UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18292

In the Matter of **Anton &Chia, LLP,** **Gregory A. Wahl, CPA,** **Michael Deutchman, CPA,** **Georgia Chung, CPA, and** **Tommy Shek, CPA,** **Respondents.**	**DIVISION'S RESPONSE TO RESPONDENT MICHAEL DEUTCHMAN'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

INTRODUCTION

The Division of Enforcement hereby submits its responses to Respondent Michael Deutchman's Proposed Findings of Fact and Conclusions of Law. Because neither the Court's scheduling orders nor the Rules of Procedure contemplate such a filing, and because Respondent's "Conclusions of Law" contain proposed facts as well as proposed legal conclusions, the Division hereby responds to each paragraph in Respondent's submission.

DIVISION RESPONSES TO DEUTCHMAN'S PROPOSED FINDINGS OF FACT

1. On December 4, 2017 the Securities and Exchange Commission filed its Order Instituting Public Administrative And Cease-And-Desist Proceedings Pursuant to Sections 4c And 21c of the Securities Exchange Act of 1934 And Rule 102(E) of the Commission's Rules of Practice And Notice of Hearing ("OIPP"). Hearings were held before the Honorable Jason S. Patil, U.S. Administrative Law Judge.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 1*: Not disputed**.

2. The Commission made the following allegations against Mr. Deutchman, a 73-year old man with over 50 years of public audit experience, who previously worked for the SEC, KPMG, and has written and edited publications for the AICPA, regarding his one audit of Accelera as A&C's Concurring Partner for Accelera's December 31, 2014:

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 2*: Disputed in part**. The Division **does not dispute** that Respondent Deutchman is 73 years old, or that he previously worked for KPMG, the AICPA, and the SEC. The Division **disputes** the remaining proposed facts in this paragraph, which are unsupported by any evidence. In particular, the Division **disputes** that Respondent Deutchman has over 50 years of public auditing experience. Respondent cites no evidence for this proposed fact, and the Division is aware of none. While Deutchman was a CPA for 48 years, for a majority of his career, he was not practicing public accounting. *See* Tr. (Vol. III Deutchman) 827:17-19 ("When I was younger I worked for KPMG and I started – I hadn't done it, and when I was a little bit older I came back to doing the work."). In addition, the Division **disputes** that its claims against Deutchman relate to just one audit; rather, the Division's claims relate to three quarterly reviews of Accelera, in addition to the 2014 audit. *See* OIP ¶ 30.

a. 4. A&C [Anton &Chia hereafter "A&C"], Wahl, and Deutchman disregarded red flags and violated professional standards in the audits of Accelera from 2013 to 2015, and so did A&C and Wahl in the audit of Premier in 2013. The process was fundamentally flawed. They then issued or approved reports on the financial statements of Accelera and Premier, claiming that A&C had conducted the audits in accordance with the standards of the PCAOB. The reports, in turn, opined that the financial statements fairly presented the financial positions and results of Accelera and Premier, respectively, and followed Generally Accepted Accounting Principles ("GAAP")[1]. A&C, Wahl, and Deutchman knew, or were reckless in not

[1] See FASB § 805 *Business* Combinations, codifying the GAAP standards at https://asc.fasb.org/section&trid=2899136#d3e841-128460. According to the CPA Journal, *Common Control Entities and Consolidation of Variable Interest Entities*, "Research Bulletin (ARB) 51, Consolidated Financial Statements under Generally Accepted Account Principles ("GAAP"). ARB 51 requires a company to consolidate any affiliate for which the company retains a direct or indirect controlling financial interest. A controlling financial interest is defined as an investment of 50% or more of the voting equity of another entity (or related group of entities). Therefore, in accordance with ARB 51, a company that holds 50% or more of the voting equity of an affiliate is viewed as the controlling parent company and should include the affiliate (or affiliated group) in its consolidated financial statements. In accounting jargon, ARB 51 codified the "voting interest model" (VOE). Under a VOE model, the entity with the majority ownership interest retains significant influence over the way in which the affiliate manages its operations, and the controlled affiliate should therefore be included in the financial statements of

knowing, that the statements in A&C's reports for Accelera and Premier were false and misleading. OIPP, p. 3, ¶ 4;

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 2(a)*:** The Division **does not dispute** that this was among the allegations in its OIP, except for footnote 1, which the Division **disputes** was among its allegations.

b. 6. As described below, in connection with A&C's audits and interim reviews of Accelera's FY 2013 through FY 2015 financial statements:

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its majority interest investor. ARB 51's guidance presumes that the controlling parent would exercise its voting power to prevent the affiliate from entering transactions that the parent's management views as being contrary to its own best interest or contrary to the best interest of the controlled group. As one might assume, companies have developed very complex approaches for financing and administering the activities of their affiliated legal entities. Many of these approaches render the guidance contained in ARB 51 ineffective for ensuring that the controlling investor is properly consolidating affiliates for which it retains significant controlling influence. ARB 51's guidance is particularly ineffective when a parent entity maintains control over its affiliate in an ownership structure different from the VOE approach, such as without retaining a direct majority ownership interest in its affiliate. Therefore, FASB's guidance regarding consolidation of affiliated entities has evolved beyond the ARB 51 VOE model." See https://www.cpajournal.com/2018/08/15/common-control-entities-and-consolidation-of-variable-interest-entities/. See also *Statement of Financial Accounting Standards No. 141* (revised 2007) *Business Combinations*, at https://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1218220124931&acceptedDisclaimer=true; c.f. SEC Financial Reporting Manual, Topic 2, § 2015.12: "Significance – 'Related Businesses' - Acquisitions of 'related businesses' must be treated as a single business acquisition. Businesses are related under S-X 3-05 if: they are under common control or management, or their acquisitions are dependent on each other or a single common event or condition." https://www.sec.gov/corpfin/cf-manual/topic-2; and see Deloitte's *A Roadmap to SEC Reporting Considerations for Business Combinations*, § 1.3.3 Differences Between the Definition of a Business for SEC Reporting Purposes and U.S. GAAP Accounting Purposes Q&A Regulation S-X: Rule 11-01(d)-4A "Question Is the definition of a business for SEC reporting purposes the same as the definition for U.S. GAAP accounting purposes? Answer No. The definition of a business for SEC reporting purposes in Rule 11-01(d) is different from the definition for U.S. GAAP accounting purposes." at https://dart.deloitte.com/USDART/ov-resource/401b96f2-838c-11e8-85b9-7172a0502bbd.pdf.

i. a. A&C willfully violated Exchange Act Section 10(b)[2]and Rule 10b-5(b)[3] thereunder, and Deutchman willfully aided and abetted A&C's violation of Exchange Act Section 10(b) and Rule 10b-5(b) thereunder;

ii. b. A&C, Wahl, and Deutchman willfully aided and abetted and were a cause of Accelera's violation of Section 13(a) of the Exchange Act, and Rules 13a-1 and 13a-13 thereunder;

iii. c. A&C willfully violated Rule 2-02(b) of Regulation S-X,[4] and Wahl and Deutchman willfully aided and abetted and were a cause of A&C's violation of Rule 2-02(b) of Regulation S-X; and

iv. d. A&C, Wahl, and Deutchman willfully violated or willfully aided and abetted violations of the federal securities laws or the rules and regulations

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[2] 15 U.S. Code § 78j.Manipulative and deceptive devices: It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—…(b)**To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, or any securities-based swap agreement [1] any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors**." [Bold added.]

[3] 17 C.F.R. § 240.10b-5 Employment of manipulative and deceptive devices: "It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,
(a) To employ any device, scheme, or artifice to defraud, (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, *or* (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security." [Emphasis added.]

[4] Rule 2-02 of Regulation S-X reads as follows: "…(b) **In certifying the financial statements, the accountants may give due weight to an internal system of audit regularly maintained by means of auditors employed on the registrant's own staff**. The accountants shall review the accounting procedures followed by the person or persons whose statements are certified and by appropriate measures shall satisfy themselves that such accounting procedures are in fact being followed. **Nothing in these instructions shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit made for the purpose of presenting comprehensive and dependable financial statements**. (c) Any matters to which the accountants take exception shall be clearly identified and the exception thereto specifically and clearly stated. (d) If certification is made by an individual accountant, the above provisions as to accountants shall be read in the singular." [Bold added.]

thereunder for the purposes of Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii)[5]of the Commission's Rules of Practice, and engaged in improper professional conduct within the meaning of Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice. OIPP, pp. 3-4:¶ 6.

DIVISION RESPONSE TO PROPOSED FINDING OF FACT 2(b): The Division **does not dispute** that these were among the allegations in its OIP, except for footnotes 2-5, which the Division **disputes** were among its allegations.

3. The Commission neither alleged nor provided evidence that there were any errors or misstatements in any of the auditing work performed by either Mr. Deutchman or A&C regarding Accelera and BHCA. Rather, the Commission's *only* claim of "securities fraud" raised in its pleadings and evidence was that no one should have allowed Accelera and BHCA's financial statements to appear together in a publicly filed document, as this arguably created the incorrect appearance that the two companies had fully merged or had a *completed* parent/subsidiary relationship, in that Accelera was a "shell" company whereas there were actual operations in BHCA, even if both companies' financials showed that they operated at a net loss.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 3*:** The Division **disputes** this paragraph. As a preliminary matter, the Division **objects** to this proposed finding, as it contains argument, which the Court stated it would not consider and to which the Division therefore need not respond. *See* Jan. 17, 2020 Order at ¶ 6(c) ("I will not rely on any proposed finding of fact that contains argument.").

