UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
NEW YORK REGIONAL OFFICE
200 VESEY STREET, SUITE 400
NEW YORK, NEW YORK 10281-1022

WRITER'S DIRECT DIAL LINE
ALIX BIEL
TELEPHONE: (212) 336-0148
FACSIMILE: (212) 336-1319
PRIMOFFR@SEC.GOV

March 19, 2020

By Fax and United Parcel Service

Vanessa Countryman, Secretary
Office of the Secretary
Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549

Re: In the Matter of Joseph S. Amundsen, et al. (3-18994)

Dear Ms. Countryman:

Enclosed please find the original and three copies of the Division of Enforcement's Brief in Opposition to Respondents' Appeal from Initial Decision. Copies of the enclosed are being served on counsel for the Remus Respondents, and Respondent Joseph S. Amundsen, today.

Respectfully submitted,

Thomas P. Smith, Jr.

cc: Counsel for Remus Respondents (Email and First Class U.S. Mail)
Respondent Joseph S. Amundsen (Email, First Class U.S. Mail, and UPS)
ALJ Carol Fox Foelak (Email)

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 ENFORCEMENT'S BRIEF IN OPPOSITION TO RESPONDENTS' APPEAL FROM INITIAL DECISION

Richard Primoff
Alix Biel
Attorneys for the Division of Enforcement
Securities and Exchange Commission
New York Regional Office
Brookfield Place
200 Vesey St., Suite 400
New York, NY 10281
(212) 336-0148 (Primoff)
(212) 336-0028 (Biel)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

SEC RULES AND REGULATIONS

OTHER RULES

OTHER AUTHORITIES

The Division of Enforcement ("Division") respectfully submits this memorandum in opposition to the Respondents' Petitions for Review.[1]

PRELIMINARY STATEMENT

The Remus Respondents and Amundsen violated the auditor independence requirements over a two-year period in 2015 and 2016, by conducting fourteen audits of seven broker-dealer clients (the "Broker-Dealers") while knowing at all times that Amundsen, their engagement quality reviewer ("EQR"), was the father of the financial operations principal ("FINOP") of the Broker-Dealers. In doing so, Respondents violated decades-old independence rules of the Commission and the American Institute of Certified Public Accountants ("AICPA"), which prohibit a concurring partner or EQR from participating in audits where a close family member or relative (expressly defined to include children) is the FINOP of the client.

The Remus Respondents do not dispute that they violated the Commission's independence rules over this two-year period. Nor do they challenge the cease-and-desist orders issued by ALJ Foelak, who found Respondents' conduct to be "egregious and recurrent fourteen times over two years."[2] ID at 12. In particular, the Remus Respondents do not contest key facts that are the basis for their liability, including that they: (1) hired Amundsen as their EQR knowing at all times that he was the father of their audit clients' FINOP; (2) knew that the EQR they hired was required under the auditing standards of the Public Company Accounting

---

[1]This brief adopts the following abbreviations: Michael T. Remus CPA ("Remus") and his firm, Michael Remus CPA ("Remus CPA"), collectively the "Remus Respondents"; Joseph S. Amundsen CPA ("Amundsen"), Initial Decision Rel. No. 1391 dated Dec. 5, 2019 ("ID"); Division Exhibit ("DX") and Respondents Exhibit ("RX"); transcript of the administrative hearing on June 18 and 19, 2019 ("Tr.").

[2]Amundsen did not submit a brief by the February 18, 2020 deadline, and largely sought in his December 11, 2019 petition to continue his meritless argument that the district court injunction issued against him in 1983 is invalid, and that the independence rules did not apply to him as an EQR – an unsupported assertion directly at odds with the Commission's rules.

Oversight Board ("PCAOB") to be independent; (3) knew that a parent-child relationship between an auditor and a client was inappropriate; and (4) did not check the Commission's rules, nor seek advice from the Commission.

Rather, the Remus Respondents insist that the one-year suspension under Rule 102(e), and the $56,227 in disgorgement ordered by ALJ Foelak, are too severe under the factors set out in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981), because (1) Remus was ignorant of the independence rules, and is now sincerely remorseful; (2) there were no other deficiencies in the fourteen audits, apart from their independence violations; and (3) Remus has a clean disciplinary history. The Remus Respondents' argument avoids the evidentiary record of their reckless indifference to their regulatory obligations, their continuing efforts to cast blame elsewhere, and the insincerity of their claimed acceptance of responsibility for their own misconduct. ALJ Foelak, in weighing the factors, considered all of the arguments the Remus Respondents make again on this appeal. The record and settled case law support relief at least as strong as that ordered below.

STANDARD OF REVIEW

The Commission's Rule of Practice 411(a) provides that in reviewing initial decisions of administrative hearing officers, the Commission "may make any findings or conclusions that in its judgment are proper and on the basis of the record." 17 C.F.R. § 201.411(a). Pursuant to this rule, the Commission considers an appeal of an administrative judge's initial decision on a *de novo* basis. *See* 5 U.S.C. § 557(b) (Administrative Procedures Act ("APA") provision granting agency reviewing initial decision "all powers which it would have in making initial decision except as it may limit the issues on notice or by rule"). *See also Mr. Sprout, Inc. v. United States*, 8 F.3rd 118, 123 (2d Cir. 1993) (characterizing § 557(b) as allowing for *de novo* review of initial decision by Interstate Commerce Commission); *Gross v. SEC*, 418 F.2d 103, 105, 107-08

(2d Cir. 1969) (applying § 557(b) and *de novo* standard to Commission appellate decision); *Commercial Capital Corp. v. SEC*, 360 F.2d 856, 857-58 (7th Cir. 1966) (applying provisions of APA to activities of Commission).

STATEMENT OF FACTS

I. The Respondents and Related Parties

Remus is a certified public accountant ("CPA") and the sole proprietor of Remus CPA, who has been auditing broker-dealers since 1992. Tr. 140:13-142:8; Answer of Remus Respondents (Mar. 20, 2019) ("Ans.") ¶ 3. Remus has a substantial accounting practice in addition to auditing broker-dealers, including auditing private companies, non-profit organizations and employee benefit plans, and, additionally, tax preparation. Opening Br. in Supp. of Pet. for Review of Remus Respondents (Feb. 18, 2020) ("Remus Br.") at 2.

