

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 79364 / November 21, 2016

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3825 / November 21, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17691

In the Matter of

**PMB Helin Donovan, LLP,
Christopher Bauer, CPA,
and Jeffrey Jamieson, CPA**

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,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against PMB Helin Donovan, LLP ("PMBHD"), Christopher Bauer ("Bauer") and Jeffrey Jamieson ("Jamieson") (collectively "Respondents") pursuant to Sections 4C¹ and 21C of the Securities Exchange Act of

¹ Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully

1934 (“Exchange Act”) and Rule 102(e)(1)(ii) and 102(e)(1)(iii) of the Commission’s Rules of Practice.²

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this 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, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds³ that:

A. SUMMARY

1. This proceeding concerns improper professional conduct and violations of Commission and Public Company Accounting Oversight Board (“PCAOB”) rules and standards that require a registered public accounting firm and its associated persons to be independent of the firm’s audit

violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

² Rule 102(e)(1)(ii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in unethical or improper professional conduct.

Rule 102(e)(1)(iii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

³ The findings herein are made pursuant to Respondents’ Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

client throughout the audit and professional engagement period. As a result of failing to comply with partner rotation requirements, PMBHD was not independent with respect to seven issuer clients in connection with the 2010 through 2013 reporting periods detailed below resulting in the issuance of audit reports that erroneously stated PMBHD had conducted its audits in accordance with PCAOB standards.

2. This proceeding also concerns the failure to conduct quarterly reviews and an annual audit relating to Uni-Pixel, Inc. (“UNXL”) for the year ended December 31, 2013 in accordance with applicable professional standards and issuance of an audit report that erroneously stated it had conducted its audit in accordance with PCAOB standards.

B. RESPONDENTS

3. **PMBHD** is a public accounting firm that has been registered since 2003 with the PCAOB and is headquartered in Austin, Texas.

4. **Christopher Bauer, CPA**, age 41 and a resident of Austin, Texas, is a CPA licensed in Texas and Colorado. He also was a licensed CPA in Massachusetts from 2001 until his license expired in 2009. Bauer served as the lead engagement partner on UNXL engagements from the 2008 audit through the second quarter review in 2013. He served as PMBHD’s CFO from 2011 through 2013, the partner in charge of the firm’s Texas audit practice beginning in 2013, and then the firm-wide chair of the audit quality committee in 2014. Bauer left PMBHD in October 2014.

5. **Jeffrey Jamieson, CPA**, age 64 and a resident of Dallas, Texas, is a CPA licensed in Texas, Florida and California. He has been the managing partner for PMBHD’s Dallas office since 2009. Jamieson served as the engagement quality review partner for UNXL’s 2012 audit and 2013 first and second quarter reviews. From the 2013 third quarter review through the 2015 audit, Jamieson served as the lead engagement partner for UNXL engagements.

C. RELATED INDIVIDUALS AND ENTITY

6. **Partner A**, is a CPA licensed in Texas. He joined PMBHD in 2002 and departed in January 2014. At relevant times, he served as the lead engagement partner for Issuer F and as the engagement quality review partner for Issuer E.

7. **Partner B**, is a CPA licensed in California. He joined PMBHD in 2002 and departed in December 2012. At relevant times, he served as the engagement quality review partner for Issuer F.

8. **Partner C**, is a CPA licensed in Washington. She joined PMBHD in 2007 and departed in March 2016. At relevant times, she served as the lead engagement partner for Issuers D and G.

9. **Partner D**, is a CPA licensed in Texas. He has been an audit partner with PMBHD since 2002. At relevant times, he served as the lead engagement partner for Issuers B and C and the engagement quality review partner for Issuers B, C, and D.

10. **Uni-Pixel, Inc.** (“UNXL”) is a Delaware Corporation originally headquartered in The Woodlands, Texas, and, beginning in August 2015, headquartered in Santa Clara, California. UNXL purports to develop and sell display and touch screen technologies. At all relevant times, UNXL’s common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and quoted on the NASDAQ. At all relevant times, UNXL had a fiscal year ended on the last day of December. On March 16, 2016, by consent, a Final Judgment was entered against UNXL, enjoining it from violating Section 17(a) of the Securities Act of 1933 (“Securities Act”), Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13 thereunder, and pay a \$750,000 civil penalty, in a civil action entitled *SEC v. Killion et. al*, Civ. Act. No. 4:16-cv-00621 (S.D.Tex. Mar. 16, 2016).

