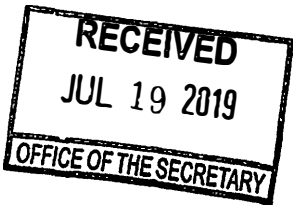
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-18994

In the Matter of

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

Respondents.

DIVISION OF ENFOREMENT'S PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

DIVISION OF ENFORCEMENT'S PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW

Pursuant to Rule 340 of the Commission's Rules of Practice, the Division of Enforcement of the Securities and Exchange Commission (the "Division") respectfully submits the following Proposed Findings of Fact and Conclusions of Law in support of its claims against Respondents Joseph S. Amundsen, CPA, Michael T. Remus, CPA, and Michael Remus CPA.

PROPOSED FINDINGS OF FACT

I. RESPONDENTS

1. Michael T. Remus ("Remus") has been a Certified Public Accountant ("CPA") in New Jersey since 1988 and in Missouri since 2015. He is a member of the American Institute of Certified Public Accountants ("AICPA") and has been registered with the Public Company Accounting Oversight Board ("PCAOB") since 2011. Answer of Respondents Michael T. Remus, CPA and Michael Remus CPA (collectively, the "Remus Respondents") dated March 20, 2019 ("Remus Ans.") ¶ 3.

2. Remus is the sole proprietor of Respondent Michael Remus CPA (the "Remus Firm"). Remus Ans. ¶ 3. From time to time, Remus's son, also a CPA, assists him. Tr. 141:12-15.[1]

3. Respondent Joseph S. Amundsen ("Amundsen") has been a CPA in New York and California since at least 2002.[2] He claims to have been registered with the PCAOB since at least 2010. Tr. 195:21-22, 257:17-20. Amundsen previously held several FINRA licenses, including

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[1] References to the pages and lines of the transcript of the June 17-18, 2019 hearing in this matter are designated as "Tr. [page]:[line]." Division exhibits are designated as "DX"; the Remus Respondents' exhibits as "RX"; and Amundsen's as "JA."

[2] Amundsen's California CPA license was revoked in 1986, and was reinstated in the summer of 2002. DX 69-4 through DX 69-5. In the instant proceeding, Amundsen testified that his license was reinstated in 2000 or 2001. Tr. 186:9-13, 194:12-23.

Series 27 for financial and operation principal ("FINOP"), but none is current. Tr.186:14-22; DX 54-3, DX 54-5.

II. AMUNDSEN'S REPEATED VIOLATIONS OF FEDERAL COURT INJUNCTION

4. In 1983, the Commission sued Amundsen for violations of the anti-fraud provisions of the securities laws. *SEC v. Amundsen*, No. C 83-0711 (N.D. Cal.) (the "Civil Action"). DX 22. The Commission alleged that Amundsen had issued and signed an audit report with an unqualified opinion that falsely stated (i) that an issuer's financial statements fairly presented its financial positions and results of its operations in conformity with generally accepted accounting principles, and (ii) that the audit was conducted in accordance with generally accepted auditing standards. DX 22 ¶¶ 12, 13. Among other things, the complaint alleged that Amundsen had not received or examined required disclosures regarding sales and costs of sales, failed to take steps to test sales or costs of sales, and altered his work papers before providing them to Commission staff. DX 22 ¶ 13.

5. Amundsen settled the Civil Action, without admitting or denying the allegations, by consenting to the entry of a judgment that enjoined him from violating the anti-fraud provisions of the securities laws, and permanently enjoined him from "appearing or practicing before the Commission in any way." DX 23.[3]

6. On November 15, 2010, the court in the Civil Action denied Amundsen's petition

[3] As part of this settlement, the Commission simultaneously dismissed its related administrative proceeding against Amundsen under then-existing Commission Rule 2(e) (which had sought the practice bar that Amundsen consented to in the consent injunction). Amundsen has falsely insisted throughout the instant proceeding that the Commission agreed to "drop all the charges" against him (Tr. 189:9-17), a point that is plainly contradicted by (i) DX 23; (ii) the "news digest" Amundsen himself has submitted to the Court in the instant proceeding (JA 1), and (iii) the subsequent litigation history in the Civil Action, including, most recently, the finding of contempt by the court in the Civil Action on May 13, 2019 (DX 29), which was based on Amundsen's repeated violations of the injunction entered against him in the Civil Action.

to vacate the injunction, noting that the Commission had submitted evidence that he had been violating the injunction for the prior seven years by appearing and practicing before the Commission as an accountant and auditor for various registered broker-dealers. DX 24.

7. On January 19, 2012, the court granted in part and denied in part the Commission's motion for civil contempt against Amundsen based on those violations. DX 25. The court found that after regaining his CPA license, Amundsen in 2003 began auditing financial statements of broker-dealers, which were then filed with the Commission, and that he had done so more than one thousand times. DX 25-1. The court held that Amundsen "never should have begun the practice in question in the first place and was at least on fair notice that the intended practice was covered by the prohibition in the decree." DX 25-2.

8. The court also rejected Amundsen's explanations for why he believed his conduct did not violate the injunction, holding that his "narrow reading was unreasonable in light of the regulation, as it read then as well as now." DX 25-3.[4] Although it declined to order Amundsen to disgorge the fees he had earned, the court ordered Amundsen 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." *Id.*[5]

9. On May 13, 2019, the court in the Civil Action granted the Commission's second motion for civil contempt against Amundsen. The court based its findings on Amundsen's participation in 2015 and 2016 in more than a dozen audits of broker-dealers as the engagement

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[4] The factual findings in DX 25, as well as DX 69 (*see* n.2, *supra*) and the other orders entered in the Civil Action and in subsequent Commission and FINRA proceedings against Amundsen, are binding on Amundsen under the doctrines of collateral estoppel and *res judicata*. *See SEC v. Monarch Funding Corp.*, 192 F.3d 295, 304 (2d Cir. 1999).

[5] In the following six years, Amundsen filed "numerous additional motions to vacate the injunction, all of which [were] denied," DX 27-2, as have his numerous requests to reconsider those denials. DX 29-2.

quality reviewer ("EQR"). The court noted that the PCAOB's Auditing Standard 7 requires an EQR for audits of broker-dealers as part of the annual audit process, and that the EQR must provide concurring approval of issuance before the audit firm may grant permission to the client to use the auditor's report. *See SEC v. Amundsen*, No. C 83 Civ. 0711, 2019 SEC U.S. Dist. LEXIS 80490 (N. D. Cal. May 13, 2019), DX 29-3.

10. The court further found that Amundsen knew his approval was necessary for the audit team to release the audits to the broker-dealers for inclusion with their filings with the Commission, and based on the foregoing, held that a finding of civil contempt of the injunction was warranted. DX 29-4.

11. Further, when presented with just one example of Amundsen's participation as EQR on an audit of a broker-dealer where his daughter was the FINOP of the client (Profor) – despite Amundsen's written affirmation that he "possess[ed] the competence, independence, integrity, and objectivity" to perform the EQR – the court concluded that Amundsen has remained "tone deaf when it comes to his professional responsibilities and that the injunction should remain in place." *Id.*

12. The court directed that Amundsen file a complete list of all broker-dealers for which he has served as EQR since 2015 by June 14, 2019, and also directed that Amundsen remained barred from appearing or practicing before the Commission, "including by participating in any way on audits of regulated entities such as broker-dealers." DX 29-4 through DX 29-5. As of today's date, Amundsen has not complied with the court's directive.[6]

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[6] The only remaining issue on the motion for contempt in the Civil Action is the extent of additional penalties, the determination of which was postponed pending the conclusion of the instant proceeding. On June 14, 2019, Amundsen's petition for reconsideration of the May 13, 2019 contempt order was denied (JA 2), of which the Division requests the Court take official notice. *See* Docket Entry No. 144, *SEC v. Amundsen*, No. C 83-00711 (WHA) (Order Denying

III. FINRA BARS AMUNDSEN FOR DELIBERATELY FAILING TO DISCLOSE THE INJUNCTION AND REVOCATION OF HIS CPA LICENSE

13. Amundsen in 2003 also had obtained a Series 27 license to act as FINOP for broker-dealers. DX 54-5. During the same time period that he was violating the injunction in the Civil Action by auditing broker-dealers (*see* ¶¶ 6-8, *supra*), Amundsen also was serving as FINOP for as many as thirty-six broker-dealers. DX 54; Tr. 199:7-19; DX 71-4.

14. The broker-dealers for which Amundsen was FINOP included the following, and for the following time periods: Arjent Services LLC ("Arjent") (2009-2010); Profor Securities LLC (formerly Aurelius Securities LLC) ("Profor") (2005-2010); Fox Chase Capital Partners, LLC ("Fox Chase") (2003-2010); Thomas P. Reynolds Securities Ltd. ("Reynolds") (2005-2010); and CapFi Partners LLC (formerly known as K & Z Partners LLC) ("CapFi") (2007-2010). DX 54-6; Tr. 199:23-200:15.

15. In April 2010, Amundsen was notified that he was subject to statutory disqualification under NASD's and FINRA's By-Laws. DX 69-19, n.64. Amundsen's BrokerCheck Report indicates that he ceased being registered as FINOP with FINRA member firms at that time. DX 54-6.

16. By order dated December 30, 2011 (the "FINRA Order"), a FINRA hearing panel, after an evidentiary hearing held on September 22, 2011, barred Amundsen from associating with

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Motion for Reconsideration, June 14, 2019). Amundsen did not disclose the denial of his petition, and instead falsely insisted at the hearing that the court in the Civil Action did not "find there was a violation of the father-daughter relationship," and that it "threw that argument out." Tr. 192:21-193:20. He has also falsely insisted to that there never was an injunction entered in the Civil Action. Tr. 54:7-9.