The Division **disputes** Respondent's characterization of its allegations, including that it "neither alleged nor provided evidence that there were any errors or misstatements in any of the auditing work performed by either Mr. Deutchman or A&C regarding Accelera and BHCA." The

[5] Rule 102: "(e) Suspension and Disbarment. (1) Generally. The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice and opportunity for hearing in the matter: …(iii) to have *willfully* violated, or *willfully aided and abetted* the violation of any provision of the Federal securities laws or the rules and regulations thereunder." [Italics added.]

Division both alleged and proved that Deutchman and Anton & Chia violated numerous PCAOB standards and federal securities laws in their audits and reviews of Accelera's accounting treatment of BHCA. *See* OIP ¶¶ 23-29, 42, 45, 48, 51, 55-63, 66-104. *See also* The Division of Enforcement's Proposed Findings of Fact ("Div. Facts") ¶¶ 262, 268-269, 289, 297, 302, 312, 315, 322, 325-328, 360-363, 376, 379-381, 390, 397-398; The Division of Enforcement's Post-Hearing Brief ("Div. Brief") at 25-28, 32-39.

The Division further **disputes** the Respondent's description of the factual basis of the Division's fraud claim against Deutchman. To be clear, the Division claims Deutchman knowingly, recklessly, and materially aided and abetted Anton & Chia in its fraudulent misrepresentations in its 2014 audit report (*i.e.*, that Anton & Chia had conducted its audit in accordance with PCAOB standards, and that, based on that audit, it was of the opinion that Acelera's 2014 financial statements were presented fairly in conformity with GAAP). *See* Div. Brief at 32-35.

4. The evidence adduced by the Commission and Respondents showed the following regarding the Commission's claims against Mr. Deutchman regarding his work on the Accelera audit, and is supported by admitted Exhibits 100-315, and 1248-1250.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 4*:** The Division **disputes** this paragraph. This paragraph contains argument, which the Court stated it would not consider and to which the Division therefore need not respond. *See* Jan. 17, 2020 Order at ¶ 6(c) ("I will not rely on any proposed finding of fact that contains argument."). Further, the Division **objects** to Deutchman's prefatory mass citation of 218 exhibits, which violates the Court's Order (*see id.* at ¶ 6(b)) and impedes the Division's ability to fully respond.

5. Behavioral Health Care Associates, Ltd ("BHCA") entered into a Share [sic] Purchase Agreement ("SPA") with Accelera Innovations, Inc. ("Accelera"), a publicly traded company in 2013, by which BHCA should [sic] a controlling block of stock to Accelera under certain terms and conditions.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 5*:** The Division **disputes in part** this proposed finding. It is **not disputed** that BHCA, Accelera, and Dr. Blaise Wolfrum entered into a Stock Purchase Agreement in 2013. *See* Div. Facts ¶ 117; Ex. 184 (Stock Purchase Agreement) at 1. As to whether "BHCA should [sic] a controlling block of stock to Accelera under certain terms and conditions," the paragraph is vague and unintelligible and therefore the Division **disputes** that proposed fact. Answering further, the Division states that Wolfrum agreed to sell to Accelera 100% of the shares of BHCA if and only if Accelera paid Wolfrum, which it never did. *See* Ex. 184 (Stock Purchase Agreement) at § 1.1 (stock of BHCA to transfer "[u]pon receipt of the payment of the purchase price set forth in Section 1.1.1.1."); Div. Facts ¶¶ 118-124.

6. BHCA and Accelera had signed the SPA before Mr. Deutchman's involvement in the audit process.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 6*: Not disputed**.

7. Mr. Deutchman's audit work in Accelera was performed between 2014 and 2015 regarding the 2014 audit of Accelera.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 7*: Not disputed**.

8. By the time Mr. Deutchman started work on the Accelera audit in 2014, A&C had already made the difficult audit decision to include Accelera's audited financial statements with BHCA's in its public filings.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 8*: Disputed in part**. It is **not disputed** that, at the time Deutchman worked on his first Accelera engagement, Accelera had consolidated the financials of BHCA into its financial statements in the prior period.

The Division **disputes** Respondent's characterization of the decision to consolidate BHCA's financials into Accelera's financial statements as "difficult." Respondent cites no evidence in support of that proposed fact, and the Division is aware of none. To the contrary, as Harris Devor testified, it would not have been at all difficult to determine that consolidation was inappropriate,

rating the transaction "less than a one" on an auditing difficulty scale of one to ten. Tr. (Vol. XXV Devor) at 5875:2-5873:2 ("Q. You may recall Mr. Wahl testified that of the three issuers in this case, that Accelera was the most complex, that it rates as a six out of ten, whereas the other ones were one or two or three … with respect to the difficulty level of the Accelera engagement, what's your opinion on that subject? A. Well, with respect to the issue at hand, it's a – less than a one … But you've got an agreement that says I'm going to sell you my stock, and you're going to pay me X. How can it be more simple than that? … it's absurd to think it's more complex than that, quite frankly."); *see also* Tr. (Vol. XXV Devor) 5896:1-4 ("Q. So, in your opinion on Accelera, this is not a complex accounting or auditing question; is that correct? A. It is not."). As Devor testified, this was a simple stock purchase agreement, and the exchange of shares was clearly triggered by an event that obviously had not yet occurred. *Id.* *See also* Ex. 184 (Stock Purchase Agreement) at § 1.1 (stock of BHCA to transfer "[u]pon receipt of the payment of the purchase price set forth in Section 1.1.1.1."); Div. Facts ¶¶ 118-124.

9. Generally, an auditor may rely on the work of other auditors under Rule 2-02 of Regulation S-X.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 9*: Disputed.** Nothing in Rule 2-02 of Regulation S-X supports this proposed fact or addresses the concept of reliance on other auditors.

Even setting aside Reg. S-X, the Division **disputes** that an engagement quality review partner ("EQR") can "rely" on the work of other auditors. As Devor explained, Deutchman's role as EQR was exactly the opposite: he was to "'evaluate' the judgments made by the engagement team and the conclusions they reached on 'difficult or contentions matters.'" Ex. 88.1 (Devor Report) at ¶ 227 (quoting AS 7.10 and AS 7.15);

see also id. at ¶ 228 ("Deutchman's attitude that prior issued financial statements, in his words, 'are what they are' is void of due professional care. An auditor cannot simply 'assume that it's done correctly.'").

10. Generally, a public company's management team is primarily responsible for the information contained in its financial statements. "Although this section focuses on the auditor's consideration of fraud in an audit of financial statements**, it is management's responsibility to design and implement programs and controls to prevent, deter, and detect fraud**. That responsibility is described in [PCAOB] AS 1001.03, which states, 'Management is responsible for adopting sound accounting policies and for establishing and maintaining internal control that will, among other things, initiate, record, process, and report transactions (as well as events and conditions) consistent with management's assertions embodied in the financial statements.' Management, along with those who have responsibility for oversight of the financial reporting process (such as the audit committee, board of trustees, board of directors, or the owner in owner-managed entities), should set the proper tone; create and maintain a culture of honesty and high ethical standards; and establish appropriate controls to prevent, deter, and detect fraud. When management and those responsible for the oversight of the financial reporting process fulfill those responsibilities, the opportunities to commit fraud can be reduced significantly." See PCAAOB [sic] Auditing Standard ("PCAOB AS") § 2401.04, https://pcaobus.org/Standards/Auditing/Pages/AS2401.aspx. (Bold added.)

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 10*: Not disputed,** except that Respondent cites the incorrect auditing standard. The standard applicable to audits conducted in 2014 and 2015 was AU 316.

11. Under PCAOB AS § 2401.05, "Fraud is a broad legal concept and auditors do not make legal determinations of whether fraud has occurred. Rather, the auditor's interest specifically relates to acts that result in a material misstatement of the financial statements. The primary factor that distinguishes fraud from error is whether the underlying action that results in the misstatement of the financial statements is intentional or unintentional. For purposes of the section, fraud is an intentional act that results in a material misstatement in financial statements that are the subject of an audit." See https://pcaobus.org/Standards/Auditing/Pages/AS2401.aspx. (Bold added.)

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 11*: Not disputed,** except that Respondent cites the incorrect auditing standard. The standard applicable to audits conducted in 2014 and 2015 was AU 316. Answering further, the Division notes

that the cited PCAOB standards relate to an auditor's responsibility for identifying ***an issuer's*** fraud. In contrast, here, Deutchman stands accused of aiding ***Anton & Chia's*** fraud in issuing its audit opinion, which contained two material misstatements. *See* Div. Brief at 32-35; *see also* OIP at ¶ 208.

12. This decision was difficult in that it involved a combination of making legal and audit determinations that were not "clear" given the efforts of the two companies to hold themselves out as having merged and then jointly attempt to raise capital together to finalize the closing of the merger between the companies for years.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 12*: Disputed**. This paragraph contains argument, which the Court stated it would not consider and to which the Division therefore need not respond. *See* Jan. 17, 2020 Order at ¶ 6(c) ("I will not rely on any proposed finding of fact that contains argument."). Respondent cites no evidence for this proposed fact, and the Division is aware of none, and it therefore **disputes** this proposed fact.

