UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18994

In the Matter of

Joseph S. Amundsen, CPA, Michael T. Remus, CPA, and Michael Remus CPA,

Respondents.

DIVISON OF ENFORCEMENT'S OBJECTIONS TO RESPONDENTS' PROPOSED EXHIBITS

The Division of Enforcement ("Division") hereby submits its objections to Respondents' Proposed Exhibits.

Proposed Exhibits of Respondents
Michael T. Remus, CPA and Michael Remus CPA ("Remus Respondents")

The Division objects to Proposed Exhibit No. 22 listed on the Remus Respondents' Amended Exhibit List dated June 5, 2019, entitled "FINRA correspondence to Anthony Cianci, Fox Chase Capital Partners, LLC, dated 2/12/16," on grounds of hearsay and lack of relevance.

Respondent Joseph S. Amundsen ("Amundsen")

Amundsen has not served or filed an exhibit list, but has emailed the Division two documents the Division understands to be those he wishes to introduce at the hearing. One is correspondence dated May 27, 2019 entitled "Notice Regarding Correspondence – Answer," apparently addressed to the Office of the Secretary, as well as the Court in *SEC v. Amundsen*, et al. No. C 83 – 00711 (WHA) (the "Civil Action"), and the other is a document dated June 2, 2019, entitled "Petition to Vacate an Order of the Securities and Exchange Commission," apparently addressed (or bearing the caption of) the United States Court of Appeals for the District of

Columbia Circuit.

The Division objects to both of these proposed exhibits on grounds of lack of relevance, as well as on the grounds of collateral estoppel and *res judicata*.

Dated: June 10, 2019
New York, NY

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard G. Primoff, certify that on the 10th day of June, 2019, I caused the original and three copies of the Division of Enforcement' June 10, 2019 Pre-Hearing Memorandum to be filed with the Office of the Secretary by facsimile transmission and by United Parcel Service (UPS) overnight delivery, and copies to be served by UPS overnight delivery and email on Respondent Joseph S. Amundsen and ALJ Carol Fox Foelak, at the following addresses, and on counsel for the Remus Respondents by email to prginsberg@sullivanlaw.com:

Vanessa Countryman, Acting Secretary
Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E., Mail Stop 3628
Washington, D.C. 20549

Joseph S. Amundsen
[redacted]
Easton, PA [redacted]

The Honorable Carol Fox Foelak
Office of Administrative Law Judges
U.S. Securities and Exchange Commission
100 F Street, NE, Mail Stop 2557
Washington, DC 20549

Richard G. Primoff

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DIVISION OF ENFORCEMENT'S PREHEARING MEMORANDUM

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The Division of Enforcement respectfully submits this Pre-Hearing Memorandum.

PRELIMINARY STATEMENT

"Throughout its history, the Commission has stressed that auditor independence is essential to the notion that an auditor's opinion on financial statements provides investors with critical assurance that the financial statements have been subject to a rigorous examination by an impartial and skilled professional." *Ernst & Young LLP*, Init. Decisions Rel. No. 249, 2004 SEC LEXIS 831, at *85-86 (Apr. 16, 2004). "Because of the importance of an accountant's independence to the integrity of the financial reporting system," the Commission noted when adopting its amendments to Rule 102(e) in 1998, "circumstances that raise questions about an accountant's independence always merit heightened scrutiny." *Amendment to Rule 102(e) of the Commission's Rules of Practice*, Rel. No. 33-7593, 1998 SEC LEXIS 2256, at *34 (Oct. 19, 1998).

Over a two-year period in 2015 and 2016, Respondents Michael T. Remus ("Remus") and Michael Remus, CPA (the "Remus Firm") (collectively, the "Remus Respondents"), together with Respondent Joseph S. Amundsen ("Amundsen") as Engagement Quality Reviewer ("EQR"), conducted fourteen audits of seven broker-dealers whose financial and operations principal ("FINOP") was Respondent Amundsen's daughter, Stephanie Murray. In doing so, they recklessly violated the Commission's long-standing and clear independence rules as set forth in Regulation S-X, 17 C.F.R. § 210.2-01(b) and (c)(2), which explicitly provide, among other things, that an auditing firm's independence is impaired where a member of the audit engagement team's adult child (whether dependent or nondependent) is in an accounting or financial oversight role at the client.

Amundsen knew his daughter was the FINOP of these broker-dealers, and Remus was aware of their family relationship. Amundsen and Murray, however, were important sources of broker-dealer audit referrals for Remus, and the Remus Respondents proceeded with Amundsen as EQR on these audits nonetheless. Amundsen signed off as the EQR, which required him to be independent of the audit client, for all fourteen audits in 2015 and 2016. In each audit, he falsely represented his independence. Remus then signed these audit reports, all of which falsely represented that the auditing team was "independent" and that the audits were conducted "in accordance with the standards of the PCAOB," and he then released them to their clients for filing with the Commission. The Remus Firm thus recklessly violated, and Remus and Amundsen aided and abetted its violations of, Rules 17a-5(g) and (i) under the Securities Exchange Act of 1934 ("Exchange Act"), and caused their broker-dealer clients to violate their financial reporting requirements under Rule 17a-5(f). Respondents also engaged in repeated instances of improper professional conduct pursuant to Commission Rule of Practice 102(e)(ii).