Amundsen filed another petition for reconsideration of the May 13, 2019 order, based largely on misrepresentations of the record in the instant proceeding (JA 2). By order dated July 1, 2019, the court in the Civil Action denied that motion, of which the Division also requests the Court take official notice. *See* Docket Entry No. 147 in the Civil Action. (Order Denying Motion for Reconsideration, July 1, 2019).

FINRA member firms. DX 71. The panel concluded that for a period of more than six years he willfully chose to conceal on thirty-six occasions on his Uniform Applications for Securities Industry Registration or Transfers ("Form U4") the injunction entered against him in the Civil Action, as well as the prior revocation of his CPA license. DX 71-11 through DX 71-12.[7] Upon Amundsen's subsequent appeals and petitions for review, the FINRA Order was sustained first by FINRA's National Adjudicatory Council, then by the Commission, and finally by the United States Court of Appeals for the D.C. Circuit. *See Amundsen v. SEC*, 575 Fed. Appx. 1, 2014 U.S. App. LEXIS 15559, *1 (D.C. Cir. 2014); DX 69-11.[8]

IV. RESPONDENTS' PROFESSIONAL OBLIGATIONS UNDER THE PCAOB AND COMMISSION AUDITOR INDEPENDENCE STANDARDS

17. On July 30, 2013, the Commission adopted amendments to Rule 17a-5 under the Securities Exchange Act of 1934 (the "Exchange Act") that required broker-dealer audits to be conducted in accordance with the standards of the PCAOB.[9] Tr. 411:18-412:20, 413:13-414:13, 415:3-11 (Carmichael); Tr. 75:18-76:13 (Remus testifying that he believes the PCAOB rules were made applicable to broker-dealer audits in 2012).

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[7] The FINRA hearing panel rejected as incredible Amundsen's argument that he was not required to disclose the injunction because it was not "investment-related" (the injunction was based on his fraudulent audit report on a securities issuer's registration statement). DX 71-5 through DX 71-6. The FINRA panel found that Amundsen's omissions were material and calculated, that his answers at the hearing were evasive and dissembling, and that he betrayed a "complete lack of respect for FINRA's rules, processes, and the broker-dealers who employed him." DX 71-11.

[8] The D.C. Circuit also rejected as both waived and meritless Amundsen's belated attempt to raise a "statute of limitations" argument to excuse his failure to disclose the injunction. *Amundsen*, 2014 U.S. App. LEXIS 15559 at *2. Amundsen has raised the same argument here. It is meritless for the reasons stated by the D.C. Circuit, and it is also irrelevant, and barred by collateral estoppel and *res judicata.*

[9] *See Broker-Dealer Reports*, Exchange Act Rel. No. 70073, 2013 SEC LEXIS 2239 (July 30, 2013).

18. In July 2009, the PCAOB had adopted Auditing Standard 7 ("AS 7"). *See* PCAOB Rel. No. 2009-004 (July 28, 2009), DX 41. Under AS 7, an engagement quality review and concurring approval of issuance by an EQR are required for audit engagements. *Id.* Thus, beginning in 2014 (*see* ¶ 17, *supra*), an accounting firm's audit report could not be released to a broker-dealer, and the broker-dealer's financial reports could not be filed with the Commission, until after the EQR had "signed off" on the audits. DX 51 ¶¶ 8, 11-12; DX 41; Tr. 80:6-11 (Remus).

19. An EQR is the PCAOB's term for a "concurring partner" (or concurring partner review), a position that has been part of the audit process for decades prior to the adoption of AS 7. An EQR, like a "concurring partner," is required to be independent of the audit client like other members of the audit engagement team. Tr. 360:23-361:23 (Carmichael); Tr. 98:15-99:8 (Remus); Tr. 276:21-277:6 (Amundsen).[10]

20. Although the EQR does not participate in the initial audit procedures, the EQR is part of the audit team because the audit report cannot be released to the client until the EQR signs off on it. Tr. 417:20-418:6 (Carmichael); DX 51 ¶ 11; DX 41-30.

21. Under AS 7, the PCAOB requires (and required at all times relevant to this proceeding) that the EQR be an associated person of the auditing firm, be independent of the audit client, and perform the engagement quality review with integrity and objectivity. DX 51 ¶ 12; DX 41-5 through DX 41-8, and DX 41-25 through DX 41-26; Tr. 358:2-21 (Carmichael); Tr.

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[10] The concept of a "concurring" partner who did not make the initial audit judgments "coming in after the fact and reviewing those judgments" began in the 1960s. "What happened in 2009 was that the PCAOB issued a new Auditing Standard 7 that ... changed the name." *See* Tr. 405:7-406:2 (Carmichael). The PCAOB added additional responsibilities for the EQR, but "the necessity for the concurring partner or engagement quality reviewer to be independent in the same sense as the auditors on the engagement needed to be independent has remained the same throughout that period." Tr. 406:7-14.

81:16-82:8, 82:15-19, 82:23-83:2 (Remus, testifying that he understood that EQR had to be associated person of his firm, and had to have independence, integrity and objectivity under AS 7).

22. The PCAOB also provided that an individual from outside the auditing firm may be hired as an EQR, and would become associated with the firm issuing the report if he or she receives compensation from the firm issuing the report for performing the review. DX 41-8, DX 41-25 through DX 41-26; Tr. 82:3-8 (Remus); Tr. 359:6-360:22 (Carmichael). The PCAOB further explicitly provided when adopting AS 7 that for purposes of the application or enforcement of the independence requirements, it would consider such outside EQRs to be included in the Commission's definitions of an "audit partner" and a member of the "audit engagement team" in its independence rules. DX 41-8 & n.14; DX 51 ¶ 12; Tr. 360:4-22 (Carmichael).[11] It warned that in such cases, the engagement partner would need to make additional inquiries of the EQR regarding his or her qualifications and independence. DX 41-8; DX 51 ¶ 29; Tr. 359:6-360:3 (Carmichael).

23. The PCAOB's principal independence requirement is set forth in Rule 3520, *Auditor Independence*. PCAOB Rule 3520 states 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 period." The rule notes that this requirement encompasses "an obligation to satisfy all other independence criteria applicable to the engagement, including the independence criteria set out in the rules and regulations of the Commission under the federal securities laws." DX 83-9; Tr. 349:12-22 (Carmichael); DX 51 ¶ 5.

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[11] The PCAOB explicitly referred to the definition section in Rule 2-01(f)(11) of Regulation S-X, 17 C.F.R. § 210.2-01(f)(11). DX 41-8, n.14.

24. In addition, PCAOB Rule 3526, *Communications with Audit Committees Concerning Independence*, requires that a registered public accounting firm must at least annually with respect to each of its audit clients: describe in writing to the audit committee (or, absent an audit committee, management) all relationships between the firm and the audit client or persons in financial reporting oversight roles at the audit client that, as of the date of the communication, may reasonably be thought to bear on independence; discuss the potential effects of those relationships with the audit committee; and affirm that the firm is independent in compliance with Rule 3520. DX 51 ¶ 30.

25. The Commission's auditor independence rules are set forth 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." DX 51 ¶ 6. Rule 2-01(b) of Regulation S-X is the general independence rule and provides, among other things, that "the Commission will not recognize an accountant as independent, with respect to an audit client, if the accountant is not ... capable of exercising objective and impartial judgment." DX 51 ¶ 10. The Commission, emphasizing the "importance of an accountant's independence to the integrity of the financial reporting system," has explicitly stated that "heightened scrutiny" is always required when "circumstances that raise questions about an accountant's independence" are present. DX 51 ¶¶ 22, 28.

26. Rule 2-01(c), in turn, separately provides a non-exhaustive list of specific circumstances the Commission has determined to be inconsistent with this general standard. DX 51 ¶ 6.

27. Rule 2-01(c)(2)(ii) in particular provides that independence is impaired if "a *close family member* of a *covered person* in the [audit] firm is in an a*ccounting 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). DX 51 ¶ 7; Tr. 369:16-370:5 (Carmichael).

28. Rule 2-01(f)(9) of Regulation S-X defines a "close family member" to include a nondependent child. DX 51 ¶ 7. Rule 2-01(f)(11) defines a "covered person" to include those accounting firm partners (and other personnel) who are members of the audit engagement team. As noted above (*see* ¶ 22, *supra*), EQRs from outside an accounting firm are deemed to be "audit partners" of the accounting firm and members of the "audit engagement team" as defined in Rule 2-01(f) for purposes of the Commission's independence requirements.

29. Rule 2-01(f)(3)(i) defines "accounting role" to mean 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 over anyone who prepares them. "[F]inancial reporting oversight role" as defined by Rule 2-01(f)(3)(ii) 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. DX 51 ¶ 7.

30. Rule 2-01 in its current form – and in particular Rule 2-01(c)(2)(ii), which establishes that a nondependent child functioning in an accounting role or financial oversight role impairs an accountant's independence – has been in effect since 2001, approximately fourteen years before the period of time relevant to this proceeding. DX 51 ¶¶ 24-25.

31. This same "nondependent child rule" has been in effect in Rule 101 of the AICPA's ethics rules even before the Commission's adoption of Rule 2-01, since at least the early 1990s. DX 51 ¶ 23; Tr. 361:13-362:16 (Carmichael). Nor is it obscure, as "the effect of family members in an accounting role is covered in auditing textbooks for courses required to be eligible to sit for the CPA exam and continuing professional education courses required to

maintain a CPA license. In short, it is 'Auditing 101.'" DX 51 ¶ 23.[12]

32. Under PCAOB Rule 3500T, the PCAOB requires – and required at all times relevant to this proceeding – compliance by auditors not only with the Commission's independence rules under Rule 2-01, but the AICPA's independence rules as well. To the extent there is any conflict between them, it requires compliance with the stricter rule. DX 83-4.

