

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**

**Release No. 73224 / September 25, 2014**

**ACCOUNTING AND AUDITING ENFORCEMENT**

**Release No. 3587 / September 25, 2014**

**ADMINISTRATIVE PROCEEDING**

**File No. 3-16171**

**In the Matter of**

**MAYER HOFFMAN  
McCANN, P.C.**

**Respondent.**

**ORDER INSTITUTING PUBLIC  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTIONS 4C AND 21C OF THE  
SECURITIES EXCHANGE ACT OF 1934  
AND RULE 102(e) OF THE COMMISSION'S  
RULES OF PRACTICE AND NOTICE OF  
HEARING**

**I.**

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative proceedings be, and hereby are, instituted pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e) of the Commission's Rules of Practice against Mayer Hoffman McCann, P.C. ("Respondent" or "MHM").

**II.**

After an investigation, the Division of Enforcement ("Enforcement") and the Office of the Chief Accountant ("OCA") allege that:

**A. SUMMARY**

1. Mayer Hoffman McCann P.C. ("MHM") is a public accounting firm associated with CBIZ, Inc. ("CBIZ"), a publicly traded company, through a business model referred to as an alternative practice structure ("APS"). CBIZ's APS model with MHM utilizes an administrative service agreement ("ASA") which requires MHM to lease from CBIZ virtually all of the human capital, equipment and overhead MHM requires to perform its attest work, in exchange for a majority of MHM's revenue.

2. CBIZ is an associated entity of MHM, and CBIZ and MHM are viewed as a single entity for Commission auditor independence purposes.

3. MHM has numerous attest clients that file reports with the Commission, including Tradebot Systems, Inc. (“Tradebot”), a registered broker-dealer. Pursuant to Rule 17a-5 promulgated under Section 17(a) of the Exchange Act, Tradebot is required to file annual reports with the Commission containing financial statements audited by an independent public accountant (“Annual Reports”).

4. MHM audited Tradebot’s Annual Reports from 2004 through 2012. From 2008 to at least 2013, Tradebot invested in CBIZ stock, thereby impairing MHM’s independence with respect to its audits of Tradebot’s 2008 through 2012 financial statements. As a result, Tradebot’s Annual Reports do not comply with Rule 17a-5 for those periods.

5. In addition to MHM’s independence violations related to the Tradebot audits, MHM’s procedures were deficient to prevent such independence violations for all of its broker-dealer and investment fund audit clients, and resulted in MHM’s multiple failures to comply with the auditor independence rules.

6. MHM lacked an appropriate system of quality controls to detect transactions in CBIZ stock by its attest clients in order to ensure that those engagements complied with the firm’s legal and ethical requirements. MHM’s quality control and audit procedures failed to meet adequate professional standards with respect to its audits of Tradebot.

7. During the audit of its 2012 year, Tradebot was made aware that trading in CBIZ stock would impair MHM’s independence. Tradebot continued to trade in CBIZ stock.

## **B. RESPONDENT**

8. **Mayer Hoffman McCann P.C.**, is a Missouri professional corporation headquartered in Leawood, Kansas, with offices throughout the U.S. MHM’s Commission-related attest practice includes registered broker-dealers, investment funds and publicly traded companies.

## **C. RELATED ENTITIES**

9. **CBIZ, Inc.**, is a Delaware corporation headquartered in Cleveland, Ohio, that provides products and services to businesses throughout the U.S. CBIZ associates with several U.S. public accounting firms through its APS model, with MHM being the largest. CBIZ’s stock is traded on the New York Stock Exchange.

10. **Tradebot Systems, Inc.**, is a broker dealer registered with the Commission, and is located in Kansas City, Missouri.

#### **D. CBIZ AND MHM ASSOCIATION**

11. In about 1996, CBIZ began using the APS model to expand its revenue base by acquiring the non-attest practices of public accounting firms and forming relationships with those public accounting firms by means of ASAs.

12. From about 1998 to present, CBIZ entered into periodic ASAs with MHM which provide, among other things, that virtually all of MHM's shareholders are salaried employees of CBIZ and are leased to MHM along with other CBIZ professional and non-professional staff, office space, equipment, and marketing and other services, to enable MHM to perform its attest practice, in exchange for approximately 85% of MHM's revenues.