STATEMENT OF FACTS

A. Amundsen's Repeated Violations of the Commission's Prior Injunction.

Amundsen has been a certified public accountant ("CPA") in New York and California since 2002. In 1983, the Commission sued Amundsen for a violations of the anti-fraud provisions of the securities laws in *SEC v. Amundsen*, No. C 83-0711 (N. D. Cal.) (the "Civil Action"). Amundsen settled the action, consenting, without admitting or denying the truth of the allegations of the complaint, to the entry of an injunction that, among other things, permanently enjoined him from appearing or practicing before the Commission in any way. Notwithstanding the 1983 injunction, from approximately 2003 to 2011 (after his CPA license was reinstated), Amundsen audited financial statements of broker-dealers filed with the Commission on more

than one thousand occasions. He also acted as FINOP for a number of broker-dealers during this period, including many of the broker-dealers at issue here.

On May 13, 2019, the Court in the Civil Action granted the Commission's motion for contempt against Amundsen, finding that he violated the injunction by acting as EQR on more than a dozen audits of broker-dealers (including those at issue in this proceeding). *See SEC v. Amundsen*, slip op, No. C 83-00711 (WHA), 2019 SEC U.S. Dist. LEXIS 80490, at *6 (N.D. Cal. May 13, 2019).[1] Before reaching its decision, the Court asked for supplemental briefing to determine whether any of Amundsen's work as EQR had been deficient. When presented with just one example of an audit (Profor) in which Amundsen was EQR while his daughter was the FINOP of the audit client, the Court found that Amundsen was "tone deaf when it comes to his professional responsibilities." *Id.*, 2019 SEC U.S. Dist. LEXIS 80490, at *7.

B. Murray Apprentices with Amundsen and Assumes His FINOP Role after FINRA Bars Amundsen.

In 2010, the Financial Industry Regulatory Authority ("FINRA") notified Amundsen that he was statutorily disqualified by reason of the injunction in the Civil Action. Amundsen formally stopped working as FINOP, and in 2011, FINRA barred Respondent Amundsen from association with its member firms, based on, among other things, his failure to disclose the 1983 injunction to FINRA.

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[1] The Commission had previously sought a contempt order against Amundsen in 2011, claiming his auditing practice violated the 1983 injunction. In deciding that contempt action, the Court held in January 2012 that Amundsen "should never have begun the practice in question [of auditing financial statements of broker-dealers destined for filing with the Commission] in the first place," and that his conduct was "unreasonable in light of the regulation, as it read then as well as now." Although declining then to hold Amundsen in contempt, the Court ordered him "to cease preparation of all audit reports destined for filing with the Commission, including audit reports on financial statements for broker dealers so destined for filing with the Commission."

At that point, his daughter, Murray, who had obtained a FINOP license, began working as FINOP at firms where Amundsen had previously acted in that role —including at least five of the broker-dealers at issue in this proceeding.[2] As FINOP at these, and at all of the Broker-Dealers, Murray was part of management, and had overall responsibility for all the financial matters of the Broker-Dealers. She prepared, supervised and held final responsibility for the broker-dealers' financial statements, including quarterly FOCUS reports filed with the Commission. She was also responsible for supervising and maintaining the Broker-Dealers' books and records.[3]

Murray had apprenticed for Amundsen since approximately 2006, assisting him with his FINOP work, as well as with his tax preparation business and the marketing of Amundsen's accounting firm. They maintained a close professional relationship—even after Amundsen had been barred by FINRA and Murray began acting as FINOP in his stead. Murray continued to work with Amundsen in connection with his tax preparation business, and at times referred individual tax clients to him from the broker-dealer firms for which she has been FINOP. Amundsen, by his own admission and notwithstanding his FINRA disqualification, assisted Murray in her FINOP work by informally advising her as well as acting as a document courier.

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[2] The seven broker-dealers at issue in this proceeding are Allegro Securities, LLC: CapFi Partners, LLC; Fox Chase Capital Partners, LLC; Profor Securities, LLC; Race Rock Capital, LLC; McBarron Capital, LLC (known as Arjent in 2014); and Thomas P. Reynolds Securities Ltd., (collectively, the "Broker-Dealers"). Amundsen had not been FINOP at Allegro Securities, LLC and Race Rock Capital, LLC.

[3] FINRA Rule 1022(b), as of the time in question, required a FINOP to be registered as a "Limited Principal" of a member firm, whose duties include "final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory body, "final preparation of such reports," "supervision of individuals who assist in the preparation of such reports," and "any other matter involving the financial and operational management of the member."

He also directly intervened in Murray's fee negotiations with the broker-dealer Fox Chase, and sought to use his tax preparation services as leverage to prevent a broker-dealer, CapFi, from terminating Murray as FINOP, and retaliate against it when it did.

C. Remus Respondents Hire Amundsen as EQR for the 2014 and 2015 Audits of Seven Broker Dealers Where Murray Was the FINOP.

Remus has been a CPA in New Jersey since 1988 and has been registered with the PCAOB since 2011. He is the sole proprietor of the Remus Firm. Beginning with the 2014 year-end audit period (in 2015), Remus hired Amundsen as his EQR on audits of broker-dealers at a fee of $500 per engagement, and hired him again for audits for the 2015 year-end audit period (in 2016). Murray was the FINOP at the Broker-Dealers for both the 2014 and 2015 year-end audit periods, fourteen audits in total, and served as Remus's main point of contact when he was conducting his audits.[4]

By that time, Remus had been acquainted with Amundsen for approximately ten years and Murray for approximately seven years, and the association of all three with the Broker-Dealers long precedes the two audit years at issue in this proceeding:

(1) Remus has audited Thomas P. Reynolds since at least as early as 2002, while Amundsen was its FINOP from 2005 until 2010, when Murray took over as FINOP;

(2) Remus has audited Fox Chase since as early as 2008, while Amundsen was its FINOP from 2003 until 2010, when Murray took over as FINOP;

(3) Remus has audited Profor since 2006, while Amundsen was its FINOP from 2005 until 2010, when Murray took over as FINOP;

[4] The audit periods for Thomas P. Reynolds were for the years ended March 31, 2015 and March 31, 2016.