33. The AICPA's revised Code of Professional Conduct, effective December 14, 2014 and thus in effect during the times relevant to this proceeding, contains the same "nondependent child rule" as in the prior version of the AICPA Code of Professional Conduct, and is substantially the same as the Commission's Rule 2-01(c)(2)(ii). DX 64A. Notably, the definition of "attest engagement team" (which includes audit engagements, *see* n.12, *supra*) was even updated in the revised version specifically to include the term "engagement quality reviews." DX 64A-13; Tr. 363:12-364:5 (Carmichael).

34. At all times relevant to this proceeding the FINOP of a broker-dealer met the definition of someone in an accounting role or financial oversight role under Rule 2-01(c)(2)(ii)

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[12] In the 2008 edition of the AICPA's Code of Professional Conduct and Bylaws (DX 64-53) (ET § 101.02, *Application of the Independence Rules to Close Relatives*), the AICPA stated that under Rule 101, independence would be considered to be impaired if an individual participating on the *attest engagement team* has a *close relative* who had a *key position* with the client. An "attest engagement" under these rules included audit engagements. Tr. 363:12-364:1 (Carmichael). The "attest engagement team" was defined to consist of individuals "participating in the attest engagement, including those who perform concurring and second partner reviews." DX 64-31.

The inclusion of a "concurring partner" as a member of the attest engagement team for independence purposes is also not a new concept, but rather has been around "for some time." Tr. 361:13-17 (Carmichael). A "close relative" in these AICPA's rules – as in the Commission's Rule 2-01 – includes a "nondependent child." DX 64-32. "Key position" – like Rule 2-01's definition of "accounting role" or "financial oversight role" – is defined as a position in which an individual, for example, "has primary responsibility for significant accounting functions that support material components of the financial statements," "has primary responsibility for the preparation of the financial statements"; or "has the ability to exercise influence over the contents of the financial statements...." DX 64- 33.

and 2-01(f), and someone in a "key position" at an audit client pursuant to the AICPA's Code of Professional Conduct. DX 98; Tr. 366:18-367:16 (Carmichael); Tr. 49:25-51:17, 51:24-52:22 (Remus); *see also* Tr. 270:21-271:24 (Amundsen) (identifying the FINOP duties under FINRA Rule 1022(b) as those he performed as FINOP).

35. As Remus admitted he understood, auditors are required to be knowledgeable about relevant professional standards, particularly those related to independence, and to exercise due professional care to ensure compliance with them. Tr. 116:23-117:3 (Remus); DX 51 ¶¶ 16-18; Tr. 372:20-374:3, 374:10-375:2 (Carmichael); *see also* ¶¶ 84-88, *infra.*

V. MURRAY REPLACES AMUNDSEN AS FINOP AT BROKER-DEALERS, AND FATHER AND DAUGHTER ASSIST EACH OTHER PROFESSIONALLY

36. After Amundsen ceased being FINOP at broker-dealers in 2010, his daughter, Stephanie Murray ("Murray"), who had trained with him and helped him with his accounting practice for several years beforehand, obtained her own FINOP license. Tr. 305:9-306:24. In 2010, Murray, with Amundsen recommending her to management, took over for her father as FINOP at a number of broker-dealers, including five of the seven at issue here: Arjent (renamed McBarron in 2015); Profor; CapFi; Fox Chase; and Reynolds. Tr. 313:24-314:15, 314:25-315:11, 316:21-317:23, 318:25-319:24 (Murray); Tr. 208:6-212:20 (Amundsen); DX 40-7 through DX 40-10.[13] She also became the FINOP in 2010 at Allegro Securities LLC ("Allegro") and Race Rock Capital LLC ("Race Rock"). Tr. 320:13-321:12 (Murray); DX 40-7.

[13] In all, Murray obtained the FINOP job at ten broker-dealers where her father previously was FINOP, including McBarron (previously known as Arjent). CapFi (previously known as K&Z), Fox Chase, Profor (previously known as Aurelius), Reynolds, BSG Markets LLC, Groupargent Securities LLC, NW Advisors LLC, NCB Securities LLC and Semanza Securities LLC. *Compare* Murray CRD report (DX 40-7 through DX 40-10) *with* Amundsen BrokerCheck report (DX 54-6).

37. Despite his bar from association with FINRA member firms, Amundsen assisted Murray in her FINOP work, including advising her, acting as a document courier for her, acting as an intermediary in FINOP fee negotiations with at least one broker-dealer (Fox Chase), participating in a Commission examination of Fox Chase while Murray was FINOP, and attempting to use his provision of tax services for the principal of another firm (CapFi) to prevent it from terminating Murray as FINOP.[14] Murray also continued to help Amundsen with his tax practice. Tr. 322:8-17.

VI. REMUS RESPONDENTS HIRE AMUNDSEN AS EQR ON FOURTEEN AUDITS OF SEVEN BROKER-DEALERS WHERE RESPONDENTS KNEW THE FINOP WAS AMUNDSEN'S DAUGHTER

38. In early 2015 and 2016, the Remus Respondents, with Remus as the engagement partner, conducted audits of the broker-dealers Arjent/McBarron, Profor, Fox Chase, CapFi, Allegro, and Race Rock for the years ended December 31, 2014 and December 31, 2015, and for Reynolds for the years ended March 31, 2015 and March 31, 2016. Tr. 83:3-85:6, 91:3-92:2; DX 1 through DX 14. (The foregoing seven broker-dealers are collectively referred to hereinafter as the "Broker-Dealers").

39. The Remus Respondents received a total of $57,227 in fees on these audit

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[14] Tr. 321:13-322:7 (Murray acknowledges Amundsen offered assistance); Tr. 222:22-224:16 (Amundsen offered Murray guidance in her FINOP duties, but "not on the record"); DX 26-1 (Amundsen acknowledges he "[b]riefly worked for daughter helping her with her FINRA FINOP work"); Tr. 322:18-24 (Murray acknowledges Amundsen couriered documents to her from Fox Chase and Profor); DX 47-2 (Amundsen acknowledges he couriered documents from Profor to Murray); DX 43 (Amundsen intercedes in Murray's FINOP fee negotiations with Fox Chase); DX 44 (Amundsen agrees to help during Fox Chase's 2015 Commission examination); Tr. 322:25-323:22 (Murray previously testified that Amundsen attempted to prevent CapFi from firing her by withholding tax preparation services); Tr. 225:16-21, 228:15-23 (Amundsen admits that while serving as EQR on CapFi audit, he interceded when CapFi principal was going to fire Murray); DX 35 (Amundsen quit as tax preparer for CapFi's principal after the principal fired Murray as FINOP).

engagements, as evidenced by the total sums of checks and wires received, and Remus's testimony regarding his audit engagement fees. Tr. 135:10-137:12; DX 87.

40. For each of these audits, the Remus Respondents issued a purported "Report of Independent Registered Public Accounting Firm," signed by Remus, which he released to the Broker-Dealers. The Broker-Dealers then filed their financial statements, with the Remus Respondents' audit reports, with the Commission. In each audit report that was filed, the Remus Respondents represented that the audits were conducted "in accordance with the standards of the Public Company Accounting Oversight Board (United States)." *See, e.g.*, DX 6-5; Tr. 86:23-87:10 (Remus); *see also* DX 1 through DX 5, DX 7 through DX 14.

41. Remus engaged Amundsen to be the EQR on these fourteen audits for a fee of $500 per audit, $7,000 in total. Tr. 85:7-12 (Remus); Tr. 247:23-248:4 (Amundsen). Amundsen thus became an associated person of the Remus Firm, pursuant to AS 7, and, for purposes of the independence requirements under the standards of the PCAOB and the Commission, an audit partner of the Remus Firm and member of its audit engagement team. *See* ¶ 22, *supra*. He also became a member of the Firm's attest engagement team for purposes of the AICPA's independence requirements. *See* ¶ 33, *supra*.

42. Remus had long known both Amundsen and Murray before Remus first hired Amundsen as EQR in 2015. Remus began auditing broker-dealers no later than 2002, beginning with Reynolds, which was his only broker-dealer audit client for a period of time. Remus met Amundsen when Amundsen became Reynolds's FINOP in 2005. Tr. 36:23-37:19, 74:8-17, 75:6-14 (Remus); DX 54-6 (Amundsen's BrokerCheck Report); Tr. 198:7-14 (Amundsen).

43. By 2017, Remus's broker-dealer audit practice had grown to more than twenty firms, with help from Amundsen and/or Murray, and represented approximately a third of his

accounting practice by revenue. Remus estimated Amundsen and/or Murray recommended him as auditor for approximately eight to ten broker-dealers, including six of the seven at issue in this proceeding, and were a "referral service" for him. Tr. 30:2 (Remus's counsel acknowledges Amundsen and Murray were referral service); Tr. 38:16-39:24, 40:7-41:9, 43:20-44:14, 49:11-15, 164:9-12 (Remus); DX 30.

44. The Remus Respondents had been the auditor for most of the Broker-Dealers for several years before the 2014 and 2015 audit periods at issue. In addition to Reynolds (*see* ¶ 42, *supra*), the Remus Respondents audited Fox Chase since at least 2008 (where Amundsen was also FINOP at the time), and, since at least 2010 or 2011, Profor (where Amundsen was FINOP), Capfi (where Amundsen was FINOP), Race Rock (where Murray was FINOP) and Allegro (where Murray was FINOP). Tr. 44:19-24 (CapFi); 45:24-46:8, 46:23-47:9 (Profor); 49:1-7 (Fox Chase); 47:11-48:25 (Race Rock and Allegro); DX 54-6 through DX 54-8 (Amundsen's registration and employment history).

