteration and the lack of any evidence of a "dual filing system." *See* R.D. 206 at 7 n.1; I.D. 64.

15/ Applicants' faulty argument about the 900 work papers is the only basis for their attack on the hearing officer's experience and qualifications. Br. 2 n.2, 41-42. Their mere disagreement with his conclusions does not call his fitness into question. *See, e.g., San Francisco Mining Exchange*, SEC Rel. No. 34-7106, 1963 SEC LEXIS 582, *9 (July 31, 1963), *aff'd*, 378 F.2d 162 (9th Cir. 1967) (citing *United States v. Morgan*, 313 U.S. 409, 421 (1941)); *Mayer A. Amsel,* SEC Rel. No. 34-37092, 1996 SEC LEXIS 1053, *15 n.14 (Apr. 10, 1996).

wholesale, untracked revisions, such as those evidenced here. Moreover, even if the documentation deadline for the Issuer A audit were extended to August 18, 2008, as Applicants seek, nearly all alterations at issue to that file occurred after even that later date. As noted above, Saeed did not complete his Issuer A review until September 23, 2008.[16/]

E. Applicants provide no basis for overturning the hearing officer's credibility determinations.

Applicants repeat their argument that Saeed's testimony should not be credited over theirs. Br. 4, 17. The Board addressed this argument at length, explaining that the hearing officer carefully considered the circumstances surrounding Saeed's departure from the Firm and his submission of an altered document during the investigation, and came to a detailed, fair, and reasoned conclusion—relying importantly on the fact that Saeed's testimony was corroborated by other record evidence, whereas Applicants' testimony was not—about the relative credibility of Saeed and Applicants. *See* R.D. 206 at 8-9; *see also* I.D. 54-57.

Applicants now additionally argue that the "disparity in sanctions between [them] and Saeed provides only one reasonable inference"—"that Saeed provided slanted and untruthful testimony to the PCAOB." Br. 5. No such inference can be drawn from the sanctions imposed in settled cases. *See Gary M. Kornman*, SEC Rel. No. 34-59403, 2009 SEC LEXIS 367, *35 (Feb. 13, 2009) ("'[R]espondents who offer to settle may properly receive lesser sanctions than

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[16/] Applicants have abandoned any claim that the AS No. 3 deadlines should be extended for Issuers B and C. Such a claim would conflict with stipulations made that they performed no new audit work in conjunction with the amended filing for Issuer B (made by all Applicants, *see* I.D. 13 n.68), and that the deadline for Issuer C was as charged in the OIP—May 30, 2008 (made by Khan, *see* I.D. 13 n.68). And even assuming it were valid here to use later dates of October 13, 2008 for Issuer B and June 14, 2008 for Issuer C, that would not assist Applicants. Saeed did not complete his review of Issuer B until October 14 and of Issuer C until October 17, 2008.

they otherwise might have received based on pragmatic considerations such as avoidance of time-and-manpower-consuming adversary proceedings.'") (quoting *Stonegate Sec., Inc.*, SEC Rel. No. 34-44933, 2001 SEC LEXIS 2136, *16 (Oct. 15, 2001)), *petition denied*, 592 F.3d 173 (D.C. Cir. 2010). If Applicants rely here on the results of a lie detector test Kabani claims to have taken after the initial decision issued (Br. 17 & n.9), the Board explained that those results are inadmissible as untimely and immaterial. R.D. 206 at 9-10. In sum, as the Board already properly found, Applicants "have provided no basis for revisiting the hearing officer's credibility determinations, and the record provides ample basis for declining to do so." *Id.* at 9.

F. The hearing officer did not misplace the burden of proof.

Applicants contend the hearing officer "misplaced the burden of proof" when he rejected one of their defenses. Br. 17-18, 38-39. Their argument focuses on one sentence in the amended initial decision, which described the defense claim that Saeed was reviewing non-final audit work papers for an internal quality control inspection and concluded that they "never proved, however, either that [Saeed] was reviewing the documents solely for quality control purposes or that he was reviewing non-final versions of the audit work papers" (I.D. 51). Br. 38-39.