(4) Remus has audited CapFi since 2010, while Amundsen was its FINOP (then known as K & Z Partners) from 2007 until 2010, when Murray took over as FINOP; and

(5) Remus has audited Race Rock and Allegro since at least as early as 2011, at which time Murray was also FINOP.

These long-standing relationships among Remus, Amundsen, and Murray are not a coincidence. Amundsen and Murray were important sources of auditing business referrals for Remus: Approximately a third of the Remus Respondents' auditing business (eight to ten clients, by Remus's estimation) arose from Amundsen's and/or Murray's referrals. At least six of the seven broker–dealers at issue in this proceeding—Fox Chase, Allegro, CapFi, Race Rock, Arjent-McBarron, and Profor—were referrals from Amundsen and/or Murray. From these fourteen audits alone, the Remus Respondents earned more than $54,000 for the two audit years in question.

When he hired Amundsen as his EQR, Remus was aware of the father-daughter relationship between Amundsen and Murray—something that was also readily apparent from numerous publicly available documents Remus obtained and reviewed as a regular part of his audit practice in auditing Broker-Dealers. He also knew Amundsen had been barred by FINRA from association with broker-dealers, and that the Commission had obtained an injunction against him in the Civil Action that prevented him for appearing or practicing before the Commission.

Remus made no inquiry of the Commission regarding the injunction, and of FINRA he asked only whether the FINRA bar disqualified Amundsen from performing an engagement quality review "in accordance with PCAOB Auditing Standard No. 7." Notably, Remus did not inquire as to whether it was appropriate for Amundsen to act as EQR on audits of firms where his daughter was the FINOP. Although FINRA responded to Remus that an EQR does "not meet

the definition of an 'associated person' pursuant to Article 1 of FINRA by laws," it did recommend that Remus "utilize a partner that is not barred from associating with FINRA member firms."

Remus ignored this recommendation. He also never bothered to consult the Commission's independence rules, or anyone at the Commission, the PCAOB or FINRA as to whether those rules prohibit a father from participating in an audit of a client where his daughter is the client's FINOP. In fact, he "couldn't say for sure" that he has ever read the Commission's independence rules.

Remus also elected to proceed, and continue, with Amundsen as EQR on these audits despite receiving red flags from multiple sources that Amundsen was not merely reviewing the work of his daughter on these audits, but may have been performing some of it himself. As early as February 4, 2015, the Remus Respondents received financial documents of Arjent that prominently and repeatedly noted they had been prepared by Amundsen in 2014, despite the fact that Murray -- not Amundsen -- was then the FINOP of Arjent, and Amundsen was prohibited from doing the work. Remus made no inquiry at Arjent into Amundsen's role on these records at Arjent, nor did he apply any additional scrutiny to the relationship between Murray and Amundsen and how it affected Amundsen's or the Remus Respondents' independence on the audits.

Remus similarly undertook no further inquiry into whether Amundsen was independent of Profor even after he was aware, by no later than during his audit of Profor for the year-end 2015 (from January to early February 2016), that FINRA examiners complained that that Amundsen was involving himself with Profor by accessing its offices, obtaining its documents and delivering them to his daughter, Murray.

Remus claims he was unaware of the "nondependent child rule," and that Amundsen's family connection to Murray "never crossed" his mind. He has claimed he did not become aware of this rule until 2017 (after he had already switched to a different EQR who did not charge him a fee), when the PCAOB released its settled disciplinary proceeding in the *Matter of Matter of Thomas W. Klash, CPA*, PCAOB Rel. No. 105-2017-025 (Apr. 26, 2017), in which the PCAOB disciplined an auditor who had engaged an EQR whose son was in an accounting role at the client. Remus claims he then recognized the independence impairment posed by Amundsen's role as EQR on certain audits.[5] But even then, Remus took no action to correct the deficient 2014 or 2015 audit reports he issued with respect to the Broker-Dealers, disclose those deficiencies to the Commission, or alert his clients to the independence impairment.

Remus's claim that he did not know about the independence rules is further belied by the fact that Remus prepared an undated letter and had Amundsen sign it, in which he had Amundsen represent that Amundsen was aware of the PCAOB independence requirements, including "PCAOB Professional Standards Rule 3526, Communication with Audit Committees Concerning Independence" and "Rule 101 of the AICPA Code of Professional Conduct," and that he had "no relationships that may be reasonably thought to bear on my independence." Additionally, during this same period Remus himself routinely sent letters to his clients, falsely representing the Remus Respondents' compliance with the PCAOB independence rules, as well as with the AICPA's independence rule. Both the letter Remus had Amundsen sign, as well as

[5] On October 2, 2015, almost two years prior to *Klash*, the PCAOB released a disciplinary order in *Matter of David A. Aronson, CPA,* PCAOB Rel. No. 105-2015-034, in which the PCAOB censured an auditor for independence violations where audit clients had engaged the auditor's son's bookkeeping firm.

the letters Remus sent to his clients, contained representations about independence that were false.[6]

As EQR, Amundsen was required to ensure that, for each of the fourteen audits, the auditor had followed the audit plans, complied with accounting procedures, responded appropriately to identified risks, and proofread and corrected the underlying financial statements. In addition, Amundsen had final approval on the audits before the clients' financial statements could be filed with the Commission. Amundsen documented and "signed off" on his review for each of these fourteen audits, and, as the Court in the Civil Action noted, falsely represented that he had, among other things, maintained his independence in connection with these audits, despite his awareness that his daughter was the FINOP at these clients. Remus himself then submitted his audit reports to his clients to be included in their financial reports filed with the Commission, falsely representing the Remus Respondents as independent auditors and falsely representing they had conducted the fourteen audits "in accordance with the standards of the PCAOB."