Answering further, the Division **disputes** that the issue of Accelera's consolidation of BHCA was at all difficult. To the contrary, auditing expert Harris Devor testified that it was not at all difficult to determine that the consolidation of BHCA into Accelera's financial statements was inappropriate. *See* Div. Resp. to ¶ 8, above (citing Tr. (Vol. XXV Devor) at 5875:2-5873:2).

The Division further **disputes** that BHCA and Accelera "held themselves out as having merged," a fact that is unsupported by Respondent and for which no support in the record exists.

13. For example, Accelera's management team credibly testified that when they asked their lawyers to give an opinion whether a merger had been effected when the parties had contractually bound themselves to each other but all conditions of closing had not been finalized, they represented that their lawyers claimed that this was an "audit" question and so refused to answer.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 13*: Disputed.** Respondent

cites no evidence for this proposed fact, and the Division is aware of none. To the contrary, the only record evidence related to a "legal opinion" introduced at this hearing was as follows: (1) Shek asked Deutchman to "make sure you speak with the attorneys on Accelera to make sure you know what entities need to be audited," and Deutchman responded "[f]or sure," but was only "placating him;" (2) Shek represented to Accelera (in an email on which Deutchman was copied) that Deutchman would call Accelera's attorneys regarding a "legal representation for business they acquired in 2013 and 2014; (3) Deutchman admitted that although "the only way [he] would be able to make a determination as an accountant as to the accounting treatment [of a potential default on the SPA] would be to get a legal opinion as to whether or not they had control," and (4) Deutchman never obtained or saw a legal opinion "about anything." Div. Facts ¶¶ 338-341.

While there was evidence introduced of telephone call among Accelera's management, its attorneys, and Michael Deutchman, that call was resolved by instructing Accelera consultant Bob Acri to obtain from Wolfrum a "supplemental agreement which essentially would say that Behavioral would be under the control of Accelera to get around the issue of consolidation." Tr. (Vol I Freeman) at 123:18-23; *see also* Div. Facts ¶ 319. No such supplemental agreement was ever obtained, however. *Id.* at 123:24-124:1 ("Q. And to your knowledge was such a supplemental agreement ever actually entered into? A. Not to my knowledge.").

14. Even when cash is a stated consideration in an agreement, contracts can be enforced through estoppel or by other means, and contractual conditions, including the specific form of consideration contractually demanded can be *waived*, which is why the Restatement (Second) of Contracts has long held that even when cash payment is due, the parties can expressly or implied agree to that other performance may be substituted. See, e.g., Rest. 2nd § 249 *When Payment Other Than by Legal Tender Is Sufficient*.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 14*:** This paragraph contains argument, which the Court stated it would not consider and to which the Division therefore need not respond. *See* Jan. 17, 2020 Order at ¶ 6(c) ("I will not rely on any proposed finding of fact

that contains argument.").

15. Conversely, A&C's witnesses testified that whether a merger had occurred had to be a determination by Accelera's management team in consultation with their attorneys, and that, as independent auditors, that A&C was concerned with losing its independence as independent auditors were they to provide legal/auditing advice to Accelera.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 15*: Disputed**. The Respondent has cited no testimony to support this fact, the Division is aware of none, and therefore the Division **disputes** this paragraph. Further, it is undisputed that Anton & Chia proposed numerous adjustments to Accelera's financials over the years. Therefore, it is **disputed** that Anton & Chia was concerned with losing its independence as independent auditors were they to provide legal/ auditing advice to Accelera," and it is nonsensical to suggest that it would somehow have been improper for Anton & Chia to review, or to point out the obvious error in, the improper consolidation of BHCA. *See* Tr. (Vol. IV Deutchman) 1076:16-23 ("But you're saying you couldn't give [Freeman] verbal information about the rationale for an analysis in a prior year's audit, but you could direct the client, Accelera, to write-off – or to impair their goodwill, and that didn't violate the independence rule? A. No. Because it was as clear as a bell that's what they had to do."). In fact, Devor testified that Deutchman's testimony that the independence rules somehow forbid him from answering Freeman's questions regarding Anton & Chia's analysis of the prior period's accounting treatment of Accelera was "the most absurd thing I've ever heard" and evidence that "there is no way he was qualified to be an EQR in this issue." Tr. (Vol. IV Devor) 1182:4-20; *see also id.* at 1183:2-6 ("of course it can't impair his independence for an audit that he did last year…. this guy was not qualified to be the EQR if he really believes that.").

16. This problem was underscored by Daniel Freeman's testimony that he attempted to get guidance other members of Accelera's management team, Accelera's legal counsel, and

even A&C whether BHCA's audited financial statements should be combined with Accelera's audited financial statements. However, neither he nor anyone at Accelera attempted to get an audit opinion regarding Accelera's decision to combine BHCA's audited financials with Accelera's during his tenure with Accelera, which was Accelera's *management's* primary responsibility to do.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 16*: Disputed.** As a preliminary matter, this paragraph contains argument, which the Court stated it would not consider and to which the Division therefore need not respond. *See* Jan. 17, 2020 Order at ¶ 6(c) ("I will not rely on any proposed finding of fact that contains argument.").

The Division **disputes** Respondent's characterization of Freeman's testimony in the first sentence of this paragraph, for which Respondent cites no actual testimony, nor any other evidence. Rather than merely seeking to "get guidance" about consolidation, Freeman repeatedly questioned the basis of the consolidation of BHCA to Accelera, its attorneys, and Deutchman himself, and he expressly told Deutchman "[t]hat Behavioral was inappropriately consolidated." *See* Div. Facts ¶¶ 271-273, 316-318.

The Division also **disputes** the second sentence of this paragraph. It is not management's responsibility to "get an audit opinion," a proposition for which Respondent cites no evidence. As the ***auditor***, it is axiomatic that it was Anton & Chia's responsibility to issue an ***audit*** opinion. *See* Div. Facts ¶ 45.

17. The Commission made much that the Commission had somewhat "relaxed" the independent auditor ethical rules that ensure auditors remain "independent" however, a single bulleting is far from "clear" in view of the following ethical and legal rules independent auditors must follow.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 17*: Disputed.** As a preliminary matter, this paragraph contains argument, which the Court stated it would not consider and to which the Division therefore need not respond. *See* Jan. 17, 2020 Order at ¶ 6(c) ("I will not rely on any proposed finding of fact that contains argument."). Also, the Respondent

cites no evidence for this proposed fact, and the Division is aware of none, so it is **disputed.**

18. The existing FASB standards still expressly provide that, "Management is responsible for the financial statements, and responsibility for the choices and judgments inherent in the preparation of those financial statements cannot be delegated to the auditor or to anyone else." See https://pcaobus.org//Standards/EI/Documents/ISB_Interp_99-1.pdf at p. ¶ 6.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 18*: Not disputed.**

19. Similarly, the AICPA, which auditors are required to follow under PCAOB AS 1005 Indepdence [sic] at ¶ 04 ["The profession has established, through the AICPA's Code of Professional Conduct, precepts to guard against the presumption of loss of independence"], and AICPA *requires* that, "The member [auditor] should not perform management functions or make management decisions for the attest client." See https://www.aicpa.org/Research/Standards/CodeofConduct/DownloadableDocuments/2011June1CodeOfProfessionalConduct.pdf at p. 1722, ¶ 1. Compare with PCAOB AU §110.03's requirement that, "The financial statements are management's responsibility." See https://pcaobus.org/Standards/Archived/PreReorgStandards/Pages/AU110.aspx.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 19*: Not disputed.**

20. A&C's witnesses and documents showed that A&C reviewed Accelera's management's determination to include Accelera's audited financial statements with BHCA's because:

a. The Companies had fully executed a Stock Purchase Agreement that indebted BHCA to buy Accelera and which precluded Accelera from being purchased by any other entity;

b. Dr. Wolfram, Accelera's undisputed CEO, signed an employment agreement with BHCA and for several years received payment from BHCA in the form of stock;

c. The executives of BHCA and Accelera had told A&C that that the two companies had executed a merger;

d. BHCA's management filed 8ks, 10ks, and 10Qs that BHCA and Accelera had merged with BHCA before Mr. Deutchman was involved in Accelera's audits;

e. Accelera's management never provided an opinion that BHCA's audited financials should not be included with Accelera's, and never told any at A&C that they should not be consolidated—and certainly never told A&C this after Accelera's management told A&C that they had merged with BHCA and had executed documents to such legal effect;

f. Dr. Wolfram repeated signed acknowledgements that Accelera was indebted to BHCA under the SPA and provided these to A&C;

g. Between 2013 and 2015, Accelera and BHCA signed not only the SPA to contractually bind themselves to each other, but four (4) separate Amendments to the SPA to extend the closing date to complete the merger.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 20*: Disputed**. The Respondent cites no evidence to support the proposition that Deutchman, or Anton & Chia in general, considered any of these seven factors in reviewing Accelera's decision to consolidate BHCA. In fact, Deutchman did not perform any analysis of the consolidation at all, but rather "defaulted to the firm's position." Ex. 839.6 (Prior Testimony. Designations) at 472-473 (Deutchman June 25, 2019 Dep. at 88:23-89:7); *see also id.* at 63:24-64:2 ("[I]t wasn't my place to go back to the beginning and challenge my own firm's accounting position."); Tr. (Vol. III Deutchman) 762:6-13 (quoting Ex. 8 (Deutchman July 26, 2016 Inv. Test.) 82:18) (Deutchman "assume[]d that it was done correctly); Ex. 839 (Prior Testimony Designations).