Applicants mischaracterize the decision. At the end of a 47-page discussion, the hearing officer concluded that, "based on the factual findings detailed above," Applicants failed to cooperate with the 2008 inspection. I.D. 48-49. He then explained why none of the myriad defenses Applicants offered—beginning with their claim that Saeed was reviewing non-final files—was supported by the record and/or logic, and why none countered the weight of the evidence against them. *See, e.g.*, I.D. 52 (defense that Saeed reviewed non-final files was contrary to the "weight of the evidence"); I.D. 55 (Applicants were "unable to challenge effectively" Saeed's hearing testimony); I.D. 55 n.299 (the Firm, Kabani, and Deutchman were

"unable to raise credible doubts" about the authenticity of emails Saeed produced); I.D. 59-62 (finding unpersuasive Applicants' "tortuous argument" that Firm produced non-final copy of Issuer A file to DEI); I.D. 64, n.342 (rejecting argument that document was not late because it was moved from a "permanent file" as there was "no evidence supporting the position"); I.D. 66-67 (rejecting Khan's defenses as failing to "undermine[] the evidence of violative conduct"). This was an appropriate and legally sound analysis. *See, e.g., James M. Bowen*, SEC Rel. No. 34-34195, 1994 SEC LEXIS 1768, *5 & n.9 (June 10, 1994) (once charging party makes prima facie case, respondent bears burden of producing evidence to support purported defenses).

Applicants' misreading of the hearing officer's decision does nothing to defeat the findings of liability, summarily affirmed by the Board after de novo review, based on hearing testimony, investigative testimony, emails, work paper files, and forensic analysis of those files, that the respective Firm personnel reviewed the three work paper files for deficiencies, addressed the deficiencies after the deadline established by AS No. 3, and made those secretly altered files available to Board inspectors. *See* pp. 4-17 above; R.D. 206 at 3; R.D. 209 at 3.

II. Applicants' Attacks on the Validity of the Proceeding Are Unavailing.

Unable to mount any serious challenge to the evidence of their violations, Applicants make a flurry of procedural arguments, mostly at the last minute, against the validity of the proceeding. These arguments are waived, baseless, or both. The proceeding was conducted in accordance with all applicable laws, rules, and due process norms.

A. There is no basis for Applicants' claim that the Board prejudged this case.

Applicants argue that the publication of the Board's order accepting Saeed's offer of settlement in May 2013 demonstrated that the Board must have prejudged the case against the remaining respondents. Br. 18-19, 30-31. The Board's summary affirmance order detailed the

well-established authority, ignored by Applicants, holding that it is not improper—but in fact, routine—for an administrative body to settle proceedings against one respondent while continuing to proceed against others in the same case. R.D. 206 at 16-17; *see Stuart-James Co., Inc.*, SEC Rel. No. 34-28810, 1991 SEC LEXIS 168, *3 (Jan. 23, 1991); *see also Jean-Paul Bolduc*, SEC Rel. No. 34-43884, 2001 SEC LEXIS 2765, *10-12 (Jan. 25, 2001).

Applicants' sole support for their argument is 28 U.S.C. 455(a), which states only a general requirement that a federal judge disqualify himself in any proceeding in which his impartiality might reasonably be questioned and which does not apply to administrative proceedings. *See, e.g., Greenberg v. Bd. of Governors of Fed. Reserve Sys.*, 968 F.2d 164, 167 (2d Cir. 1992). Applicants offer no valid basis for voiding the findings of liability here, which were grounded in the extensive evidence adduced in this proceeding, not on a settlement order that, as noted by the hearing officer and the Board, made clear that "[t]he findings herein are made pursuant to the Respondent's Offer and are not binding on any other person or entity in this or any other proceeding." *See* R.D. 206 at 17; I.D. 8 (hearing officer "did not consider either [the settled order's] findings or conclusions in deciding this case"); *see generally Robert Bruce Orkin*, SEC Rel. No. 34-32035, 1993 SEC LEXIS 726, *19 (Mar. 23, 1993) ("de novo review of this matter cures whatever bias or disregard of precedent or evidence, if any, that may have existed below"), *aff'd*, 31 F.3d 1056 (11th Cir. 1994).