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[6] Rule 101 of the AICPA, in place during the relevant period, also provided hat independence would be considered impaired if a "close relative" (including nondependent child) had a "key position" at the client, a term that includes primary responsibility for preparation of financial statements. *See* AICPA ET 101.02, *Application of Independence Rules to Close Relatives*. This has been a principle of the AICPA since at least 1994. *See* AICPA Interpretation 101-9, "*The Meaning of Certain Independence Terminology and the Effect of Family Relationships on Independence*," AICPA Professional Standards: Code of Professional Conduct (June 1, 1994). In Rule 3500T, the PCAOB adopted on an interim basis in 2003 the auditing standards of the AICPA, and requires compliance with the independence standards as described in AICPA Professional Standards, ET 101. The Order Instituting Proceedings ("OIP") inadvertently miscites this provision as Rule 3200T. See *Halpern & Assocs. LLC*, Init. Decisions Rel. No. 939, 2016 SEC LEXIS 26, at *58n (Jan. 5, 2016) ("scrivener's error" in rule citation in OIP immaterial).

LEGAL ANALYSIS

I. REMUS CPA WILLFULLY VIOLATED, AND REMUS AND AMUNDSEN AIDED AND ABETTED ITS VIOLATIONS OF, EXCHANGE ACT RULES 17a-5(g) AND (i)

A. Respondents Conducted at Least Fourteen Audits That Violated Commission and PCAOB Independence Rules and Standards.

From its inception, "the Commission consistently has emphasized that auditor independence is critically important to the efficient functioning of the nation's securities markets, which depend on a continuous flow of reliable financial information." *KPMG Peat Marwick LLP*, Exch. Act Rel. No. 43862, SEC LEXIS 98, at *49 n51 (Jan. 19, 2001) (Commission Opinion), *aff'd,* KPMG v. SEC, 289 F.3d 109 (D.C. Cir. 2002) (citations omitted). The Commission has further observed that "[a]lthough the independence of auditors does not alone assure reliable and credible financial reporting, its absence would certainly undermine public confidence in that reporting," and "[a]ccountants and their firms must be—and must reasonably be perceived to be—free from influences that would impair objective, unbiased examinations ...."

The Commission's auditor independence rules are set out in Rule 2-01 of Regulation S-X, 17 C.F.R. § 210.2-01. Rule 2-01 is "designed to ensure that auditors are qualified and independent of their audit clients both in fact and in appearance[]" and "sets forth restrictions on financial, employment, and business relationships between an accountant and an audit client ...." Rule 2-01 (Preliminary Note).

Rule 2-01(b) provides a general standard and set of factors to assess independence (which by themselves are violated by the family relationship between Amundsen and Murray). Rule 2-01(c) spells out a "non-exclusive specification of circumstances [that are] inconsistent" with

Rule 2-01(b). Rule 2-01(c)(2)(ii) provides that an auditor's independence is impaired if "*a close family member* of a covered person in the [audit] firm is in an *accounting role or financial reporting oversight role* at an audit client, or was in such a role during any period covered by an audit" (emphasis added).

"Close family members," furthermore, is defined in Rule 2-01(f)(9) of Regulation S-X specifically to include a *nondependent child* (emphasis added). Rule 2-01(f)(3)(i) provides that an "Accounting role" means a role in which a person exercises, or is in a position to exercise, more than minimal influence over the contents of accounting records, or anyone who prepares them, and "Financial reporting oversight role" means "a role in which a person is in a position to or does exercise influence over the contents of the financial statements or anyone who prepares them ...."

The Commission's rule against a parent participating in an audit of a client where his nondependent child is the FINOP is not obscure, counterintuitive, or recent. The current version of Rule 2-01 has been effective since 2001, *see Final Rule: Revision of the Commission's Auditor Independence Requirements*, SEC Rel. No. 33-7919, effective date February 5, 2001, but even before that, the ethical rules of the AICPA expressly provided the same independence rules concerning "close family members" and "nondependent children" as those at issue in this proceeding. *See* p. 9, n. 6, *supra*. Indeed, the relationship is so plainly contrary to both the fact and the appearance of independence that even in the absence of its express prohibition in Rule 2-01(c)(2)(ii), it would be prohibited by the general standard found in Rule 2-01(b), discussed above.