D. RELEVANT ISSUERS

11. At all relevant times, Issuer B filed reports with the Commission pursuant to Rule 30b2-1(a) of the Investment Company Act, had a fiscal year ended on the last day of December and had securities that traded on the NASDAQ.

12. At all relevant times, Issuer C filed reports with the Commission pursuant to Rule 30b2-1(a) of the Investment Company Act, had a fiscal year ended on the last day of December and had securities that traded on the NASDAQ.

13. At all relevant times, Issuer D’s common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and traded on the OTC Market. The issuer also had a fiscal year ended on the last day of December.

14. At all relevant times, Issuer E’s common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the OTC Market. The issuer also had a fiscal year ended on the last day of December.

15. At all relevant times, Issuer F’s common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and traded on the NASDAQ. The issuer also had a fiscal year ended on the last day of March.

16. At all relevant times, Issuer G’s common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and traded on the OTC Market. The issuer also had a fiscal year ended on the last day of December.

E. FACTS

i. Commission Audit Partner Rotation Requirements and PCAOB Engagement Quality Review Requirements

17. Registered public accounting firms and their associated persons are required to be independent of their audit clients throughout the audit and professional engagement period. 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. *See* Amendment to Rule 102(e) of the Commission's Rules of Practice, 63 Fed. Reg. 57,164 – 67; 57,168 (Oct. 26, 1998).

18. Section 10A(j) of the Exchange Act, *Audit Partner Rotation*, states “it shall be unlawful for a registered public accounting firm to provide audit services to an issuer if the lead (or coordinating) audit partner (having primary responsibility for the audit) or the partner responsible for reviewing the audit, has performed audit services for that issuer in each of the five previous fiscal years of that issuer.”⁴

19. Rule 10A-2 of the Exchange Act, *Auditor Independence*, provides that it shall be unlawful for an auditor not to be independent with respect to, among other requirements, the partner rotation requirements of the Commission's Regulation S-X. The Commission's independence rules allow lead and concurring partners⁵ to serve for five consecutive years, after which they may not serve in either role for another period of five consecutive years. Rule 2-01(c)(6)(i)(A) of Regulation S-X. PCAOB Rule 3520, *Auditor Independence*, requires that a registered public accounting firm and its associated persons be independent of the Firm's issuer audit clients throughout the audit and professional engagement period.

20. For fiscal years beginning on or after December 15, 2009, Auditing Standard No. 7, *Engagement Quality Review* (“AS 7”) requires that an engagement quality review be performed on audits and interim reviews conducted pursuant to PCAOB standards. AS 7, ¶ 1. “The person who served as the engagement partner during either of the two audits preceding the audit subject to the engagement quality review may not be the engagement quality reviewer.” (“Cooling-Off Period”). AS 7, ¶ 8. In addition, the engagement quality reviewer should, among other things, review the engagement team's evaluation of the firm's independence in relation to the engagement. AS 7, ¶¶ 10 and 15. When reviewing interim financial information, and / or performing an engagement quality review for an audit, the engagement quality reviewer may provide concurring approval of issuance only if, after performing with due professional care the review required by AS 7, he or she is not aware of a significant engagement deficiency. *Id.* at ¶¶ 12 and 17. AS 7 provides that a

⁴ PCAOB Rule 1001(a)(vii) defines audit services in part as “professional services rendered for the audit of an issuer's annual financial statements, and (if applicable) for the reviews of an issuer's financial statements included in the issuer's quarterly reports.”

⁵ *See* Definitions at Rule 2-01(f)(7)(ii)(A) and (B) of Regulation S-X.

significant engagement deficiency in a review of interim financial information exists when, among other things, the firm is not independent of its client. *Id.*

ii. PMBHD Violated Audit Partner Rotation Requirements and PCAOB Engagement Quality Review Cooling-Off Period Requirements

21. PMBHD failed to comply with the audit partner rotation requirements and, as a result, PMBHD’s independence was impaired with respect to the seven engagements described below. PMBHD also failed to comply with the PCAOB Engagement Quality Review Cooling-Off Period requirements. In connection therewith, the firm issued audit reports erroneously stating that PMBHD conducted its audits in accordance with PCAOB standards.