45. Remus read AS 7 (DX 41-25 *et seq.*) when the PCAOB rules became applicable to the Remus Respondents' audits of broker-dealers. Tr. 80:17-82:8. He was aware at that time that under AS 7, the EQR he hired was required to have independence, competence and integrity, and would be considered an associated person "in the eyes of the PCAOB." Tr. 82:15-83:2.

46. In fact, Remus, by his own acknowledgment in order to comply with PCAOB standards, drafted and had Amundsen sign a letter addressed to Remus entitled "Independence Confirmation." DX 33 and RX 19; Tr. 131:19-132:4, 160:20-162:9. In the letter, Amundsen represented to Remus that he was "aware of the independence standards requirements," that he had reviewed his "independence with respect to the audit engagements listed below and I am currently assisting you on and note that I am independent with respect to each of the

engagements." The listed engagements included six of the seven Broker-Dealers for the December 31, 2015 audit period.

47. Amundsen also represented in the letter Remus drafted (DX 33) that he was "aware of the independence standards as required by Rule 101 of the AICPA Code of Professional Conduct and PCAOB Professional Standards Rule 3526, *Communication with Audit Committees Concerning Independence* and I have reviewed my relationship with all of the above mentioned clients in respect to those standards and I am independent except as noted below: None."[15]

48. For each of the fourteen audits of the Broker-Dealers, Amundsen completed and signed an "engagement quality review" portion of the engagements' "Supervision, Review and Approval" forms. In each one, Amundsen represented that he had performed the required steps of an EQR, including reviewing all significant judgments of the engagement partner, and reviewing audit work papers and the financial statements of the audit client. *See, e.g.*, DX 15-4 through DX 15-6; DX 16-21; Tr. 87:11-90:8 (Remus); Tr. 251:9-253:3, 254:4-12 (Amundsen).[16]

49. In each such "engagement quality review" section, Amundsen also represented that "I possess the competence, independence, integrity, and objectivity to perform the engagement quality review (EQR)" (*see, e.g.*, DX 15-4 (Item 35)), and that "I have reviewed the engagement team's evaluation of the firm's independence in relation to the engagement." *See, e.g.*, DX 15-5 (Item 40).

50. The Remus Respondents also represented in writing to the Broker-Dealers in all fourteen audits at issue that they were independent for purposes of the PCAOB's and AICPA's

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[15] *See* ¶ 24, *supra*.

[16] In each of these forms, Remus also represented that he had "maintained my independence throughout the performance of the audit." *E.g.*, DX 15-2.

independence rules. In these letters, Remus purported "to be in compliance with Rule 101 of the AICPA's Code of Professional Conduct, *Independence*" and represented that he was independent "within the meaning of Rule 3520 Auditor Independence as established by the Public Company Accounting Oversight Board (PCAOB) Section 3 Professional Standards." DX 96-1 through DX 96-2; Tr. 121:9-122:11.

VII. RESPONDENTS' CONDUCT OF THE FOURTEEN AUDITS VIOLATED COMMISSION INDEPENDENCE RULES AND DID NOT CONFORM TO PCAOB STANDARDS

51. Remus knew when he hired Amundsen, and at all times while conducting the fourteen audits of the Broker-Dealers, that Murray was Amundsen's daughter, and that she was the FINOP of the Broker-Dealers. DX 40-6 through DX 40-10; DX 48; Tr. 83:3-85:16, 100:16-101:6, 106:1-10, 169:19-170:3.

52. Amundsen knew at all times while acting as EQR on these fourteen audits that his daughter Murray was the FINOP of the Broker-Dealers. Tr. 267:12-17, 208:6-212:20, 277:7-12.[17]

53. Murray, as the FINOP for the Broker-Dealers during the 2014 and 2015 periods covered by the Remus Respondents' audits, was in a position to, and did keep, the accounting records and prepare the financial statements for the Broker-Dealers. As Remus and Amundsen were aware, Murray's duties as FINOP included: responsibility for the accuracy of financial reports submitted to regulators, preparing of such reports, supervising others who assisted in preparing such reports, supervising the maintenance of books and records from which the reports were derived, reconciling bank and brokerage statements for the Broker-Dealers, making net

[17] *See also* Tr. 232:10-234:22 (Amundsen involved with Murray's FINOP fee discussions with Fox Chase in 2015), 225:1-227:6, 228:20-229:5 (Amundsen intercedes with CapFi regarding its firing of Murray as FINOP); DX 35, DX 43.

capital computations, preparing and/or filing FOCUS and SSOI reports, supervising entries in the general ledger, providing any necessary information to the Broker-Dealers' auditor, and overall supervision of the Broker-Dealers' financial statements. Tr. 325:1-23, 326:8-327:25, 328:18-331:13 (Murray); Tr. 49:20-51:17, 51:24-52:22 (Remus); Tr. 270:21-271:18 (Amundsen) (recalling duties listed under FINRA Rule 1022(b) from when he was FINOP); DX 98-2 (FINRA Rule 1022(b) stating FINOP duties).[18]

54. Murray was therefore in an accounting role and a financial oversight role at the Broker-Dealers under Rule 2-01(c)(2)(ii) of Regulation S-X (the Commission's independence rules). Tr. 356:16-358:1 (Carmichael); DX 51 ¶¶ 8, 13-15.[19]

55. Murray was a "close family member" of Amundsen under Rule 2-01(c)(2)(ii) of Regulation S-X. Tr. 204:17-19 (Amundsen).[20] Amundsen was an associated person of the Remus Firm and a member of its audit engagement team under AS 7 for independence purposes, and of its attest engagement team under the AICPA's Code of Professional Conduct. *See* Section IV, *supra* and Section VIII, *infra.*

56. Thus, Respondents failed to satisfy applicable independence criteria under PCAOB Rule 3520 because they violated Rule 2-01(c)(2)(ii) of Regulation S-X, as well as the AICPA's Code of Professional Conduct. DX 51 ¶¶ 5-20; Tr. 356:21-358:19, 360:23-366:19, 367:7-370:5 (Carmichael); Tr. 30:18-20 (Remus Respondents' counsel acknowledging that

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[18] FOCUS reports stands for "Financial and Operations Combined Uniform Single reports," and SSOI reports stands for "Supplemental Statement of Income reports." Tr. 326:16-19, 327:2010 (Murray).

[19] Murray was also in a "key position" at the Broker-Dealers pursuant to the independence criteria of the AICPA Code of Professional Conduct. *See* ¶¶ 31 & n.12, 34, *supra*; DX 64-33; 64A-16; Tr. 364:6-365:11 (Carmichael).

[20] For the same reason, Murray was also a "close relative" of Amundsen under the AICPA's Code of Professional Conduct. *See* DX 64-32, DX 64A-13; DX 51 ¶ 23.

Remus and the Firm violated the "nondependent child rule"). *See also* Section IV, *supra,* and Section VIII, *infra.*

57. Respondents' representations of their independence (*see* ¶¶ 40, 46-50, *supra*) were false, and the Remus Respondents' representations in each of the audit reports filed with the Commission (DX 1 through DX 14) that they had conducted the audits in accordance with the standards of the PCAOB were false, because an audit that violates the PCAOB's independence standards and rules cannot be in compliance with PCAOB standards. DX 51 ¶¶ 5-20; Tr. 371:17-372:19 (Carmichael).

58. Remus claimed at the hearing that he had been unaware of the long-standing "nondependent child rule" in the Commission's independence rules and in the AICPA's Code of Conduct when he hired Amundsen as the EQR on these audits. Tr. 100:16-101:6, 106:1-10; 113:3-25, 114:7-12.

59. Yet Remus also conceded that in 2014, it would not have appeared proper to him to conduct an audit of a client where his own son was the FINOP of the client. Tr. 120:2-121:8. Similarly, it struck the Chief Compliance Officer of one of Remus's clients, CapFi, as inappropriate for Amundsen to be participating in CapFi's audit where his daughter was the FINOP (and because he had been barred by FINRA as well). Tr. 175:24-177:25, 182:4-183:23 (Calder).

60. Remus understood in 2014, 2015 and 2016 that he had an obligation to understand the ethics and independence rules of his profession. Tr. 116:23-117:3. But he also admitted that he never looked at the Commission's independence rules to determine if the parent-child relationship (which he conceded struck him as inappropriate in the audit context) between Amundsen and Murray was prohibited for independence purposes. Tr. 112:8-16.

61. Remus never asked anyone at the Commission, PCAOB or FINRA if the parent-child relationship between Amundsen and Murray was a prohibited relationship for independence purposes. Tr. 112:17-113:2. Nor, he claims, did he ever discuss this issue with Amundsen, despite his drafting of a letter for Amundsen to sign in which Amundsen represented that he had "no relationships that may be reasonably thought to bear on my independence." DX 33; Tr. 131:19-133:4; *see also* ¶¶ 46-47, *supra.*

62. When Remus hired Amundsen as his EQR, he understood that AS 7 (among other things) required that his EQR have the competence and integrity to act in that role, but he also knew that FINRA had barred (or "U-5'd") Amundsen from associating with FINRA member firms, which Remuse had learned in 2011. Tr. 55:20-56:11, 73:12-22.