Further, these purported factors themselves misstate the evidence in the record. As to **20(a)**, it is **disputed** that the SPA "precluded Accelera from being purchased by any other entity." Respondent cites no evidence in support of this proposed fact, and the Division is aware of none. To the contrary, under the terms of the SPA and the amendments thereto, Wolfrum could terminate the SPA "immediately upon written notice" at any time "prior to [his] receipt of the payment set forth in Section 1.1.1.1." Ex. 201 (2d Amendment to SPA) § 1(B); Ex. 184 (SPA) at § 1.2.

As to **20(b)**, it is **disputed** that Wolfrum ever received compensation from Accelera. There is no evidence of that, and Wolfrum testified to the opposite. Div. Facts ¶ 147. Further, the conditions in the Employment Letter were never met, so Wolfrum's employment agreement was never effective. *See* Div. Facts ¶¶ 145-148.

As to **20(c)**, it is **disputed** that "executives of BHCA and Accelera had told A&C that that the

two companies had executed a merger." Respondent cites no evidence for this proposition, and the Division is aware of none. To the contrary, no Anton & Chia personnel, including Deutchman, ever asked Wolfrum if the acquisition had occurred. *See* Div. Facts ¶¶ 294, 360, 365-366, 391. When Anton & Chia staff performed field work at BHCA, Wolfrum informed them that he still owned "a hundred percent of the company." *See* Div. Facts ¶¶ 277, 333. Nor did Deutchman ask any questions of Accelera personnel about the relationship between Accelera and Behavioral. Div. Facts ¶¶ 288, 359. *See also* Exhibit 839.6 (Prior Testimony Designations) at 479-480 (Deutchman June 25, 2019 Dep. at 154:24-155:8) ("Q. Did anyone from Accelera ever tell you whether or not it had acquired the stock of Behavioral Health Care Associates? … A. No. Q. Did you ever ask? A. No. And the reason I didn't was because it's a complicated issue, and I assumed that our firm's position was correct.").

As to **20(d)**, it is **disputed** that "BHCA's management filed 8Ks, 10Ks, and 10Qs that BHCA and Accelera had merged with BHCA." Respondent cites no evidence for this proposition and the Division is aware of none. BHCA is a private company and therefore never filed any Form 8K, 10K, or 10Q. As to the Form 8-K filed by ***Accelera*** regarding the acquisition, it referred to the acquisition in the ***future tense.*** Exhibit 103 (Dec. 2, 2013 Form 8K) at 3 ("Accelera ***will acquire*** 100% of the 1000,000 issued and outstanding shares of BHCA."); *id.* ("Accelera ***will operate*** BHCA in accordance with the Operating Agreement.") (emphasis added).

As to **20(e)**, it is **disputed.** Accelera's management ***did*** tell Anton & Chia (including Deutchman) that BHCA should not be included in Accelera's financials. *See* Div. Facts ¶¶ 272-273, 317-318; *see also* Ex. 263 (Mar. 30, 2016 email from Boerum to Gandhi) ("So now I need to know how we can remove the revenue and restate all those years.").

As to **20(f)**, it is **disputed** that "Dr. Wolfram [sic] repeated [sic] signed acknowledgements

that Accelera was indebted to BHCA under the SPA." The acknowledgement that Respondent references (Exhibit 239) included the important caveat: "To the extent the terms of this letter conflict with the terms of the parties' Stock Purchase Agreement, the terms of the Stock Purchase Agreement shall control." *See also* Div. Facts ¶¶ 329-330

21. Given these facts, Mr. Deutchman testified that in performing his audit work in 2014-2015 regarding Accelera, he booked all the debt but wrote off the goodwill, meaning that an objective reader looking at his audit work would conclude that the fully executed but incomplete merger of Accelera and BHCA resulted in Accelera incurring all the debt but none of the benefits of this contractual transaction in that the value of the merger would be in the goodwill, which Mr. Deutchman indisputably testified had been written off in its entirety. A&C also provided a "going concern" opinion, which stated that, in the opinion of the auditor, it was *unlikely* that Accelera had the financial wherewithal to stay in business as a going concern. See PCAOB AS 2415 regarding going concern opinions at https://pcaobus.org/Standards/Auditing/Pages/AS2415.aspx.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 21*: Disputed in part.** It is **not disputed** that Anton & Chia's audit report included in Accelera's 2014 Form 10-K contained a going concern opinion. *See* Div. Facts ¶ 373. It is **disputed** that the inclusion of a going concern opinion had anything to do with the BHCA consolidation, because there is no evidence that that was the case.

As to the remaining proposed facts in this paragraph, Respondent does not cite to any actual testimony from Deutchman, or any other evidence, and the Division is aware of none; therefore, the facts are **disputed**. In particular, it is **disputed** that the 2014 financials of Accelera reflected "none of the benefits" of the contract. To the contrary, the 2014 financials improperly included the revenues of Accelera. In fact, ***90%*** of Accelera's reported revenues in 2014 were actually BHCA's. Div. Facts ¶ 324.

In addition, the Division **disputes** that it was Deutchman who proposed writing off Accelera's goodwill in the 2014 financial statements. To the contrary, Shek testified that it was he

– not Deutchman – who made that proposal. Tr. (Vol. VIII Shek) 2344:1-8 ("A. Well, what I put was the adjustments and, you know, and they agree on that. Q. Just to make sure that I understood you correctly, you proposed the adjustments to the goodwill? A. Correct. Q. You proposed impairing the goodwill for Accelera? A. Correct.").

22. The purpose of writing off BHCA's goodwill and providing the going concern opinion was to provide a red flag to potential investors that Accelera's financial condition was extremely poor in that it was operating at a loss and dependent on the success of raising capital to close on potential subsidiaries. That is, one of the reasons why Accelera's financials were poor and running at a cash negative was *because of* Accelera's contractual obligation to buy BHCA. Even BHCA's own financial documents showed that while it did have operations, it too operated at a loss.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 22*: Disputed.** Respondent does not cite to any evidence to support this proposed facts, and the Division is aware of none. In fact, it was Shek, and not Deutchman, who proposed the goodwill write-down in Accelera's 2014 financial statements (*see* Division's response to Proposed Finding of Fact 21, above), and his reason for doing so was not at stated by Respondent above, but rather because "the Company [Accelera] has $2.1 million losses from operations, At Home and All Staffing has been discontinued in 2014, and the Company do not have sufficient support to validate the goodwill for BHCA." Ex. 147 (goodwill impairment memo) at 2.

23. Mr. Deutchman testified that given all the public records and documents in the audit file, given Accelera's management made the determination to combine BHCA's financials and never directed that this should change, and given A&C's own internal and earlier determination that the two companies should combine their financial statements, Mr. Deutchman felt comfortable keeping the audited financials combined, but with the red flags he insisted be put in the audit opinion to warn investors that this was high risk investment since Accelera's liabilities far exceeded its assets.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 23*: Disputed.**

Respondent does not cite to any actual testimony from Deutchman to support this proposed fact, and the Division is aware of none. This account contradicts Deutchman's actual

testimony, which was that he never analyzed the accounting treatment but rather "defaulted to the firm's position." Ex. 839.6 (Prior Testimony Designations) at 472-473 (Deutchman June 25, 2019 Dep. at 88:23-89:7); *see also id.* at 63:24-64:2 ("[I]t wasn't my place to go back to the beginning and challenge my own firm's accounting position."); Tr. (Vol. III Deutchman) 762:6-13 (quoting Ex. 8 (Deutchman July 26, 2016 Inv. Test.) 82:18) (Deutchman "assume[]d that it was done correctly); Ex. 839 (Prior Testimony Designations). In fact, Deutchman could not even remember if he read the BHCA agreements. Tr. (Vol. IV Deutchman) 1062:3-12 ("QUESTION: Did you read the – any of the agreements between Behavoiral and Accelera? ANSWER: Well, you know, right now, I couldn't recall.") (quoting Ex. 8 (2016 testimony) at 103:13).

Further, the Division **disputes** the characterization that Deutchman "insisted" on putting any "red flags" in Accelera's audit opinion, because there is no evidence that Deutchman caused the "going concern" opinion to be included in the 2014 audit report and it was Shek – not Deutchman – who proposed the write-down of goodwill. *See* Division's Response to Proposed Finding of Fact 21, above.

24. Notably, Accelera always public disclosed that it was indebted to but had not yet paid the cash consideration for its merger with BHCA, and both Accelera and BHCA testified how they worked together to help Accelera raise capital to effect the merger as both companies wanted the merger to happen, but Accelera was not successful in raising sufficient capital to effect the closing.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 24*: Disputed.** Respondent does not cite to any evidence to support this proposed fact, and the Division is aware of none.

25. The following facts were also proved at the hearings.

26. Under the SPA, BHCA and Dr. Wolfram sold 100% of BHCA's shares to Accelera. See Ex. 100 [sic], Bill of Sale.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 26*: Disputed.** As stated in the

SPA and Bill of Sale (among other documents), the sale would occur only upon the payment of the purchase price as set forth in 1.1.1.1. of the SPA, which never happened. *See* Exhibit 184 (SPA) at 1.1 ("Upon receipt of the payment of the purchase price set forth in Section 1.1.1.1…."); Exhibit 194 (Bill of Sale) at 2 ("effective upon the payment of the purchase price set forth in Section 1.1.1.1. of the Purchase Agreement."); Exhibit 186 (Promissory Notes) (same); Ex. 189 (Stock Powers Certificate) (same); Ex. 188 (Escrow Agreement) (same). *See also* Div. Facts ¶¶ 124, 198.