Amundsen is a CPA, and in 1983 consented to injunctions from future violations of the antifraud provisions, and from appearing or practicing before the Commission, in *SEC v. Amundsen*, No. 83-civ-711 (N.D. Cal. Feb. 15, 1983) (the "Civil Action") (Tr. 186:9-13; DX 23); The state of California revoked his CPA license as a result of the injunctions, but in or about 2000 Amundsen was relicensed in California and obtained a license in New York. Tr. 194:12-20; DX 69-4 through DX 69-5. Amundsen then became a FINOP for broker-dealers registered with FINRA. Tr.186:14-22; DX 54-3, DX 54-5 (Amundsen BrokerCheck Report).

In 2011, FINRA barred Amundsen from association with its member firms for failing to disclose the prior injunction, and revocation of his CPA license, when registering as a FINOP. DX 54 (Amundsen BrokerCheck Report), DX 71-4. In sustaining FINRA's bar, the Commission found Amundsen's failures to disclose to be "egregious" conduct. *Joseph S. Amundsen*,

Exchange Act Rel. No. 69406, 2013 SEC LEXIS 1148, *50 (Apr. 18, 2013).[3] Most recently, the court in the Civil Action found Amundsen in contempt of the 1983 injunction for acting as EQR on the audits in question. DX 29.

Amundsen's adult daughter is Stephanie Murray ("Murray"). Tr. 204:17-19; 285:12-14. She learned about accounting and FINOP work from her father, who also introduced her to his FINOP clients and to Remus. Tr. 205:5-17;207:15-208:5;309:10-311:3. After FINRA barred Amundsen, Murray became a FINOP and assumed that role at five broker-dealers where Amundsen had been FINOP (Arjent LLC (n/k/a McBarron), Fox Chase Capital Partners LLC, Profor Securities LLC, Thomas P. Reynold Securities Ltd. and CapFi Partners LLC). She also became FINOP at two additional firms (Allegro Securities LLC and Race Rock Capital LLC), among others. Tr. 210:10-212:23; 311:12-321:12; DX 40-6 through DX 40-10; DX 54-6.

Amundsen maintained a close familial and professional relationship with Murray. Despite the FINRA bar, 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. Tr. 222:22-224:16; 225:16-21, 228:15-23; 321:13-323:22; DX 26; DX 47-2; DX 43; DX 44; Tr.; DX 35.

As FINOP, Murray's duties included reconciling bank statements; making net capital computations; preparing FOCUS reports; supervising financial operations, recordkeeping and the general ledger; making available to the firm and regulators various records (including ledgers,

---

[3]Amundsen has contested every decision against him, all unsuccessfully. *See e.g.*, DX 23 through DX 29; *Joseph S. Amundsen*, 2013 SEC LEXIS 1148 at *50-53 (sustaining FINRA bar); *Joseph S. Amundsen*, Exchange Act Rel. No. 75015, 2015 SEC LEXIS 101, *1-2 (Jan. 8. 2015) (denying reconsideration of decision sustaining FINRA bar.)

securities positions and bank statements); and providing records to the auditor. Tr. 325:18-332:24. As FINOP, Murray was also responsible for compliance with financial and operational rules, including the preparation and accuracy of reports submitted to regulators. *See* FINRA Rule 1022(b) (superseded by Rule1220(a)(4) on Oct. 1, 2018); DX 98; Tr. 37:20-23;49:20-51:23.

II. Respondents' Professional Obligations Under the PCAOB and Commission Auditor Independence Standards

A. Auditing Standard 7 and PCAOB Rules

On July 30, 2013, the Commission adopted amendments to Rule 17a-5 under the Exchange Act of 1934 (the "Exchange Act") that required broker-dealer audits to be conducted in accordance with the standards of the PCAOB.[4] 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).

In July 2009, the PCAOB 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 of an audit are required for audit engagements. *Id.* Thus, beginning in 2014 (when the Commission's amendments to Rule 17a-5 were effective, *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 41-30; DX 51 ¶¶ 8, 11-12; Tr. 80:6-11 (Remus); Tr. 417:20-418:6 (Carmichael).

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. Tr.

---

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

405:7-406:14 (Carmichael). Remus was familiar with the concurring partner role and review process, from before the release of AS 7. Tr. 98:15-99:8 ("[c]oncurring partner, engagement, it's all the same thing … different terminologies"); Tr. 276:21-277:6 (Amundsen).

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; 360:4-361:23 (Carmichael).

Remus was aware, when the PCAOB rules became applicable to his audits, that the EQR must be an associated person of his firm, and must have independence, integrity and objectivity under AS 7. Tr. 81:16-82:8;82:15-19; 82:23-83:2.

The PCAOB also expressly stated when issuing AS 7 that EQRs who are not partners of the accounting firm, but are outside individuals who are hired and compensated to act as EQR, are included in the Commission's definitions of an "audit partner" and a member of the "audit engagement team" for purposes of independence rules. The PCAOB warned that when hiring an outside EQR, the engagement partner would need to make additional inquiries of the EQR regarding his or her qualifications and independence. DX 41-8 & n.14, 41-25 through 41-26; DX 51 ¶¶ 12, 29; Tr. 359:6-360:3 (Carmichael).[5]

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

[5]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.

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. *See also* DX 51 ¶ 30.

B. Regulation S-X

The Commission's auditor independence rules are set forth in Rule 2-01 of Regulation S-X, promulgated under the Securities Act of 1933 (the "Securities Act"), 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, 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.

Rule 2-01(c) provides a non-exhaustive list of specific circumstances the Commission has determined to be inconsistent with the general standard of independence under Rule 2-01(c). DX 51 ¶ 6. 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).

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* p. 6, *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.

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.

Rule 2-01(c)(2)(ii) has been in effect since 2001, approximately fourteen years before the period of time relevant to this proceeding. DX 51 ¶¶ 24-25. This same "nondependent child rule" had 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). It is not an obscure rule. It is, rather, "'Auditing 101.'" DX 51 ¶ 23. *See also* DX 64A, Tr. 363:12-364:5 (Carmichael).[6]

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) 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, acknowledging FINOP duties); *see also* Tr. 270:21-271:24 (Amundsen) (identifying the FINOP duties under FINRA Rule 1022(b) as those he performed as FINOP).