63. Although Remus twice previously testified under oath (to the Commission and to the PCAOB) that when he learned about the FINRA bar, he also learned about the 1983 federal court injunction against Amundsen (Tr. 53:22-54:6, 54:13-22, 56:12-17, 58:3-24), he claimed at the hearing only to have learned about the injunction when he testified to the Commission and PCAOB, in 2017. Tr. 54:23-55:19.[21]

64. The only inquiry Remus made before hiring Amundsen was of a FINRA representative, and only for an answer to the limited question of whether "a person that is barred

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[21] Remus sought to justify his purported ignorance of the injunction against Amundsen by claiming that neither FINRA nor the Commission was "aware" of it either. Tr. 55:9-19. But FINRA of course was aware of the injunction in 2011, as it was Amundsen's non-disclosure of the injunction on his U4 applications that was the basis for FINRA's disciplinary proceeding. And the Commission by 2011 had already filed a motion for contempt against Amundsen for his violation of the injunction. The injunction was a matter of public record, and a cursory inquiry by Remus at the time into the FINRA bar would have revealed the injunction to him. If Remus (contrary to his earlier testimony) genuinely was unaware of the injunction in 2011 or in the 2014-2016 time period, his ignorance reflects only his indifference in making diligent inquiries into Amundsen's competence and integrity (not to mention his independence), as he was required to do. *See* DX 41-8.

from being [a]ssociated with a FINRA member firm [is] prohibited from performing an Engagement Quality Review (Concurring Partner Approval) [i]n accordance with PCAOB Auditing Standard 7." DX 32.

65. The FINRA representative answered narrowly, that the "concurring partner does not meet the definition of an 'associated person' pursuant to Article I of FINRA By-Laws...." DX 32. But the FINRA representative added, "That said, we recommend that the Firm utilize a partner that is not barred from associating with FINRA member firms."

66. Neither the FINRA bar itself, nor FINRA's recommendation that Remus refrain from hiring Amundsen because of it, caused Remus to question Amundsen's competence or integrity. Tr. 99:9-14. Remus was simply not interested in FINRA's recommendation (Tr. 158:7-13), as he made clear when his own counsel asked him why he disregarded it:

> I never asked her for a recommendation. My question to her was specific: Can he or can he not do it? That's all I wanted to know. If I wanted a recommendation, I would have asked for it.

Tr. 157:25-158:6.

67. Remus hired another accountant to be his EQR for the year-end 2016 audits of his clients, not because of any concerns in his mind about Amundsen, but solely as a "business decision": the new EQR offered to review Remus's audits for free, provided Remus returned the favor. Tr. 137:13-138:7.

68. Remus has never disclosed to any of his audit clients the independence violations related to Amundsen's participation on the audits. Tr. 168:18-169:5.[22] No amendment or update to any of the fourteen audits at issue in this proceeding has ever been filed with the Commission.

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[22] The only disclosure Remus identified was an "AP3" form he claims to have filed with the PCAOB, and only after the institution of this proceeding. Tr. 170:5-21.

69. Amundsen conceded at the hearing that the AICPA Code of Professional Conduct had "been around forever." Tr. 267:8-11. He also conceded he did not check the rules or regulations to determine if his father-daughter relationship with Murray affected his independence on these audits, nor did he consult with anyone about that. Tr. 268:22-269:22.

70. Amundsen's attempted justification at the hearing was based more on resentment of the PCAOB and what he insisted was the unfairness of the rules as written, rather than any defense that he did not violate them. *See* Tr. 255:15-256:6 (complaining that the EQR requirement was designed by PCAOB to "put sole practitioners out of business"), 261:12-20 (insisting there would have been no independence violation if the language of Rule 2-01(c)(2)(ii) were different from what it actually says).

71. Otherwise, Amundsen insisted that the independence rules did not apply to him because his daughter, Murray, was an "independent businesswoman," and he was not involved in her business. Tr. 193:21-194:2, 268:4-12. His argument (for which he cites nothing in the rules) is contradicted by Rule 2-01(c)(2)(ii), which explicitly prohibits an accountant from participating as a member of an audit engagement team on an audit where his or her child is in an "accounting role" or "financial reporting oversight" role" at the audit client (or, in the words of the AICPA, in a "key position"). *See* Section IV, *supra*, and Section VIII, *infra*.[23]

72. Amundsen argued that as the EQR, he did not consider himself a member of the audit engagement team and thus the independence rules did not apply to him. Tr. 258:23-259:7, 259:25-260:6, 260:22-261:3. But he contradicted himself, as he also claimed that he *did* consider his independence at the time in question as it related to his daughter, Murray, and concluded there was no issue because he was "barred from helping her." Tr. 259:13-24. His

[23] His argument is also contradicted by the extensive evidence that Amundsen actually *was* substantially involved in Murray's FINOP work. *See* ¶ 37, *supra*.

claim also is contradicted by (i) the PCAOB's adopting release when issuing AS 7 (DX 41-8) and the AICPA's Code of Professional Conduct (DX 64A), both of which explicitly provide that EQRs are members of the audit engagement team (or "attest engagement team") for purposes of the independence rules; and (ii) Amundsen's own written representations *at the time in question*, in which he acknowledged he was aware of the independence rules and was required to comply with them *as the EQR. See, e.g.,* DX 15, DX 33.

73. Amundsen insisted he was required to be "independent" only of the auditing firm, not the clients. Tr. 406:15-23. The argument again is in conflict not only with the plain language of the rules, but also with Amundsen's written representations at the time, in which he acknowledged that he had "reviewed my relationships with all of the above mentioned *clients*" with respect to the relevant independence rules (emphasis added).[24] DX 33.

VIII. THE DIVISION'S EXPERT WITNESS

74. The Division's expert witness, Dr. Douglas R. Carmichael ("Dr. Carmichael"), has been a professor of accounting at Baruch College, City University of New York, since 1983, and since 2008 has held the Claire and Eli Mason Professorship. He is a CPA licensed in New York, a certified fraud examiner, and is certified in financial forensics. Dr. Carmichael was awarded his doctorate in Accounting from the University of Illinois in 1968. Dr. Carmichael teaches auditing, a senior-level course for people who intend to practice as CPAs, of which ethics and independence are a significant part. Tr. 344:2-17, 345:19-346:1; DX 51 ¶ 2, App. A.

75. Dr. Carmichael also has held the position of Director of Baruch College's Center for Financial Integrity, and consulted on accounting and auditing matters since 1983 to various

[24] Amundsen was confusing (or was pretending to confuse) the "objectivity" requirement with the long established rules on independence from auditing clients. Tr. 406:15-409:2, 410:24-412:20, 413:13-414:13, 415:3-11, 416:4-418:6 (Carmichael); DX 51 ¶¶ 11, 12.

government agencies, CPA firms, financial institutions and public corporations. He has authored, co-authored and edited numerous books on accounting, has published more than 100 articles or papers in professional journals, and has frequently presented papers or lectures, and made public appearances, to discuss accounting and auditing issues. DX 51, App. A (*e.g.*, DX 51-17 through DX 51-39).

76. Dr. Carmichael has testified as an expert witness on forensic accounting and auditing in civil and criminal proceedings, *see* DX 51-15, App. A, and has testified previously in several Commission administrative proceedings. Tr. 346:2-15; *see also* DX 51-43, App. B.

77. Dr. Carmichael submitted an expert report and testified that the Respondents repeatedly and egregiously violated PCAOB rules and standards and departed from the required professional standard of care in connection with the fourteen audits at issue. *See, e.g.,* DX 51 ¶¶ 1-15; Tr. 347:3-348:17, 349:1-350:9, 356:7-358:21.

78. Dr. Carmichael stated that PCAOB Rule 3520 requires a registered public accounting firm and its associated persons to be independent of the audit client throughout the audit, and satisfy all applicable independence criteria, including those set out in the rules and regulations of the Commission. DX 51 ¶ 5.

79. Dr. Carmichael explained that the Commission's independence rule is set out in Rule 2-01 of Regulation S-X, and that Rule 2-01(c)(2)(ii) expressly provides that independence is impaired on an audit where a "close family member" of an accountant who is a "covered person," was in an "accounting role" or "financial reporting oversight role" at the audit client. DX 51 ¶¶ 6-10; Tr. 369:16-370:5.

80. Further, Dr. Carmichael explained that under PCAOB AS 7, adopted in 2009, an EQR is required to approve or "sign off" on all audits before they can be released to the audit

client for filing with the Commission, and that under AS 7, the EQR must be independent of the audit client. So as not to overburden the solo practitioner, the PCAOB provided that accountants outside the accounting firm could act as EQR, but it expressly provided that in those circumstances, the EQR is considered an "audit partner" and member of the "audit engagement team" under the Commission's definition of "covered person." DX 51 ¶ 12; Tr. 359:8-360:22, 369:16-370:5. The PCAOB also made clear, however, that the engagement partners in such circumstances would need to make additional inquiries of the EQR regarding his or her qualifications and independence. DX 41-8; DX 51 ¶ 29; Tr. 359:8-360:3.[25]

81. Dr. Carmichael stated that because Amundsen was the EQR on these fourteen audits, where his daughter, Murray, was the FINOP – and thus in an accounting and financial reporting oversight role at the audit clients – Respondents failed to satisfy the applicable independence criteria in Rule 2-01(c)(2)(ii) and PCAOB Rule 3520. DX 51 ¶¶ 7-9.

82. He further noted that any reasonable recipient of the audited financial statements with knowledge that Amundsen was tasked with evaluating significant judgments made by the engagement team, and thus auditing the quality of work of his own daughter, would conclude he could not exercise objective and impartial judgment. For that reason, Respondents also failed to satisfy the general independence standard under Rule 2-01(b), in addition to the specific "nondependent child" rule in Rule 2(c)(2)(ii). DX 51 ¶ 10.[26]

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[25] As Dr. Carmichael explained, AS 7 became applicable to broker-dealer audits in 2014, when PCAOB standards became applicable to such audits. Tr. 411:18-414:13.

[26] In fact, Remus himself acknowledged the impropriety in both appearance and fact of a parent auditing the work of a nondependent child. *See* ¶ 59, *supra*. This, Dr. Carmichael noted, demonstrated why the conduct at issue also violated Rule 2-01(b), as it showed "this concept that someone aware of the circumstances would not think it was proper." Tr. 367:17-369:15.

