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

Admin. Proc. File No. 3-21841

In the Matter of the Application of

AHMED MOHIDIN, CPA, and
GEORGE WEINBAUM, CPA,

For Review of Disciplinary Action Taken By the

PUBLIC COMPANY ACCOUNTING
OVERSIGHT BOARD

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD'S OPPOSITION TO APPLICATIONS FOR REVIEW

May 20, 2024

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The Public Company Accounting Oversight Board (Board or PCAOB) opposes the applications filed by Ahmed Mohidin, CPA (Mohidin), and George Weinbaum, CPA (Weinbaum, together with Mohidin, the Applicants), for review by the Securities and Exchange Commission (Commission or SEC) of sanctions ordered against them in this PCAOB disciplinary proceeding.

INTRODUCTION

Mohidin and Weinbaum, through their violations in this case, subverted an associational bar imposed by the Board on Mohidin. Such bars, imposed for serious misconduct, protect the public from individuals who have shown an inability or unwillingness to meet their obligations as auditors of issuers or SEC-registered brokers or dealers. Compliance with a bar order is fundamental.

In 2016, for misconduct preceding this case, the Board barred Mohidin from associating with any registered public accounting firm. *See Goldman Kurland & Mohidin, LLP, and Ahmed Mohidin, CPA*, PCAOB No. 105-2016-027 (Sept. 13, 2016) (Bar Order). Mohidin proceeded to repeatedly violate the Sarbanes-Oxley Act of 2002, as amended (Sarbanes-Oxley), and PCAOB Rules by participating in audits and reviews for his former clients for over a year while the bar remained in place, from April 2017 to May 2018, for MJF Associates, APC (MJF), a PCAOB-registered firm. Weinbaum was the engagement partner on these audits and reviews. Despite knowing of the Bar Order, Weinbaum allowed his longtime friend and colleague, Mohidin, to participate in this work, directly engaging with him on the audits and reviews and taking no action to prevent the misconduct, in violation of PCAOB Rule 3502 ("Responsibility Not to Knowingly or Recklessly Contribute to Violations"). Then Mohidin, in exercising the leave granted by the Bar Order to petition the Board to terminate the bar after one year, made false

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statements about having complied with the Bar Order, on which the Board relied in lifting the bar. Mohidin's false and misleading statements in the petition process violated PCAOB Rule 5302 ("Applications for Relief From, or Modification of, Revocations and Bars").[1/]

BACKGROUND

The Bar Order was in effect from September 13, 2016, to June 13, 2018 (the Bar Period). *See Ahmed Mohidin, CPA*, PCAOB Rel. No. 105-2018-011 (June 13, 2018) (Order Terminating the Bar). During the Bar Period, Applicants were associated with MJF; both were partners of the Firm. Index to the Record, Record Document (RD) 132 at 08365; RD 133 at 08382. Mohidin joined MJF in January 2015 while the PCAOB investigation that ultimately resulted in the Bar Order remained ongoing. Mohidin persuaded MJF to hire him and Weinbaum despite the then-ongoing investigation because "[Mohidin] wanted to continue his career as an auditor of issuer engagements" and because "he needed" Weinbaum to assist him. RD 133 at 08384; RD 123 at 08172; Hearing Transcript (Tr.) 188-189.[2/] Mohidin also brought with him "between seven and ten" issuer clients, including Adamant DRI Processing & Minerals (Adamant); China Recycling Energy Corporation (China Recycling); and Yosen Group, Inc. (Yosen). RD 133 at 08384. At all relevant times, each of these clients was an "issuer" as defined by Sarbanes-Oxley Section 2(a)(7) and PCAOB Rule 1001(i)(iii). RD 132 at 08368.

Mohidin and Weinbaum have extensive audit experience. Mohidin is a certified public accountant (CPA) registered with the California Board of Accountancy (CBA) and has over 25

[1/] Citations to Mohidin's Application for Commission Review and Opening Brief are referred to herein as M.App. __ and M.Br. __, respectively. Citations to Weinbaum's Application for Commission Review and Opening Brief are referred to herein as W.App. __ and W.Br. __, respectively. Cited PCAOB orders, decisions, or settlements are available at https://pcaobus.org/oversight/enforcement/enforcement-actions (last visited May 16, 2024).

[2/] The hearing transcript appears as RDs 102-105.

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years of issuer audit experience. *Id.* at 08365. Weinbaum is a CPA registered with the CBA and Texas State Board of Public Accountancy and has over 45 years of experience auditing public companies. RD 133 at 08382. For decades, Mohidin and Weinbaum have worked with each other, and they continue to do so. *Id.* at 08383; RD 123 at 08171.[3/] At GKM and initially at MJF, Mohidin typically served as engagement partner and Weinbaum typically as engagement quality review partner on the same audits for what were considered Mohidin's clients. RD 133 at 08384; RD 123 at 08171-72.

I. Mohidin Violated Sarbanes-Oxley and PCAOB Rules by Unlawfully Participating in Issuer Audits and Reviews While Barred, and Weinbaum Violated a PCAOB Rule by Directly and Substantially Contributing to His Firm's Violations.

Sarbanes-Oxley Section 105(c)(7)(A) and PCAOB Rule 5301 ("Effect of Sanctions") make it "unlawful" for any person that is barred from being associated with a registered public accounting firm to willfully become or remain an associated person of such a firm "without the consent" of the Board or Commission. The same authorities prohibit registered public accounting firms from permitting a barred individual to associate with such firm. PCAOB Rule 5000 further requires any person associated with a registered public accounting firm to comply with all Board orders to which the person is subject. And PCAOB Rule 3502 specifies that a person associated with a registered firm cannot "take or omit to take an action knowing, or recklessly not knowing, that the act or omission would directly and substantially contribute to a violation by that registered public accounting firm of the Act [and] Rules of the Board."

[3/] During the Board's proceedings for this case, Applicants worked together at Prager Metis CPAs LLC, a PCAOB-registered firm. RD 143 at 08536, 08549. Applicants do not contest the PCAOB's assertions in prior briefing (PCAOB Motion dated Mar. 1, 2024, at 4 n.2) that they remain licensed CPAs. *See* Ahmed Mohidin and George Weinbaum CPA Search, *available at* https://cpaverify.org/ (last visited May 16, 2024). Nor do they contest that they are currently associated with another PCAOB-registered firm, Kreit & Chiu LLP.

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A. Mohidin Violated Sarbanes-Oxley Section 105(c)(7)(A) and PCAOB Rules 5000 and 5301(a) by Participating in Issuer Audits and Reviews While Barred.

Central to the question of whether a bar order has been violated is whether the barred individual acted as an "associated person" of a registered public accounting firm. Sarbanes-Oxley Section 2(a)(9) and PCAOB Rule 1001(p)(i) define that term broadly to include any "partner," "accountant," or "other professional employee of a public accounting firm" that, "in connection with the preparation or issuance of any audit report," "participates as agent or otherwise" on behalf of such accounting firm in "any activity" of that firm. PCAOB Rule 1001(p)(i) clarifies that this definition "do[es] not include a person engaged only in clerical or ministerial tasks." *See* Sarbanes-Oxley Section 2(a)(9)(B) (authorizing that exemption); *see also* PCAOB Rel. No. 2003-011A at 8 (Nov. 13, 2003) (PCAOB guidance stating that "[a]ny employee" of a PCAOB registered firm "who participates in any way in an audit" should be "presumed to be an 'associated person'").

MJF, Mohidin, and Weinbaum each understood that, when the Bar Order went into effect, Mohidin could not engage in any activity in connection with an issuer audit or review. MJF removed Mohidin as engagement partner for all his issuer clients. RD 133 at 08384. MJF also blocked Mohidin's access to issuer clients' files in MJF's electronic audit software. *Id.* With respect to Adamant, China Recycling, and Yosen, MJF replaced Mohidin with Weinbaum as the engagement partner. *Id*. And both Applicants conceded in testimony at the hearing that they understood that, as a result of the Bar Order, Mohidin could not perform any work on issuer audits and reviews, including those of Adamant, China Recycling, and Yosen, during the Bar Period. RD 132 at 08370; RD 133 at 08390; Tr. 195-97 (Mohidin), 513 (Weinbaum).

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Despite this understanding, the overwhelming evidence showed that, "on more than twenty different occasions during the Bar Period" Mohidin violated Sarbanes-Oxley Section 105(c)(7)(A) and PCAOB Rule 5301 by participating in issuer audit and review work while barred. RD 132 at 08369, 08374-08375. At the time of the violative conduct, Mohidin was a partner of MJF and had not received consent from the Board or Commission for him to associate. RD 132 at 08374. His conduct included:

- Reviewing work papers for issuer audits and forwarding substantive comments to the engagement team members;
- Reviewing drafts of issuers clients' filings with the SEC, raising substantive questions about language in those documents with engagement team members, and suggesting specific revisions to those documents before they were filed with the SEC;
- Discussing substantive issues related to significant audit areas with engagement team personnel; and
- Communicating directly with issuer client personnel about substantive accounting questions and how certain issues should be addressed in the clients' financial statements to be filed with the SEC.