III. Remus Ignores Red Flags and Hires Amundsen As His Engagement Quality Reviewer On the Broker-Dealer Audits

In 2015 and 2016, the Remus Respondents performed the fourteen audits at issue for the Broker-Dealers, for the years ended Dec. 31, 2014 and 2015, respectively. Remus hired Amundsen to be on his audit engagement team as EQR, providing concurring partner approval

[6] The inclusion of a "concurring partner" as a member of the attest engagement team for independence purposes is also not new. Tr. 361:13-17, 363:12-364:1 (Carmichael). *See* AICPA's Code of Professional Conduct and Bylaws (2008) (DX 64-53) (ET § 101.02, *Application of the Independence Rules to Close Relatives*); DX 64-31-33.

on these fourteen audits before the audit reports were filed with the Commission. ID at 5 (citing Tr. 149, 153); DX 1-21; Tr. 153:4-11; Tr. 83:3-85:6; 91:3-92:2.

For their audit fees, the Remus Respondents were paid a total of approximately $56,227 for the fourteen audits (each of the seven broker-dealers for year-end audits in 2014 and 2015), and they paid Amundsen $500 per audit as EQR, or a total of $7,000 for the fourteen audits. Tr. 135:15-137:19;153:4-6; 247:23-248:4; DX 87.

At the time the Remus Respondents hired Amundsen as EQR, Remus already knew that FINRA had barred (or "U-5'd") Amundsen from associating with FINRA member firms; Remus had learned this in 2011. Tr. 55:20-56:11, 73:12-22. Although Remus twice previously testified (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.

But even if, contrary to the findings made by ALJ Foelak (ID at 5), one credits Remus' belated claim that he knew only of the FINRA bar, and not the 1983 injunction, when he hired Amundsen, he would readily have discovered that information had he conducted even a cursory inquiry – as required, at a minimum, by AS 7. The injunction is a matter of public record (DX 71) on an issue he concedes was of interest to him. Remus Br. at 7.

Nor, if Remus' belated claim to ignorance is to be believed, did Remus make any additional inquiry, even after a representative of FINRA warned him in writing in 2014 that "we recommend that the Firm utilize a partner that is not barred from associating with FINRA member firms." DX 32. Remus ignored the recommendation, providing the revealing excuse that he had not asked for that unwelcome information:

> 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. Tr.

IV. Respondents Violate Auditor Independence Rules

For each of the fourteen audits at issue, the Remus Respondents issued a "Report of Independent Registered Public Accounting Firm," signed by Remus, in which he 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. He released these to the Broker-Dealers, who then filed their financial statements and the audit reports, with the Commission. In addition, for each of the fourteen audits, Remus represented to his audit clients that he was independent for the purposes of PCAOB and AICPA standards. DX 96-1 through DX 96-2; Tr. 121:9-122:11.

For each of his reviews of the fourteen audits, Amundsen completed and signed an "engagement quality review" form that he gave to Remus, on which he checked "Yes" to the statement: "I possess the competence, independence, integrity and objectivity to perform the engagement quality review." DX 15-18, 21 at Item 35, DX 19-20 at Item 2, Tr. 251:9-252:24.

As the Remus Respondents do not dispute (Remus Br. at 1n, 10), all of these representations were false: The participation by Amundsen on the Remus Respondents' audit engagement team on these audits, where the clients' FINOP was Amundsen's own daughter, was a clear violation of Rule 2-01(c)(2)(ii), and obvious independence standards of long standing. *See* pp. 5-8, *supra*.

In this proceeding, Remus initially sought to contest the fact that he knew Murray was Amundsen's daughter at all times during the conduct of the audits, *see* Answer ¶ 23 (admitting only that "at some point," Remus learned of the "father-daughter relationship"). Then, at the

hearing, Remus acknowledged that he knew of the relationship at all times during the conduct of the audits. Tr. 83:3-85:16;100:16-101:6;106:1-10;169:19-170:3.[7]

Remus also 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. But this assertion is at odds not only with the obvious nature of the independence violation at issue, but his concession that in 2014, he would not have considered it proper to conduct an audit of a client where his own son was the FINOP of the client. Tr. 120:2-121:8.[8]

Auditor independence requirements, and specifically those relating to relations with family members in an accounting role at the audit client, are not obscure or complicated. They are covered in elementary accounting education for CPAs. In short, as the Division's expert described it, it is "Auditing 101." DX 51 ¶ 23 (report of Division's expert).

Remus also conceded he 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. Yet he also testified that he never looked at the Commission's independence rules to determine if the parent-child relationship between Amundsen and Murray was prohibited for independence purposes, or asked anyone at the Commission, PCAOB or FINRA if that relationship was prohibited for independence purposes. Tr. 112:8-16;112:17-113:2.

---

[7] 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.

[8] The independence issue created by having a parent audit a client where the auditor's child is FINOP was obvious, for example, to the Chief Compliance Officer of one of Remus's clients, CapFi, when she later learned of it. Tr. 175:24-177:25;182:4-183:23 (Calder).

Remus took none of those steps, moreover, even while knowing that Amundsen had a disciplinary history with FINRA, and that FINRA had recommended he not engage someone as EQR who had been barred. *See* pp. 8-10, *supra.*

Respondents were clearly aware of the necessity to make inquiries into their independence on the audits. As discussed above, Respondents made and issued written representations as to their independence. In addition to those, Remus, to purportedly 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 "a member of the PCAOB and 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.

Amundsen also represented in the letter Remus drafted (DX 33) specifically 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."

The Remus Respondents replaced Amundsen as EQR after this two year period, but only because Remus made a "business decision," and had a "better deal" with someone else in that role. Tr. 167:11-14. The Remus Respondents at no time took any corrective action with respect to their impaired audits. Tr. 168:18-169:5.

ARGUMENT

I. RESPONDENTS COMMITTED PRIMARY AND SECONDARY VIOLATIONS OF EXCHANGE ACT RULES 17a-5(g) AND (i), AND ENGAGED IN IMPROPER PROFESSIONAL CONDUCT PURSUANT TO RULE 102(e)(1)(ii)

In the Initial Decision, ALJ Foelak found that:

(1) Remus CPA willfully violated Section 17(a) of the Exchange Act and Rules 17a-5(g) and (i) thereunder, by conducting audits that, contrary to representations, did not comply with PCAOB standards;

(2) Remus and Amundsen willfully aided and abetted and/or caused Remus CPA's violations of Section 17(a) and Rules 17a-5(a) and (i);

(3) Respondents caused the broker-dealers to violate Exchange Act Section 17(a) and Rule 17a-5(f) when the broker-dealers submitted annual reports to the Commission that included a report by an accountant that was not independent; and

(4) Respondents engaged in unprofessional conduct under Commission Rule 102(e)(1)(ii) and are subject to sanctions under Rule 102(e)(1)(iii).