83. The "nondependent child" rule is neither recent nor obscure, Dr. Carmichael explained. Rather, the Commission's Rule 2-01(c)(2)(ii) in its current form has been in effect since 2001, and even before that, was the subject of a substantially identical rule in the AICPA since the early 1990s – and the PCAOB requires compliance with the AICPA's independence rules. The topic of family relationships and their effects on auditor independence is a significant topic covered in auditing classes and continuing professional education. It is, as he wrote in his expert report, "Auditing 101." DX 51 ¶¶ 23-25.

84. Respondents demonstrated an extreme lack of due care concerning their compliance with independence criteria, according to Dr. Carmichael. Ignorance of these rules and standards was inexcusable and by itself demonstrated a violation of their professional obligations, particularly those under PCAOB AU 210, 220 and 230 (and the related quality control standards) that required Respondents to be knowledgeable about relevant professional standards, especially those relating to independence. DX 51 ¶¶ 16-25, 36-38; Tr. 372:20-374:3, 374:10-376:1.[27] The Commission, emphasizing the "importance of an accountant's independence to the integrity of the financial reporting system," has explicitly stated that "heightened scrutiny" is always required when "circumstances that raise questions about an accountant's independence" are present. DX 51 ¶ 22.

85. PCAOB AU 230, *Due Professional Care in the Performance of Work* requires that an auditor should exercise "reasonable care and diligence," and requires that "the engagement partner should know, at a minimum, the relevant professional accounting and auditing standards and should be knowledgeable about the client." DX 51 ¶ 19. Dr. Carmichael

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[27] The PCAOB's auditing standards designated as "AU" were among those generally accepted auditing standards ("GAAS") that were adopted by the PCAOB in its Auditing Standard No. 1 and approved by the Commission. *See* 69 Fed. Reg. 29149 (May 20, 2004)); *Dohan & Co.*, Initial Decisions Rel. No 420, 2011 SEC LEXIS 2205, at *3 (June 27, 2011).

explained the application of that standard here:

> Paragraph 19 [of DX 51] indicates that an engagement partner has to know at a minimum the relevant professional accounting and auditing standards. And independence is an auditing standard, and as we saw requires compliance with the PCAOB, AICPA, SEC rules. So as a bare minimum, knowledge of that family relationship that prepared financial statements under audit would at least raise a question about independence and should have at that point. If they were unfamiliar with the rule, at that point looked up the rule. My understanding is they never consulted the written rules. They never asked the PCAOB. They never asked the SEC about the meaning of those rules and their application to the specific circumstances that they were both aware of.

Tr. 374:10-375:2.

86. The PCAOB's auditing standards themselves highlight the importance of auditor independence. PCAOB AU 220, Dr. Carmichael said, "indicates that it is of utmost importance to the profession that the general public maintain confidence in the independence of the auditors." He added that "public confidence would be impaired by evidence of an actual lack of independence, but may also be impaired by circumstances that reasonable people might believe likely to influence independence." Tr. 370:17-371:7; DX 51 ¶ 18.

87. Further, he testified, because a "lack of independence can really – jeopardizes the integrity of the whole financial reporting system... the PCAOB when it originally issued this standard said it's of utmost importance to the profession that in order for the public to have confidence that auditors are independent, each auditor needs to scrupulously adhere to the standards of independence." Tr. 3718-16; DX 51 ¶ 18.

88. Dr. Carmichael testified that an impairment of independence is so significant that even if there were no other material deficiencies in the audit, a non-independent audit cannot comply with PCAOB standards:

> The auditor could not even express an audit opinion in those circumstances, no matter how much work was done. So regardless of the extensiveness of the audit procedures performed, the audit work can't be considered of sufficient quality to

support an opinion. In other words, in short, the auditor can't express an opinion if the auditor or anyone encompassed within the rules is not an independent.

Q Would that be the case even if there were no other material or technical deficiency in the audit other than the independence impairment?

A Definitely. It's the integrity of the process. I mean, that's why the Commission – as I point out at one other point in my report – said that circumstances raised questions about independence always require heightened scrutiny

Tr. 372:1-17; DX 51 ¶¶ 16-22.

PROPOSED CONCLUSIONS OF LAW

I. THE REMUS FIRM 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.

89. 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*, Exchange Act Rel. No. 43862, 2001 SEC LEXIS 98, *49 n.51 (Jan. 19, 2001) (Commission Op.), *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 ...." *Id.*

90. The Commission's rule against a parent participating in an audit of a client where his or her nondependent child is the FINOP is neither obscure nor recent. The current version of

Rule 2-01 has been in effect since February 2001. *See Final Rule: Revision of the Commission's Auditor Independence Requirements*, SEC Rel. No. 33-7919, 2000 SEC LEXIS 2717, *1 (Nov. 21, 2000). But even before that, the ethical rules of the AICPA's Code of Professional Conduct expressly provided the same independence rules concerning "close family members" and "nondependent children" as those at issue in this proceeding. *See* ¶¶ 31, 83, *supra*.[28]

91. In 2015 and 2016, the Remus Respondents conducted, and Amundsen participated as EQR in, fourteen audits of the Broker-Dealers in blatant violation of the Commission's independence rules in Regulation S-X. Specifically, they violated Rule 2-01(c)(2)(ii) and Rule 2-01(b) thereof, because Amundsen's daughter was the FINOP of the Broker-Dealers, and thus in an "accounting role" and "financial reporting oversight role" at those audit clients. *See* Proposed Findings of Fact ("FOF") Section VII, *supra*; *see also* DX 29.

92. As each of these audits was impaired by Respondents' violation of the Commission independence rules, they were conducted in violation of PCAOB Rule 3520 and thus were not conducted in accordance with the standards of the PCAOB. *See* FOF Sections IV and VIII, *supra*.

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

93. Rule 17a-5(d)(1)(i) under the Exchange Act requires broker-dealers to file financial reports annually with the Commission, along with 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

[28] Indeed, the relationship is so plainly contrary to both the fact and the appearance of independence – as Remus and the Chief Compliance Officer of one of his clients recognized (¶¶ 59, 82, *supra*) – 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.

Commission's Regulation S-X. 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).

94. 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. Under Rule 17a-5(i), the independent public accountant must represent that the audit was conducted in accordance with PCAOB standards.

95. The Remus Firm willfully violated Rules 17a-5(g) and 5(i) by conducting audits of its broker-dealer clients that failed to conform to PCAOB standards while falsely representing that it had. Remus and Amundsen aided and abetted the Remus Firm's violations.

96. 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); *see Horton & Co.,* Initial Decisions Rel. No. 208, 2002 SEC LEXIS 1712, *29 (July 2, 2002)

97. Remus and Amundsen provided substantial assistance to the Remus Firm's primary violations. As owner, controller, and sole proprietor of the Remus Firm, Remus took the action that resulted in each rule violation: he conducted the deficient audits, and he signed the purportedly 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.

98. 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.

99. Remus acted knowingly or at least with reckless disregard for the rules and his basic professional obligations. At all times while conducting the fourteen audits in question, Remus knew Amundsen was Murray's father, and that Murray was the FINOP of the audit clients. *See* ¶ 51, *supra*. Remus was not only aware, therefore, of the circumstances that created Respondents' independence violations, he was also aware of the rules and standards that applied to these circumstances: He knew that the PCAOB rules applied to these audits, he knew that the PCAOB required an EQR on the audits, and he knew that he and Amundsen were required to comply with independence requirements. Indeed, Remus expressly and falsely represented that he was in compliance with PCAOB and AICPA independence requirements, and he drafted a letter for Amundsen's signature in which he had Amundsen falsely represent his independence from the audit clients. *See* ¶¶ 40, 46-50, *supra*.

100. Remus also was aware that although the PCAOB standards were newly applicable to his audits in 2014, the concept of the EQR was not. It was simply a new term for a "concurring partner," a role that had been part of the audit process for some time and was required to be independent of the audit client. *See* ¶ 19, *supra*.

101. Remus claims he was unaware of the "nondependent child rule" that was in place for decades before the conduct at issue. But he conceded he understood that AS 7 required his EQR to be independent. *See* ¶¶ 45, 46, *supra*. He also admitted that it would have seemed, at the time, inappropriate to him to audit a client where his own son was the FINOP. *See* ¶ 59, *supra*. He admitted that he was obligated to, but did not, check the ethics and independence rules

or consult anyone at the Commission or PCAOB, or any other resource (or Amundsen), and proceeded to sign audit reports that falsely represented the audits had been conducted in accordance with the standards of the PCAOB. *See* ¶¶ 60-62, *supra.*

102. Nor did Remus take any corrective action at any time, or disclose the independence violations to his audit clients, even after the Commission and PCAOB questioned his conduct in 2017. *See* ¶ 68, *supra.*

103. Remus thus either knew the Commission's and AICPA's rules prohibited Amundsen's participation on these fourteen audits, and simply disregarded them in deference to his "referral service" of Amundsen and Murray, or he acted with reckless indifference to his regulatory and professional obligations. Even if Remus truly were unaware of the long-standing "nondependent child" rule, it was his responsibility (as he admitted) to know it – it would not have been difficult to learn, particularly since, as he acknowledged, the PCAOB standards were only a "rewrite of the existing standards." Tr. 76:3-13.