#### **E. SEC STAFF INFORMED CBIZ IT IS SUBJECT TO THE COMMISSION'S INDEPENDENCE STANDARDS**

13. On November 2, 1998, OCA became aware of CBIZ's use of the APS model and its acquisition of non-attest practices of accounting firms. OCA notified CBIZ of the application of the Commission's independence rules:

[Y]our affiliation with certain accounting firms ... may subject you to the application of the independence rules set forth in Rule 2-01 of Regulation S-X.

... [A]ny accounting firm and the acquirer ("acquirer") of that accounting firm that employs any accountants that work on SEC clients of the accounting firm should continue to fully comply with the SEC's independence requirements.

14. On August 13, 1999, OCA sent guidance to CBIZ related to independence disclosures provided in a CBIZ Form S-4 filing then under review. In that letter, OCA stated:

[T]he Commission and the staff are concerned about the significant public policy issues that are raised in situations where audits of public companies are performed by auditors under an alternative business structure. . . . [CBIZ] has acquired the non-attest businesses of several accounting firms ("the Attest Firms") that have audited clients required to file financial statements with the [Commission]. . . .

... [I]n the application of the independence rules, the SEC staff will view [CBIZ] and all Attest Firms as a single entity. As a result, [CBIZ] must abide by all of the independence rules that the Attest Firm must follow in order for the Attest Firm to be independent of an SEC audit client. . . .

#### **F. SEC PROMULGATED REVISED RULE 2-01 IN 2001**

15. In 2000, the Commission promulgated an extensive revision of its auditor independence requirements under Rule 2-01 of Regulation S-X. 17 C.F.R. § 210.2-01. The revised rule was adopted in response to "an increasingly complex web of business and financial

relationships” of public accounting firms. Included in the revision was subsection 2-01(c)(1)(iv)(A). It provides:

(iv) Audit clients' financial relationships. An accountant is not independent when:

(A) Investments by the audit client in the accounting firm. An audit client has, or has agreed to acquire, any direct investment in the accounting firm, such as stocks, bonds, notes, options, or other securities, or the audit client's officers or directors are record or beneficial owners of more than 5% of the equity securities of the accounting firm.

16. Rule 2-01(f)(2) of Regulation S-X defines “accounting firm” as “an organization . . . that is engaged in the practice of public accounting . . . and all of the organization’s . . . associated entities . . . .”

17. CBIZ is an associated entity of MHM by virtue of its APS relationship and ASA with MHM.

#### **G. MHM LEARNED OF TRADEBOT TRADES IN CBIZ STOCK**

18. Pursuant to Rule 17a-5(d) of the Exchange Act, Tradebot is required to file an annual report (“Annual Report”) which contains its audited financial statements. Rules 17a-5(d), (e) and (f) specifically require that the Annual Report be audited by an “independent public accountant” and a “public accountant who shall be in fact independent” as defined by Rule 2-01(b) and (c). From 2004 through 2012, Tradebot engaged MHM to audit its financial statements included in the Annual Report.

19. Commencing in 2008, Tradebot began to regularly trade in CBIZ stock and continued to trade in that stock through 2013.

20. Prior to 2012, Tradebot was unaware of any prohibition against it acquiring any interest in the securities of CBIZ. Prior to the 2012 audit period, MHM had never inquired whether Tradebot traded in CBIZ stock.

21. In about mid-2012, MHM’s engagement shareholder learned from Tradebot’s CFO that Tradebot had traded in CBIZ stock and discussed with Tradebot’s CFO the possibility that such trades may impact MHM’s independence.

22. In response, MHM’s engagement shareholder contacted MHM’s national office shareholder over independence and asked “whether or not that was something we need to be concerned about from an independence issue.” MHM’s national office shareholder over independence indicated he was not sure and forwarded the question to MHM’s national director of professional standards, MHM’s president, and members of MHM’s executive committee.

23. On September 4, 2012, Tradebot’s CFO emailed MHM’s engagement shareholder seeking further guidance on the impact of Tradebot’s trading in CBIZ, asking: “Can you send me the link pointing to the independence issue related to trading public stock.”

24. On September 6, 2012, MHM's engagement shareholder responded to Tradebot's CFO's email, stating: "I do not have anything specific to this situation to send (as it does not exist). It is basically an interpretation of the SEC rules. Our New York office had inquired of a similar situation in which the entity holds CBIZ stock and it was determined to be an issue.... Unfortunately our chief independence officer is on a long vacation and I am trying to get a hold of him for thoughts."