B. Applicants had ample opportunity to present expert testimony.

Applicants argue that the hearing officer erred when he rejected their request to introduce a substitute expert six weeks before the June 2013 scheduled start of the hearing. Br. 18, 32-35. The hearing officer and the Board carefully considered and properly rejected this argument.

Applicants knew since September 2012 that DEI intended to call a data forensics expert witness. R.D. 30 at 7-8 (9/6/2012 pre-hearing conference). Khan, who represented himself at the time, did not file a separate expert report. Counsel for Kabani & Co., Kabani, and Deutchman requested and received two extensions of time (totaling 23 days) from the hearing officer before exchanging initial expert reports with DEI on December 14, 2012. R.D. 51, 58. These three Applicants requested and received another extension of time (totaling 24 days) within which to submit a revised expert report responding to DEI's submission. R.D. 63, 65. In March 2013, their counsel withdrew, citing a "break-down of the attorney-client relationship" and a "failure to cooperate" with him in defending the proceeding, and the hearing officer granted yet another extension (of 49 days) to file all final exhibits, including revised expert reports. R.D. 106 at 2, 3. These Applicants retained new counsel (their third attorney) who, on April 26, 2013 (six weeks before the hearing, already postponed three weeks at the new counsel's request, R.D. 114), moved for permission to present a different expert. R.D. 123.

In a well-reasoned order, the hearing officer noted the several extensions already granted to these Applicants to submit their expert report and other filings and noted the imminence of the hearing. R.D. 128. And importantly, he made numerous accommodations to assist them in presenting the testimony of their initial expert. For example, he extended the length of the hearing to allow them to try to secure their expert's testimony by videoconference. R.D. 154. They were able to have their alternate expert attend the hearing during DEI's expert's testimony and serve as consultant to counsel during breaks in questioning. R.D. 164 at 1041, 1101.

The Board was correct to affirm the hearing officer's decision to hold Applicants to their original choice of expert. As the Board noted, hearing officers enjoy wide latitude in regulating the course of a hearing, *see, e.g., Dearlove v. SEC*, 573 F.3d 801, 807 (D.C. Cir. 2009);

Geiserman v. MacDonald, 893 F.2d 787, 790 (5th Cir. 1990), and Applicants failed to show good cause to amend the schedule weeks before the hearing date to facilitate a substitution requested only after the latest in a series of changes of attorney, which had already caused multiple delays. *See* R.D. 206 at 14; *Kenny v. County of Suffolk*, 2008 U.S. Dist. LEXIS 93120, *3 (E.D.N.Y. Nov. 17, 2008) ("Incoming counsel is bound by the actions of his or her predecessor, and 'to hold otherwise would allow parties to create "good cause" simply by switching counsel.'").

Furthermore, Applicants have had numerous opportunities to indicate how an expert could have countered even some portion of the evidence against them and supported some theory of defense but have never done so, even after consulting with a new expert during the hearing and despite opportunities to enlist consultants to help them prepare their appeals to the Board and the Commission. The only new claim they bring to bear now, without any support, is that the Board is to blame "in part" for Applicants' inability to make the "large payment" that they allege their original expert sought after the hearing, representing that "[t]he firm's total number of clients has since declined from over 50 at the time of publishing the [Saeed] settlement to about 5 currently." Br. 33. Yet Applicants fail to explain why a demand for payment made after the hearing was relevant to the hearing officer's decision to exclude their new expert six weeks prior to the hearing. And this asserted reason for the prior expert's unavailability conflicts with Applicants' own statement that they wanted to replace him because he "was out of state on another assignment" (*id.*), a last-minute difficulty the hearing officer made every effort to address by extending the hearing and granting permission for the expert to testify by videoconference (*see* R.D. 206 at 13). Finally, Applicants' unsupported assertion of inability to pay the prior expert due to declining Firm business is inconsistent with evidence from filings by

issuers showing that, in 2013 and 2014, the Firm continued to collect substantial fees from issuer clients. *See* R.D. 206 at 18 n.3; R.D. 199 at Appendix A.

C. Applicants' newly made claims that the PCAOB violated their constitutional rights to a jury trial and a speedy trial are waived and unfounded.