The Remus Respondents concede now that they violated the independence rules that are the basis of these violations, and insist that their actions were merely negligent. Remus Br. at 1 n.1, 10, 12. They now ask for recognition of this fact as purported acceptance of their wrongdoing and as a demonstration of their cooperation in the proceeding below. Remus Br. at 6. But their position is disingenuous, as it was not until the hearing in this proceeding commenced, after the Division conducted discovery, that the Remus Respondents conceded both that they had violated the Commission's independence rules, and that they knew at all relevant times that Amundsen was Murray's father. *See* pp. 10-11, *supra*.

Before then, they denied having violated the auditor independence rules in their Answer, and even sought to cast blame on FINRA (which Remus admits warned him not to hire

Amundsen) and the Commission (with whom Remus concedes he never consulted). Their Ninth Affirmative Defense states:

> The Financial Industry Regulatory Authority, upon information and belief with the consent and on behalf of the SEC and other government representatives, represented to the Remus Respondents that Amundsen was qualified to be an Engagement Quality Receiver ("EQR") with respect to audits of broker-dealers.

Although they devote their appeal principally toward the remedies imposed in the Initial Decision, the Remus Respondents nonetheless also challenge ALJ Foelak's conclusion that they acted with a "reckless degree of *scienter*," Remus Br. at 11, based on their insistence that Remus did not "know" that hiring Amundsen as his EQR on audits where he knew Amundsen's daughter was FINOP violated the Commission's independence rules. As a result, the Remus Respondents argue, it was improper for ALJ Foelak to have concluded that Remus engaged in "improper proper professional conduct" under Rule 102(e)(1)(ii). Remus Br. at 11. Their argument is also relevant, of course, to the Initial Decision's finding that Respondents aided and abetted the primary violations under Rule 17a-5. ID at 8-9.

Their argument is without merit, as it misstates the law regarding *scienter*, and the definition of improper professional conduct under Rule 102(e)(1)(ii), and ignores the evidence of their reckless conduct.

A. Respondents Acted Knowingly or Recklessly

Remus, at all times while conducting these fourteen audits: (1) knew he was responsible for being knowledgeable about the independence rules; (2) knew that a parent-child relationship between an auditor and a client was inappropriate under the independence rules; (3) knew that Amundsen was Murray's father, and thus was aware of the circumstances that gave rise to the independence violations; (4) knew Amundsen was required to be independent; (5) obtained written representations from Amundsen regarding his independence that cited the very AICPA

standards on independence that they violated; and (6) claims he did not check the Commission's rules once, nor seeking advice from the Commission, regarding these rules. *See* pp. 10-12, *supra*.

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 LLP*, Initial Decisions Rel. No. 249, 2004 SEC LEXIS 831, *152 (Apr. 16, 2004) (*citing Amendment to Rule 102(e) of the Commission's Rules of Practice*, Release No. 33-7593, 1998 SEC LEXIS 2256 (Oct. 19, 1998)). 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)).

Remus' knowing disregard or egregious indifference to the independence rules are not the only evidence of his extreme departure from the standards of ordinary care. The 1983 injunction against Amundsen in the Civil Action prohibited him from appearing or practicing before the Commission, and, therefore, from acting as EQR on any audits filed with the Commission. Even if Remus were not aware of that injunction when he hired Amundsen, he ignored important red flags that would have led him straight to it. FINRA effectively *twice* warned the Remus Respondents not to use Amundsen: First, as Remus concedes he knew, when FINRA publicly ordered Amundsen barred in 2011, by virtue of his failure to disclose the 1983 injunction – a fact Remus could readily have discovered, had he made even minimal inquiry into the basis for the FINRA bar. Then, FINRA specifically recommended to Remus that he not engage as EQR someone whom FINRA had barred (which Remus contends he understood to refer specifically to Amundsen). *See* pp. 9-10, *supra*. Remus ignored those warnings, the latter merely because he had not affirmatively asked for that unwelcome information. *See* pp. 9-10,

supra. Yet he now has the temerity to complain (as he did in his Answer), that FINRA should have done even more to warn him about Amundsen.[9]

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. Tr. 168:18-169:5.

Commission precedent addressing conduct even less compelling than Remus's establish he acted recklessly, and the Remus Respondents cite no case law to the contrary. *See, e.g., Horton & Co., et al.*, Initial Decisions Rel. No. 208, 2002 SEC LEXIS 1712, at *36-37 (July 2, 2002) (knowledge requirement satisfied for aiding and abetting liability against experienced auditor for independence violation where, "if he was not aware of the Commission's independence requirement, he was reckless in not knowing that it forbade auditors from performing bookkeeping and compilation services [to the auditing client]"); *Ernst & Young LLP*, *supra*, 2004 SEC LEXIS at *153-156 (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").

---

[9] The Remus Respondents repeatedly describe FINRA as having told Remus he was "permitted" to hire Amundsen. *See, e.g.*, Remus Br. at 13. This is false: Remus had merely asked FINRA if its associational bar disqualified a person from acting as EQR, and in response, the FINRA representative responded to that narrow question. DX 32. FINRA is not the governing body on auditing standards, and Remus does not explain why he never consulted with either the PCAOB or the Commission on the appropriateness of using Amundsen as EQR, either at all, or in audits where Amundsen's daughter was the FINOP.

The independence impairment of a father participating in an audit of financial statements prepared by his own daughter is so obvious that Remus and Amundsen must have been aware of it. In fact, given the fundamental importance of independence, and Respondents' representations that they were independent and familiar with independence standards in PCAOB Rule 3526 and AICPA Rule 101, the evidence supports a finding that Respondents deliberately disregarded independence requirements. DX 1-21 (audit reports and EQR work papers); DX 33 (Amundsen's independence confirmation); DX 51 ¶ 30 (expert opining that "Remus and Amundsen were aware of but disregarded" disclosure requirement to audit client of all relationships between the auditing firm and the persons in financial reporting oversight roles).

At a minimum, Respondents recklessly violated independence standards in auditing the Broker Dealers, firms where Murray was FINOP. *See Sundstrand Corp., supra,* 553 F.2d at 1045; DX 51 ¶ 18 (expert opining, "[i]t should have been obvious to Remus and Amundsen that Amundsen … would be regarded by a reasonable person as lacking in impartiality. Even a casual understanding of … independence would raise a concern….").