On July 28, 2009, the PCAOB issued AS 7, which required that each audit engagement undertaken by the independent public auditor undergo an engagement quality review—by an

EQR who has "competence, independence, integrity, and objectivity."[7] Though it permitted accounting firms to engage EQRs from outside the auditing firm, as Respondents did here, the PCAOB warned that in such circumstances the auditing firm would "likely need to make additional inquiries to obtain necessary information about the individual's qualifications," including information about the EQR's independence. AS 7.[8]

The PCAOB classifies the EQR as an artner" and member of the "audit engagement team" for purposes of the independence requirements of the Commission's Regulation S-X. *See* PCAOB Rel. No. 2009-004 at p. 8, and Rule 2-01(f)(11). Accordingly, the PCAOB considers an EQR engaged from outside the auditing firm to be an associated person of the firm and, for independence purposes, a "covered person" under Regulation S-X, *see* Rule 2-01(f) of Regulation S-X, 17 C.F.R. § 210.2-01(f).

Furthermore, PCAOB Rule 3520 stipulates that "[a] registered public accounting firm and its associated persons must be independent of the firm's audit client throughout the audit and professional engagement." To this end, the PCAOB requires the firm and its associated persons to comply with "the independence criteria set out in the rules and regulations of the Commission under the federal securities laws."

For the 2014 and 2015 audit years, the Remus Respondents conducted at least fourteen audits of broker-dealer clients where the EQR the firm hired—a member of the audit engagement team and thus a covered person under Rule 2-01(f)—had a daughter serving as the broker-

[7] See PCAOB Rel. No. 2009-004 (July 28, 2009), p. 8n https://pcaobus.org/Rulemaking/Docket%20025/2009-07-28_Release_No_2009-004.pdf

[8] PCAOB Rule 3526, which Remus himself cited in the letter he had Amundsen sign, requires an auditing firm to inquire and obtain information about its outside EQR's relationships with any persons in financial reporting oversight roles at broker-dealer audit.

dealers' FINOP, and thus was in an accounting and financial reporting oversight role at those clients. *See, e.g., Amundsen, supra*, 2019 WL 2085571, at *2. All of these audits were impaired by Respondents' independence violations and thus were not conducted in accordance with the standards of the PCAOB.

B. Respondents Violated, and Aided and Abetted Violations of, Rule 17a-5(g) and (i).

Rule 17a-5(d)(1)(i) under the Exchange Act requires broker-dealers to file financial reports annually with the Commission, and a report prepared by an independent public accountant covering the financial report. Rule 17a-5(f)(1) requires that the independent public accountant be qualified and independent in accordance with Rule 2-01 of the Commission's Regulation S-X, and Rule 17a-5(f)(2) requires that broker-dealers file with their mandated financial statements a representation that the independent public accountant, among other things, has complied with Rule 17a-5(g).

Rule 17a-5(g) under the Exchange Act requires the independent public accountant engaged by the broker or dealer to provide its independent report required under Rules 17a-5(d)(1)(i) in accordance with the standards of the PCAOB – and under Rule 17a-5(i), the independent public accountant must represent that the audit was conducted in accordance with PCAOB standards.

The Remus Firm willfully violated Rules 17a-5(g) and 5(i) by conducting audits of their broker-dealer clients that failed to conform with PCAOB standards while falsely representing that they had. Remus and Amundsen aided and abetted the Remus Firm's violations. To find aiding and abetting liability under the federal securities laws, three elements must be established: "(1) that a principal committed a primary violation; (2) that the aider and abettor provided substantial assistance to the primary violator; and (3) that the aider and abettor rendered such

assistance knowingly or recklessly." *Graham v. SEC*, 222 F.3d 994, 1000(D.C. Cir. 2000); *Bernerd E. Young*, Exch. Act Rel. No. 34-10060, 2016 SEC LEXIS 1123, at *76-77 (Mar. 24, 2016) (Commission Opinion).

Remus and Amundsen provided substantial assistance to the Remus Firm's primary violations. As owner, controller, and sole proprietor of Remus CPA, Remus took the action that resulted in each rule violation: He conducted the deficient audits, and he signed the "independent" audit report that the broker-dealers filed with the Commission, falsely representing that the Remus Respondents were independent and that the audits had been conducted in accordance with the PCAOB. Amundsen performed (or purported to perform) the EQR functions, and provided the required EQR sign-off that constituted the independence violation on which the primary violations are based.

Remus and Amundsen acted knowingly or at least with reckless disregard for the rules and their basic professional obligations. Remus knew of the family relationship between Amundsen and Murray that impaired the independence of the audits, and he knew Murray was FINOP at the Broker-Dealers. Even were it possible to credit Remus's claim that he was unaware of the long-standing nondependent child rule (in place for decades) and that the independence impairment here "never crossed" his mind, he still knew all of the circumstances that gave rise to the independence violation, chose not to check the rules or consult any other resource, signed audit reports that falsely represented the audits had been conducted in accordance with the standards of the PCAOB, and failed to take corrective action even after he claims he learned of his rule violation in 2017.

Remus was also aware of numerous red flags during the 2014 and 2015 audit periods regarding the retention of Amundsen as EQR that should have, at a minimum, caused him to

heighten his scrutiny of the relationship between Amundsen and Murray, but which generated no skepticism or concern on his part. He knew Amundsen had been the subject of a Commission injunction, and had been barred by FINRA, which recommended engaging an EQR not subject to a FINRA disqualification. He knew FINRA examiners suspected that Amundsen was actually involved in performing some or all of the FINOP work his daughter was nominally obligated to do, and had seen documentary evidence consistent with that suspicion as early as February 4, 2015.[9]

Amundsen knew that his daughter was the FINOP at these broker-dealers and of their close working relationship, and that he was reviewing financial statements prepared by his daughter. He further was aware that his approval was required before the fourteen audit reports could be released to the seven broker-dealers for inclusion in their filings with the Commission. Amundsen intentionally, or at least recklessly, ignored the close familial relationship he had with his daughter and falsely declared his independence in the fourteen supervision, review and approval forms he signed as EQR.