104. Remus's recklessness toward his independence obligations was not an isolated occurrence. Remus knew before he hired Amundsen that FINRA had barred Amundsen from associating with FINRA members, and that FINRA had recommended to Remus in response to his own specific inquiry that he not hire someone who had been barred by FINRA.[29] When his counsel asked him why he disregarded that recommendation, his answer betrayed his casual indifference toward his professional obligations to ensure that his EQR had the requisite "competence, independence, integrity, and objectivity" (DX 41-26):

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[29] Remus has provided inconsistent testimony on whether he also knew at the time of the 1983 federal court injunction that barred Amundsen from appearing or practicing before it in any way. Even if he were unaware of it, Remus could readily have learned of it from the public record had he been interested in ensuring that his EQR was qualified to do the work. It was Amundsen's deliberate non-disclosure of that injunction that led to the FINRA bar several years before the audits in question. *See* FOF Section III, *supra.*

> I never asked her for a recommendation. My question to her was specific: Can he or can he not do it? That's all I wanted to know. If I wanted a recommendation, I would have asked for it.

Tr. 158:2-6.

105. Amundsen acted knowingly or at least with reckless disregard for the rules and his basic professional obligations. He knew that his daughter was the FINOP at the Broker-Dealers, of his close working relationship with his daughter, and that he was reviewing financial statements prepared by her. Of course, he also knew he was subject to a federal court injunction that barred him from acting as EQR at all. *See* ¶¶ 4-12, 36-37, 52, *supra*.

106. Amundsen plainly had no interest in conforming his conduct to his professional or regulatory obligations. In fact, Amundsen still refuses to acknowledge his independence violations. His arguments are not based on the rules themselves, but rather his insistence on fashioning rules for himself while complaining of the unfairness of the rules as written (*see* ¶¶ 69-73, *supra*) – or, as the court in the Civil Action held, of his being "tone deaf" as to his professional responsibilities. DX 29-4.

107. Yet Amundsen nonetheless falsely declared on his engagement quality review forms that he possessed the requisite "competence, independence, integrity, and objectivity" to act as EQR, *see e.g.,* DX 15-4, and falsely represented in the letter Remus drafted for him that he had "no relationships" that might bear on his independence from the audit clients at issue. DX 33.

108. 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, and even assuming *arguendo* that Respondents were unaware of the content of the rules they represented they were in compliance with, their conduct

was at minimum reckless. *See Horton,* 2002 SEC LEXIS 1712 at *36-37 (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]"); *Ernst & Young LLP*, Initial Decisions Rel. No. 249, 2004 SEC LEXIS 831, *153-156 (Apr. 16, 2004) (accountant acted recklessly when facing his "first encounter" with a licensing agreement that posed independence violation of prior version of Rule 2-01, because it created an improper business relationship between auditor and client, but "conducted no independent research on the subject," did not "read the proposed licensing agreement, or "consult with others at EY or at the Commission": the conduct constituted an "extreme and unreasonable departure from what a reasonable independent auditor would have done in these circumstances to avoid an impairment of independence)."

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

109. In addition to the foregoing violations, Respondents caused the seven broker-dealers at issue to violate Exchange Act Rule 17a-5(f) on 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*, Exchange Act Rel. No. 49366, 2004 SEC LEXIS 504, *75 (Mar. 5, 2004) (Commission Op.) (*citing SEC v. Drexel Burnham Lambert Inc.*, 837 F. Supp. 587, 610 (S.D.N.Y. 1993), *aff'd*, 16 F.3d 520 (2d Cir. 1994)); *Stead v. SEC*, 444 F.2d 713, 716-17 (10th Cir. 1971). As the 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).

110. 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,* 2001 SEC LEXIS 98 at *82; *see Halpern & Assocs. LLC,* Initial Decisions Rel. No. 939, 2016 SEC LEXIS 26, *59-60 (Jan. 5, 2016)

111. Respondents 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 claimed 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 negligent. As CPAs registered with the PCAOB, each of them was responsible not only to conform their conduct of, and participation in, the audits in question to PCAOB's standards, but they had an affirmative obligation to be aware of those standards – and the independence rules in particular. Their utter disregard for them establishes they breached this standard of care. *See* FOF Section VIII, *supra.*

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

112. 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: (A) intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards; or (B) either (1) "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 (2) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission." Exchange Act Section 4C; Rule 102(e)(1)(iv). Under any of these three standards, Respondents engaged in improper professional conduct.

113. 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) of the Commission's Rules of Practice,* Rel. No. 33-7593, 1998 SEC LEXIS 22546 at *34 (Oct. 19, 1998) (emphasis added).

114. 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.*

115. Recklessness "has the same meaning in Rule 102(e) and Section 4C of the Exchange Act as it does under the Exchange Act's antifraud provisions." *Ernst & Young,* 2004 SEC LEXIS 831 at *152. (citing *Amendment to Rule 102(e)*). Recklessness is "an extreme

departure from the standards of ordinary care ... which presents a danger of misleading buyers or sellers that is either known to the [actor] or is so obvious that the actor must have been aware of it." *Id.* (*quoting Sundstrand Corp. v. Sun Chemical Corp.*, 553 F.2d 1033, 1045 (7th Cir. 1977)).

116. 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).[30] But even should the Court conclude their actions were not reckless, they plainly involved at least one instance of highly unreasonable conduct, or repeated instances of unreasonable conduct.

117. Respondents conceded they applied no scrutiny to the independence issues posed by Amundsen's participation in these fourteen 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.

118. And even were it 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. The Commission has determined that such repeated instances of unreasonable conduct, each violating professional standards, "ordinarily will indicate a lack of competence."

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[30] Rule 102(e)(1)(iii) is an additional ground upon which to deny Respondents the privilege of appearing or practicing before the Commission, imposed on those 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 I.B, Remus and Amundsen aided and abetted violations of Exchange Act Rules 17a-5(g) and (i).

119. The Remus Respondents' improper professional conduct also consisted of repeated violations of professional quality control standards. Under PCAOB QC 20, *System of Quality Control for a CPA Firm's Accounting and Auditing Practice*, audit firms are required to maintain a system providing them with reasonable assurance that their personnel comply with applicable professional standards, including independence standards (in fact and in appearance), "[b]ecause of the public interest in the services provided by and reliance placed on the objectivity and integrity of, CPAs." *See* DX 51 ¶ 36.

120. 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.

121. The Remus Respondents' purported "quality control" procedures (RX 17 and RX 18; DX 88 and DX 95) on their face do not even purport to capture or monitor the "nondependent child" relationships that Respondents violated, and thus were inadequate even had they been followed.

122. Those purported "quality control procedures," furthermore, included measures such as 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. But the Remus Respondents never did any of these things. Printing boilerplate documents that list quality control procedures and then not following those procedures does not constitute having a reasonable quality control procedure. And these procedures, tellingly, 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. *See* DX 51 ¶¶ 36-38.

123. The Remus Respondents also failed to exercise due professional care pursuant to PCAOB AU, 210, 220 and 230, *see* FOF Section VIII, *supra*, as shown by fourteen instances of Amundsen serving 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 the Remus Firm's knowing or reckless failure to plan and perform their work with due professional care violated professional standards and represents another basis for concluding that they engaged in improper professional conduct.

IV. MEANINGFUL SANCTIONS AND OTHER REMEDIES SHOULD BE IMPOSED AGAINST RESPONDENTS

A. Cease and Desist Orders Are Warranted Against Respondents.

124. The Commission is authorized to issue cease-and-desist orders when a person 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 future violations of the statutes and rules set forth above.

125. In considering whether an administrative sanction such as a cease-and-desist order is in the public interest, the Commission considers the factors identified in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981): the egregiousness of the respondents' actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondents' assurances against future violations, the respondents' recognition of the wrongful nature of his or her conduct, and the likelihood that the respondents' occupation will present opportunities for future violations. *See, e.g., Halpern,* 2016 SEC LEXIS 26 at *90; *Horton,* 2002 SEC LEXIS 1712 at *44.

126. These factors weigh heavily in favor of imposing cease-and-desist orders against the Respondents here. Their actions constituted blatant violations of long-standing independence rules on fourteen separate audits occurring over a two-year period. Even in the absence of any specific pecuniary harm to investors, independence requirements are matters that Congress and the Commission have recognized are "matters that are significant to public investors" and are "one of the paramount conditions that auditors must observe." *Ernst & Young LLP*, 2004 SEC LEXIS 831 at *169; *see also* ¶¶ 86-89, *supra.*

127. Respondents acted knowingly or with extreme recklessness, if not with deliberate disregard of their obligations. *See* ¶¶ 99-108, *supra.* They have offered no sincere assurance against future violations, or recognition of their wrongful conduct. Although Remus' counsel made reference to his client's "violation of the nondependent child rule" in his opening statement, Remus himself was considerably more ambivalent in his testimony and demeanor at the hearing.

128. Remus self-servingly expressed regret at the situation he now finds himself in, while also impatiently sought to avoid scrutiny of his indifference to his professional obligations. Tr. 115:22-116:22. He also casually dismissed his lack of interest in FINRA's recommendation that he not employ Amundsen based on the associational bar it ordered against him. Tr. 158:2-6. When confronted with his false written representations to his audit clients that he had no relationships that impaired his independence (DX 96), he reacted with impatience, insisting that he "had no relationships, all right?" Tr. 123:3-14. Thus, even at this late stage of the proceedings, it was evident that Remus did not appreciate his responsibility to ensure the independence of every member of his audit engagement team, including the EQR.

129. Nor have the Remus Respondents taken a single step of corrective action with respect to the independence violations – not even disclosing them to their audit clients. *See* ¶¶ 68, 102, *supra*. Moreover, the Remus Respondents continue to conduct audits of broker-dealers, and they offered no evidence that they have taken any steps to prevent future violations of the independence rules.

130. Amundsen refuses to accept any responsibility for his actions, and his conduct and demeanor at the hearing demonstrated that he neither appreciates the wrongfulness of his conduct nor can assure against future wrongdoing. On the contrary, he has a rich history of prior violating rules, regulations and judicial orders. He has repeatedly violated, and is now in contempt, of the injunction entered against him in 1983 in the Civil Action. He deliberately concealed that litigation history from FINRA members when he was required to disclose it. And in both the FINRA litigation and the Civil Action, he has offered disingenuous explanations in an attempt to avoid responsibility.