RD 132 at 08369.

Each time Mohidin engaged in the above conduct, he performed a prohibited "activity" in connection with an issuer audit or review, and his actions were not limited to ministerial or clerical tasks. In fact, Mohidin's misconduct was substantial, comprising substantive engagement with issuer and audit personnel on material issues in three year-end audits and five quarterly reviews despite being barred from doing so. RD 132 at 08369 & n.6. He actively participated in the issuer audits and reviews, including through some 25 communications with issuer and audit personnel, weighing in on important issues, including:

- the "materiality section of the audit planning memorandum";
- the "accounting treatment" for "litigation matters" and related restatement disclosures;
- "the division of labor" between MJF and the China-based auditors on a quarterly review;

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- "'a [potentially] material misstatement in the balance sheet and cash flow statement"';
- "how to account for a deconsolidation" in the financial statements;
- a "material collectability issue";
- a "significant tax liability issue"; and
- the consequences of a "change in management" for one issuer, to which Mohidin provided his "professional opinion" directly to Yosen personnel that various of the issuer's subsidiaries should be treated as "discontinued operations" under relevant accounting literature.

RD 132 at 08375. Emails in the record show Mohidin directly communicating about these matters with audit and issuer personnel as if he were part of MJF's engagement team on the issuer engagements, which is inconsistent with the actions of someone who was barred from participating in "any activity" with respect to them. *Id.*

Mohidin acted intentionally and knowingly and thereby willfully. *Id.* & n.10. At the time of his violations, Mohidin was aware of the Bar Order; knew MJF was a registered public accounting firm; knew Adamant, China Recycling, and Yosen were issuers, and knew the questions he asked and the subjects on which he offered his opinions related to reviews and audits of those issuer clients. RD 132 at 08370. Despite his suggestions in this appeal that he did nothing wrong, Mohidin admitted in testimony that he understood during the Bar Period that he was prohibited from engaging in the above conduct. *See* Tr. 198, 214, 218-19 (Mohidin); RD 136 at 08448; *see also* Tr. 520-22, 581-83(Weinbaum).[4/]

[4/] Mohidin testified that he understood during the Bar Period that he could not: (i) perform any work on the audits and reviews of Adamant, China Recycling, and Yosen (Tr. 195-97); (ii) influence MJF's audits or reviews for issuer clients (*id.* at 207); (iii) advise on an issuer client audit, even on immaterial or insignificant issues (*id.* at 223); (iv) edit issuer clients' public filings (*id.* at 214); (v) edit (or instruct others to edit) work papers for issuer client audits or reviews (*id.* at 216-17); (vi) supervise or review any part of an issuer client audit or review (*id.* at 218); or (vii) communicate with issuer client personnel about their audits, including about accounting judgments, work papers, and issuer SEC filings (*id.* at 218-19). If an issuer client sent him an email, Mohidin acknowledged that he should have instructed the client to communicate with the engagement team partner. *Id.* at 198.

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B. Weinbaum Violated PCAOB Rule 3502 by Directly and Substantially Contributing to MJF's Violations.

For his part, Weinbaum violated PCAOB Rule 3502 by directly and substantially contributing to MJF's violations of Sarbanes-Oxley Section 105(c)(7)(A) and PCAOB Rule 5301(b). As the Board found, MJF violated these provisions by permitting Mohidin to associate despite MJF's knowledge of the Bar Order. RD 133 at 08382 n.1, 08386. During the Bar Period, Weinbaum was the engagement partner on the audits and reviews on which Mohidin participated, having inherited the role on the Adamant, China Recycling, and Yosen from Mohidin upon the effectiveness of his bar. *Id.* at 08384. Weinbaum admitted that, as engagement partner, he was responsible for MJF's performance in these engagements. *Id.* at 08386. Yet after witnessing Mohidin's repeated violations of the Bar Order, Weinbaum failed to take any steps to prevent further violations. *Id.* at 08390. And, in multiple instances, he actively engaged with Mohidin on the engagements. *Id.* at 08393; RD 123 at 08196-08197.

Weinbaum's contribution to MJF's violations was direct and substantial. Besides Mohidin, no other person at MJF was more responsible for MJF's violations. *Id.* at 08392-93. Weinbaum played a material, facilitating role. *Id.* He was the lead auditor on the three issuer engagements in which Mohidin participated. *Id.* As Mohidin's longtime friend and colleague, including at GKM, Weinbaum had first-hand knowledge of the Bar Order; understood how it prevented Mohidin from participating in audits and reviews of Mohidin's former clients; and bore witness to Mohidin's repeated involvement in the audits and reviews involved here, notwithstanding the Bar Order. RD 133 at 08393.

As the Board noted in this case, for over a year, Weinbaum was included on or forwarded email correspondence between Mohidin and issuer or audit personnel for Adamant, China

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Recycling, and Yosen engagements. *Id.* The record includes some 28 emails that Weinbaum either received or himself sent where Mohidin was the intended recipient, copied, or actively engaged with issuer and audit staff about those audits or reviews. *Id*. In fact, highlighting their significance, many of these emails were retained in hard copy by Weinbaum in a binder that contained audit materials that Weinbaum viewed as important. RD 133 at 08390 (noting 13 emails retained by Weinbaum); *id.* at 08393. The emails showed, among other things, Weinbaum directly engaging with Mohidin on issuer audits and reviews, as well as Mohidin (i) updating Weinbaum on emerging audit issues and providing his opinions on those matters, (ii) directing junior audit personnel to perform tasks related to the issuer audits and reviews; (iii) furnishing draft responses to questions from issuer or auditor personnel, and (iv) proposing meetings with Weinbaum to discuss issues on audits and reviews. RD 133 at 08393; RD 123 at 08187.

Weinbaum's acts and omissions were at least reckless. RD 133 at 08393.[5/] Despite knowing of the Bar Order and surrounding prohibitions, he facilitated Mohidin's participation in the Adamant, China Recycling, and Yosen audits and reviews as demonstrated by the emails in the record. *Id.* Like Mohidin, Weinbaum admitted in hearing testimony that he understood during the Bar Period that Mohidin was prohibited from engaging in the kind of conduct that formed a basis for Mohidin's violations. *Id*.[6/] Weinbaum also understood at the time of the violative

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[5/] "Recklessness is an 'extreme departure from the standards of ordinary care, . . . which presents a danger' to investors or markets 'that is either known to the (actor) or is so obvious that the actor must have been aware of it.'" *Kabani & Co.*, SEC Rel. No. 34-80201, 2017 WL 947229, *13 (Mar. 10, 2017) (citation omitted), *aff'd,* 733 F. App'x 918 (9th Cir. 2018).

[6/] Weinbaum testified that the Bar Order prohibited Mohidin from (i) working on issuer audits and reviews (Tr. 513); (ii) making editorial comments that could potentially influence an issuer audit (*id.* at 520); (iii) making comments that could potentially influence audit personnel working on issuer audits, including providing technical advice to audit personnel about issues that arose during issuer audits or reviews (*id.* at 521-22); and (iv) making comments that could potentially influence issuer client personnel or issuer clients' representatives who were involved in preparing the clients' financial statements (*id.* at 521). Weinbaum specifically conceded that certain of Mohidin's conduct, reflected in emails in the record, was improper in light of the Bar Order. RD 133 at 08390; *see,*

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conduct that MJF could be subject to potential sanctions if Mohidin was permitted to participate in issuer audits while he was barred, or if MJF personnel facilitated Mohidin's violation of his Bar Order. RD 133 at 08396; Tr. 526-27 (Weinbaum). Weinbaum also admitted in testimony that he understood that his own conduct during the Bar Period could cause MJF to violate the Bar Order. Tr. 527. Weinbaum also stood to gain by permitting Mohidin to associate, notwithstanding the bar: Weinbaum was essentially filling in for Mohidin as engagement partner for what were considered Mohidin's issuer clients while Mohidin purported to serve out his time-limited bar. *See* RD 143 at 08537, 08549. Indeed, after Mohidin's Bar Order was terminated, just like before the Bar Order was entered, Weinbaum continued to work, along with Mohidin, as a team for Mohidin's issuer clients, on a contractual basis. RD 143 at 08549.