#### **H. MHM WAS ENGAGED FOR 2012 AUDIT BEFORE INDEPENDENCE ISSUE WAS RESOLVED**

25. On October 3, 2012, before resolving whether MHM was independent, Tradebot engaged MHM for the 2012 audit. In connection with that engagement, MHM did not discuss with Tradebot the unresolved independence issue and proceeded to sign the engagement letter.

26. MHM's potential independence conflict should have been resolved prior to signing the engagement letter.

#### **I. MHM PROVIDED ERRONEOUS INSTRUCTION TO TRADEBOT REGARDING INDEPENDENCE ISSUE**

27. On October 28, 2012, MHM's national office shareholder over independence contacted MHM's national director of professional standards and MHM's president regarding the Tradebot independence issue. On October 30, 2012, MHM's national director of professional standards provided guidance to MHM's national office shareholder over independence and MHM's engagement shareholder, citing Rule 2-01(c)(1)(iv)(A) and instructing them that he thought MHM would have to resign if Tradebot would be able to acquire more than 5% of the equity securities of CBIZ.

28. MHM's national director of professional standards's guidance to MHM's national office shareholder over independence and MHM's engagement shareholder did not comply with Rule 2-01(c)(1)(iv)(A).

29. In October 2012, MHM requested a meeting with the Commission staff ("Staff") to discuss matters relevant to the investigation, including a response to a request by the Staff to know whether MHM monitored the holdings of its broker-dealer clients for CBIZ stock, and whether there were instances of a broker-dealer client taking a position in CBIZ stock.

30. The Staff met with MHM on December 4, 2012; MHM's president attended the meeting with MHM's counsel. At the meeting, despite MHM's and MHM's president's knowledge regarding Tradebot's trades in CBIZ, MHM failed to inform the Staff of Tradebot's trades in CBIZ, even after specific requests for information regarding possible broker-dealer attest client trades in CBIZ stock. At that meeting the Staff conveyed to MHM that an audit client holding even one share of CBIZ would impair MHM's independence.

31. On December 5, 2012, one day after MHM's meeting with the Staff, MHM's engagement shareholder emailed Tradebot concerning MHM's conclusion regarding the independence question posed in September 2012, stating:

Following up on the independence issues we discussed earlier this year, below is the SEC rule. I am assuming Tradebot has not become the beneficial owner of more than 5% of the CBIZ stock at one time, however, I would like to propose perhaps you put a limit on the number of shares to be acquired at any one time. Is that possible??

Reg. SX §210.2-01(c)(1)(iv)(A)-

An accountant is not independent when:

(A) Investments by the audit client in the accounting firm. An audit client has, or has agreed to acquire, any direct investment in the accounting firm, such as stocks, bonds, notes, options, or other securities, or the audit client's officers or directors are record or beneficial owners of more than 5% of the equity securities of the accounting firm.

32. MHM's engagement shareholder's instruction to Tradebot was erroneous because the 5% threshold referenced in the rule does not apply to Tradebot; rather, it only applies to Tradebot's officers and directors.

33. Tradebot responded to MHM's engagement shareholder's email by indicating it would place a 10,000 share limit on trades in CBIZ, an amount that was below 5% of CBIZ's outstanding shares.

34. Tradebot continued to trade in CBIZ stock through 2013.

#### **J. MHM LACKED QUALITY CONTROL OR AUDIT PROCEDURES TO ENSURE CLIENTS DID NOT TRADE IN CBIZ STOCK**

35. Until 2013, MHM did not have any quality control or audit procedures to ensure clients did not trade in CBIZ stock or to otherwise comply with Rule 2-01(c)(1)(iv)(A). Until 2013, MHM provided no guidance to any audit client, including Tradebot, regarding trading prohibitions in CBIZ stock by the audit client. Further, MHM did not implement any audit procedures during its audits of Tradebot, or any other broker-dealer clients, to review the securities they were trading to ensure compliance with Rule 2-01(c)(1)(iv)(A).

#### **K. MHM PROVIDED AUDIT OPINIONS FOR 2008 THROUGH 2012 THAT REPRESENTED IT WAS INDEPENDENT OF TRADEBOT**

36. MHM performed audits of Tradebot's financial statements for the periods 2008 through 2012 in connection with Tradebot's Annual Reports filed with the Commission. MHM provided audit opinions for those audits which indicated, among other things, that MHM was independent of Tradebot for those audits, when in fact, MHM was not independent.