B. Respondents Acted Unreasonably or Highly Unreasonably As Defined By Rule 102(e)(1)(iv)

Notwithstanding the Remus Respondents' incomplete citation (Remus Br. at 10), Rule 102(e)(1)(iv) defines "improper professional conduct" 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) (emphasis added).

In adopting its amendments to Rule 102(e) in 1998, the Commission noted that "[b]ecause of the importance of an accountant's independence to the integrity of the financial reporting system, the Commission has concluded that circumstances that raise questions about an accountant's independence *always* merit heightened scrutiny." *Amendment to Rule 102(e), supra*, SEC LEXIS 2256 at *34 (emphasis added). The Commission also noted that when, as here, an accountant violates the independence rules "intentionally or knowingly, including recklessly, or highly unreasonably," he or she "conclusively demonstrates a lack of competence to practice before the Commission," and "has engaged in 'improper professional conduct.'" *Id.*, 1998 SEC LEXIS 2256 at *3-5, 34.

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 2256 at *27. Unreasonable conduct "connotes an ordinary or simple negligence standard." *Id.* at *38. This standard is justified, because "[m]ore than one violation of applicable professional standards ordinarily will indicate a lack of competence." *Id.*

Thus, even assuming *arguendo* that Respondents did not act knowingly or recklessly (and they did), their fourteen audits plainly involved more than one instance of highly unreasonable conduct, or repeated instances of unreasonable conduct. The Remus 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.

And even were it possible to view their actions as neither reckless nor highly unreasonable, but rather as constituting merely ordinary or simple negligence – which the Remus Respondents insist is the case (Remus Br. at 12) – Respondents conducted at least fourteen separate audits in violation of basic independence rules 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." *Amendment to Rule 102(e),* 1998 SEC LEXIS 2256 at *39.

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 ¶¶ 36-38. The Remus Respondents' purported "quality control" procedures 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. RX 17 and RX 18; DX 88 and DX 95.

C. Amundsen's Contentions Are Specious

On December 11, 2019, Amundsen submitted a "Petition to Vacate" purporting to address both the rulings in the Civil Action, and the Initial Decision. The court in the Civil Action construed the petition as a request to vacate the permanent injunction issued in 1983, and denied Amundsen's request. *SEC v. Amundsen*, No. 83-cv-00711 (Order Denying Mot. to

Vacate, Dkt. No. 158, Dec. 19, 2019). ALJ Foelak construed the petition as a request for the Commission to review the Initial Decision. Notice, AP Rel. No. 6719, 2019 SEC LEXIS 5365 (Dec. 19, 2019).[10]

Amundsen's petition consists of his assertions (1) that the Commission "dropped all charges against him" in the Civil Action, despite the entry of the 1983 injunction to which he consented, and (2) that the independence rules do not apply to his role or work as an EQR on the fourteen audits at issue. Both arguments are specious.

Amundsen's cites a SEC News Digest dated February 25, 1983 (admitted as Amundsen Ex. 1), as support for his argument that the Commission dropped its charges against him. The digest discusses the settlement of the Civil Action, which "provided for the dismissal of the *administrative* proceedings upon entry of the final judgment of permanent injunction in the district court action (*i.e.*, the Civil Action) (Rel. 33-6451)." (emphasis added). Amundsen's argument in any event is belied by the orders entered against him in the Civil Action, including most recently the order entered by the court on December 19, 2019, denying this very petition.

Amundsen's unsupported argument that the independence rules did not apply to him is contradicted by the rules themselves (specifically, AS 7 and PCAOB 3520), and the Division's expert, Dr. Carmichael, who testified that for independence purposes, the EQR is regarded the same as an engagement partner on the audit, and is and was required to comply with them. (Tr. 357:3-358:19 (Carmichael); DX 51 ¶¶ 5-12 (expert report)).

Amundsen's argument is also contradicted by his recognition during the audits in question that the independence rules *did* apply to his role as EQR. Amundsen attested to his

---

[10] In light of Amundsen's failure to submit a brief in support of his petition, the Commission may dismiss his appeal. *See* Rule of Practice 180(c), 17 C.F.R. § 201.180(c); Corrected Order Granting Petitions for Review and Scheduling Briefs, Exchange Act Rel. No. 88001 (Jan. 16, 2020) at 2.

independence (falsely) as an EQR in a letter he provided to Remus, which detailed the independence standards of AICPA Rule 101 and PCAOB Rule 3526. DX 33 (Amundsen's independence confirmation); DX 64 at 31-33, 53 (Rule 101 of AICPA Code of Professional Conduct); DX 83 at 4, 9 (PCAOB Rule 3520); DX 41-8 (PCAOB's adopting release concerning AS 7)). Amundsen also (falsely) represented that he possessed the required independence in each of fourteen engagement quality review forms he completed (DX 15-18, 21 at Item 35 (EQR forms Amundsen signed); DX 19-20 at Item 2 (EQR forms Amundsen signed)).

Finally, the claim in Amundsen's petition that he has had an "unblemished career in the securities industry" is at odds with his extensive disciplinary history: He settled the Commission's fraud charges against him in 1983. *See, e.g.,* DX 23-25, 27-29. His accounting license was revoked. Tr. 194:8-11. He was barred by FINRA. *See* DX 54 (BrokerCheck report). The Commission upheld the bar, which was based on Amundsen's failures to disclose the 1983 injunction, and denied reconsideration. *Joseph S. Amundsen*, Exchange Act Rel. No. 69406, 2013 SEC LEXIS 1148 (Apr. 18, 2013) (upholding bar); Exchange Act Rel. No. 74015, 2015 SEC LEXIS 101 (Jan. 8, 2015) (denying reconsideration).

II. THE RECORD SUPPORTS SANCTIONS AT LEAST AS STRONG AS THOSE IMPOSED IN THE INITIAL DECISION

In considering the imposition of sanctions, ALJ Foelak, as required by Commission precedent, weighed:

> ...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 [their] conduct, and the likelihood that the [respondents'] occupation will present opportunities for future violations.