Issuer	Violations of Audit Partner Rotation Requirements
UNXL	Bauer improperly served as lead engagement partner for the Q1 and Q2 2013 reporting periods after previously serving as lead engagement partner for the preceding five fiscal periods (December 31, 2008 through December 31, 2012)
Issuer D	Partner C improperly served as lead engagement partner for the Q1, Q2, and Q3 2013 reporting periods after previously serving as lead engagement partner for the preceding five fiscal periods (December 31, 2008 through December 31, 2012); Partner D improperly served as the engagement quality review partner for the 2012 and Q1 and Q2 2013 reporting periods after previously serving as the concurring partner or the engagement quality review partner for the preceding five fiscal periods (December 31, 2007 through December 31, 2011)
Issuer E	Partner A improperly served as the engagement quality review partner for the Q1, Q2, and Q3 2012 reporting periods after previously serving as the concurring partner or the engagement quality review partner for the preceding five fiscal periods (December 31, 2007 through December 31, 2011)
Issuer F	Partner A improperly served as the lead engagement partner for the Q1 and Q2 fiscal 2013 reporting periods after previously serving as lead engagement partner for the preceding five fiscal periods (March 31, 2008 through March 31, 2012); Partner B improperly served as the engagement quality review partner for the Q1 and Q2 fiscal 2013 reporting periods after previously serving as the concurring partner or the engagement quality review partner for the preceding five fiscal periods (March 31, 2008 through March 31, 2012)
Issuer G	Partner C improperly served as lead engagement partner for the Q1, Q2, and Q3 2013 reporting periods after previously serving as lead engagement partner for the preceding five fiscal periods (December 31, 2008 through December 31, 2012)

Issuer	Violations of Engagement Quality Review Cooling-Off Period and Audit Partner Rotation Requirements
Issuer B	Partner D improperly served as the engagement quality review partner for the 2010 fiscal reporting periods after having previously served as lead engagement partner during either of the two audits preceding the audit subject to the engagement quality review – Partner D served as the lead engagement partner for the fiscal years ended December 31, 2005 through 2008 and the concurring partner for the fiscal year ended December 31, 2009.
Issuer C	Partner D improperly served as engagement quality review partner for the 2010 fiscal reporting periods after having previously served as lead engagement partner during either of the two audits preceding the audit subject to the engagement quality review – Partner D served as the lead engagement partner during the fiscal years ended December 31, 2005 through 2008 and the concurring partner for the fiscal year ended December 31, 2009.

iii. 2013 UNXL Engagement Review and Audit Failures

22. As detailed below, PMBHD, Bauer, and Jamieson failed to conduct UNXL’s 2013 quarterly reviews and annual audit in accordance with PCAOB standards for two main reasons. First, Bauer was not independent of UNXL during the Q1 and Q2 2013 reviews of interim financial information because he served as lead engagement partner for the preceding five fiscal periods. Jamieson, who served as engagement quality review partner for UNXL’s 2012 audit – and Bauer’s fifth consecutive audit – failed to identify that Bauer was not independent when Jamieson performed his engagement quality reviews for Q1 and Q2 2013. Second, PMBHD, Bauer, and Jamieson improperly evaluated whether UNXL’s disclosures in its interim and year-end financial statements relating to two research and development arrangements contained the information essential for a fair presentation of the financial statements in conformity with the applicable financial reporting framework. PMBHD and Jamieson should have evaluated these departures from Generally Accepted Accounting Principles (“GAAP”) in UNXL’s audited financial statements for fiscal 2013, and should have considered whether to modify the audit report based on their evaluation.

a. PMBHD’s Independence Was Impaired For Q1 and Q2 2013

23. As noted above, Bauer was not independent of UNXL when he served as lead engagement partner for the Q1 and Q2 2013 reviews because he previously functioned as lead engagement partner for the preceding five fiscal periods (December 31, 2008 through December 31, 2012). Additionally, Jamieson failed to identify that Bauer’s continuing involvement impaired PMBHD’s independence as a part of his engagement quality reviews of PMBHD’s Q1 and Q2 2013 interim review engagements. The engagement quality review partner should, among other things, review the engagement team’s evaluation of the firm’s independence in relation to the

engagement. AS 7, ¶ 15. When reviewing interim financial information, the engagement quality reviewer may provide concurring approval of issuance only if, after performing with due professional care the review required by AS 7, he or she is not aware of a significant engagement deficiency. *Id.* at ¶ 17. AS 7 provides that a significant engagement deficiency in a review of interim financial information exists when, among other things, the firm is not independent of its client. *Id.* Despite the impairment of PMBHD's independence, Jamieson nonetheless provided concurring approval of issuance in connection with the reviews of UNXL's Q1 and Q2 2013 interim financial information.

b. UNXL's Agreements with Dell and Intel

24. Effective on November 20, 2012, UNXL entered into a "preferred price and capacity license" agreement with Dell to introduce products to the market using the company's purportedly proprietary technology (the "Dell Agreement"). The Dell Agreement contemplated UNXL satisfying three potential deliverables or milestones. At the completion of each milestone, contingent upon the mutual agreement of the parties, Dell would pay UNXL \$5 million, for a potential total of \$15 million. UNXL received the first milestone payment of \$5 million in March 2013, but did not receive any additional amounts under the Dell Agreement.