27. Under the SPA, BHCA indebted itself to both Accelera and to its principal, Dr. Blaise Wolfrom [sic].

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 27*: Disputed.** Respondent does not cite to any evidence to support this proposed fact, and the Division is aware of none. To the contrary, no debt was incurred, or stock transferred, until the payment of the purchase price set forth in Section 1.1.1.1. of the SPA. *See* Exhibit 186 (Promissory Note) at 1 ("effective upon the payment of the purchase price set forth in Section 1.1.1.1. of the Purchase Agreement."); *see also* Div. Facts. ¶¶ 128-130; Tr. (Vol. II Wolfrum 317:5-15) ("Q. But upon signing the SPA in Accelera, they did owe you $4.5 million, correct? … A. There were transactions that were contemplated. So it was contemplated that I would give them stock, and that they would give me money. They never gave me they money, so I never gave them the stock. So it was contemplated, but it never took place.").

28. As part of the SPA, BHCA employed Dr. Wolfram [sic] under an Accelera employment agreement.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 28*: Disputed.** Respondent does not cite to any evidence to support this proposed fact, and the Division is aware of none. To the contrary, the testimony of both Accelera and BHCA witnesses was consistent that the employment agreement between Accelera and Wolfrum was not yet in

effect. Div. Facts ¶¶ 145-148. Among other reasons, the employment agreement was expressly "contingent upon" completion of a valuation and audited financials of BHCA, which were never completed. Exhibit 190 (Employment Letter) at 3; Div. Facts ¶ 146.

29. While the SPA was in effect and each of the Amendments thereto, BHCA was precluded from merging with any other company or selling off its assets pledged under the SPA to Accelera, and BHCA/Dr. Wolfram [sic] had considered Accelera in breach of its contractual obligation to purchase BHCA's stock up through the time the parties terminated the SPA.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 29*: Disputed.** Respondent does not cite to any evidence to support this proposed fact, and the Division is aware of none. To the contrary, under the terms of the SPA and the amendments thereto, Wolfrum could terminate the SPA "immediately upon written notice" at any time "prior to [his] receipt of the payment set forth in Section 1.1.1.1." Ex. 201 (2d Amendment to SPA) § 1(B); Ex. 184 (SPA) at 1.2. *See also* Tr. (Vol. II Wolfrum 317:5-15) ("Q. But upon signing the SPA in Accelera, they did owe you $4.5 million, correct? … A. There were transactions that were contemplated. So it was contemplated that I would give them stock, and that they would give me money. They never gave me they money, so I never gave them the stock. So it was contemplated, but it never took place.").

30. Dr. Wolfram [sic] filled out documents to be insured under Accelera's Directors & Officers Liability Insurance.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 30*: Disputed.** Respondent does not cite to any evidence to support this proposed fact, and the Division is aware of none. The only evidence adduced related to the Directors & Officers Liability Insurance was that Wolfrum was requested to fill out a form, but that he had difficulty doing so because "the questions [on the D&O form] don't even make sense. They're not applicable … I thought the form was utter nonsense and made no sense, because I wasn't on [Accelera's] board." *See* Tr. (Vol II Wolfrum) at 347:10-348:4; Ex. 243 (April 8, 2015 e-mail from Boerum). There is no evidence that Accelera ever obtained

D&O insurance coverage for Wolfrum.

31. Dr. Wolfram [sic] knowingly allowed A&C to audit BHCA and knew that A&C was doing so to combine BHCA's audited financials with Accelera's financials, and his hope was that this process would enable Accelera to raise enough to capital to finalize the closing of SPA.

DIVISION RESPONSE TO PROPOSED FINDING OF FACT 31*: Disputed.** Respondent does not cite to any evidence to support this proposed fact, and the Division is aware of none. To the contrary, Anton & Chia actually never "audit[ed] BHCA." BHCA was not audited; ***Accelera was audited and Anton & Chia (wrongly) included BHCA in the audit. *See* Tr. (Vol. VI Devor) at 1648:24-1649:9 ("there were no financials of BHCA. I don't remember ever seeing them. There were only financials of Accelera, consolidated, but only Accelera. I don't remember ever seeing a financial statement of BHCA that was audited, that had an opinion on the separate company … There's no audited financials of Behavioral Health Care Associates.").

The Division also **disputes** that "BHCA … knew that A&C was doing so to combine BHCA's audited financials with Accelera's financials…" To the contrary, Wolfrum understood Anton & Chia was conducting field work at BHCA only because "because we were a ***target of acquisition*** for Accelera." Tr. (Vol. I Wolfrum) at 249:8-9 (emphasis added). Further, each time Anton & Chia was present for field work, Wolfrum informed the staff that he still owned BHCA. *See* Div. Facts ¶¶ 277, 333. Wolfrum was unaware that Accelera was consolidating Behavioral into its financial statements until September or October of 2015. Tr. (Vol I Wolfrum) at 271:5-21. When he eventually learned that Accelera was "somehow claiming that it was their income as if they had already purchased Behavioral," he felt "concerned," because that "[s]eemed to be a misrepresentation of what was actual and fact." Tr. (Vol. II Wolfrum) at 356:1-18.

32. Accelera paid Dr. Wolfram [sic] in Accelera stock as an Accelera employee as consideration for his agreeing to extend the final closing date between Accelera & BHCA.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 32*: Disputed.** Respondent does not cite to any evidence to support this proposed fact, and the Division is aware of none. While Accelera did provide Wolfrum with Accelera stock as consideration for extending the date for the initial payment (*see* Div. Facts ¶¶ 149-161), there is no support for the proposed fact that Wolfrum was paid "as an Accelera employee." In fact, Wolfrum was never an employee of Accelera. *Id.* at ¶¶ 144-148.

33. For its case, the SEC relied on the expert opinion testimony of Harris Devor, who disagreed with Accelera's management's decision that sufficient evidence of a merger existed warranting the combining of Accelera's and BHCA's audited financial statements together.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 33*: Disputed in part**. The Division **does not dispute** that it introduced expert testimony from Harris Devor. The Division **disputes** Respondent's suggestion that Accelera decided that "sufficient evidence of a merger existed." Respondent cites no evidence to support this proposed fact, and the Division is aware of none. To the contrary, the only evidence adduced as to the rationale behind the decision to consolidate was that "[i]t was because without Behavioral they did not have any operations and would be considered a shell company." Tr. (Vol. I Freeman) 80:25-81:12. The Division further **disputes** that it was Accelera's management who decided to consolidate BHCA in the first instance. The testimony was that it was "Tim Neher, working with the auditors of Anton & Chia" who decided to consolidate. *Id.* at 80:2-12.

34. Mr. Devor's opinion was largely based on his legal conclusion that the closing of the merger required Accelera to make the initial cash down payment under the SPA, and since Accelera failed to make such cash payment to BHCA, in his opinion, a merger had not legally occurred for public auditing purposes, even though Accelera and BHCA's principals undoubtedly wanted the merger and worked together towards raising capital for their merger.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 34*: Disputed.** Devor is an

accounting and auditing expert, and did not offer any legal conclusions. *See* Exhibit 88.1 (Devor Report) at ¶¶ 1, 6-7. This proposed fact is not an accurate synopsis of Devor's opinions.

35. Mr. Devor also relied on his interpretation of various auditing standards to support his determined [sic] that the above facts were not sufficient to show that a merger happened, which are discussed more fully below.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 35*: Not disputed**.

36. Finally, Mr. Deutchman testified that he is presently retired, and, because of an earlier SEC disciplinary action, he has lost his California license to practice as a CPA.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 36*: Not disputed.**

37. In his 50 years of practice, this is his third SEC disciplinary action. The first action was a minor disciplinary action for practicing before the SEC without having the proper registration, which occurred approximately 15 years ago.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 37*: Disputed in part**. The Division does **not dispute** that this would be Deutchman's third disciplinary action. *See* Div. Facts. ¶¶ 899, 901. The Division **disputes** the characterization of his 2008 action as "minor," as Respondent cites no evidence to support that characterization, and the Division is aware of none.

38. The second disciplinary action involved Mr. Deutchman's failure to properly supervise the audit work of other employees while he was a senior auditor at Kabani and Company in 2007 regarding sophisticated changes some employees made to their computer system without his knowledge thirteen years ago, for which the Commission imposed a 2-year bar (now over) and a fine (which he paid).

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 38*: Disputed in part**. The Division does **not dispute** that Deutchman was disciplined in connection with his work at Kabani. *See* Div. Facts ¶ 901. The Division otherwise **disputes** Respondent's characterizations of the *Kabani* matter, as Respondent has cited no evidence to support them, and the Division is aware of none. In particular, the Division **disputes** Respondent's assertion that the conduct at issue in the Kabani matter occurred "without his knowledge," as that proposed fact is unsupported by

evidence and belied by the decision itself, which held that Deutchman's misconduct was "intentional and knowing." *See* PCAOB File No. 104-2012-002, Orderly Summarily Affirming Findings (Jan. 22, 2015) at 1. *See also id.* at 6 (citing hearing offering finding that "Deutchman … participated in the scheme to alter the work papers and the provide the altered work papers to the inspectors").