In their brief, Applicants argue for the first time in this case that the PCAOB denied their rights to a jury trial under the Seventh Amendment and to a speedy trial under the Sixth Amendment. Br. 39-40, 42. Not having been timely raised, their jury trial affirmative defense is waived. *See* PCAOB Rule 5421(c) (any "matter constituting an affirmative defense shall be asserted in the answer"); *Russell Ponce*, SEC Rel. No. 34-43235, 2000 SEC LEXIS 1814, *43-44 & nn.53-54 (Aug. 31, 2000), *aff'd*, 345 F.3d 722 (9th Cir. 2003); *Laurie Jones Canady*, SEC Rel. No. 34-41250, 1999 SEC LEXIS 669, *46-47 (Apr. 5, 1999), *aff'd*, 230 F.3d 362, 365 (D.C. Cir. 2000); *see also, e.g, Robinson v. Johnson*, 313 F.3d 128, 137 (3d Cir. 2002) ("Affirmative defenses must be raised as early as practicable, not only to avoid prejudice, but also to promote judicial economy."); 5 C. Wright & A. Miller, Fed. Prac. & Proc. § 1278 (3d ed.). Their Speedy Trial Clause claim is based on the proceedings before the hearing officer and on the investigation (even though the Clause does not apply to an investigation, *see, e.g., United States v. Marion*, 404 U.S. 307, 313-15 (1971)). Br. 41. Not having raised the speedy trial claim until appeal to the SEC, Applicants have waived it. *See* PCAOB Rule 5460(a) (petitions for Board review must "set[] forth specific findings and conclusions of the initial decision as to which exception is taken, together with the supporting reasons for each exception") & (d) (review limited to "the issues specified in the petition for review" unless, with notice, Board broadens review); *see also, e.g., MFS Sec. Corp. v. SEC*, 380 F.3d 611, 621 (2d Cir. 2004); *Amsel*, 1996 SEC LEXIS 1053,

*16 (citing *David T. Fleischman*, SEC Rel. No. 34-8187, 1967 SEC LEXIS 560, *8 (Nov. 1, 1967)). These constitutional claims have no merit in any event.

As the SEC has held, "[a] disciplinary hearing before a self-regulatory organization is neither a 'criminal prosecution' within the meaning of the Sixth Amendment nor a 'suit at common law' within the meaning of the Seventh Amendment. The guarantees pertaining to trials by jury in those amendments are therefore inapposite." *Daniel Turov*, SEC Rel. No. 34-31649, 1992 SEC LEXIS 3332, *8-*9 (Dec. 23, 1992) (citing *Harold T. White*, SEC Rel. No. 517, 1938 SEC LEXIS 2836, *147-*148 (June 21, 1938)). This holding applies by analogy to the PCAOB. *See Free Enterprise Fund v. PCAOB*, 561 U.S. 477, 484 (2010) (PCAOB is "modeled on private self-regulatory organizations in the securities industry...that investigate and discipline their own members subject to Commission oversight."). Congress may properly assign to administrative bodies the adjudication of cases involving "public rights"—those which "arise between the Government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments"—without an attendant right to a jury trial, which "would be incompatible with the whole concept of administrative adjudication." *See, e.g., Granfinanciera v. Nordberg*, 492 U.S. 33, 51 (1989); *Atlas Roofing Co. v. OSHRC*, 430 U.S. 442, 457 (1977).

Similarly, there is no basis for concluding that the Sixth Amendment's right to a speedy trial in "criminal prosecutions" applies here. *See generally Hannah v. Larche*, 363 U.S. 420, 440 n.16 (1960) (citing cases). Without analysis, Applicants cite two district court orders for the proposition that the "imposition of a fine as penalty for violation of the law can be considered 'quasi-criminal' in nature." Br. 40. But those orders, resolving motions, stated only that Fifth Amendment protections may apply outside of traditional criminal litigation. Applicants ignore

the Supreme Court's guidance in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963), for determining whether a sanction is civil or criminal, and they ignore the cases applying *Mendoza-Martinez* and finding that money penalties (and debarments) levied by administrative agencies are civil and do not invoke constitutional protections that generally apply to criminal proceedings. *See, e.g., Hudson v. United States*, 522 U.S. 93, 104 (1997) (Sixth Amendment); *SEC v. Palmisano*, 135 F.3d 860, 864-65 (2d Cir. 1998) (Fifth Amendment); *Kornman*, 2009 SEC LEXIS 367, *51-52 (citing *Cox v. CFTC*, 138 F.3d 268, 272 (7th Cir. 1998)).