Steadman, supra, 603 F.2d at 1140. ALJ Foelak also considered the age of the violation, the degree of harm to investors and the marketplace, and the extent to which the sanction will have a deterrent effect. ID at 11-14.[11]

The Remus Respondents do not challenge the cease-and-desist order issued against them (Remus Br. at 1, n.1). They challenge instead the one-year practice suspension under Rule 102(e), and the order of disgorgement. Remus Br. at 1. The Remus Respondents insist that ALJ Foelak did not consider what they contend are "mitigating factors" under *Steadman*, despite the fact that the Initial Decision explicitly notes the very arguments the Remus Respondents raise now on appeal, and that ALJ Foelak declined to order the civil penalties, and the longer practice suspension, that the Division sought – sanctions the Division maintains are well supported by Respondents' egregious misconduct.

The evidentiary record and case law support sanctions at least as strong – if not stronger – as those imposed in the Initial Decision. Respondents' arguments should be rejected.

A. Respondents Egregiously and Repeatedly Violated Auditor Independence Rules Fourteen Times Over Two Years

Based on the undisputed clarity, and long-standing nature of the independence rules, and the testimony of the Division's expert witness, Dr. Carmichael, ALJ Foelak properly found, that "[i]t could not be clearer that the Commission does not accept as independent an audit team that includes quality review by a close family member of the client's FINOP." ID at 12. For the reasons discussed above, Respondents acted knowingly, or with reckless disregard of their regulatory obligations. *See* pp. 14-17, *supra.*

---

[11] The *Steadman* factors apply to Rule 102(e) proceedings against accountants. *See Michael C. Pattison, CPA*, Exchange Act Rel. No. 67900, 2012 SEC LEXIS 2973 *23 & n.34 (Sept. 20, 2012); *accord Thomas D. Melvin, CPA*, Exchange Act Rel. No. 75844, 2015 SEC LEXIS 3624 *8 & n.16 (Sept. 4, 2015).

Further, based on the evidence of their misconduct, ALJ Foelak properly found that Respondents' conduct was "egregious and recurrent fourteen times over two years...," and that it involved a "reckless degree of scienter, by both Remus and Amundsen." ID at 12. Nor did Remus cease his misconduct out of a new-found sense of professional responsibility Remus hired another accountant to be his EQR for the year-end 2016 audits of his clients, 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.

The Remus Respondents attempt to minimize their violations, by claiming that the fourteen separate audit engagements constituted but a single violation, because they all involved "one" violative action – their hiring of Amundsen as EQR. Remus Br. at 8-9. Having thus converted their fourteen violations into one through this rhetorical sleight of hand, they insist that the one-year suspension is too harsh, when this "one" violation is contrasted with Remus' "spotless" history. *Id.* However, there is no doubt that the Remus Respondents' conduct was recurrent: the separate audits were conducted over two years, and for each separate audit the Remus Respondents were paid audit fees in exchange for fourteen separate audit reports that each contained knowingly or recklessly false representations about their independence.

Notwithstanding this strained effort to convert a two-year span that encompassed fourteen egregious violations of the auditor independence rules, Respondents plainly engaged in recurrent misconduct, which would have continued had Remus not, as he put it, made a "better deal" with someone else as EQR.

B. Respondents' Assurances Against Future Violations Are Insincere and Display a Lack of Recognition of Their Misconduct

Amundsen has made no assurance against future violations, and on the contrary continues to insist the independence rules do not apply to him – and even after a finding of

contempt in the Civil Action based on his acting as EQR in violation of the 1983 injunction, Amundsen remains defiant. Amundsen Pet. to Vacate (Dec. 13, 2019). Even his petition demonstrates the lack of any recognition of his misconduct: Amundsen frivolously asserts that none of the cases cited in the Initial Decision are applicable "where the SEC has dropped all charges." *Id.*

Remus's assurances against future violations are not credible, and in fact serve only to underscore his lack of appreciation for the fundamental importance of auditor independence, and the material deficiencies in any audit report that results from an auditor who lacks it.

The Remus Respondents argue throughout their papers that Remus: "does not minimize the importance of the independence rule" (Remus Br. at 6); "sincerely regrets his decision to hire Amundsen as EQR for the clients where Murray served as a FINOP" (*Id.*); "has learned his lesson, has readily accepted responsibility to know and understand the rules, and has acknowledged that he failed that responsibility…"(Remus Br. at 10); "has been candid about his violation throughout this proceeding once he became aware of the nondependent child rule and its application to the present situation" (Remus Br. at 14); and "thoroughly cooperated with the Commission's investigation and enforcement of this matter…." (Remus Br. at 6).

These assurances are not supported by the meager factual citations they make in their papers, and are in fact contradicted by Remus' conduct during both the audits at issue and this proceeding. Remus was not "candid" about his wrongdoing throughout this proceeding, nor did he "accept responsibility." Remus filed an Answer that contested his liability and denied having violated the independence rules, and formally sought to cast blame for his impaired audits on FINRA and the Commission as an Affirmative Defense. *See* p. 14, *supra*. Remus even refused to acknowledge the fact that he knew at all relevant times that Amundsen was Murray's father

until he testified at the hearing – having been deliberately coy on that point in his Answer. *See* pp. 10-11, *supra*.

Remarkably, even while asking the Commission to credit his assurances that he has accepted responsibility, Remus continues to blame the Commission and FINRA – and now the PCAOB as well – for his professional misconduct, for not adequately publicizing Amundsen's 1983 injunction. Remus Br. at 12-13. FINRA warned Remus not to use an EQR whom it had barred, and he ignored the advice, merely because he had not asked for it. He is in no position to complain about inadequate publicity about Amundsen's disciplinary history, and the fact that he continues to do so is an aggravating, not mitigating, factor under *Steadman*.

Similarly troubling is the Remus Respondents' repeated insistence that there is no "evidence that any of the at-issue audits contained any errors of any or sort or that Remus compromised the audits that he performed." Remus Br. at 9. Although ALJ Foelak considered this point as a mitigating factor in declining to order the stronger remedies sought by the Division, the Remus Respondents' repeated emphasis of it – even while they pay lip service to the "importance of the independence rules" – disregards the critical point that, as the Division's expert witness observed, a violation by an auditor of the independence rules, by itself, renders the entire audit opinion materially deficient.

The Remus Respondents' insistence that despite the independence impairments, the audits were uncompromised – essentially, no harm-no foul – suggests they would have the Commission create an exception to the independence requirements for impaired audits where there is no other underlying audit issue. Under such an ill-advised exception, audits would be acceptable even if auditors were married to their clients' employees, or had a financial interest in their client, or had any number of other conflicts – provided the audit figures were accurate.