39. This action is the only other disciplinary action against Mr. Deutchman, which involves his audit work in 2014-2015.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 39*: Not disputed**.

40. Both earlier disciplinary actions involve facts and circumstances entirely different from the issues raised in this hearing.

***DIVISION RESPONSE TO PROPOSED FINDING OF FACT 40*:** The Division **disputes** this paragraph. This paragraph contains argument, which the Court stated it would not consider and to which the Division therefore need not respond. *See* Jan. 17, 2020 Order at ¶ 6(c) ("I will not rely on any proposed finding of fact that contains argument."). Answering further, the Division **disputes** this proposed paragraph because all three actions relate to Respondent Deutchman's improper conduct while auditing public companies that bears on his judgement and competence to practice before the Commission.

DIVISION'S RESPONSES TO DEUTCHMAN'S PROPOSED CONCLUSIONS OF LAW

1. The Commission must prove each of its allegations by a preponderance of the evidence. *Steadman v. SEC* (1981) 450 U.S. 91, 100-101; 101 S.Ct. 999, 1007; 67 L.Ed.2d 69, 78; 5 U.S. Code § 556(d); SEC Rules of Practice, rule 320.

***DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 1:* Not disputed**

2. That is, the Commission must prove that is more likely than unlikely that Mr. Deutchman's auditing work was far below the applicable standard of care, that his auditing work was not only incorrect, but negligent, and not only negligent, but so very negligent that it was "reckless" so as to be liable for securities fraud. See *Tellabs, Inc. v. Makor Issues & Rights, Ltd*., 551 U.S. 308, 322 (2007), holding that in order for an inference of scienter

to qualify as "strong" under the Reform Act, it must "be more than merely plausible or reasonable — it must be cogent and at least as compelling as any opposing inference of nonfraudulent intent"; see *In re Worlds of Wonder Securities Litigation*, 35 F.3d 1407, 1426 (9th Cir. 1994), holding that an outside auditor acts recklessly only when "the accounting practices were so deficient that the audit amounted audit at all, or an egregious refusal to see the obvious, or to investigate the doubtful, or that the accounting judgments which were made were such that no reasonable accountant would have made the same decisions if confronted with the same facts."

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 2: **Disputed.** While Respondent cites cases related to the standard for securities fraud (*see also* Div. Brief at 28-30), Deutchman is also charged with improper professional conduct and violations of Section 13(a) of the Exchange Act, Rule 2 2-02(b) of Regulation S-X, for which the standards differ. *See id.* at 25-28, 36-38.

3. While it is true that the Commission's auditing expert testified credibly that he personally would not have combined the audited financial statements, that is not the legal standard for securities *fraud*, which requires something significantly more.

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 3: The Division **disputes** that Devor's opinion was limited to what "he personally would have" done with respect to BHCA. Rather, Devor testified that "[t]his consolidation violated GAAP, because Accelera did not own or control BHCA," and Deutchman's related audit failures were "excessive and egregious." *See* Ex. 88.1 (Devor Report) at 165, 314; *see also id.* at ¶¶ 166-170, 179, 183, 224, 227-230, 232, 236, 245-251, 255-262, 302-303, 311, 314.

4. The Commission has not proved that *no* hypothetically "reasonable" accountant would have ever consolidated the balance sheets at issue under the facts presented the auditors; rather, its evidence was that its expert would not have done so and personally did not believe it reasonable to do so.

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 4: **Disputed.** *See* Division's Response to item 3, above.

5. However, Mr. Devor did not convincingly testify that *no* rational auditor would have agreed to consolidate the two companies' financials given the unique facts of this case.

Moreover, if this were such an "obvious error," then it is more likely than unlikely that Accelera's attorneys would have advised Accelera to not consolidate the financials. That they refused to express an opinion on this key issue speaks to the complexity of the auditing and legal determination needed to be made under the unique facts presented.

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 5: **Disputed.** *See* Division's Response to item 3, above.

Also, the Division **disputes** that "Accelera's attorneys "refused to express an opinion." *See* Division's Response to Finding of Fact No. 13, above. The telephone call among Accelera's management, its attorneys, and Michael Deutchman was resolved by instructing Accelera consultant Bob Acri to obtain from Wolfrum a "supplemental agreement which essentially would say that Behavioral would be under the control of Accelera to get around the issue of consolidation." Tr. (Vol. I Freeman) at 123:18-23; *see also* Div. Facts ¶ 319. No such supplemental agreement was ever obtained, however. *Id.* at 123:24-124:1 ("Q. And to your knowledge was such a supplemental agreement ever actually entered into? A. Not to my knowledge.").

6. That is not to say that A&C's failure to object to Accelera's management's decision that the two companies' financials should be audited and combined was correct. Rather, assuming for sake of argument only, even if they had incorrectly failed to object to Accelera's management's determination, the issue is whether they had any rational, non-fraudulent or "good faith" basis for doing so.

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 6: **Disputed.** Respondent cites no facts or authority for this proposed fact, and the Division is aware of none.

7. Here, there record is replete with facts indicating that the two companies intended to merge, and were actively working together to try to complete their merger up through the time that they later decided to terminate the merger in March of 2016. At no time did Accelera tell or direct A&C that the companies were not merging, and, as stated in all its public filings, Accelera's management has primary responsibility for the accuracy of the information provided to the auditors under Rule 2-02 of Regulation S-X and PCAOB AS 1001.03. See https://pcaobus.org/Standards/Auditing/Pages/AS1001.aspx: "The financial statements are management's responsibility. The auditor's responsibility is to express an opinion on the financial statements. Management is responsible for adopting sound

accounting policies and for establishing and maintaining internal control that will, among other things, initiate, record, process, and report transactions (as well as events and conditions) consistent with management's assertions embodied in the financial statements."

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 7: **Disputed in part.** As to the first sentence, the Division **does not dispute** that Wolfrum intended to sell his company to Accelera, ***once he received payment*** (*see* Div. Facts ¶¶ 123, 125; Ex. 184 (SPA) at 1.1), but the sentence is otherwise **disputed.**

The Division **disputes** the proposed fact that "[a]t no time did Accelrea tell or direct A&C that the companies were not merging," as Freeman told Deutchman "[t]hat Behavioral was inappropriately consolidated into the financial statements." Tr. (Vol. I Freeman) 84:21-86:1; *see also* Div. Facts ¶¶ 272-273, 316-318.

The remainder of this paragraph is **not disputed.**

8. The Court notes that the Commission has separately filed an action and has obtained judgments against Accelera and Mr. Thompson in Case No. 1:17-cv-07052 in the U.S. Northern District of Illinois, Eastern Division in the action styled *SEC vs. Accelera et al.* regarding, in part, Accelera's filings regarding BHCA.

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 8: **Not disputed.**

9. While Mr. Devor cited innumerable auditing standards in his lengthy report and at hearing, he failed to cite a single standard or rule or guidance that provides what an auditor should do when the parties have contractually bound themselves to merge, hold themselves as having merged by taking affirmative steps together to raise a capital together, continue to extend their closing date, etc.

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 9: **Disputed.** Devor repeatedly testified that it was inappropriate under GAAP, including ASC 805, to consolidate BHCA in the circumstances present here. *See* Ex. 88.1 (Devor Report) ¶ 166 ("Accelera consolidated BHCA's financial results (including its revenues, assets and liabilities) with its own in Accelera's 2013, 2014, and 2015 Forms 10-K and its Forms 10-Q filed in 2014 and 2015. This consolidation violated

GAAP, because Accelera did not own or control BHCA."); *id.* at ¶ 169 ("Accelera also did not have the 'ability to determine the direction of management and policies' [quoting ASC 805-10-20]. Accelera did not control BHCA's business or affairs, hire or fire employees, make managerial decisions, influence day-to-day operations, or acquire any portion of BHCA's revenue."); Tr. (Vol. IV Devor) 1155:24-1156 ("Q. What does GAAP actually require before you consolidate? A. That control of the entity has passed. Generally, that is indicated in most circumstances, not all, by – by the purchase, the transfer of control of the voting stock of the company. Not a hard concept to understand, generally."). *See also* Tr. (Vol. VI Devor) at 1834:18-1835:12 ("[Armstrong]: So you're telling me if I have a contract and I have a right to purchase an asset and I have the exclusive right to purchase the asset and I incur a debt of $4.5 million for the right to purchase that asset, that there's no accounting for that? A. There is absolutely no --- Q. And there's no accounting standard ---… A. I don't know how this can be clearer. If the agreement says 'I agree to buy your stock, buy your company, and in return for $4.5 million you will convey control, title … of your company to me, but only after that occurs do I own it,' you can't record that asset. You cannot record that acquisition. Period.").