25. The Dell Agreement – a preferred price and capacity license – was the first contract of its kind for UNXL. It granted Dell an exclusive license in the notebook market segment for UNXL's purported technology, and the potential revenue of \$15 million dwarfed not only UNXL's 2012 revenues of \$76,000 but also the Company's lifetime total revenue of approximately \$1.67 million.

26. Effective March 21, 2013, UNXL entered into an agreement with Intel in connection with the development and production of UNXL's purported technology (the "Intel Agreement"). The Intel Agreement contemplated two potential milestones requiring deliverables from UNXL. At the completion of each milestone, contingent upon the mutual agreement of the parties, Intel would pay UNXL \$5 million, for a potential total of \$10 million. UNXL received an initial payment of \$5 million in May 2013 to assist with the purchase of certain equipment, and this was classified as deferred revenue until completion of the first required deliverable. UNXL never reached the first milestone contemplated by the Intel Agreement and did not receive any additional payments from Intel.

c. UNXL's GAAP Required Disclosure Omissions

27. UNXL filed with the Commission quarterly reports on Forms 10-Q on April 30, August 8, and November 7, 2013 and its 2013 annual report on Form 10-K on February 26, 2014. In each of these reports, UNXL failed to provide disclosures required under GAAP in connection with the Dell and Intel Agreements despite noting that it used the milestone accounting method in its 2013 Form 10-K.

28. Applicable accounting standards require specific disclosures, including the terms of significant arrangements and a description of each milestone and related contingent consideration. UNXL's lack of disclosure allowed the Company to conceal the fact that it not only missed, but also did not even have the capability to meet, contractually defined milestones required under both the Dell and Intel Agreements.

29. Under GAAP, the Dell and Intel Agreements are research and development arrangements. ASC 730-20, *Research and Development Arrangements*, requires the following disclosures:

- a. The terms of significant agreements under the research and development arrangement (including royalty arrangements, purchase provisions, license agreements, and commitments to provide additional funding) as of the date of each balance sheet presented; and
- b. The amount of compensation earned and costs incurred under such contracts for each period for which an income statement is presented.

30. ASC 605-28, *Revenue Recognition: Milestone Method*, requires an entity to disclose the following for each arrangement that includes milestones:

- a. A description of the overall arrangement;
- b. A description of each milestone and related contingent consideration;
- c. A determination of whether each milestone is considered substantive;
- d. The factors that the entity considered in determining whether the milestone or milestones are substantive; and
- e. The amount of consideration recognized during the period of the milestone or milestones.

31. UNXL failed to make all of the foregoing disclosures in connection with the Dell and Intel Agreements until January 27, 2015 when it filed an amended Form 10-K for the 2013 reporting period.

d. PMBHD's Reviews of Q1 and Q2 2013 Interim Information

32. The objective of a review of interim financial information is to provide the accountant with a basis for communicating whether he or she is aware of any material modifications that should be made to the interim financial information for it to conform with GAAP. A review consists principally of performing analytical procedures and making inquiries, and does not contemplate tests of accounting records, tests of controls, or performing other procedures

ordinarily performed in an audit. A review may bring to the accountant's attention significant matters affecting the interim financial information, but it does not provide assurance that the accountant will become aware of all significant matters that would be identified in an audit. AU 722, *Interim Financial Information*, at .07.

33. Accountants should make inquiries of management and perform other review procedures when conducting a review of interim financial information. AU 722.18. One example of a situation ordinarily requiring an accountant to inquire of management is the existence of new or complex revenue recognition methods. AU 722.55. If the accountant becomes aware of information that leads him or her to believe that the interim financial information may not be in conformity with GAAP in all material respects, the accountant should make additional inquiries or perform other procedures that the accountant considers appropriate to provide a basis for communicating whether he or she is aware of any material modifications that should be made to the interim financial information. Another example is if the accountant questions whether a significant sales transaction is recorded in conformity with GAAP, the accountant should perform additional procedures, such as discussing the terms of the transaction with senior marketing and accounting personnel, reading the sales contract, or both, to resolve his or her questions. AU 722.22.