131. In the instant proceeding as well, he has misrepresented the record in the Civil Action to this Court, *see* ¶ 5 & n.3, ¶ 12 & n.6, *supra*, and has offered one disingenuous argument after another as to why the black-letter independence rules he previously represented applied to him, do not or should not apply to him. *See* ¶¶ 69-73.

132. For these reasons, cease-and-desist orders against Respondents are amply warranted. *See, e.g., Ernst & Young LLP*, 2004 SEC LEXIS 831 at *169.

133. The Commission provided guidance on issuing cease-and-desist orders in *S.W. Hatfield, CPA,* Accounting and Auditing Enforcement Rel. No. 3602, 2014 SEC LEXIS 4691 (Dec. 5, 2014) (Commission Op.). In *Hatfield*, the Commission issued cease-and-desist orders against an accounting firm and the individual auditor for issuing thirteen audit reports when they were not properly licensed to do so, and implicitly representing they were properly licensed in their audit reports in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The Commission found that notwithstanding the absence of pecuniary harm to investors, the violations were recent, and the misrepresentation of the auditor's qualifications "undermines the reliability of fundamental investment tools that help investors make informed decisions." The respondents "pose a substantial, continuing risk of harm" and a "cease-and-desist order will serve the remedial purpose of encouraging Respondents to understand and obey their obligations under the securities laws." *Id.*, 2014 SEC LEXIS 4691, at *41-42; *see also Russell Ponce*, Accounting and Auditing Enforcement Rel. No. 1297, 2000 SEC LEXIS 1814, *37 (Aug. 31, 2000) (Commission Op.), *aff'd*, 345 F.3d 722 (9th Cir. 2003) (cease-and-desist order against accountant for improper conduct under Rule 102(e)((1)(ii) and (iii) for independence violations and violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder).

B. Remus Should Be Barred from Appearing or Practicing Before the Commission.[31]

134. 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.

135. 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*, Exchange Act Rel. No. 57244, 2008 SEC LEXIS 223, *107 (Jan. 31, 2008) (Commission Op.), *pet. denied*, 573 F.3d 801 (D.C. Cir. 2009) (*quoting* Amendment to Rule 102(e), 63 Fed. Reg. at 57164). 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.*, 2008 SEC LEXIS 223, at *108.

136. 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.

137. Although Remus sought to emphasize the absence of any material deficiency in the fourteen audits beyond the independence violations (and the false representations regarding the same) or the absence of any pecuniary harm to others, independence is a "crucial concept in

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

auditing, and in requirements for financial statements filed by public corporations with the Commission." *Horton*, 2002 SEC LEXIS 1712 at *45. Violations of independence, if not deterred, threaten the integrity of the nation's financial reporting system. *See* ¶¶ 86-89, *supra*.

138. Respondents are responsible for an extraordinary number of independence violations that extended over a two-year period. In view these facts, and the other *Steadman* factors discussed above, *see* ¶¶ 125-131, *supra*, the Division requests that Remus be denied the privilege of appearing or practicing before the Commission for a period of not less than five years. This is consistent with Commission precedent, and the remedial purpose of Rule 102(e) "to prevent Respondents and deter others from disregarding their professional responsibilities and protect the investing public by encouraging diligent compliance with regulatory requirements." *Hatfield,* 2014 SEC LEXIS 4691 at *40-41(permanently barring firm and accountant from appearing or practicing before the Commission as accountants); *see also Dohan & Co.,* 2011 LEXIS 2205 at *52 (accountant suspended from practice under Rule 102(e) for two years, based on his unreasonable auditing failures in a single audit, which was warranted "to protect the public from future reckless or negligent conduct by professionals who practice before the Commission and to encourage more rigorous compliance with auditing standards in future audits"); *Horton*, 2002 SEC LEXIS 1712 at *48 (one year suspension ordered for independence violations for one audit client in two audit periods); *Ponce*, 2000 SEC LEXIS 1814 at *50 (ordering five-year bar against accountant for improper conduct under Rule 102(e)(1)(ii) and (iii) for independence violations and violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder); *Dearlove*, 2008 SEC LEXIS 223 at *107 (ordering accountant barred under Rule 102(e) with a right to reapply for four years, based on auditing failures for a single client, in one audit period).

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

139. The Remus Respondents should be ordered to disgorge, jointly and severally, the fees they received in return for the fourteen improper audits at issue here, approximately $57,227, and Amundsen should be ordered to disgorge the $7,000 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)).

140. Accordingly, Respondents should each be ordered to disgorge the amounts they received in connection with their improper audits and EQR work. *See Ernst & Young,* 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.,* Initial Decisions Rel. No. 340, 2008 SEC LEXIS 83, *77-78 (Jan. 14, 2008) (ordering disgorgement of respondent's compensation); *Kenneth R. Ward*, 2003 SEC LEXIS 3175, *60(Mar. 19, 2003) (Commission Op.) (disgorgement of commissions).

141. 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*, 1997 U.S. Dist. LEXIS 6225, *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 Remus and Amundsen Should Be Ordered to Pay Substantial Penalties.

142. 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 violation of, 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) whether the acts or omissions at issue involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) any 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,* Initial Decisions Rel. No.199, 2002 SEC LEXIS 3433, *172 (Feb. 4 2002), *aff'd*, Exchange Act Rel. No. 48684, 2003 SEC LEXIS 2572 (Oct. 23, 2003).

143. 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.

144. For the audits for the year ended December 31, 2014, the maximum Tier 2 penalties per act or omission is $80,000. *See* 17 C.F.R. § 201.1005 and Table V to Subpart E of Part 201 (penalties for the period prior to November 2, 2015). For the audits for the year ended December 31, 2015, the maximum penalties per act or omission is $94,713. *See Adjustments to*

Civil Monetary Penalty Amounts, Exchange Act Release No. 34-85118, 84 Fed. Reg. 5122 (Feb. 20, 2019) (penalties for the period after November 2, 2015).

145. Under the statutory factors above, and the *Steadman* factors discussed above in connection with the appropriateness of cease-and-desist orders (see ¶¶ 125-131, *supra*), significant 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, and received an unjust economic benefit from their deficient audits. Although there is no evidence of specific pecuniary harm to others from their misconduct, the auditor independence rules are of critical importance, and violations of those rules threatens the integrity of the financial reporting system. Amundsen, furthermore, has an extensive history of prior violations. Civil penalties will serve as a strong deterrent to future violations by the Respondents and similarly situated accountants, auditors, and EQRs.

146. In *Hatfield,* 2014 SEC LEXIS 4691 at *47-48, the Commission ordered second tier penalties against the auditing firm and its sole proprietor, jointly and severally, for violations factually analogous to the instant matter: conducting audits and signing audit reports of issuers despite the fact the firm was not properly licensed (although *Hatfield* was premised on Section 10(b) of the Exchange Act for the implicit misrepresentation in its audit reports that the firm was licensed, as well as Rule 102(e)). The Commission exercised its discretion, and ordered the respondents to pay $8,500 (out of a maximum that was for the time in question $75,000) for each of thirteen audits. *Id.* Using a similar fraction of the relevant statutory maximum in the instant proceeding, applied to each of the fourteen audits at issue, would yield a total penalty of $138,565 for each of the Respondents Remus and Amundsen.

147. Alternatively, the Commission has also adopted a method of calculating penalties in which the unit of violation is the number of time periods in which the violations occurred. *See Phlo Corp.*, Exchange Act Rel. No. 55562, 2007 SEC LEXIS 604, at *62 (Mar. 30, 2007) (Commission Op.) (imposing second-tier penalty for each month in which respondent aided and abetted violations). In the instant case, there are two separate audit periods: 2014 and 2015. Under this alternative approach, and applying the relevant statutory maximus, *see* ¶ 144, *supra*, Remus and Amundsen would each be ordered to pay a total penalty of $174,713.

Dated: July 18, 2019
New York, New York

Respectfully submitted,

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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 18th day of July, 2019, I caused the original and three copies of the Division of Enforcement's Proposed Findings of Fact and Conclusions of Law dated July 18, 2019 to be filed with the Office of the Secretary by fax and UPS overnight delivery to the address listed below, and served on the Court and Respondent Joseph S. Amundsen by email and UPS overnight delivery at the addresses listed below, and on counsel for Respondents Michael T. Remus, CPA and Michael Remus CPA by email to prginsberg@sullivanlaw.com:

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100 F Street, N.E., Mail Stop 3628
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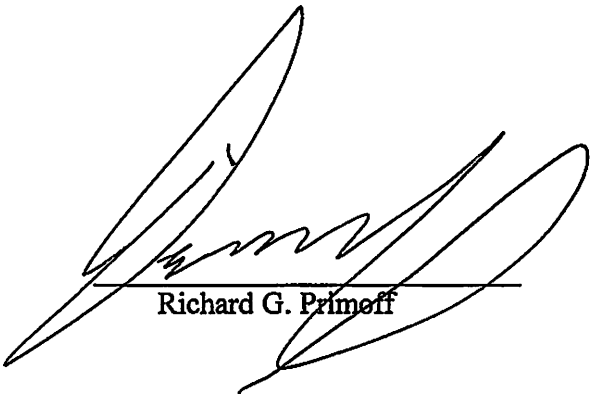
The Honorable Carol Fox Foelak
Office of Administrative Law Judges
U.S. Securities and Exchange Commission
100 F Street, NE, Mail Stop 2557
Washington, DC 20549

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

Dated: July 18, 2019
New York, NY



Richard G. Primoff