He also repeated his false representations in an undated letter Remus gave him to sign, which not only falsely represented that he was independent, but claimed awareness of the independence rules at which a cursory glance would have informed him (and Remus) that they were not independent.

Amundsen refuses to recognize (or pretends to) the ethics and independence rules (among other things) he violated, even after the Court in the Civil Action held him to be "tone deaf" with

[9] Remus's indifference toward his obligations to ensure his audits were conducted with objectivity and independence are particularly difficult to fathom with respect to Arjent – where first Amundsen and then Murray were FINOPs. At the time Remus became its auditor, he was well aware the firm was under investigation for fraud.

respect to his professional responsibilities for this very independence violation. He insists he is being blamed for having a daughter, and not violating a basic rule of his profession.

Even had it not been obvious to Respondents that a father-daughter relationship between a member of an audit engagement team and the FINOP at a broker-dealer audit client constituted an independence violation, it was at minimum reckless of them not to read the rules that make that plain. *See Horton & Co.,* Init. Decisions Rel. No. 208, 2002 SEC LEXIS 1712, at *36 (July 2, 2002) (knowledge requirement satisfied for aiding and abetting liability against experienced auditor for independence violation where, "if he was not aware of the Commission's independence requirement, he was reckless in not knowing that it forbade auditors from performing bookkeeping and compilation services [to the auditing client])."

II. RESPONDENTS CAUSED THEIR BROKER-DEALER CLIENTS TO VIOLATE RULE 17a-5(f)

In addition to the foregoing violations, Respondents caused the seven broker-dealers at issue to violate Exchange Act Rule 17a-5(f) on at least fourteen occasions. Exchange Act Section 17(a)(1) and Rule 17a-5 thereunder require broker-dealers to file annual reports containing, among other things, financial statements audited by independent public accountants. No showing of scienter is necessary to establish a violation of Exchange Act Section 17(a)(1). *See Orlando Joseph Jett*, Exch. Act Rel. No. 49366, 2004 SEC LEXIS 504, at *75 (Mar. 5, 2004) (Commission Opinion) (*citing SEC v. Drexel Burnham Lambert Inc.*, 837 F. Supp. 587, 610 (S.D.N.Y. 1993)); *Stead v. SEC*, 444 F.2d 713, 716-17 (10th Cir. 1971)). As these broker-dealers filed annual reports for the audit years 2014 and 2015 that were not in fact audited by public accountants that were independent, they violated Rule 17a-5(f).

Under Section 21C of the Exchange Act, a person is a "cause" of another's primary violation if the person knew or should have known that his act or omission would contribute to

the primary violation. Negligence is sufficient to establish "causing" liability under Section 21C when a person is alleged to have caused a primary violation that does not require scienter. *KPMG Peat Marwick LLP, supra*, 2001 SEC LEXIS 98, at *82; *See Halpern & Assocs. LLC, supra*, 2016 SEC LEXIS 26, at *59-60.

Remus, Remus CPA and Amundsen caused the seven broker-dealers who employed Murray as FINOP to violate Exchange Act Rule 17a-5(f). As noted above, they acted with reckless disregard for their professional and regulatory obligations – and even were it possible to characterize their ignorance of important and basic independence rules in place for decades as anything less than reckless, the best that could be said of their conduct, and it would be a stretch, is that they were merely negligent.

III. RESPONDENTS ENGAGED IN IMPROPER PROFESSIONAL CONDUCT UNDER SECTION 4C(a)(2) AND RULE 102(e)(1)(ii)

Under Rule 102(e)(1)(ii) of the Commission's Rules of Practice, an accountant may be permanently or temporarily denied the privilege of appearing or practicing before the Commission for having engaged in "improper professional conduct." Improper professional conduct is defined as: (i) intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards; (ii) "a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstance in which an accountant knows, or should know, that heightened scrutiny is warranted," or (iii) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission." Exchange Act Section 4C; Rule 102(e)(1)(iv).

In adopting its amendments to Rule 102(e) in 1998, the Commission noted that "[b]ecause of the importance of an accountant's independence to the integrity of the financial

reporting system, the Commission has concluded that circumstances that raise questions about an accountant's independence *always* merit heightened scrutiny." *Amendment to Rule 102(e), supra*, 1998 SEC LEXIS 22546, at *34 (emphasis added).

Highly unreasonable conduct is an objective standard meaning more than ordinary negligence but less than recklessness; it is "measured by the degree of the departure from professional standards and not the intent of the accountant." *Amendment to Rule 102(e),* 1998 SEC LEXIS 22546, at *27. Unreasonable conduct "connotes an ordinary or simple negligence standard." *Id.* at *39. This standard is justified, because "[m]ore than one violation of applicable professional standards ordinarily will indicate a lack of competence." *Id.*

For the reasons discussed above, Respondents' independence violations were at a minimum reckless, and therefore constituted improper professional conduct under Rule 102(e)(1)(ii).[10] But even should the Court conclude their actions were not reckless, they plainly were highly unreasonable.

Respondents applied no scrutiny to the independence issues posed by Amundsen's participation in these audits, much less the heightened scrutiny that has been required of accountants on the question of independence since 1998. They merely checked the boxes and signed the forms that falsely assured they were independent, when even a cursory glance at rules in place for decades – and with which they represented in writing they were familiar – would have alerted them to the contrary.