Such an exception would swallow the auditor independence rules and negate all independence requirements.

As Dr. Carmichael testified, 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.

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. 371:8-16; DX 51 ¶ 18.

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.

As noted above, the Commission has stated that when, as here, an accountant violates the independence rules "intentionally or knowingly, including recklessly, or highly unreasonably," he or she "conclusively demonstrates a lack of competence to practice before the Commission," and "has engaged in 'improper professional conduct.'" *Amendment to Rule 102(e), supra*, 1998 SEC LEXIS 2256 at *3-5, 34; *see also United States v. Arthur Young & Co.*, 465 U.S. 805, 817-18 (1984) (accountant who disregards professional obligations lacks competence to discharge "'public watchdog' function" demanding "total independence from the client at all times.")

Similarly unpersuasive is the Remus Respondents' assurances of sincere regret for having hired Amundsen. As demonstrated even by the portion of Remus's testimony they cite (Tr. 116-17, 167 (Remus Br. at 6)), Remus offered at best regret at being subject to this enforcement proceeding, not regret for his misconduct, and a dismissive impatience with any scrutiny of his actions, and indifference to reading relevant sections of the AICPA Code of Conduct – incredulity, even, that he would be expected to – even though that indifference, in part, is what brought him to this point. *See* Tr. 115:2-116:4.[12]

Remus's testimony also demonstrated his continuing refusal to acknowledge that his representations to his audit clients that he was independent on these audits were false, Tr. 123:3-14. He maintains, even now, his flippant attitude toward Amundsen's disciplinary history and FINRA's express recommendation that he not hire Amundsen because of it. As Remus phrased it, "[i]f I wanted a recommendation, I would have asked for it." *See* p. 10, *supra*.

Remus has also failed to alter his firm's procedures in a way that would mitigate repeating violations in the future (*see* Tr. 134:1-135:8 (Remus testifying that same procedures

[12] Asked to elaborate on why he regrets having hired Amundsen, Remus replied only "we wouldn't be here today, right?" Tr. 167:17-22.

from 2014 remain in place); DX 51 ¶ 36 (expert report discussing required quality control procedures), ¶ 38 (opining that Remus' procedures were inadequate to reasonably assure against Remus's own disregard of requirements). And to this day, Remus has made no effort to correct the impaired audits or even disclose to his audit clients that he issued (and was paid for) impaired reports that remain on file with the Commission for public review (*see* Tr. 168:18-169:4, 170:5-20) (Remus testifying that he never disclosed his independence impairments to any audit client, although he notified the PCAOB of the Administrative Proceeding; DX 51 ¶¶ 33-35 (expert report discussion of duty to correct audit reports and ensure against future reliance on them)).

C. Respondents' Occupations Provide Ample Opportunities for Future Violations

Both Remus and Amundsen remain active accountants and auditors, creating myriad opportunities for future violations. Amundsen, despite his 1983 injunction against appearing or practicing before the Commission, has been reprimanded repeatedly in the past three decades for doing just that. *E.g.*, DX 25 (Jan. 19, 2012 Order re Mot. for Contempt); DX 28 at 5:4-6 (court commenting in 2018 "You said forever, for the rest of your life, you wouldn't do this. So now you're trying to wiggle out of this"); DX 29 (May 1, 2019 Order Finding Amundsen in Contempt).

Remus, while claiming to have learned a "sobering lesson" about complying with independence requirements, tries to have it both ways: deflecting blame elsewhere and minimizing the importance of this most critical auditing standard, while asking for additional, undeserved credit from the Commission (having already received it in the Initial Decision), for responsibility he has refused to assume. Strong sanctions are warranted here to ensure that he and other auditors appreciate adherence to the professional standards that provide public confidence in audit reports found in the Commission's files.

D. Respondents Were Properly Ordered To Disgorge Their Fees

Although Respondents purport to challenge ALJ Foelak's order that the Remus Respondents disgorge the $56,227 in fees the Remus Respondents received from their impaired audits, and Amundsen the $7,000 in fees he received, none of the Respondents briefed the issue or offered any explanation as to why that relief is not fully warranted under the case law or evidence. "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)). 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 *170-3 (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., et al.*, Initial Decisions Rel. No. 340, 2008 SEC LEXIS 83, *77-78 (Jan. 14, 2008) (ordering disgorgement of respondent's compensation); *Kenneth R. Ward*, Exchange Act Rel. No. 47535, 2003 SEC LEXIS 3175, *60 (Mar. 19, 2003) (Commission Op.) (disgorgement of commissions).

Prejudgment interest is properly ordered as well. Prejudgment interest deprives a Respondent of an interest-free loan in the amount of his ill-gotten gains, thereby preventing unjust enrichment. *SEC v. Grossman*, No. 87 Civ. 1031, 1997 U.S. Dist. LEXIS 6225, *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).

The Remus Respondents do not argue the disgorgement ordered is not a reasonable approximation of the gains from their conduct that violated the securities laws. Tr. 135:10-137:12 (Remus testifying about his fees for the seven audits); DX 87 (checks paying audit fees). Instead, they (and Amundsen, who likewise does not challenge the amount) seek to keep the fees earned from audits they admit were deficient. Counsel for the Remus Respondents argue disgorgement is a "difficult obstacle," but they never introduced evidence of an inability to pay, despite expressly having been invited to do so by ALJ Foelak. Remus Br. at 6, n.4; Tr. Pre-Hearing Scheduling Conference 29:9-17.[13]

E. The Remus Respondents Were Properly Suspended From Appearing or Practicing Before the Commission

Respondents are responsible for an extraordinary number of independence violations that extended over a two-year period. In view of these facts, and the other *Steadman* factors discussed above, the Division had requested in the proceeding below that Remus be denied the privilege of appearing or practicing before the Commission for a period of not less than five years. That request – and thus of course the more lenient suspension ordered by ALJ Foelak – was well supported by 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."

---

[13] The Remus Respondents complain that an errant FINRA communication that Remus' suspension had already become effective, in December 2019—which was quickly corrected -- may have dissuaded existing clients from retaining them. The assertion is both irrelevant and entirely speculative. Indeed, it appears the Remus Respondents' real complaint is with the public nature of the instant proceeding, and the Initial Decision, none of which was affected one way or another by FINRA's communication. *See* Remus Br. at 19-20 & n.10.