## **L. MHM's IMPROPER PROFESSIONAL CONDUCT**

37. Section 4C(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice allow the Commission to censure, or deny temporarily or permanently, an accounting firm's privilege of practicing before it if the firm is found to have "engaged . . . in improper professional conduct."

38. Pursuant to Section 4C(2) and Rule 102(e)(1)(ii), improper professional conduct involves a violation of applicable professional standards through intentional, knowing or reckless conduct, and two types of negligent conduct: a single instance of highly unreasonable conduct for which heightened scrutiny is warranted; or repeated instances of unreasonable conduct that indicate a lack of competence to practice before the Commission.

39. "Because of the importance of an accountant's independence to the integrity of the financial reporting system, the Commission has concluded that circumstances that raise questions about an accountant's independence always merit heightened scrutiny." Amendment to Rule 102(e) of the Commission's Rules of Practice, Release No. 33-7593 (Oct. 19, 1998), 63 Fed. Reg. 57168.

### **1. Relevant Audit Standards**

40. The term "applicable professional standards" primarily refers to generally accepted accounting principles ("GAAP"), generally accepted auditing standards ("GAAS"), the AICPA Code of Professional Conduct, and Commission regulations, but is broad enough to accommodate changes in the body of professional guidance routinely used by accountants.

41. For auditors of registered broker-dealers, such as Tradebot, the applicable professional standards related to GAAS are those that have been issued by the AICPA.<sup>1</sup>

42. Both Rule 2-01 and GAAS require auditors to maintain strict independence from their audit clients. AICPA Auditing Standards AU Section 150.02 requires that the auditor "maintain independence . . . in all matters relating to the audit." AICPA Auditing Standards AU Section 220.03 states "[i]t is of utmost importance to the profession that the general public maintain confidence in the independence of auditors."

43. GAAS requires that an auditor have policies and procedures designed to prevent independence impairment, and client acceptance and continuance procedures that ensure compliance with legal requirements, discussed below.

44. MHM was negligent in its failure to comply with those professional standards.

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<sup>1</sup> The AICPA auditing standards are applicable for the audits of broker-dealers, *Commission Guidance Regarding Auditing, Attestation, and Related Practice Standards Related to Brokers and Dealers*, Release No. 34-62991, Sept. 24, 2010.

## **2. MHM'S Independence Was Impaired When It Audited Tradebot's 2008 – 2012 Financial Statements**

### **a. Rule 17a-5**

45. Rule 17a-5 of the Exchange Act requires registered broker dealers to file periodic reports with the Commission including, pursuant to Rule 17a-5(d)(1)(i), an annual report “which shall be audited by an independent public accountant.” Rule 17a-5(e)(1)(i) further states: “An audit shall be conducted by a public accountant who shall be in fact independent as defined in paragraph (f)(3) of this section herein, and shall give an opinion covering the statements filed pursuant to paragraph (d)...”

46. Rule 17a-5(f)(3) defines independence as “in accordance with the provisions of § 210.2-01(b) and (c) of this chapter.”

### **b. Rule 2-01(b) and (c)**

47. The general standard of auditor independence is described in Rule 2-01(b) and states an accountant is not independent if not “capable of exercising objective and impartial judgment on all issues encompassed within the accountant’s engagement.”

48. Additionally, Rule 2-01(c)’s subsections set forth “a non-exclusive specification of circumstances inconsistent with” Rule 2-01(b)’s general requirement. The Commission stated: “As to circumstances specifically set forth in our rule, we have set forth a bright-line test: an auditor is not independent if he or she maintains the relationships, acquires the interests, or engages in the transactions specified in the rule.” Revision of the Commission’s Auditor Independence Requirements, Release No. 33-7919, 65 Fed. Reg. 76008 at 76030.

49. When MHM audited Tradebot’s financial statements during the audit periods in which Tradebot had acquired direct investments in CBIZ stock, namely 2008 through 2012, MHM’s independence was impaired as to those audits.

## **3. MHM Violated Other Applicable Professional Standards**

50. MHM violated professional standards that require an accounting firm to establish policies and procedures designed to assure independence, and client engagement procedures that ensure compliance with legal requirements and risks associated with the engagement.