[10] Rule 102(e)(1)(iii) authorizes a similar sanction for one who willfully violated, or willfully aided and abetted the violation of, any provision of the federal securities laws or the rules thereunder. For the reasons described above in Section IB, Remus and Amundsen aided and abetted violations of Exchange Act Rules 17a-5(g) and (i).

And were it even possible to view their actions as neither reckless nor highly unreasonable, but rather as constituting merely ordinary or simple negligence, Respondents conducted at least fourteen separate audits that were not independent over a two-year period – repeated instances of negligence that the Commission has noted "ordinarily will indicate a lack of competence."

The Remus Respondents' improper professional conduct also consisted of repeated violations of professional quality control standards. Under PCAOB System of Quality Control for a CPA Firm's Accounting and Auditing Practice ("QC"), Section 20, audit firms are required to maintain a system providing them with reasonable assurance that their personnel comply with applicable professional standards, "[b]ecause of the public interest in the services provided by and reliance placed on the objectivity and integrity of, CPAs."

These quality control systems are required to include assurances and monitoring of, among other things, the integrity, objectivity, independence, impartiality and competence of auditor personnel. QC § 20.02. Under QC § 20.09, "[p]olicies and procedures should be established to provide the firm with reasonable assurance that personnel maintain independence (in fact and appearance) in all required circumstances." An auditing firm is required to have policies and procedures relating to personnel that maintain the quality of the firm's work, which "ultimately depends on the integrity, objectivity, intelligence, competence, experience, and motivation of personnel who perform, supervise, and review the work." QC § 20.12. Finally, quality control systems for auditing firms require ongoing monitoring of the various elements to provide reasonable assurance that the "elements of quality control ... are suitably designed and are being effectively applied." QC § 20.20.

The Remus Respondents provided an undated document in response to the Division's Wells notice titled "quality control system" that purported to "make personnel aware of independence requirements, including "family, business, and other relationships that may be prohibited." The quality control procedures included consulting the PCAOB website for information about changes in professional ethics and independence standards, and consulting with the AICPA and Commission ethics hotline with concerns about possible threats to independence. The Remus Respondents never did any of these things. Printing boilerplate documents listing quality control procedures and then not following those procedures does not constitute having a reasonable quality control procedure. And these procedures, notably, lacked any mention of, much less guidance on preventing, independence impairments caused by involving on the audit team close family relatives of individuals at the clients in accounting or financial oversight roles.

Auditing standards also require that an auditor plan and perform his or her work with due professional care. AU § 230.02. Due professional care concerns "what the independent auditor does and how well he or she does it," requiring the auditor to, among other things, exercise auditing skills "with 'reasonable care and diligence' (that is, with due professional care)." AU § 230.04-.05. Auditing standards require an auditor to plan and perform his or her work with due professional care. PCAOB Standard AU ("AU") Section 230.02. Due professional care concerns "what the independent auditor does and how well he or she does it," requiring the auditor to, among other things, exercise auditing skills "with 'reasonable care and diligence' (that is, with due professional care)." AU § 230.04-.05.

Remus and Remus CPA failed to exercise due professional care as shown by fourteen instances of Amundsen serving Remus and Remus CPA as EQR in 2015 and 2016 despite the

obvious independence impairments stemming from Amundsen's work on audits of financial statements his daughter had prepared. Remus's and Remus CPA's failure to plan and perform their work with due professional care represents another basis for concluding that they engaged in improper professional conduct.

IV. THE COURT SHOULD IMPOSE MEANINGFUL SANCTIONS AND OTHER REMEDIES AGAINST RESPONDENTS

A. Cease and Desist Orders Are Warranted Against Respondents.

The Commission is authorized to issue cease and desist orders where a person who has, among other things, been found to have violated, or to have been a cause of any violation of, a provision of the Exchange Act, or the rules and regulations thereunder. Section 21C of the Exchange Act. As described above, Respondents each willfully violated, aided and abetted, or caused violations of Exchange Act Rules 17a-5. Their actions demonstrate a conscious disregard of the federal securities laws and regulations, and cease-and-desist orders against them are appropriate to prevent violations and future violations of the statutes and rules set forth above.

B. The Court Should Order Remus Barred from Appearing or Practicing Before the Commission.[11]

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

[11] In view of the May 13, 2019 Order in the Civil Action and the injunction previously entered in that matter, the Division does not seek an appearance or practice bar under Rule 102(e) against Respondent Amundsen in this proceeding, as such relief has effectively already been granted.

Rule 102(e) is remedial in nature, and was promulgated to "ensure that the Commission's 'processes continue to be protected, and that the investing public continues to have confidence in the integrity of the financial reporting process.' *Gregory M. Dearlove*, CPA, Exch. Act Rel. No. 57244, 2008 SEC LEXIS 223, at *107 (Jan. 31, 2008) (Commission Opinion), *petition denied*, 573 F.3d 801 (D.C. Cir. 2009) (*quoting* Amendment to Rule 102(e), 63 Fed. Reg. at 57,164). Even an auditor who acts only negligently "can do just as much harm to the Commission's processes as one who acts with an improper motive." *Id.* at 108.

For the reasons discussed above, Remus acted recklessly, and/or highly unreasonably in deliberately disregarding his professional obligations toward ensuring his independence when conducting the fourteen audits over a two-year period. Indeed, even after Remus insists that he became aware of the independence rules he previously disregarded, in 2017, he took no corrective action with respect to the deficient audits performed in 2015 and 2016. The Division seeks the maximum appropriate suspension against Remus.