II. Mohidin Violated PCAOB Rule 5302 by Submitting Sworn Affidavits to the Board that were False and Misleading.

PCAOB Rule 5302(b)(1) provides that "[a]ny person subject to a bar imposed by an order that contains a proviso that a petition to terminate the bar may be made to the Board after a specific period of time may file a petition for Board consent to associate . . . with a registered public accounting firm." PCAOB Rule 5302(b)(2) requires that such petition be accompanied by an affidavit by the petitioner, and PCAOB Rule 5302(b)(4)(iii) specifies that the affidavit must address "the petitioner's compliance with the order imposing the bar." As underscored by the affidavit requirement, the information provided to Board pursuant to Rule 5302 must be "accurate and truthful." *Kabani*, 2017 WL 947229, *12 & n.20 (citing authorities).

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e.g., Tr. 583-84 (Weinbaum reflecting on an email he received (RD 96a at 04855) that "[Mohidin] had no business instructing [a junior auditor] to do anything" on the 2017 Adamant audit).

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The record establishes that in two separate submissions to the Board – one in September 2017 and the other in May 2018—Mohidin made eight false and misleading statements about his compliance with the Bar Order during the Bar Period, in violation of PCAOB Rules 5302(b)(2) and (b)(4). Associational bars protect the public from individuals who have shown an inability or unwillingness to comply with their obligations as auditors of issuers or SEC-registered brokers or dealers.

In his sworn September 13, 2017 Affidavit, Mohidin made the following statements in support of his petition to terminate the bar order:

- that he had "complied fully with the [Bar Order]";
- that during the Bar Period, he had "continued to be employed by M[JF] but . . . stopped performing services on, and had no direct or indirect involvement with, any audit engagement subject to PCAOB rules (*i.e.,* audits of issuers, brokers, or dealers)"; and
- that his activities at MJF during the Bar Period "focused solely on providing compilation and review services and limited scope audits of financial statements of employee benefit plans to [his] clients, none of whom were issuers, brokers, or dealers."

RD 132 at 08371 (emphases added). These statements were false and misleading–by the time Mohidin made them, he had already participated in quarterly reviews and audits of the 2017 financial statements of Yosen and China Recycling. *Id*.

In his May 23, 2018 affidavit to the Board, Mohidin repeated these three misrepresentations as well as making two additional misrepresentations about his activities during the Bar Period. Mohidin emphasized, falsely:

- "[T]o be clear, from September 13, 2016 to the present [*i.e.,* May 23, 2018], I have not performed any audit work for issuer clients or broker dealers"; and
- "Again, I wish to emphasize that I have not performed any work for the Firm's issuer clients."

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Id. (emphases added). Mohidin's statements were false and misleading because, by the time he made them, he had already participated repeatedly in quarterly reviews and audits of the 2017 financial statements of Adamant, China Recycling, and Yosen. *Id*.

In fact, on the very day that Mohidin made the May 23, 2018 statements to the Board and in the days before, Mohidin participated substantially in an issuer audit. RD 132 at 08369. As emails from the record show, on May 23, 2018, Mohidin provided a junior MJF auditor with his edits to a draft litigation footnote for inclusion in Adamant's 2017 financial statements (Exhibit (Ex.) J-15; Tr. 277); also on the same day he solicited "any further comments" from Weinbaum concerning a reclassification in Adamant's balance sheet (Ex. J-13; Tr. 274-75); and just days before that, he provided audit personnel with his proposed edits to Adamant's financial statements (Ex. J-12 (Mohidin email stating: "Adamant restatement: They should add the following in the restatement footnote"); Ex. J-62 at 292 (Mohidin investigative testimony)). Such brazen conduct exemplifies Mohidin's high degree of culpability—which the Board described as intentional and knowing—as well as his pattern of deceit and disregard for regulatory obligations repeatedly demonstrated by this record and proceeding. RD 132 at 08370, 08378-08379; RD 142 at 08520-08521, 08523.

Mohidin's misstatements were also material. RD 132 at 08379. They addressed a specified factor in PCAOB Rule 5302 (b)(4) that the Board considers in determining whether to terminate a bar. In terminating Mohidin's bar, the Board, in fact, stated that it had relied on "the information supplied and representations made" by Mohidin in his petition. *Id*. (quoting *Mohidin*, PCAOB Rel. No. 105-2018-011 at 2).

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ARGUMENT

This case does not present any close questions. Despite many rounds of merits briefing over the course of the case, Applicants take little—let alone any meaningful—exception to the extensive findings of fact supporting the violations. A wealth of documentary and testimonial evidence thoroughly establishes Mohidin's unlawful participation in issuer audits and reviews during the Bar Period and Weinbaum's direct, substantial contribution to MJF's violations in permitting Mohidin to unlawfully associate. Applicants have both acknowledged that Mohidin's conduct—reflected in numerous emails Weinbaum admitted he received—violated the Bar Order. *See* RD 136 at 08448; Tr. 198, 214, 218-19 (Mohidin); RD 136 at 08448; *see also* RD 133 at 08390; Tr. 520-22, 547, 554, 575-76, 581-83, 587, 600-02, 604 (Weinbaum). What's more, Mohidin conceded in a sworn declaration before the Board that his conduct during the Bar Period "did not comply" with the Bar Order and was "improper" (RD 136 at 08448), and he takes no exception in this appeal to the findings that he violated PCAOB Rule 5302 by providing eight false and misleading statements to the Board. The findings of violations against Applicants and the Board's well-founded, tailored sanctions should be sustained.

Mohidin's and Weinbaum's briefs in support of their applications for review disregard their repeated concessions in this proceeding that Mohidin's activities violated the Bar Order, and remarkably, despite extensive, uncontested findings to the contrary, Applicants suggest now on appeal to the Commission that they did nothing wrong. Applicants' aim is clear: to obscure their clear violations by essentially rehashing the same insubstantial, baseless arguments that were thoroughly rejected by the Board and by asserting on appeal here, for the first time, an untimely claim that the PCAOB's action somehow violated an unspecified statute of limitations. Their arguments may be grouped first by their challenges to the violations, followed by their

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procedural and other claims, and finally their sanctions claims. We address below the litany of arguments in Applicants' briefs, all of which should be rejected.[7/]

I. Applicants' Challenges to the Findings of Violations Are Meritless

A. Neither the Board nor the Hearing Officer Reversed "the Burden of Production" or Proof.

Applicants claim the Board erred in "reversing the burden of production." M.Br. 1. Mohidin fails to elaborate on this claim. Weinbaum asserts variously, without citing any authority, that the PCAOB has the "burden of production" (i) to explain why it did not offer him the same settlement terms it supposedly offered to another respondent in a wholly separate, settled matter and (ii) "to explain my statistics." W.App. 1; W.Br. 8. Weinbaum argued similarly that the Hearing Officer improperly "reversed the burden of proof." RD 133 at 08395.

PCAOB Rule 5204(a) states that in a disciplinary proceeding the Division of Enforcement and Investigations (DEI) shall the bear the burden of proving an alleged violation by "a preponderance of evidence." DEI did so here by putting forth substantial evidence, including documentary and testimonial evidence, to establish the allegations that Mohidin participated in issuer audits and reviews while barred and that Weinbaum directly and substantially contributed to MJF's violations. It is well established that, once the proponent puts forth evidence to establish its case, the defense bears "the burden of producing evidence to

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[7] In many instances, Weinbaum's brief contravenes SEC Rule of Practice 450(c) by simply incorporating by reference arguments he suggests he made before the PCAOB, which has the effect of leaving his argument before the Commission wholly indecipherable. Weinbaum's mass incorporation by reference should not be countenanced. *See* 17 C.F.R. 201.450(c) ("Incorporation of pleadings or filings by reference into briefs submitted to the Commission is not permitted."); *cf. Jose P. Zollino*, SEC Rel. No. 34-55107, 2007 WL 98919, *2 n.12 (Jan. 16, 2007) (citing Rule 450(c) in "limit[ing] . . . review to the issues raised in Zollino's petition for review, and his opening and reply briefs, without reference to any additional issues he may have raised in his filings before the law judge").

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support their factual claims." *Kabani*, 2017 WL 947229, *10; *cf. The Dratel Grp., Inc.*, SEC Rel. No. 34-77396, 2016 WL 1071560, *9 (Mar. 17, 2016) ("Although the burden of proving that Applicants engaged in violative conduct rests with FINRA, Applicants bore the burden of producing evidence to support their claimed factual defenses to the charged conduct.").

Despite their suggestion of impropriety, Applicants fail to identify any deficiency in the factual findings. *See* RD 142 at 08524; *see also* RD 123 at 08166. Indeed, after several rounds of briefing about this matter here on appeal, only Weinbaum appears to contest, albeit cryptically, the finding that he sat idly by while Mohidin continually participated, asserting that he orally told "Mohidin to shut up" about audit issues. W.Br. 29. But as the Board found, Weinbaum provided "no documentation or other record evidence corroborating such discussions. The fact that Weinbaum received emails for more than a year showing Mohidin participating unabated in issuer audits and reviews strongly suggests the discussions never took place." RD 133 at 08394. And the two other witnesses who testified at the hearing, including Mohidin, failed to corroborate Weinbaum's assertion. *Id.* Weinbaum had every opportunity to ask these witnesses questions or to call his own witnesses to corroborate his story, but he did nothing of the sort. *See* RD 57b at 03228.