34. Misstatements identified by the accountant or brought to the accountant's attention, including inadequate disclosure, should be evaluated individually and in the aggregate to determine whether material modification should be made to the interim financial information for it to conform with GAAP. AU 722.26.

35. Rule 10-01 of Regulation S-X states, in part, that

The interim financial information shall include disclosures either on the face of the financial statements or in accompanying footnotes sufficient so as to make the interim information presented not misleading. Registrants may presume that users of the interim financial information have read or have access to the audited financial statements for the preceding fiscal year and that the adequacy of additional disclosure needed for a fair presentation, except in regard to material contingencies, may be determined in that context. Accordingly, footnote disclosure which would substantially duplicate the disclosure contained in the most recent annual report to security holders or latest audited financial statements [...] may be omitted. However, disclosure shall be provided where events subsequent to the end of the most recent fiscal year have occurred which have a material impact on the registrant.

36. When reviewing interim financial information, engagement quality reviewers should, among other things, evaluate the engagement team's significant judgments in connection with the company's business and recent significant activities. AS 7, ¶ 15. The engagement quality reviewer should also review the interim financial statements for all periods presented and for the immediately preceding interim period. *Id.*

37. As a part of PMBHD's reviews of UNXL's Q1 and Q2 2013 interim financial information, Bauer, as the lead engagement partner, and Jamieson, as the engagement quality review partner, were aware that UNXL had entered into material agreements with Intel and Dell. Additionally, Bauer examined the agreements and discussed the company's accounting treatment with UNXL's management. Bauer and Jamieson knew or should have known that these agreements were research and development agreements containing contractual milestones affecting revenue recognition. Similarly, Bauer and Jamieson knew or should have known that the interim financial information included in UNXL's Q1 and Q2 2013 Forms 10-Q, read in conjunction with the audited financial statements included in UNXL's 2012 Form 10-K, did not contain all of the disclosures about these agreements that were required for the Q1 and Q2 2013 interim financial information to be in conformity with GAAP in all material respects.

38. Bauer improperly evaluated the required revenue recognition disclosures in the financial statements included in UNXL's Q1 and Q2 2013 Forms 10-Q. The Dell Agreement was the first contract of its kind for UNXL and amounted to the most revenue ever recognized by the Company. Yet, the financial statements included in UNXL's Form 10-Q for Q1 2013 was devoid of any mention of the milestone method, let alone the disclosures required about the Dell Agreement.

39. The Intel Agreement similarly resulted in significant operational results for UNXL and caused the company to recognize \$5 million in deferred revenue – amounting to approximately 76% of UNXL's total liabilities. UNXL's financial statements included in its Form 10-Q for Q2 2013 again failed to mention it was using the milestone method and did not include all of the required disclosures about the Intel Agreement.

40. As engagement quality reviewer, Jamieson's review should have included a review of the significant judgments of the engagement team's review of UNXL's most significant revenue transactions. Jamieson discussed the Dell and Intel agreements with the engagement team and had access to all relevant facts, yet he failed to identify that the engagement team's documentation did not address the engagement team's erroneous conclusion regarding UNXL's omission of required revenue recognition disclosures under GAAP. AS 7 ¶ 16. Similarly, when Jamieson served as the engagement quality reviewer for UNXL's 2012 audit and Q1 and Q2 2013 review engagements, he reviewed the engagement team's evaluation of the firm's independence in relation to the engagement but failed to identify that Bauer was required to rotate off the engagement beginning in Q1 2013. As a result, Jamieson, as engagement quality reviewer for PMBHD's Q1 and Q2 2013 engagements, improperly provided concurring approval of issuance and approved Bauer's communications of the engagement conclusions to UNXL's management and audit committee without objecting to UNXL's failure to include the required revenue recognition disclosures in the Company's financial statements included in its Q1 and Q2 2013 Forms 10-Q or informing them that PMBHD's independence was impaired.

e. PMBHD's Review of Q3 2013 Interim Information and 2013 Audit

41. Jamieson, as the lead engagement partner for PMBHD's Q3 2013 review and 2013 audit, improperly evaluated the required revenue recognition disclosures in the financial statements included in UNXL's Q3 2013 Form 10-Q and 2013 Form 10-K. Neither filing included all of the required disclosures about the Dell and Intel Agreements.