Furthermore, there was no undue delay at any stage of this case. DRI inspected the Firm in October 2008. The file alterations did not come to the attention of the PCAOB (and might never have) until Saeed approached the PCAOB with his concerns, causing DEI to launch an investigation in April 2010. The Board instituted a disciplinary proceeding against Applicants in June 2012. The hearing was held in June 2013, after the hearing officers granted Applicants' several requests for extensions of deadlines. *See, e.g.*, R.D. 16, 17, 51, 113, 172. After the close of post-hearing briefing in October 2013, the initial decision was issued and then amended in April 2014. In May 2015, Applicants filed two separate petitions for review and two motions. R.D. 196-198, 203. Although Applicants opposed DEI's motion to expedite review, *see* R.D. 201, 202, the Board responded to these filings in a summary affirmance order on January 22, 2014 and denied two motions for reconsideration on March 31, 2015. R.D. 206-209. Thus, the administrative proceeding was concluded—after Applicants availed themselves of all possible appeal avenues under Board rules—less than three years after the case was brought.

Applicants make no showing that the time taken to conduct a diligent investigation, prosecute hotly contested litigation, and adjudicate all the issues and arguments raised in this case prejudiced them or represented "lackadaisical conduct" or some sort of intentional delaying

tactic. *See, e.g., Feeley & Willcox Asset Management Corp.*, SEC Rel. No. 34-48607, 2003 SEC LEXIS 2396, *4-*9 (Oct. 9, 2003) (citing *Vernazza v. SEC*, 327 F.3d 851, 863, *as amended*, 335 F.3d 1096 (9th Cir. 2003)), *summarily aff'd*, No. 03-41113 (2d Cir. Feb. 24, 2004); *Kevin Hall, CPA*, SEC Rel. No. 34-61162, 2009 SEC LEXIS 4165, *73 (Dec. 14, 2009); *Daniel M. Pecoraro,* SEC Rel. No. 34-24980, 1987 SEC LEXIS 3533, *7-*9 (Oct. 2, 1987); *see also Irish v. SEC*, 367 F.2d 637, 639 (9th Cir. 1966); *cf. Telecommunications Research & Action Center v. FCC*, 750 F.2d 70, 78-81 (D.C. Cir. 1984). The mathematical fact that the initial decision issued about 6 ½ months after post-hearing briefing (*see* Br. 13 & n.5), outside the 60-day guideline suggested in PCAOB Rule 5204(b)'s note, is unrevealing and unavailing. That guideline creates no right to a remedy for respondents. *See Feeley & Willcox*, 2003 SEC LEXIS 2396, *6 (SEC Rules of Practice confer no substantive right on parties to observance of case management deadlines); *cf. Montford & Co. v. SEC,* 2015 U.S. App. LEXIS 11898, *15 (D.C. Cir. July 10, 2015) (statutory deadline for bringing SEC enforcement action was merely an "internal timing directive" conferring no right to dismissal). Applicants' arguments should be rejected.

D. Applicants' argument that the PCAOB had a duty to create unspecified defenses for Applicants out of their own files is waived and meritless.

Applicants argue the PCAOB has a duty under the criminal cases *Brady v. Maryland*, 373 U.S. 83 (1963), and *United States v. Brooks*, 966 F.2d 1500, 1503 (D.C. Cir. 1992), to investigate unspecified "other computer generated contemporaneous documents" of the Firm, such as unidentified "innumerable emails and other electronic data," which supposedly "show[] that the work in physical work papers was actually done on the dates indicated on the work papers themselves" and that "[t]he difference in metadata had to do with how documents were produced," and to present evidence to that effect. Br. 5-6, 20, 25, 51. Not having raised this

argument until appeal to the SEC, Applicants have waived it. *See* PCAOB Rule 5460(a), (d); *MFS*, 380 F.3d at 621; *Amsel*, 1996 SEC LEXIS 1053, *16. In any event, the claim is baseless.