As to Weinbaum's claim about a prior settlement, there is no requirement in PCAOB rules that the Board explain why a particular offer was not made in settlement talks. Because the settlement that he cites (*Deloitte & Touche LLP*, PCAOB Rel. No. 105-2013-008 (Oct. 22, 2013)) includes a substantial civil money penalty of $2,000,000 against the settling party, it is unclear to what prior offer he refers. In any event, it is well established that "the appropriate sanction depends on the facts and circumstances of each particular case and cannot be determined precisely by comparison with actions taken in other proceedings." *Hatfield*, 2013 WL

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3339647, *26. In a litigated proceeding, '"settlements are not precedent,'" especially with respect to sanctions. RD 132 at 08376 at n.11 (quoting *S.W. Hatfield, CPA*, SEC Rel. No. 34-73763, 2014 WL 6850921, *6 & n.28 (Dec. 5, 2014)). As the Commission has repeatedly explained, "comparisons to settled cases are not relevant to [the] sanction analysis . . . because auditors 'who offer to settle may properly receive lesser sanctions than they otherwise might have.'" *E.g., Hatfield*, 2013 WL 3339647, *26 (citation omitted); *Thomas D. Melvin, CPA*, SEC Rel. No. 34-75844, 2015 WL 5172974, *5 (Sept. 4, 2015) ("sanctions imposed in connection with settlements are frequently less severe than those that result from litigation"). Sanctions in settled cases reflect "pragmatic considerations such as the avoidance of time-and-manpower-consuming adversary proceedings." *Hatfield*, 2013 WL 3339647, *26 (citation omitted); *accord United States v. Armour & Co.*, 402 U.S. 673, 681 (1971).[8/]

It is also unclear what Weinbaum means by "his statistics." W.Br. 8. To the extent he suggests selective prosecution, Applicants have made no showing that this amply proven, largely uncontested disciplinary proceeding against them for fundamental, egregious wrongdoing was motivated by improper considerations "'such as race, religion, or the desire to prevent the exercise of a constitutionally-protected right.'" *John B. Busacca, III*, SEC Rel. No. 34-63312, 2010 WL 5092726, *13 (Nov. 12, 2010) (citation omitted). Despite Weinbaum's suggestion (W.Br. 10) that he was targeted because he is not employed by the "Big Four," he does not explain how such a status somehow makes him part of a "protected class" under the Equal

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[8/] Moreover, the Board's determination of whether to proceed against the firm and not individuals in a settled proceeding is well within the Board's "prosecutorial and regulatory discretion" and "presumptively unreviewable." *Eagletech Commc'ns, Inc.*, SEC Rel. No. 34-54095, 2006 WL 1835958, *4 (July 5, 2006) (citing *Heckler v. Chaney*, 470 U.S. 821, 831 (1985)). Such decisions may well reflect a vast array of considerations, including apportionment of responsibility and blame among multiple actors.

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Protection Clause or establish the other elements of a selective prosecution claim. *See, e.g., Richard G. Cody*¸ SEC Rel. No. 34-64565, 2011 WL 2098202, *19 (May 27, 2011) (listing elements); *see also Hibbard, Brown & Co.*, SEC Rel. No. 34-35476, 1995 WL 116488, *9 n.67 (Mar. 13, 1995) (rejecting selective prosecution argument based on the firm's size).

B. That Mohidin "Did Not Prepare, Sign-Off or Review Any Documents" in the Audit Binder is Wholly Irrelevant.

Despite clear concessions of wrongdoing and no challenges to the findings of fact, Mohidin on appeal repeatedly contends (without elaboration or citation to any authority) that he "did not prepare, sign-off or review any documents in MJF's audit binders." M.App. 2; M.Br. 2. Elsewhere, he asserts an unspecified "misapplication of facts." M.Br. 1. While MJF blocked Mohidin's access to the audit files on its system, the record shows that Mohidin, nevertheless, continued to participate in issuer audits and reviews, primarily through email communications with audit and issuer personnel, including Weinbaum. Contrary to Mohidin's assertions to the Board, the record showed that through email Mohidin, among other things, "participated to various extents in 'audit planning,' 'performance of procedures,' and 'audit strategy' and had 'access to' at least certain 'work papers.'" RD 132 at 08376 & n.13.

As to Mohidin's liability, violations of Sarbanes-Oxley Section 105(c)(7)(A) and PCAOB Rules 5000 and 5301(a) are in no way contingent upon whether the barred individual "prepare[d], sign[ed]-off [on] or review[ed]" the official audit binder. Rather, liability turns on, as relevant here, whether the barred individual engaged in "any activity" "in connection with the preparation or issuance of any audit report." Mohidin's repeated, persistent, and substantial conduct constituted such activities, as discussed above.

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C. Equally Irrelevant is Mohidin's Contention that He Never Received Any Issuer-Related Compensation During the Bar Period.

Mohidin also flatly states, "I received no compensation from MJF on any issuer client during the bar period." M.Br. 3. However, his lack of compensation is neither exonerating nor mitigating. The Board did not predicate its findings of violations upon the "compensation" prong of Sarbanes-Oxley Section 2(a)(9)(A)(i) and PCAOB Rule 1001(p)(i)(1) but rather upon the "participat[ion]" prong under Sarbanes-Oxley Section 2(a)(9)(A)(ii) and PCAOB Rule 1001(p)(i)(2). *See* RD 132 at 08369-08370. Moreover, in its sanctions analysis, the Board considered that Mohidin "had a particular financial interest" in accommodating the issuer clients involved through his continued audit work for them, and Mohidin has never contested that fact. RD 142 at 08526-08527 & n.7.

D. The Board Did Not "Create Ex Post Facto Law."

Mohidin's brief contends, without argument or support, that the Board erred by improperly "creating ex post facto law." M.Br. 1. Weinbaum made a similar claim in his application (at 1) but has since abandoned that claim. In any event, the Board did no such thing. The Ex Post Facto Clause of the U.S. Constitution prohibits applying a law retroactively that "inflicts a greater punishment, than the law annexed to the crime, when committed." *Calder v. Ball*, 3 U.S. (3 Dall.) 386, 390 (1798); *Landgraf v. USI Film Prods., Inc*., 511 U.S. 244, 266 n.19 (1994) ("We have construed [the Ex Post Facto Clause] as applicable only to penal legislation."). Even if the Clause were to apply to PCAOB disciplinary proceedings, which are not criminal proceedings, the Board did not retroactively apply any of the provisions that Mohidin and Weinbaum violated, all of which were in force well before they engaged in their misconduct. *See* RD 133 at 08395-08396 (citing *Lynne v. Mathis*, 519 U.S. 433, 441 (1997)); *see also* Sarbanes-

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Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745, § 105(c)(7)(A) (July 30, 2002); *SEC Order Approving PCAOB Rules 5000 through 5469*, SEC Rel. No. 34-49704, 2004 WL 1439833, *1 (May 14, 2004); *SEC Order Approving PCAOB Rule 3502*, SEC Rel. No. 34-53677, 2006 WL 1866513, *2 (Apr. 19, 2006). Applicants' arguments are belied by their own testimony, in which they admitted knowing at the time that Mohidin could not engage in audit-related activities while barred. *See, e.g.,* RD 132 at 08370; RD 133 at 08387, 08393. Weinbaum also admitted knowing that his own conduct could cause MJF to violate the Bar Order. RD 133 at 08396 (citing RD 123 at 08183, 08244; Tr. 527).

The Board also did not retroactively apply any new sanctions framework here, as implied by Mohidin's citation to *Peugh v. United States*, 569 U.S. 530 (2013), a criminal case. *See* M.Br. 3; M.App. 2. Censures, bars, and civil money penalties have been available since Sarbanes-Oxley was enacted in 2002, *see* 116 Stat. 745, § 105(c)(4)-(5), and the chosen sanctions are well within the range of sanctions authorized by Sarbanes-Oxley.[9/] Nor were the sanctions imposed for "penal" purposes, but rather, as explained extensively in the Board's decisions, to protect investors and further the public interest. *See* RD 142 at 08524-08531; RD 143 at 08543-08552.