10. The applicable auditing standards are not clear. For example, SEC Regulation S-X, Rule 3-05, §210.3-05 *Financial statements of businesses acquired or to be acquired,* which provides: "(a) Financial statements required. (1) Financial statements prepared and audited in accordance with this regulation should be furnished for the periods specified in paragraph (b) below if any of the following conditions exist: (i) A business combination has occurred *or is probable* (for purposes of this section, this encompasses the acquisition of an interest in a business accounted for by the equity method); or (ii) Consummation of a combination between entities under common control is probable. (2) For purposes of determining whether the provisions of this rule apply, the determination of whether a business has been acquired should be made in accordance with the guidance set forth in [17 CFR] § 210.11-01(d). (3) Acquisitions of a group of related businesses that are probable or that have occurred subsequent to the latest fiscal year-end for which audited financial statements of the registrant have been filed shall be treated under this section as if they are a single business combination. The required financial statements of related businesses may be presented on a combined basis for any periods they are under common control or management. For purposes of this section, businesses shall be deemed to be related if: (i)

> They are under common control or management; (ii) The acquisition of one business is conditional on the acquisition of each other business; or (iii) Each acquisition is conditioned on a single common event."

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 10: **Disputed.** As a preliminary matter, Respondent discusses "auditing standards," but none of the rules that follow are auditing standards. The auditing standards applicable here are summarized at Div. Facts ¶¶ 42-110.

Moreover, Respondent fundamentally misconstrues Regulation S-X, Rule 3-05, §210.3-05. As Devor explained at the hearing, this Rule relates only to when the ***historical*** financials of an acquisition should be ***presented*** in a registrant's public filings, but has no relevance at all to the issue here, *i.e.*, whether the ***current*** financials of BHCA ought to have been ***consolidated into*** Accelera's financial statements. Tr. (Vol. XXV Devor) at 5878:1-14 ("the section of SX … basically is a requirement that when a company … has either purchased another company or intends to purchase another company, because the shareholders have a right to know that and have some information on this acquisition to inform their investment decisions, the SEC and SX requires that there be financial statements of -- historical financial statements of the entities that are the target acquiree. So but that doesn't indicate at all that when you're doing the audit of the potential acquirer that in fact you need to consolidate those numbers. It doesn't even begin to go there."); *id.* at 5879:5-5880:15 ("Q. And then the provision, it provides ['']the financial statements required[,'] and it goes into section (a)(1), and then subparagraph (i) with regards to 'Financial statements should be furnished regarding a business combination that has occurred or is probable.' Can you explain what this furnishing of financial information for a probable acquisition references? … A. It is saying, hey, if you've acquired somebody, … just recently or you intend in the near future to purchase a company, the public has a right to know what it is you're about to purchase and, therefore, you need to disclose and file audited financial statements of that entity for … a certain period of years so that investors are informed as to

either the deal that took place or the deal that will take place or likely will take place. It has nothing to do with whether Accelrea should consolidate the company.").

11. Similarly, Title 17 CFR § 210.3-05(a) "Financial statements required" provides that, "(1) Financial statements prepared and audited in accordance with this regulation should be furnished for the periods specified in paragraph (b) below if any of the following conditions exist: (i) A *business combination has occurred or is probable* (for purposes of this section, this encompasses the acquisition of an interest in a business accounted for by the equity method); or (ii) Consummation of a combination between entities under common control is *probable*."

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 11: The Division **does not dispute** that 17 CFR § 210.3-05(a) so states. *See* Division's Response to 10, above.

12. Additionally, S-X 3-05(a)(3) states in part "Acquisitions of a group of related businesses that are probable or that have occurred subsequent to the latest fiscal year-end for which audited financial statements of the registrant have been filed *shall be treated under this section* [emphasis added] *as if they are a single business combination*." See SEC Financial Reporting Manual, Topic 2, § 2020.8 at Note 3 found at https://www.sec.gov/corpfin/cf-manual/topic-2.

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 12: The Division **does not dispute** that 17 CFR § 210.3-05(a) so states. *See* Division's Response to 10, above.

13. Notably, S-X 3-05 (17 CFR § 210.305(a)-(b) refers to consummation of a transaction. One common understanding of consummation is "to complete (an arrangement, agreement, or the like) by a pledge or the signing of a contract." See https://www.dictionary.com/browse/consummated.

DIVISION RESPONSE TO CONCLUSION OF LAW 13: **No dispute.**

14. Title 17 CFR § 210.305(b)(4)(i)(A) expressly provides that auditors "may" omit reporting the audited financials of an acquisition when it has not yet occurred: "Financial statements required for the periods specified in paragraph (b)(2) of this section may be omitted to the extent specified as follows: …(A) The consummation of the acquisition has not yet occurred…" https://www.law.cornell.edu/cfr/text/17/210.3-05.

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 14: The Division **does not dispute** that 17 CFR § 210.3-05(a) so states. *See* Division's Response to 10, above.

15. The use of the term "may" is commonly understood to be permissive, in that one may or may not do something. See https://www.dictionary.com/browse/may?s=t. That is, the

Regulation provides that the auditor may or may not include the acquisition's audited financials when the acquisition agreements have been signed but has not yet been fully completed.

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 15: **Disputed.** As set forth above in response to item 10, this provision of Reg. S-X has nothing to do with the issue of whether BHCA should be consolidated into Accelera's financial statements.

16. Further, and perhaps more relevant, Financial Accounting Standards Board ("FASB") § ASC 805 regarding *Business Combinations* provides further guidance that whether the two companies' financial statements were permissibly consolidated. According to FASB, their accounting standards are a codification of GAAP.

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 16: **Not disputed**. *See* Div. Facts ¶¶ 15-18; OIP ¶ 52.

17. FASB ASC 805-10-25-1 provides, "An entity shall determine whether a transaction or other event is a business combination by applying the definition in this Subtopic, which requires that the assets acquired and liabilities assumed constitute a business. If the assets acquired are not a business, the reporting entity shall account for the transaction or other event as an asset acquisition."

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 17: **Not disputed**.

18. FASB ASC 805-10-55-2 provides in relevant part that, "Paragraph 805-10-25-1 requires an entity to determine whether a transaction or event is a business combination. In a business combination, an acquirer might obtain control of an acquiree in a variety of ways, including any of the following: a. By transferring cash, cash equivalents, or other assets (including net assets that constitute a business) b. *By incurring liabilities* c. *By issuing equity interests* d. *By providing more than one type of consideration* e. *Without transferring consideration including by contract alone* (see paragraph 805-10-25-11). [Italics added.]

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 18: **Not disputed**.

19. FASB ASC 805-10-55-3 further provides that, "A business combination may be structured in a variety of ways for legal, taxation, or other reasons, which include but are not limited to, the following: a. One or more businesses become subsidiaries of an acquirer or the net assets of one or more businesses are legally merged into the acquirer.
b. One combining entity transfers its net assets or its owners transfer their equity interests to another combining entity or its owners. c. All of the combining entities transfer their net assets or the owners of those entities transfer their equity interests to a newly formed entity (sometimes referred to as a roll-up or put-together transaction). d. *A group of former owners of one of the combining entities obtains control of the combined entity*. [Italics

added.]

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 19: **Not disputed**.

20. There is no dispute that all contracts were fully signed and that BHCA and Accelera wanted their merger. There is also no dispute that Dr. Wolfram as the sole shareholder and key executive officer was contractually the employee of Accelera and was paid by Accelera in Accelera shares.

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 20: **Disputed**. Not all the agreements between Wolfrum and Accelera were "fully signed." To the contrary, the Operating Agreement, the Escrow Agreement, and the Employment Letter are all missing signatures by Accelera. *See* Exhibit 185 (Operating Agreement) at 34; Ex. 188 (Escrow Agreement) at 7; Ex. 190 (Employment Letter) at 24. The Division also **disputes** that Wolfrum was ever an employee of Accelera. *See* Div. Facts ¶¶ 145-148.

21. This shows common control between the two entities sufficient under FASB ASC § 805 to allow auditors to combine the audited financials of both companies, *as long as* proper disclosures were made that the consideration for the transaction was not paid, the debt was booked on Accelera's balance sheet (it was), and there was no corresponding "good will" provided for the BHCA acquisition since the merger was not complete despite the common control regarding both companies.

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 21: **Disputed**. The Respondent cites no evidence for this proposed fact and the Division is aware of none. There was no evidence introduced of any "common control" between BHCA and Accelera. *See* Div. Facts ¶¶ 162-173. *See also* Tr. (Vol. IV Devor) at 1156:6-12 ("Q. And have you seen any evidence in your work on this case or heard any testimony in this case that would suggest that control of Behavioral passed at any time to Accelera? A. I have not. And to the contrary, I've heard testimony so many times that, in fact, it never passed.").

As Devor testified, there is no provision under GAAP or GAAS that allows for consolidation of unrelated companies as long as the company writes off the goodwill associated with the

transaction. *See* Tr. (Vol. VII Devor) 1860:4-1861:13 ("Q. What part of ASC 805 says you can consolidate another company into your financial statements even if you don't control it so long as you later write down the goodwill associated with the acquisition? … A. Obviously none. A. Okay. If it's not in 805, what other provision of GAAP says that it's okay to consolidate a company that you don't control as long as you later write down the goodwill associated with the transaction? … A. GAAP of course doesn't say that, and it wouldn't say that. I mean, think about it; there are two different issues. Consolidation is do you control the company, you know, through whatever means. And you know, goodwill is an intangible asset that needs to be evaluated on a periodic basis as to whether it's worth the value it's at. Has anything happened in the last -- since the last time you looked at it to determine whether it's impaired or deteriorated in value. One has nothing to do with the other. And the whole notion of it's okay to do something wrong here as long as you do something wrong here, you know, no one cares, which is -- BY MR. HAYES: Q Two wrongs don't make a right? A The whole thing is absurd."); *id.* at 1864:25-1865:10 ("A. Does GAAS excuse the auditor from performing his auditor review in accordance with GAAS requirements so long as he ensures that the goodwill has been written down for an acquisition for a company that they don't control? A. Of course not. Because the goodwill writedown itself was not goodwill. There was no purchase. The whole thing is fiction … so if you're writing down the goodwill that you created erroneously to begin with.").