The *Brady* doctrine "has no direct application to civil or administrative proceedings" such as enforcement proceedings before the SEC. *optionsXpress, Inc.*, SEC Rel. No. 34-70698, 2013 SEC LEXIS 3235, *11 (Oct. 16, 2013). Nor, therefore, does it apply to the PCAOB.

Even if *Brady* did apply to the PCAOB, however, it would not require DEI to imagine all possible defenses available to Applicants and then search for evidence to support them. *Brady* requires the disclosure of material exculpatory evidence in the possession or control of the prosecution. 373 U.S. at 84. *Brooks* purportedly extends that obligation to require the prosecution to search for exculpatory evidence in the files of other government entities "'closely aligned with the prosecution'" where there is "enough of a prospect of exculpatory materials to warrant a search." 966 F.2d at 1503 (internal citations omitted). But Applicants' argument is based on supposed evidence in their own possession, so the fairness concerns underlying the *Brady* doctrine are absent. *See, e.g., Calley v. Callaway*, 519 F.2d 184, 223 (5th Cir. 1975). Applicants may not shift to the PCAOB the responsibility for defending themselves. *See, e.g., Kirlin Securities, Inc.*, SEC Rel. No. 34-61135, 2009 SEC LEXIS 4168, *64 n.87 (Dec. 10, 2009); *Bowen*, 1994 SEC LEXIS 1768, *5 n.9. Applicants' *Brady/Brooks* claim fails, too, because it is too broadly drawn to amount to anything more than "mere speculation" or a "shot in the dark." *See, e.g., United States v. Navarro*, 737 F.2d 625, 631-32 (7th Cir. 1984).

III. The Sanctions Are Fully Warranted.

The sanctions reflect the nature, seriousness, and circumstances of Applicants' Rule 4006, Rule 3100, and AS No. 3 violations, as proven by overwhelming evidence, and the important public interest and investor protection concerns raised thereby. *See* R.D. 206 at 17-18;

R.D. 209 at 5-7; I.D. 72-84. Their arguments against the sanctions consist of ineffectual attempts to deny the strength of the evidence against them and to gloss over the gravity of the misconduct.

"The Board's periodic inspections, and full cooperation therewith by registered firms, are pivotal to the Board's ability to enhance investor protection and the accuracy of issuer auditor reports through its oversight of registered accounting firms." *Gately & Associates, LLC*, SEC Rel. No. 34-62656, 2010 SEC LEXIS 253, *3 (Aug. 5, 2010). The obligations under Rule 4006 are "unequivocal." *Id.* at 24. Indeed, they are so fundamental to performing issuer audits that the Sarbanes-Oxley Act requires, as pertinent here, that such firms consent to cooperate with PCAOB document production requests, enforce similar consents from their associated persons, and acknowledge that such cooperation, and securing and enforcing the required consents, are "condition[s] to the continuing effectiveness of the registration of the firm with the Board." Section 102(b)(3)(A), (B), 15 U.S.C. 7212(b)(3)(A), (B). Failure to cooperate with Board processes impairs its ability to identify deficiencies in an auditor's work or violations of auditing standards and Board rules. *R.E. Bassie & Co.*, SEC Rel. No. 3354, 2012 SEC LEXIS 89, *39 (Jan. 10, 2012) ("Imposing sanctions to deter noncooperation with PCAOB investigations thus clearly serves the public interest.").

As the Board has explained, AS No. 3 is "one of the fundamental building blocks on which both the integrity of audits and the Board's oversight will rest." AS No. 3, Appendix A ¶ A4. In the Board's view, "the quality and integrity of an audit depends, in large part, on the existence of a complete and understandable record of the work the auditor performed, the conclusions the auditor reached, and the evidence the auditor obtained that supports those conclusions. Meaningful reviews, whether by the Board in the context of its inspections or through other reviews, such as internal quality control reviews, would be difficult or impossible

without adequate documentation." *Id.* Accordingly, "[c]lear and comprehensive audit documentation is essential to enhance the quality of the audit and, at the same time, to allow the Board to fulfill its mandate to inspect registered public accounting firms to assess the degree of compliance of those firms with applicable standards and laws." *Id.*