E. The Elements of Aiding and Abetting Do Not Apply Here.

Weinbaum's reliance on civil tort law to assert that the elements of aiding and abetting liability apply to charges brought under PCAOB Rule 3502 is inapposite. PCAOB disciplinary

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[9/] With respect to a proceeding against associated persons, Sarbanes-Oxley Section 105(c)(5) specifies that a bar and civil money penalty above a certain amount "for each violation," "shall only apply" to "intentional or knowing conduct, including reckless conduct, that results in violation of the applicable statutory, regulatory, or professional standard" or to "repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard." When this culpability threshold is met, Sarbanes-Oxley authorizes the Board to impose per violation amounts that exceed $164,373 up to $1,232,803 against a natural person during the relevant period. *See* https://www.sec.gov/enforce/civil-penalties-inflation-adjustments (as of Jan. 15, 2024). Under Section 105(c)(5), a censure is available for violative conduct regardless of whether it meets this threshold.

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proceedings are not tort actions brought by private parties seeking damages. *See* RD 133 at 08394 n.14; *see also Schellenbach v. SEC*, 989 F.2d 907, 913 (7th Cir. 1993) (distinguishing law enforcement actions from "private damage suit[s]" and stating that "[s]ecurities regulations are designed to protect the general public"). In adopting PCAOB Rule 3502, which is an ethics standard specific to PCAOB actions, the Board expressly distinguished its rule from aiding and abetting liability. *Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees*, PCAOB Rel. No. 2005-014, at 11 & n.20 (July 26, 2005); *see SEC Order Approving PCAOB Rule 3502*, SEC Rel. No. 34-53677, 2006 WL 1866513 (Apr. 19, 2006). The Board's adopting release clearly identified the elements required to establish a violation of PCAOB Rule 3502, which the Board scrupulously applied in finding Weinbaum's violation and rejecting his similar contentions below. *See* RD 133 at 08391-08394.

Moreover, in contrast to *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023), upon which Weinbaum relies (W.Br. 29-30), PCAOB Rule 3502 nowhere uses the phrase "aids and abets, by knowingly providing substantial assistance." *See Twitter*, 598 U.S. at 484-85 (2023) (applying common law elements of "civil aiding-and-abetting and conspiracy liability" to undefined terms of the Justice Against Sponsors of Terrorism Act). And unlike the elements cited in *Twitter*, PCAOB Rule 3502 expressly identifies an "act or omission" as conduct by "a person associated with a registered public accounting firm" that may violate Rule 3502. 598 U.S. at 486 (identifying only "a wrongful act" as among the common law's "main elements"). Weinbaum's argument that Rule 3502 does not cover omissions also completely ignores the fact that both acts and omissions are present here: not only did Weinbaum fail to take any steps to prevent Mohidin's continuing participation in the issuer audits and reviews on which Weinbaum was lead auditor, but Weinbaum also engaged in affirmative acts, in that he "actively engaged" with

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Mohidin on the engagements. RD 143 at 08539; *see* RD 123 at 08196-08197 (reflecting their interactions on a "material misclassification in the balance sheet and cash flow statement"). Weinbaum also admitted knowing at the time–as declared by Sarbanes-Oxley Section 105(c)(7)(A) and PCAOB Rule 5301(b)—that it was "unlawful" for MJF to "permit" a barred individual to associate with the Firm. RD 123 at 08183.

II. Applicants' Procedural and Other Contentions Should be Rejected.

A. Applicants' Statute of Limitation Claim was Forfeited.

Applicants raise for the first time in this appeal that this proceeding is time barred by an unspecified five-year "statute of limitations (SOL)." M.Br. 4 (noting a "five-year SOL"); W.Br. 3. As illustrations, they cite caselaw applying the statute of limitations under 28 U.S.C. 2462. M.Br. 4-6. Applicants' briefs effectively concede they did not raise this claim until this appeal. W.Br. 3; *see* M.Br. 4 ("How could I invoke the SOL before the five-year SOL ran out?"). Applicants' claims should be rejected.

PCAOB Rule 5421(c) required that Applicants assert affirmative defenses—including "statute of limitations"—in their answers to the order instituting disciplinary proceedings (at which time, both Weinbaum and Mohidin were represented by counsel, *see* RDs 20, 21). Having failed to timely raise this defense in their answers (*see* RD 20 at 00090; RD 21 at 00098; RD 123 at 08160-08161), Applicants forfeited it. *See, e.g., Laurie Jones Canady*¸ SEC Rel. No. 34-41250, 1999 WL 183600, *12 (Apr. 5, 1999) ("It is well-established that '[r]eliance on a statute of limitations is an affirmative defense and is waived if a party does not raise it in a timely fashion.'") (quoting *Harris v. Dep't of Veterans Affairs*, 126 F.3d 339, 343 (D.C. Cir. 1997), *aff'd*, 230 F.3d 362, 365 (D.C. Cir. 2000); *Dillard v. Vill. of Ruidoso Downs*, 2003 WL 27385174, *1 (D.N.M. 2003) ("neglect and/or ignorance of the law" did not excuse failure to timely assert "statute of

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limitations defense"); *see also Merrimac Corp. Secs., Inc.*, SEC Rel. No. 34-86404, 2019 WL 3216542, *25 n.158 (July 17, 2019) (even a *pro se* party "is not exempted from the requirement to present an argument to avoid waiver").[10/]

B. Weinbaum's Challenge to Hearing Officer's Impartiality Was Forfeited.

Weinbaum also forfeited his claim concerning the Hearing Officer's impartiality. W.App. 1. He never raised any such claim before the Hearing Officer, *see* PCAOB Rule 5402(a), nor in his petition for Board review of the Initial Decision, *see* PCAOB Rule 5460(a)(1). It was not until over a year after he filed his petition for Board review—and then only after the Board had sustained the findings of violation—that Weinbaum first raised his claim. *Compare* RD 127 *with* RD 134. PCAOB Rule 5460(a)(1) expressly "requires that petitions for review specify the 'findings and conclusions of the initial decision as to which exception is taken together with the supporting reasons for each exception.'" RD 143 at 08551 (quoting RD 133 at 08389 n.7). Thus, based on that requirement, a Board order on appeal may, without doubt, be limited to the arguments raised in the petitions. *Id.* (citing *S. Brent Farhang, CPA*, PCAOB File No. 105-2016-001, at 28 n.14 (Mar. 16, 2017) (finding respondent waived arguments not raised in petition for review), *aff'd*, SEC Rel. No. 34-83494, 2018 WL 3193859 (June 21, 2018), and *Ross Mandell*, SEC Rel. No. 34-71668, 2014 WL 907416, *1 n.6 (Mar. 7, 2014) ("deem[ing] any exception to the initial decision not stated in [respondent's] petition for review waived")); *accord Sandra K.*

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[10] Applicants' claims are also indecipherable, as illustrated by their posing of repeated questions rather than contentions. *See* M.Br. 4. Even under the caselaw they cite, there is no statute of limitations issue because this proceeding was commenced well within five years from date of the underlying misconduct: The misconduct, here, occurred from April 2017 to May 2018, and the Board instituted this proceeding on December 20, 2019. *See* RD 1; RD 132 at 08375, 08377; RD 133 at 08393 & n.12.

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Simpson, SEC Rel. No. 34-45923, 2002 WL 987555, *15 n.50 (May 14, 2002) (declining to consider issue not raised in petition for review).

Issue exhaustion is a common element of administrative and court proceedings. *See, e.g., Sanchez-Llamas v. Oregon*, 548 U.S. 331, 356-357 (2006) (citation omitted) ("The consequence of failing to raise a claim for adjudication at the proper time is generally forfeiture of that claim."); *Sims v. Apfel*, 530 U.S. 103, 108 (2000) (citing procedural rule requiring petitioners to "list[ ] the specific issues to be considered on appeal" as a typical example of "an agency's regulations [that] require issue exhaustion in administrative appeals"); *Fleming v. U.S. Dep't of Agric.*, 987 F.3d 1093, 1101 (D.C. Cir. 2021) (similar); *Joseph Forrester Trucking v. Dir., Off. of Workers' Comp.*, 987 F.3d 581, 586 (6th Cir. 2021) ("Whether in proceedings before an administrative body or a court of law, a party customarily forfeits secondary review of issues not properly raised in an underlying phase of the proceeding.") (citing *Hormel v. Helvering*, 312 U.S. 552, 556 (1941)); *Canady v. SEC*, 230 F.3d 362, 362-63 (D.C. Cir. 2000) (agreeing party "waived [a] defense by failing to argue it" below). It was even more critical that Weinbaum timely raise and develop his claim because he bears the burden of proving hearing officer bias and must overcome "the presumption of honesty and integrity in those serving as adjudicators," *Withrow v. Larkin*, 421 U.S. 35, 47 (1975); *see Schweiker v. McClure*, 456 U.S. 188, 195 (1982).[11/]

[11/] To be disqualifying, alleged bias "must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966). "[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994) (citing *Grinnell*); *see Marcus v. Dir., Office of Workers' Comp. Programs* 548 F.2d 1044, 1051 (D.C. Cir. 1976). There is no indication that this standard would be met here.