22. Under the above standards, the auditors were faced with the complex problem as to whether a merger had occurred in that BHCA and Accelera had executed all documents necessary to complete their intended merger and the parties intended to merger, whether the merger was "probable" if not completely consummated, and whether the two companies' financials should be consolidated because the merger was conditioned on a single common event, namely, the consideration for BHCA shares which both BHCA and Accelera worked together to raise.

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 22: **Disputed in part.** The

Division **does not dispute** that the acquisition of BHCA was conditioned on the consideration for BHCA shares. *See* Div. Facts ¶¶ 120, 124, 198. Otherwise, the Division **disputes** this paragraph.

In particular, the Division **disputes** that the "problem" of how to account for BHCA was "complex." *See* Division's Response to Proposed Finding of Fact 8, above.

The Division **disputes** that "BHCA and Accelera had executed all documents necessary to complete their intended merger." The payment from Accelera was "necessary" to complete the transaction. Ex. 184 (SPA) at 1.1; Div. Facts ¶¶ 120, 124. Further, as set forth in response to Proposed Conclusion of Law 20, above, not all of the agreements were executed. To the contrary, the Operating Agreement, the Escrow Agreement, and the Employment Letter are all missing signatures by Accelera. *See* Exhibit 185 (Operating Agreement) at 34; Ex. 188 (Escrow Agreement) at 7; Ex. 190 (Employment Letter) at 24.

The Division **disputes** that the issue of whether the "merger was 'probable'" had any bearing on the auditors' here analysis of whether or not Accelera's consolidation of BHCA was appropriate. *See* Division Response to Proposed Conclusion of Law 10, above.

23. Finally, Title 17 CFR 210.4-08 subdivision (k) regarding, "Related party transactions that affect the financial statements" *requires* that "(1) Amounts of related party transactions should be stated on the face of the balance sheet, statement of comprehensive income, or statement of cash flows. (2) In cases where separate financial statements are presented for the registrant, certain investees, or subsidiaries, any intercompany profits or losses resulting from transactions with related parties and the effects thereof ***shall be disclosed***."

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 23: **Not disputed.**

24. This presented Mr. Deutchman and A&C with a "damned if we do, damned if we don't" dilemma regarding whether to report the audited financials.

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 24: **Disputed.** Accelera's obligation to disclose related party transactions under 17 C.F.R. 210.4-08(k) has nothing to do with BHCA, and certainly nothing to do with whether BHCA's financial results should be consolidated

with Accelera's. Moreover, BHCA was not a related party, and there had not yet been any transaction. *See* Div. Facts ¶¶ 120, 124, 198.

25. Put another way, given the unique facts of this case, the Commission could just have easily claimed that Mr. Deutchman and A&C were guilty of securities fraud for *failing* to disclose BHCA's financial/contractual relationship with Accelera.

DIVISION RESPONSE TO 25: **Disputed.** *See* Division's Responses to Conclusion of Law 24, above. Answering further, the accounting issue in this case is not whether Anton & Chia "disclose[d[BHCA's financial/ contractual relationship with Accelera." It is whether BHCA's financial results were improperly consolidated with Accelera's. *See* OIP ¶ 52.

26. That is, this case presented a unique set of facts that the existing auditing standards do not expressly address or expressly contemplate—the "half merger" where the parties have contractually bound themselves under fully executed agreements and work together to raise capital but keep extending their closing date.

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 26: **Disputed.** Respondent cites no evidence or other authority for this proposed fact, and the Division is aware of none.

27. As one court put it, "…the auditors are not lawyers…" *Coastal States Gas Corp. v. Department of Energy,* 617 F.2d 854, fn. 8 (1980). Accordingly, holding an audit firm or its members liable for securities fraud for their good faith but arguably incorrect legal analysis of all the contractual documents related to a merger transaction when the existing audit regulations are unclear regarding important terms like "probable" or "control" or "single contingent event" or "may" is improper.

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 27: **Disputed.** It is **disputed** that "audit regulations are unclear regarding important terms like 'probable' or 'control' or 'single contingent event' or 'may.'" This purported lack of clarity does not exist, because, as discussed above in the Division's Response to Proposed Conclusion of Law 10, the provisions of Reg. S-X referenced here are not applicable. The term "control" is defined in ASC 805. *See* Div. Facts ¶¶ 15-17.

The Division also **disputes** that Deutchman acted in "good faith," a proposed fact for which Respondent cites no evidence, and as to which the Division is aware of none. In Respondent's entire

filing, he cites to not one single audit procedure performed by Deutchman. In fact, the evidence adduced at this hearing revealed that Deutchman brought no good faith or diligence to bear on this transaction. There is no evidence that any purported complexities identified by Respondent above were ever identified or discussed during Deutchman's engagements for Accelera. Instead, even in the face of Accelera's own CFO informing him "[t]hat Behavioral was inappropriately consolidated" (Div. Facts ¶¶ 271-273), Deutchman just "assume[d] that it was done correctly," and "defaulted to the firm's position" (Ex. 839.6 (Prior Testimony Designations) at 472-473 (Deutchman June 25, 2019 Dep. at 88:23-89:7); Tr. (Vol. III Deutchman) 762:6-13 (quoting Ex. 8 (Deutchman July 26, 2016 Inv. Test.) 82:18)). This is not good faith where the auditing standards required Deutchman to "exercise 'reasonable care and diligence' and 'professional skepticism'" (Div. Facts ¶ 48), "investigate the circumstances and consider the reliability of the representation made," where a "representation made by management is contradicted by other audit evidence" (*id.* at ¶ 69. *See also id.* ¶¶ 49, 68, 74-97, 105-110.

28. Fraud requires more than a mistake of judgement. Reckless conduct requires more than ordinary negligence. "A reckless statement is a material misrepresentation or omission 'involving not merely simple, or even excusable negligence, *but an extreme departure from the standards of ordinary care*, and which presents a danger of misleading buyers or sellers *that is either known to the defendant or is so obvious that the actor must havebeen aware of i*t." *GSC Partners CDO Fund v. Washington*, 368 F.3d 228, 239 (3d Cir. 2004). [Italics added.]

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 28: **Not disputed.**

29. This level of "scienter" for a claim of securities fraud is particularly high against an independent auditor. "Recklessness on the part of an independent auditor entails a mental state 'so culpable that it "approximate[s] an actual intent to aid in the fraud being perpetrated by the audited company."' *Fidel*, 392 F.3d at 227 (citing *PR Diamonds*, 91 Fed. Appx. at 438; see also, *Decker v. Massey Ferguson, Ltd*., 681 F.2d 111, 121 (2d Cir. 1982); *Pegasus Fund, Inc. v. Laraneta*, 617 F.2d 1335, 1341 (9th Cir. 1980) (auditor's recklessness 'must come closer to being a lesser form of intent (to deceive) than merely a greater degree of ordinary negligence') (internal quotations omitted)). Scienter 'requires more than a misapplication of accounting principles'; the plaintiff must prove 'that the

accounting practices were so deficient that the audit amounted to no audit at all, or an egregious refusal to see the obvious, or to investigate the doubtful, or that the accounting judgments which were made were such that no reasonable accountant would have made the same decisions if confronted with the same facts.' *PR Diamonds*, 91 Fed. Appx. at 438 (citing *Miller v. Pezzani* (*In re Worlds of Wonder Sec. Litig.)*, 35 F.3d 1407, 1426 (quoting *SEC v. Price Waterhouse*, 797 F. Supp. 1217, 1240 (S.D.N.Y. 1992))." *In re Cardinal Health, Inc. Sec. Litigs*. (S.D. Ohio, 2006) 426 F.Supp.2d 688, 763.

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 29: **Not disputed.** *See also* Div. Brief at 29.

30. Certainly, once Accelera and BHCA executed their Termination Agreement in March of 2016 there was no credible basis to consolidate the balance sheets of these two companies; however, this determination/Termination Agreement did not occur during the time of Mr. Deutchman's auditing work and occurred *after* A&C's engagement with Accelera had ended.

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 30: **Not disputed.**

31. Accordingly this tribunal finds for Respondent Michael Deutchman and against the Commission.

DIVISION RESPONSE TO PROPOSED CONCLUSION OF LAW 31: **Disputed.** *See generally, above.*

Dated: August 10, 2020

Respectfully submitted,

/s/ Ariella Guardi

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18292

In the Matter of **Anton & Chia, LLP,** **Gregory A. Wahl, CPA,** **Michael Deutchman, CPA,** **Georgia Chung, CPA, and** **Tommy Shek, CPA,** **Respondents.**	**CERTIFICATE OF SERVICE**

In accordance with Rule 150 of the Commission's Rules of Practice, Alyssa A. Qualls, an attorney, hereby certifies that on August 10, 2020, she caused true and correct copies of the Division of Enforcement's Response to Respondent Michael Deutchman's Proposed Findings of Fact and Conclusions of Law to be served on the following via email:

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Dated: August 10, 2020

/s/ Alyssa A. Qualls
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