Applicants undermined these vital requirements, through deception, acted with a highly culpable state of mind, have shown no recognition of the wrongful nature of their conduct, have provided no assurances that they would not engage in further violations, and have the opportunity to engage in such violations. *See* I.D. 79-84. Indeed, Applicants continue to audit public companies, or want to return to doing so. I.D. 195 at 80, 82; R.D. 206 at 18 n.3; R.D. 199 at 3 & Appendix A; R.D. 208 at 0030045. Absent the sanctions, investors are plainly at risk.

Applicants contend they did not act with "scienter," citing cases applying a pleading standard for private securities fraud litigation and a lone district court case portrayed by their brief as establishing a universal standard for securities fraud by an auditor. Br. 20-25. If this is meant to be a defense to liability here, it is incorrect. *See Gately*, 2010 SEC LEXIS 2535, *26 ("[T]he Board is not required to establish that Applicants acted with a particular state of mind in order to establish a violation of Rule 4006."). It is also incorrect as an objection to the sanctions.

The Board's sanctioning authority under Sarbanes-Oxley Act Section 105(c)(5) extends to "intentional or knowing conduct, including reckless conduct, that results in violation of the applicable statutory, regulatory, or professional standards." 15 U.S.C. 7215(c)(5)(A). "Recklessness in this context, as under [SEC] Rule 102(e), is an 'extreme departure from the standards of ordinary care,'" which "'presents a danger' to investors or the markets 'that is either known to the (actor) or is so obvious that the actor must have been aware of it.'" *Gately*, 2010 SEC LEXIS 2535, *33. Although "this framework for establishing recklessness was borrowed

from the anti-fraud context, the other elements for a fraud-based violation" and intent to commit securities fraud "are not imported" into Section 105(c)(5). *Id.* at *33 n.32; *cf., e.g, Marrie v. SEC*, 374 F.3d 1196, 1205 (D.C. Cir. 2004); *Mitchell H. Fillet*, SEC Rel. No. 34-75054, 2015 SEC LEXIS 2142 at *19 n.13 (May 27, 2015).

The amended initial decision, summarily affirmed by the Board, applied the correct standard for determining state of mind in this case as relevant to sanctions. *See* I.D. 73-74. The hearing officer correctly concluded that Applicants acted "knowingly, intentionally, or, at a minimum, recklessly" in failing to provide "full and prompt" cooperation with a PCAOB inspection. I.D. 76-77. Kabani "formulated, and then oversaw, the implementation of a wide-spread and resource-intensive effort at the Firm to alter work papers for three audits in anticipation of, and in response to, a forthcoming PCAOB inspection." I.D. 77. Deutchman "helped implement the document alteration plan as to the three audits and encouraged Saeed in his efforts in connection with the scheme." I.D. 78. And Khan, who "had an important role both at the Firm and in connection with the [Issuer A] Audit and in documenting the Firm's [Issuer A] audit work," was "directly involved in furthering the alteration scheme by coordinating the conduct of [Audit Senior] and Saeed." I.D. 78, 84. Thus, Applicants' conduct "constituted a departure from the standard for inspections under Rule 4006 and the requirements of AS3 that was so extreme, and presented a risk of harm to investors and the markets that was so obvious, that they must have been aware of it." I.D. 78. *See Fillet*, 2015 SEC LEXIS 2142, *56 ("'Deliberate deception of regulatory authorities justifies the severest of sanctions.'").

Equally unavailing is Applicants' argument that the Board did not "admonish Kabani for any failure to conduct the audit in accordance with the PCAOB rules or any deficiency in the audit opinion issued" (Br. 9, 25). The Firm produced altered, unreliable audit documentation.

Noncooperation is so serious precisely because it frustrates the ability to detect violations. *Bassie*, 2012 SEC LEXIS 89, *40-*41 (affirming bar, explaining that noncooperation "impairs the Board's ability to identify violations and sanction violators"); *see generally Brogan v. United States*, 522 U.S. 398, 402 (1998) ("[S]ince it is the very purpose of an investigation to uncover the truth, any falsehood relating to the subject of the investigation perverts that function."). The violations proven and the sanctions ordered at issue already forcefully establish and address Applicants' demonstrated unfitness to audit issuers.