### **a. MHM Failed to Design Policies and Procedures That Assured Independence**

51. AICPA quality control standards are professional standards under GAAS. Pursuant to AICPA QC Section 10 Paragraph 22, an auditor is required to have policies and procedures “designed to provide with reasonable assurance that the firm ... maintain independence . . . .”

52. In about 2012, MHM had well over a hundred broker dealer and investment fund clients, including Tradebot, which regularly trade in the securities of thousands of public companies. Despite the risks of audit clients trading in CBIZ securities, MHM did not have any written policies or procedures to address the independence issues established by Rule 2-01(c)(1)(iv)(A) of audit clients trading in CBIZ securities.

53. Further, MHM did not have any written procedures to inform audit clients of the transactional proscriptions of trading in CBIZ securities or any written procedures to follow if audit clients traded in CBIZ securities in violation of Rule 2-01(c)(1)(iv)(A).

54. Until 2013, MHM's audit clients were unaware of restrictions on the trading of CBIZ securities.

#### **b. MHM Failed To Follow Proper Client Engagement Procedures**

55. Pursuant to AICPA QC Section 10 Paragraph 27, an auditor is required to have adequate policies and procedures for client continuance that are "designed to provide the firm with reasonable assurance that it will ... continue ... engagements only when the firm can comply with legal and relevant ethical requirements."

56. After learning in 2012 of Tradebot's CBIZ transactions, MHM failed to perform adequate client acceptance procedures to ensure it was independent when being engaged and beginning substantive field work. Shortly after internal consultation over the independence question was initiated but before MHM's national director of professional standards had provided any guidance to the engagement shareholder, MHM proceeded with the engagement. By doing so, MHM entered into an engagement without determining whether it could continue with the audit.

#### **4. MHM Violated AICPA Professional Standards**

57. Through the conduct described above, MHM violated GAAS provisions AU Sections 150.02 and 220.03, AICPA QC Section 10 Paragraphs 22 and 27 and thereby negligently engaged in improper professional conduct.

58. Through its repeated violations of applicable professional standards, MHM demonstrated a lack of competence to practice before the Commission.

#### **M. MHM CAUSED TRADEBOT'S VIOLATION OF SECTION 17(a) AND RULE 17a-5**

59. Under Section 21C of the Exchange Act, a person is a "cause" of another's primary violation if the person knew or should have known that its act or omission would contribute to the primary violation. Negligence is sufficient to establish "causing" liability under Section 21C when a person is alleged to have caused a primary violation that does not require scienter. *In re KPMG Peat Marwick*, Exch. Act. Rei. No. 43862 (Jan. 19, 2001), *aff'd*, *KPMG v. SEC*, 289 F.3d 109 (D.C. Cir. 2002).

60. MHM caused Tradebot's violations of Section 17(a) and Rule 17a-5 by certifying, as independent public accountants, Tradebot's financial statements contained in its Annual Reports, when, in fact, MHM was not independent of Tradebot.

61. Further, MHM lacked an adequate system of controls to maintain independence and failed to inform Tradebot of the proscription against trading in CBIZ stock. Those failures impaired MHM's independence and thereby caused Tradebot to file Annual Reports that did not contain audits by an independent accountant.

62. MHM was negligent in certifying it was independent of Tradebot and having an inadequate system of controls and by failing to notify Tradebot of the proscription against trading in CBIZ stock.

### **III.**

In view of the allegations made by the Division of Enforcement and the Office of Chief Accountant, the Commission deems it appropriate that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent MHM an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate against Respondent MHM pursuant to Section 4C of the Exchange Act and Rule 102(e) of the Commission's Rules of Practice, including, but not limited to, censure or denying, temporarily or permanently, the privilege of appearing or practicing before the Commission; and

C. Whether, pursuant to Section 21C of the Exchange Act, Respondent should be ordered to cease and desist from committing or causing violations of and any future violations of Exchange Act Section 17(a) and Rule 17a-5 thereunder, whether Respondent should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act, and whether Respondent should be ordered to pay disgorgement pursuant to Section 21C(e) of the Exchange Act.

### **IV.**

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent MHM shall file an answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent MHM fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against the Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Respondent as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 17 C.F.R. § 201.360(a)(2).

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as a witness or counsel in proceedings held pursuant to notice. Since this proceeding is not a "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields  
Secretary