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C. The Board Did Not Improperly Reject Weinbaum's Unauthorized Brief.

Weinbaum's brief complains that the Board's rejection of his unauthorized filing dated July 27, 2023, during the Board's proceeding was improper. W.Br. 8. In so doing, he characterizes such action as "a party to a proceeding [being able to] approve what may be filed[.]" *Id.* Elsewhere, he similarly suggests that the Board acts as the "prosecutor" in a disciplinary proceeding. W.Br. 27. In fact, the five-member Board does not prosecute disciplinary proceedings; nor is it a party in its own proceedings. Rather, as illustrated here, DEI prosecutes proceedings before the Hearing Officer, while the Board presides as adjudicator over any appeal from the Hearing Officer's decision. *See* PCAOB Rules 5200(d) (describing DEI as the "interested division") & 5204 (placing burden of proving the alleged violations on the "interested division"). During the course of a disciplinary proceeding, DEI, the Hearing Officer, and the Board are subject to strict anti-bias safeguards, including ex parte communication prohibitions, separation of functions restrictions, and the exclusive-record principle. *See, e.g.,* PCAOB Rules 5200(d), 5202, 5204(b), 5403, 5460(c), 5465; *see also* PCAOB Office of Hearing Officers Charter, *available at* https://pcaobus.org/oversight/enforcement/enforcement-actions/office-hearing-officer-charter (last visited May 16, 2024). The issuance of an OIP in a disciplinary proceeding "represents a threshold determination" in this case by the Board "that further inquiry is warranted and that a complaint should initiate proceedings." *E.g., FTC v. Standard Oil Co.*, 449 U.S. 232, 241 (1980); *see Simpson v. Office of Thrift Supervision*, 29 F.3d 1418, 1424 (9th Cir. 1994) ("The actual prosecution of Simpson's case was handled by attorneys from the Enforcement Division of the Chief Counsel's Office who were prohibited from ex parte communication with the Director.").

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Second, the Board's rejection of Weinbaum's unauthorized filing was appropriate. The Board's order scheduling briefing had expressly stated, "Motions to . . . revise briefing schedules are disfavored, and any such motion should be supported by specifically described compelling grounds." RD 143 at 08536 n.2. PCAOB Rule 5462(a) also makes clear that "[n]o briefs in addition to those specified in the [Board's] briefing schedule order may be filed except with leave of the Board." Weinbaum filed the 33-page brief two months after briefing before the Board had closed, never requested leave, and did not establish any, let alone compelling, grounds for an extra filing. At that point, he already had completed two rounds of briefing before the Board, as well as multiple rounds before the Hearing Officer. In its discretion, the Board, moreover, accepted his prior brief, even though it had exceeded the page limit by 15 pages. Moreover, as the Board pointed out that in rejecting Weinbaum's extra brief, the "additional filing merely echoe[d] contentions rejected by the Board previously or [in its final decision on sanctions]. RD 143 at 08536 n.2.[12/]

III. The Sanctions Are Fully Warranted.

The sanctions imposed by the Board reflect the nature, seriousness, and circumstances of the violations proven by overwhelming evidence and reflect the important public interest and investor protection concerns raised by Applicant's conduct.

[12/] On appeal before the Commission, Weinbaum has done virtually the same thing, filing an extra brief on April 9, 2024 concerning the statutory stay. Again, this extra filing is unmoored from any briefing schedule order and not in response to any PCAOB motion. That extra filing should be rejected. *Paul Richard Aquitania*, SEC Rel. No. 34-95042, 2022 WL 1905170 (June 3, 2022). Despite its title, "George Weinbaum's Notice and Response to the SEC's March 26, 2024 Notice," the Commission had only authorized him to file one brief on the questions related to the statutory stay, which he timely filed on April 23, 2028. Weinbaum neither requested leave to file the April 9, 2024 brief, nor did he provide any explanation for the filing. The Commission's March 12, 2024 Order Scheduling Briefing had expressly stated that "[n]o briefs other than those specified in this schedule may be filed without leave of the Commission," echoing SEC Rule of Practice 450(a). To the extent that filing contains issues not addressed in his opening brief, those issues are waived pursuant to SEC Rule of Practice 440(b).

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In certifying that financial statements are presented fairly, in all material respects, in conformity with the applicable financial reporting framework, public auditors serve a special "'public watchdog'" function, requiring "complete fidelity to the public trust." *United States v. Arthur Young & Co.*, 465 U.S. 805, 817-18 (1984). They are principal "gatekeepers" to the public securities markets, safeguarding the public interest. *KPMG Peat Marwick LLP*, SEC Rel. No. 34-43862, 2001 WL 47245, *14 & n.54 (Jan. 19, 2001) ("[T]he federal securities laws . . . give[ ] auditors both a valuable economic franchise and an important public trust."). An auditor's "competence" in serving in such a role means "not just technical skills, but also an accountant's willingness and ability to adhere to professional standards, including standards of honesty and fair dealing." *Amendment to Rule 102(e) of the SEC's Rules of Practice*, SEC Rel. No. 33-7593, 1998 WL 729201, *4 n.25 (Oct. 19, 1998); *see Myron Swartz*, 41 S.E.C. 53, 1961 WL 62209, *5 (May 24, 1961) (stating that "the public interest" demands a "high standard of honesty and professional conduct . . . of accountants"); *Touche, Niven, Bailey & Smart*, SEC Rel. No. AS-78, 1957 WL 3606, at *27, *28 & n.62 (Mar. 25, 1957) (emphasizing the "highest integrity" of CPAs).

In a long line of decisions, the Commission has emphasized that a violation of a bar order constitutes "very serious misconduct." *Leslie A. Arouh*, SEC Rel. No. 34-62898, 2010 WL 3554584, *13 (Sept. 13, 2010); *see, e.g., Robert Juan Escobio*, SEC Rel. No. 34-97701, *14 (June 12, 2023); *Bruce Zipper*, SEC Rel. No. 34-84334, 2018 WL 4727001, *10 (Oct. 1, 2018); *Kirk A. Knapp*, SEC Rel. No. 34-30391, 1992 WL 40436, *5 (Feb. 21, 1992); *cf. David C. Ho*, SEC Rel. No. 34-54481, 2006 WL 2959662, *6 (Sept. 22, 2006) (violation of suspension showed "disregard for [SRO's] disciplinary authority"). Through their actions and words, however, Applicants see the matter differently, to the detriment of the investing public. Their briefs only

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reinforce their shared view that Mohidin's association, while prohibited by the bar, was "not . . . that serious." W.Br. 24; *see* M.Br. 2 (explaining his "crime" was simply answering "questions MJF's staff persons asked me"). But as the Board emphasized, "a PCAOB bar order serves as an important safeguard meant to protect the investing public from auditors, like [Mohidin], who have demonstrated an inability or unwillingness to comply with the obligations of public auditing." RD 143 at 08542; RD 142 at 08522. A bar's importance is further embodied in Sarbanes-Oxley Section 105(c)(7)(A), where Congress made it unlawful for barred individuals to violate their bar orders and for firms to permit such persons to associate in violation of those orders.

The sanctions imposed by the Board reflect the nature, seriousness, and circumstances of the violations and the ongoing threat Applicants pose to the investing public. On multiple levels, Mohidin fell short of the standards demanded of public auditors. Despite over 25 years of experience as an auditor, he repeatedly violated the most basic requirements of professional conduct and exhibited dishonesty and deceit in communications with the Board to secure his return to public auditing. On numerous occasions, Mohidin evaded the Bar Order and exhibited a pattern of noncompliance with foundational regulatory requirements. RD 142 at 08522. He also "subvert[ed] the Board's processes by using false pretenses to secure termination of his bar." *Id.* He only reinforced "a pattern of dishonesty and deceit" by giving untruthful testimony during hearing testimony. *Id.* And now, despite having belatedly and fleetingly expressed remorse in conceding liability before the Board, he once again suggests he did nothing wrong. A recidivist, who is currently auditing only because he lied to the Board in connection with his petition to terminate the Bar Order, Mohidin remains a threat to investors, especially given his ongoing association with a PCAOB-registered firm performing issuer work.

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Therefore, for good reason, the Board found it appropriate in the public interest and to protect investors to censure, permanently bar Mohidin, and order him to pay a $175,000 civil money penalty. The Board concluded that the civil money penalty was necessary, appropriate, and proportionate in light of Mohidin's level of responsibility, the difficulty in detecting this kind of violation, and the audit fees MJF earned on the Adamant, China Recycling, and Yosen audits and reviews during the time of the violations.