Although the sanctions were thoroughly explained and tailored to each Applicant's level of culpable involvement and responsibility (*see, e.g.*, I.D. 83, 84; R.D. 206 at 17-18), Applicants incorrectly suggest otherwise by describing the associational bars as indistinguishable "lifetime" bars and asserting that the Board should have referred to lesser sanctions, like "orders for additional education and training." Br. 3 & n.3, 49-50. Their argument about lesser sanctions turns a blind eye to the gross misconduct found. The basis for the sanctions was amply explained; no statement about insufficiency of a lesser sanction was necessary. *See, e.g., PAZ Sec., Inc. v. SEC*, 566 F.3d 1172, 1176 (D.C. Cir. 2009). Applicants' other point simply assumes, without any valid basis, that the provisos that Deutchman and Khan may petition the Board to terminate their bars after specific periods of time (*see* PCAOB Rule 5302), and the carefully considered, individualized sanctioning judgments they reflect, are meaningless.

Finally, Applicants weakly argue it is mitigating that none of them, except Deutchman has any other disciplinary record. Br. 5, 49; July 15, 2015 "Errata." No error was made in rejecting that argument in the overall sanctions analysis. *See* I.D. 81 & n.387; R.D. 206 at 17-18; *see also, e.g., Siegel v. SEC,* 592 F.3d 147, 156-57 (D.C. Cir. 2010) ("associated person should not be rewarded for acting in compliance with the securities laws and with his duties as a

securities professional"); *Kornman v. SEC*, 592 F.3d 173, 187-88 (D.C. Cir. 2010); *Rooms v. SEC*, 444 F.3d 1208, 1214 (10th Cir. 2006); *Michael Pino*, SEC Rel. No. 34-74903, 2015 SEC LEXIS 1811, *39 & n.40 (May 7, 2015). The sanctions are fully warranted.

CONCLUSION

The Commission should sustain the Board's order imposing sanctions for Applicants' extremely serious violations to protect investors and further the public interest.

Dated: August 5, 2015

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE WITH RULE 450(c)

I, Jodie J. Young, certify that the foregoing brief of the Public Company Accounting Oversight Board filed in opposition to Applicants' application for Commission review complies with the word count limitations set forth in Rule 450(c) of the Commission's Rules of Practice, 17 C.F.R. 201.450(c), and that the foregoing brief contains 13,986 words, exclusive of pages containing the Table of Contents and Table of Authorities, as counted by the Word Count feature of our Microsoft Word word-processing program used to prepare the brief.

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BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.

Admin. Proc. File No. 3-16518

In the Matter of the Application of

KABANI & COMPANY, INC.,
HAMID KABANI, CPA,
MICHAEL DEUTCHMAN, CPA,
and
KARIM KHAN MUHAMMAD, CPA

For Review of Disciplinary Action Taken By the

PUBLIC COMPANY ACCOUNTING
OVERSIGHT BOARD

NOTICE OF APPEARANCE

Pursuant to Rule 102 of the Commission's Rules of Practice, J. Gordon Seymour, Luis de la Torre, and Jodie J. Young enter their appearances in the above-entitled matter representing the Public Company Accounting Oversight Board and hereby request that notice or other written communication in this proceeding be served upon them at the following mail address and email addresses below:

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th of August, 2015, I caused to be sent to John R. Armstrong and Matthew S. Henderson via Federal Express a copy of the foregoing brief and accompanying notice of appearance (the original and three copies of which were filed today via hand delivery with the Commission's Office of the Secretary) addressed as follows:

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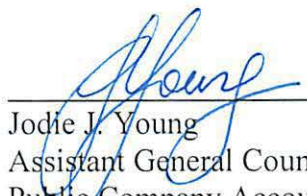
I have also transmitted today courtesy copies of the brief and notice of appearance to the above-named counsel at jarmstrong@horwitzarmstrong.com and mhenderson@horwitzarmstrong.com.



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