C. Respondents Should Be Required to Disgorge Their Ill-Gotten Gains and Pay Prejudgment Interest.

The Remus Respondents should be ordered to disgorge, jointly and severally, the approximately $54,000 in fees they received in return for the fourteen improper audits at issue here, and Amundsen should be ordered to disgorge the $7,000 he received for acting as EQR. "The primary purpose of disgorgement as a remedy for violation of the securities laws is to deprive violators of their ill-gotten gains, thereby effectuating the deterrence objectives of those laws." *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1474 (2d Cir. 1996) (citations omitted). Moreover, "effective enforcement of the federal securities laws requires that the SEC be able to make violations unprofitable." *Id.* (quoting *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1104 (2d Cir. 1972)).

Accordingly, Respondents should each be ordered to disgorge the amounts they received in connection with their improper audits and EQR work. *See Ernst & Young, supra,* 2004 SEC LEXIS 831, at *171-3 (ordering disgorgement of more than $1.6 million in auditing fees received by accounting firm in connection with audits conducted in violation of independence requirement); *Trautman Wasserman & Co., Inc.,* Init. Decisions Rel. No. 340, 2008 SEC LEXIS 83, at *77-78 (Jan. 14, 2008) (ordering disgorgement of respondent's compensation); *Kenneth R. Ward*, 56 S.E.C. 236, 2003 SEC LEXIS 3175, at *60 (Mar. 19, 2003) (Commission Opinion) (disgorgement of commissions).

Prejudgment interest should be ordered as well. Prejudgment interest deprives a Respondent of an interest-free loan in the amount of his ill-gotten gains, thereby preventing unjust enrichment. *SEC v. Grossman*, No. 87 Civ. 1031, 1997 U.S. Dist. LEXIS 6225, at *31-32 (S.D.N.Y. May 6, 1997), *aff'd in part and vacated in part on other grounds*, 173 F.3d 846 (2d Cir. 1999). Respondents should each be ordered to pay prejudgment interest on the amount of their ill-gotten gains. *See id.*

D. Respondents Should Be Required to Pay Substantial Penalties.

Under Section 21B of the Exchange Act, civil monetary penalties may be imposed in proceedings instituted under Section 21C of the Exchange Act against any person who is found to have willfully violated, or aided and abetted, any provision of the Exchange Act if such penalties are in the public interest. Six factors are relevant to determining whether civil monetary penalties are in the public interest: (1) deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) harm to others; (3) unjust enrichment; (4) prior violations; (5) deterrence; and (6) such other matters as justice may require. *See* Exchange Act Section 21B(c). "Not all factors may be relevant in a given case, and the factors need not all

carry equal weight." *Robert G. Weeks*, Init. Decisions 199, 2002 SEC LEXIS 3433, at *172 (Feb. 4 2002), *aff'd*, Exch. Act Rel. No. 48684, 2003 SEC LEXIS 2572 (Oct. 23, 2003).

Section 21B(b) of the Exchange Act specifies a three-tier system identifying the maximum amount of civil penalties, depending on the severity of the respondent's conduct. Second tier penalties are awarded in cases involving fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

Second-tier penalties are appropriate here. Respondents recklessly disregarded the Commission's independence rules, PCAOB auditing standards, and violated their obligations under Exchange Act Rules 17a-5(g) and (i). They did so repeatedly over an extended period of time, all while receiving a material benefit from their deficient audits. Civil penalties will serve as a strong deterrent to similarly situated accountants, auditors, and EQRs.

CONCLUSION

Based on the foregoing, the Division respectfully requests that following the parties' presentation of evidence at trial, this Court make findings of fact with regard to the misconduct discussed above, and that the requested sanctions be imposed on the Respondents.

Dated: New York, NY
June 10, 2019

Respectfully submitted,

DIVISION OF ENFORCEMENT

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UNITED STATES OF AMERICA

Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18994

In the Matter of

Joseph S. Amundsen, CPA,
Michael T. Remus, CPA, and
Michael Remus CPA,

Respondents.

CERTIFICATE OF SERVICE

I, Richard G. Primoff, certify that on the 10th day of June, 2019, I caused the original and three copies of the Division of Enforcement' June 10, 2019 Pre-Hearing Memorandum to be filed with the Office of the Secretary by facsimile transmission and by United Parcel Service (UPS) overnight delivery, and copies to be served by UPS overnight delivery and email on Respondent Joseph S. Amundsen and ALJ Carol Fox Foelak, at the following addresses, and on counsel for the Remus Respondents by email to prginsberg@sullivanlaw.com:

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The Honorable Carol Fox Foelak
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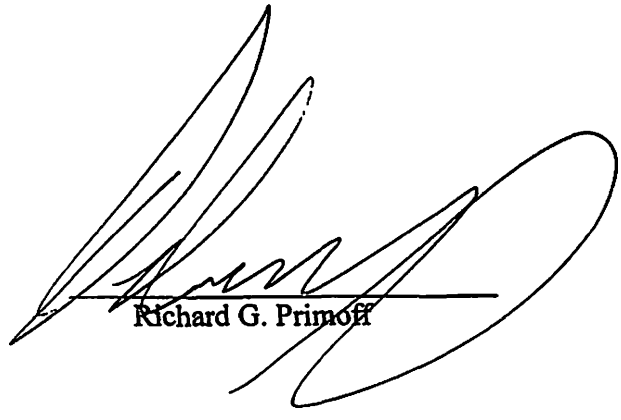

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