Weinbaum, who has over 45 years of experience as an auditor, also defied the public trust and his gatekeeping role, when for over a year he allowed his longtime friend and colleague to continue to participate in audits and reviews despite being barred. Weinbaum's active engagement with Mohidin on issuer audit work and overall acquiescence toward Mohidin's participation—notwithstanding the bar—on audits for which Weinbaum was engagement partner was particularly serious, highly culpable, subverted an important investor-protection safeguard, and demonstrated disregard for regulatory authority. Despite uncontested findings, Weinbaum continues to fail to recognize his wrongdoing, going so far as to describe Mohidin's participation as not serious and suggesting he had no responsibility for protecting investors against a barred individual despite serving as the lead auditor on the engagements at issue. In addition, he provides no assurances against further violations and is well-positioned to commit yet more misconduct as an active CPA working alongside Mohidin on issuer work. RD 143 at 08546. As the Board determined, the censure, associational bar (with the proviso he may petition to re-associate after five years), and $50,000 civil money penalty are necessary, appropriate, and well-tailored to Weinbaum's circumstances.[13/]

[13/] Applicants' current licensing and associational status are especially troubling. Not only are Applicants currently actively licensed CPAs, but they also remain associated with a PCAOB-registered firm engaging in audit

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Applicants' insubstantial sanctions arguments on appeal only reinforce the appropriateness of the sanctions. First, Weinbaum claims without elaboration that the Hearing Officer "used the wrong standard in assessing . . . sanctions." W.App. 2; *see* W.Br. 5 (referencing prior contention). But it is the Board's decision, not the Hearing Officer's, that is the final action subject to Commission review in this appeal. *Kabani*, 2017 WL 947229, *8 n.7 ("We review only the Board's decision on appeal."); Sarbanes-Oxley Section 107(c)(2) (outlining SEC review of "final disciplinary sanctions imposed by the Board"); *cf. Philippe N. Keyes*, SEC Rel. No. 34-54723, 2006 WL 3313843, *6 n.17 (Nov. 8, 2006) ("[I]t is the decision of the NAC, not the decision of the Hearing Panel, that is the final action of NASD which is subject to Commission review."). The Board further made clear that its "review of sanctions [would be] de novo," RD 133 at 08396; RD 143 at 08543, meaning it would "exercise its own judgement as to the issues properly before it and do so non-deferentially," *ABN AMRO Clearing Chicago LLC,* SEC Rel. No. 34-83849, 2018 WL 3869452, *12 (Aug. 15, 2018). And in determining the sanctions, the Board applied well-established sanctions principles to the particulars of this case. RD 142 at 08521-0829; RD 143 at 08541-08552.

Second, Weinbaum relies on a 2011 initial decision of a PCAOB Hearing Officer to suggest the sanctions here are excessive. *See* W.Br. 19 (citing *Cordovano & Honeck, LLP*, PCAOB No. 105-2010-004 (July 6, 2011) (revoking registration and permanently barring associated person for bar order violations). Weinbaum's reliance on *Cordovano* is unavailing. While a civil money penalty was not imposed by that initial decision, it is well established that

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work for issuer clients. See note 3 supra. As the Commission has long stated, the securities industry "presents a great many opportunities for abuse and overreaching, and depends very heavily on the integrity of its participants." *Richard D. Earl*, SEC Rel. No. 34-22535, 1985 WL 548312, *2 (Oct. 16, 1985). This principle applies equally to auditors, who, as discussed, play a vital role in the markets.

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there is no obligation to make sanctions uniform. *See Butz v. Glover Livestock Comm'n*., 411 U.S. 182, 186-87 (1973); *Kornman v. SEC*, 592 F.3d 173, 188 (D.C. Cir. 2010); *see Guttman v. CFTC*, 197 F.3d 33, 41 (2d Cir. 1999) (upholding increased sanctions; stating the overall effectiveness of a sanction may be undercut by an undue focus on penalties imposed in other cases) (citing, e.g., *FCC v. WOKO, Inc.*, 329 U.S. 223, 227-28 (1946) (agency is not "bound . . . to deal with all cases at all times as it has dealt with some that seem comparable").

Moreover, *Cordovano* was not a Board decision but a Hearing Officer's initial decision, which are generally "not precedential." *E.g., J.S. Oliver Capital Mgmt., LP*, SEC Rel. No. 34-78098, 2016 WL 3361166, *23 n.181 (June 17, 2016); *see Rapoport v. SEC*, 682 F.3d 98, 105 (D.C. Cir. 2012) (contrasting "an [administrative law judge (ALJ)] order" with "a binding Commission decision" and declining to consider the former); *Horner v. Burns*, 783 F.2d 196, 201-02 (Fed. Cir. 1986) (describing non-precedential treatment of final ALJ decisions as "sound policy"). In any event, civil money penalties were not sought in *Cordovano*. Thus, the initial decision in that case did not determine that civil money penalties were not warranted. In fact, it pointed out that the bar order violation "might well [have] support[ed] the imposition of a substantial civil money penalty," if it had been sought. *Cordovano*, PCAOB No. 105-2010-004, at 51-52 n.20.[14/]

[14/] Weinbaum's assertions about the availability of Board precedent (W.Br. 21-22) ignore the governing statute. Sarbanes-Oxley Section 105(c)(2) provides that hearings in disciplinary proceedings "shall not be public, unless otherwise ordered by the Board for good cause shown, with the consent of the parties to such hearing." Under Sarbanes-Oxley Section 105(d), the Board reports the result of a proceeding to the "public" only "[i]f the Board imposes a disciplinary sanction" and "once any stay on the imposition of such sanction has been lifted." Therefore, the decisions in proceedings that are nonpublic (for lack of consent, as here, to make them public) and do not impose any sanction remain nonpublic and are not precedent, much like SEC 102(e) proceedings prior to July 1988. *See Disciplinary Proceedings Involving Professionals Appearing or Practicing Before the Commission*, SEC Rel. No. 34-25893, 1988 WL 1000021, *1 (July 7, 1988) ("Those proceedings bec[a]me public once an administrative law judge finds a basis for imposing a sanction against a respondent."); *see also Checkosky v. SEC*, 23 F.3d 452, 459, 482 (D.C. Cir. 1994) (per curiam) (finding agency cannot rely on unpublished opinion as precedent) (Silberman &

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Third, Applicants' refrain that "[t]he PCAOB reviewed **nine** of [MJF's] audits faulting **none**" is of no moment. W.App. 1 (emphasis in original); *see* M.Br. 2. This contention makes no sense with respect to Mohidin, who was barred from conducting any audit or review work at that time. As to Weinbaum, even if he was not charged with auditing standards violations, his misconduct in subverting an important investor-protection safeguard stressed by Sarbanes-Oxley is serious enough. Despite his knowledge of the Bar Order, Weinbaum engaged directly with Mohidin on substantive audit issues, RD 133 at 08386-08387, 08393, and acquiesced in Mohidin's repeated participation in issuer audits and reviews as demonstrated in numerous emails (many of which Weinbaum printed and retained as important to the engagements), *id*. at 08390-08393.

Relatedly, Weinbaum incorrectly asserts that he never "jeopardized investors," attempting to minimize the seriousness of his misconduct. W.App.1; *see* W.Br. 7. While the Board need not prove specific harm to investors, Weinbaum put investors at risk by repeatedly permitting an unfit auditor to work on audits and reviews for which Weinbaum was responsible. RD 143 at 08546; *see Hatfield*, 2013 WL 3339647, *23 (the appropriate "inquiry is not whether Applicants' failures actually harmed investors" but "whether Applicants' conduct created a risk of such harm"). As the Board found, Weinbaum's "conduct 'indirectly harmed investors by depriving them of an important protection that they should have had under Sarbanes-Oxley' and a PCAOB rule." RD 143 at 08546 (quoting *R.E. Bassie & Co.*, SEC Rel. No. AE-3354, 2012 WL

Randolph, JJ., filing separate opinions); *D&W Food Ctrs. v. Block*, 786 F.2d 751, 757-58 (6th Cir. 1986) (ruling that agency's interpretation of statute could not be enforced against noncomplying parties because it was not published).

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90269, *13 (Jan. 10, 2012)); *see S. Brent Farhang, CPA*, SEC Rel. No. 34-83494, 2018 WL 319859, *10 (June 21, 2018) (same).