S.W. Hatfield, CPA, et al., Exchange Act Rel. No. 73763, 2014 SEC LEXIS 4691 at *40-41 (Dec. 5, 2014) (permanently barring firm and accountant from appearing or practicing before the Commission as accountants); *see also Dohan & Co., ,et al.*, Initial Decision Rel. No. 240, 2011 LEXIS 2205 at *52 (June 27, 2011) (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 *46 (one year suspension ordered for independence violations for one audit client in two audit periods); *Russell Ponce*, Exchange Act Rel. No. 43235, 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); *Gregory M. Dearlove, CPA*, Exchange Act Rel. No. 57244, 2008 SEC LEXIS 223 at *107 (Jan. 31, 2008) (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); *see also* ID at 13, n. 18, and cases cited therein.

The Remus Respondents contend that certain of the cases cited in the Initial Decision (or by the Division) are inapposite, because they involved charges in addition to independence violations. Remus Br. at 16. They ignore the fact that the suspensions and bars in such cases were also lengthier as well – and that in cases involving only independence violations, and for a far smaller number and duration of such violations than those committed by the Remus Respondents, suspensions at least as long as those issued by ALJ Foelak were ordered. *See, e.g., Horton, supra.*[14]

[14] The Remus Respondents' attempt to distinguish *Horton*, because the individual charged in that case was the engagement partner and not the EQR, is unavailing, as both

The Remus Respondents' argument that the one-year suspension is "disparate with other similarly-situated auditors and audit companies" (Remus Br. at 20) is meritless, as five of the six cases they cite were settled proceedings, which have no precedential value. *See Natural Blue Resources, Inc.*, Initial Decisions Rel. No. 863, 2015 SEC LEXIS 3395 (Aug. 18, 2015).[15] Moreover, the Remus Respondents fail to note that in the settled case *PricewaterhouseCoopers LLP, supra*, 2019 SEC LEXIS 3064, at *31 (¶ 57), the Commission took into account that employees responsible for the independence violation would be disciplined separately – and in the companion case *Brandon Sprankle, CPA*, Exchange Act Rel. No. 87053, 2019 SEC LEXIS 3051, *25-27 (Sept. 23, 2019) (settled), which the Remus Respondents do not cite, the auditor on the engagement team who committed the independence violation was barred for four years from appearing or practicing before the Commission.[16]

---

engagement partners and EQRs are equally members of the audit engagement team for independence purposes – and *Horton* involved only one audit client over a two year period, not the fourteen impaired audits conducted by Respondents.

[15] *See PricewaterhouseCoopers LLP*, Exchange Act Rel. No. 87952, 2019 SEC LEXIS 3064 (Sept. 23, 2019) (settled); *RSM US LLP (f/k/a McGladrey LLP)*, Exchange Act Rel. No. 86770, 2019 SEC LEXIS 2248 (Aug. 27, 2019) (settled); *Larry D. Liberfarb, P.C.*, Exchange Act Rel. No. 76401, 2015 SEC LEXIS 4627 (Nov. 9, 2015) (settled); *Joseph Yafeh CPA, Inc.*, Exchange Act Rel. No. 73770, 2014 SEC LEXIS 4706 (Dec. 8, 2014) (settled); *Brace & Assoc., PLLC*, Exchange Act Rel. No. 73772, 2014 SEC LEXIS 4708 (Dec. 8, 2014) (settled).

[16] The one litigated case the Remus Respondents cite, *KPMG, LLP v. SEC*, 289 F.3d 109, 113-114 (D.C. Cir. 2002) (Remus Br. at 20), provides no support for their contention that the one-year suspension ordered in this case was too severe. *KPMG* involved a single impaired audit, for which KPMG was charged solely with negligence, and for which no suspension was sought in the first place – unlike the fourteen audits the Remus Respondents conducted, knowingly or at a minimum, recklessly, over a two year period.

CONCLUSION

For the reasons set forth herein, the Commission should reject Respondents' appeals, make the same findings of fact and conclusions of law as the Initial Decision; and order remedies at least as strong as those imposed in the Initial Decision.

Dated: March 19, 2020
New York, New York

DIVISION OF ENFORCEMENT

Richard G. Primoff
Alix Biel
Securities and Exchange Commission
New York Regional Office
200 Vesey Street, Brookfield Place, 4th Floor
New York, NY 10281-1022
Tel: (212) 336-0148 (Primoff)
Tel: (212) 336-0028 (Biel)
primoffr@sec.gov
biela@sec.gov

CERTIFICATE OF COMPLIANCE UNDER RULE OF PRACTICE 450(d)

Pursuant to the Commission's Rule of Practice 450(d), 17 C.F.R. § 201.450(d), I hereby certify that the foregoing brief complies with Rule of Practice 450(c), 17 C.F.R. § 201.450(c) in that the text includes 10,102 words as reported by the word processing system on which it was prepared, including footnotes and citations, but excluding the table of contents, table of authorities, the certificate of service and this certificate of compliance.

By: Richard G. Primoff
Richard G. Primoff

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, Thomas P. Smith, Jr. certify that on the 19th day of March, 2020, I caused the original and three copies of the Division of Enforcement's Division Of Enforcement's Brief In Opposition To Respondents' Appeal From Initial Decision to be filed with the Office of the Secretary by fax to 202-772-9324, and UPS overnight delivery to the address listed below:

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

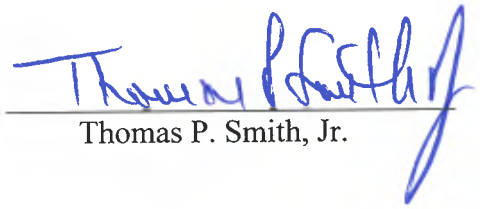
I also caused the foregoing papers to be served on Respondent Joseph S. Amundsen, CPA on March 19, 2020, by email to jamundsencpa@gmail.com, and by First Class U.S. Mail and UPS overnight delivery, to the address listed below:

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

I also caused the foregoing papers to be served on counsel for Respondents Michael T. Remus, CPA and Michael Remus CPA on March 19, 2020, by email to prginsberg@sullivanlaw.com and by First Class U.S. mail, to the address listed below:

Peter R. Ginsberg, Esq.
Christopher K. Shields
Sullivan & Worcester LLP
1633 Broadway, 32nd Floor
New York, NY 10019

Dated: March 19, 2020
New York, NY



Thomas P. Smith, Jr.