Fourth, Weinbaum's misconduct is not mitigated by his assertion that he "insisted [that] Adamant restate its financials despite believing it might trigger a PCAOB investigation." W.App. 1. Even if true, acting in accordance with one's regulatory obligations is not mitigating. *See, e.g., Siegel v. SEC*, 592 F.3d 147, 156-57 (D.C. Cir. 2010) (asserted examples of compliance with other requirements not mitigating "because an associated person should not be rewarded for acting in compliance with the securities laws and with his duties as a securities professional"); *Rooms v. SEC*, 444 F.3d 1208, 1214 (10th Cir. 2006) ("refraining from" further misconduct "is not mitigating behavior"). In fact, auditors "'have a duty to take reasonable steps to correct misstatements they have discovered in previous financial statements on which they know the public is relying.'" *Rudolph v. Arthur Andersen & Co.*, 800 F.2d 1040, 1043 (11th Cir. 1986) (citation omitted); *see* AS 2905, *Subsequent Discovery of Facts Existing at the Date of the Auditor's Report*. If anything, Weinbaum's assertion spotlights "one of the more egregious examples of [Mohidin's] participation in an issuer audit that Weinbaum enabled," RD 143 at 08546 (citing RD 133 at 08386, 08391, 08393; RD 123 at 08188-08198, 08226). As the record shows, Weinbaum directly engaged with Mohidin on that issue, providing him accounting literature and reviewing Mohidin's pressing questions, despite Weinbaum's knowledge of Mohidin's bar. *Id.*

Fifth, the Board did not err in rejecting Weinbaum's argument that the "market capitalizations" of the issuers here somehow precludes Board sanctions. W.App. 1; W.Br. 6, 9, 21. Mohidin argues similarly that, because of his clients' market capitalizations, "small investors can't be materially harmed by me or Weinbaum." M.Br. 7. Their claims suggest a fundamental

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misunderstanding of their role as auditors to safeguard the public, further underscoring the risk they pose to investors. "Corporate financial statements are one of the primary sources of information available to guide the decisions of the investing public." *Young*, 465 U.S. 805 at 810. Public auditors owe the same responsibility to comply with fundamental regulatory obligations, such as those at issue here, for all issuer audits and reviews. Those responsibilities are not subject to selective, discretionary disregard at the liberty of the auditor, and non-compliance with those obligations can "jeopardize the achievement of the objectives of the securities laws and can inflict great damage on public investors" by posing a threat to the investing public "more potent than the chisel or the crowbar." *Touche Ross & Co. v. SEC*, 609 F.2d 570, 581 (2d Cir. 1979). As the Board observed, "investors in a 'small,' 'simple' issuer, are no more to be deprived of the protection of an audit conducted in accordance with PCAOB standards than those of any other issuer." RD 143 at 08550 (quoting *Melissa K. Koeppel, CPA*, PCAOB No. 105-2011-007, at 99 (Dec. 29, 2017)).

The sanctions imposed by the Board are not disproportionate to the particulars of this case, as the Board drew on numerous case-specific factors including the audit fees that MJF collected, in reaching appropriate sanctions. Weinbaum's suggestion that a $59 civil money penalty is appropriate (W.Br. 23), would clearly do little "to impress upon him the need for strict compliance with his regulatory responsibilities" should he seek to reassociate after five years. RD 143 at 08547; *see id.* at 08548 (describing need to provide a sufficient financial disincentive to violations).[15/]

[15/] Weinbaum's citation to *Grayscale Investments, LLC v. SEC*, 82 F.4th 1239 (D.C. Cir. 2023), is inapposite. It did not involve, as here, a determination of sanctions in an adjudication. *Grayscale* involved whether to permit the listing of a bitcoin exchange-traded product on NYSE Arca, a securities exchange. Nowhere in *Grayscale* does the court in any way suggest that the "significant market test" applied by the Commission in that context has any

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Finally, Mohidin incorrectly asserts that, "[o]n page 11" of its final decision, "PCAOB claims it never offered me a $20,000 fine in its initial offer of settlement." M.App. 2; M.Br. 4. The Board, in fact, held that Mohidin's assertion about the $20,000 offer lacked any record support and in any event was meritless. RD 142 at 08527. The Board, like the Commission, is not bound by the amount requested or discussed in settlement talks by its Enforcement staff. RD 142 at 08528. (citing cases and PCAOB Rule 5205, which requires Board approval of any settlement). The Commission should, moreover, reject Mohidin's post-hoc efforts to introduce emails from his former counsel about a settlement offer, which do not comply with SEC Rule of Practice 452. Even though the PCAOB identified this deficiency in its March 1, 2024 motion immediately after he sought to introduce it, Mohidin still has filed no motion addressing the relevant standards or otherwise shown, "with particularity that such additional evidence is material and that there were reasonable grounds for [his] failure to adduce such evidence previously." SEC Rule of Practice 452.

The civil money penalties the Board imposed on both Applicants are well within the range of sanctions authorized by Congress. *See* note 9 *supra*. The Board decided to increase the penalty amounts as an exercise of its "responsibility to impose sanctions to achieve the purpose of [the] statute." RD 132 at 08379 (citing *Butz v. Glover Livestock Comm'n Co., Inc.*, 411 U.S. 182, 185 (1973)); RD 133 at 08396 (same); *see vFinance Inv., Inc.*, SEC Rel. No. 34-62448, 2010 WL 2674858, *14 (July 2, 2010). In enacting Sarbanes-Oxley, Congress sought "to safeguard investors in public companies and restore trust in the financial markets," *Lawson v.*

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relevance to the question of whether "to investigate then sanction CPAs," as Weinbaum contends (W.App. 1; *see* W.Br. 20-21).

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FMR LLC, 571 U.S. 429, 432 (2014), and accordingly authorized the Board to impose "a full range of sanctions," including "meaningful," "substantial" civil money penalties, S. Rep. No. 107-205 at 10-11 (2022) (Senate Report accompanying Sarbanes-Oxley). The $175,000 and $50,000 penalties imposed against Mohidin and Weinbaum, respectively, are substantial, fully warranted, grounded in the circumstances of this record, and well within the $1,232,803 maximum set under Sarbanes-Oxley 105(c)(5) for even a single violation involving, as found here, intentional, knowing, or reckless conduct. *Cf., e.g., Mitchell H. Fillet*, SEC Rel. No. 34-75054, 2015 WL 3397780, *14 (May 27, 2015) (FINRA matter).

Furthermore, the censures will "alert the public, including other [regulatory authorities], of the unacceptability of [their] conduct." *Philip L. Spartis*, SEC Rel. No. 34-64489, 2011 WL 1825026, *13 (Dec. 1, 2010). And, as the Board concluded, the bars are necessary and appropriate in the public interest to protect investors against two auditors who have repeatedly demonstrated on this record unfitness to audit issuers or SEC-registered brokers or dealers within the regulatory framework established by Sarbanes-Oxley. RD 142 at 08522; RD 143 at 08542. They remain licensed CPAs, elevating the risk of further violations. *See, e.g., Michael C. Pattison, CPA*¸ SEC Rel. No. 34-67900, 2012 WL 4320146, *10 (Sept. 20, 2012). Compounding the risk to the public is their ongoing association with a registered public accounting firm, which includes continuing to work together at the same firm, just as they did while engaged in the violative conduct found by the Board. *See Kabani*, 2017 WL 1295034, *1 ("'[a]llowing . . . [respondents] to remain associated persons would give them future opportunities to undermine the PCAOB's processes'").

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CONCLUSION

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

Dated: May 20, 2024

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE WITH SEC RULE 450(c)

I, Jerome P. Sisul, certify that the foregoing brief of the Public Company Accounting Oversight Board filed in opposition of Applicants' applications for Commission review complies with the word count limitations set forth in Rule 450(c) of the Commission's Rules of Practice, 17 C.F.R. 201.450(c), and that the foregoing brief contains 11,212 words, exclusive of pages containing the Table of Contents, Table of Authorities, and attachment, as counted by the Word Count feature of our Microsoft Word word-processing program used to prepare the brief.

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CERTIFICATION OF COMPLIANCE WITH SEC RULES 151 AND 440

I, Jerome P. Sisul, certify that I have complied with Rules 151 and 440(e) of the Commission's Rules of Practice by filing this brief in opposition to Applicants' applications for Commission review, which omits or redacts any sensitive personal information described in Rules of Practice 151(e) and 440(d)(2).

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CERTIFICATE OF SERVICE

I, Jerome P. Sisul, certify that on May 20, 2024, I caused a copy of the PCAOB's foregoing brief in opposition to Applicants' applications for Commission review, to be served through the SEC's eFap system on:

Vanessa A. Countryman
The Office of the Secretary
U.S. Securities and Exchange Commission
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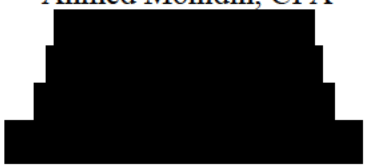
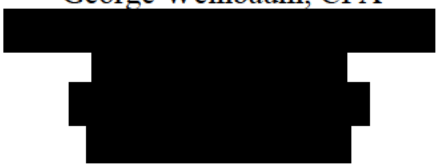
I further certify that, on this date, I caused a copy of the PCAOB's motion and brief in the foregoing matter to be served by electronic service on:

Ahmed Mohidin, CPA


George Weinbaum, CPA


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