42. In connection with its audit of UNXL's December 31, 2013 financial statements, a PMBHD audit manager communicated in writing to UNXL's then-CFO, copying Jamieson, providing specific instructions on required disclosures about the Dell and Intel Agreements, including references and details about the milestone accounting method. Most notably, the communication stated, in part, "We appreciate that you will want to have limited disclosures around the Dell contract but the disclosure still needs to fall in line with GAAP."

43. PMBHD's audit documentation contained the inappropriate conclusion that UNXL's financial statement disclosures complied with GAAP. For instance, PMBHD utilized a standardized disclosure checklist to review UNXL's primary disclosure requirements under GAAP. In the workpaper section relating to "Revenue Recognition – Special Areas," the workpaper indicated that all of the relevant disclosures relating to "Milestone Method Related to Research and Development" had been made despite, in the starkest example, UNXL not disclosing a "description of each milestone and related contingent consideration" for either the Dell or Intel Agreements.

44. In another instance, PMBHD's 2013 audit revenue recognition memorandum properly identified ASC 730-20 and ASC 605-28 as the applicable accounting standards for the Dell and Intel Agreements but improperly concluded that the filed disclosures complied with GAAP.

iv. PMBHD's Audit Reports Did Not Comply With PCAOB Standards and Thus Violated Rule 2-02 of Regulation S-X

45. Under AU 508, *Reports on Audited Financial Statements*, an auditor may only issue an unqualified opinion on historical financial statements when the auditor has formed such an opinion on the basis of an audit performed in accordance with PCAOB standards. AU 508.07. Rule 2-02(b)(1) of Regulation S-X requires an accountant's report to state whether the audit was made in accordance with generally accepted auditing standards. "[R]eferences in Commission rules and staff guidance and in the federal securities laws to GAAS or to specific standards under GAAS, as they relate to issuers, should be understood to mean the standards of the PCAOB plus any applicable rules of the Commission." *Commission Guidance Regarding the Public Company Accounting Oversight Board's Auditing and Related Professional Practice Standard No. 1*, Rel. No. 34-49708 (May 14, 2004). Thus, an auditor violates Regulation S-X Rule 2-02(b)(1) if it issues a report stating that it had conducted its audit in accordance with PCAOB standards when it had not. *See In re Andrew Sims, CPA*, Rel. No. 34-59584, AAER No. 2950 (Mar. 17, 2009).

46. As described above, PMBHD's violations of the partner rotation requirements resulted in the firm not being independent with respect to seven issuer audit clients for the 2010 through 2013 reporting periods. As a result, PMBHD should therefore not have issued audit reports asserting that PMBHD had conducted its audits in accordance with PCAOB standards for the periods in which it was not independent.

47. As described above, PMBHD improperly evaluated the required revenue recognition disclosures in the financial statements included in UNXL's 2013 Form 10-K. PMBHD should therefore not have issued an audit report asserting that PMBHD had conducted its audit of UNXL's 2013 financial statements in accordance with PCAOB standards and that UNXL's 2013 financial statements were presented fairly, in all material respects.

v. PMBHD Failed to Exercise Due Professional Care and Professional Skepticism

48. PCAOB standards require that "[d]ue professional care is to be exercised in the performance of the audit and the preparation of the report." AU 150, *Generally Accepted Auditing Standards*, at .02; AU 722.01 (noting the three general standards discussed in AU 150 are applicable to a review of interim financial information). Additionally, "[d]ue professional care requires the auditor to exercise professional skepticism. Professional skepticism is an attitude that includes a questioning mind and a critical assessment of audit evidence. The auditor uses the knowledge, skill, and ability called for by the profession of public accounting to diligently perform, in good faith and with integrity, the gathering and objective evaluation of evidence." AU 230, *Due Professional Care in the Performance of Work*, at .07. Furthermore, "[i]n exercising professional skepticism, the auditor should not be satisfied with less than persuasive evidence because of a belief that management is honest." AU 230.09.

49. PMBHD failed to act with due professional care because the firm repeatedly failed to comply with partner rotation requirements resulting in the firm not being independent with respect to seven issuer clients for the 2009 through 2013 reporting periods. Bauer and Jamieson failed to act with due professional care in connection with the firm not being independent with respect to UNXL's Q1 and Q2 2013 review engagements. Bauer and Jamieson also failed to act with due professional care by improperly evaluating the required revenue recognition disclosures relating to the Dell and Intel Agreements despite the significance of the agreements to the issuer and identification of the applicable accounting standards. PMBHD, Bauer, and Jamieson should have addressed these departures from GAAP in UNXL's audited financial statements by modification of the audit opinion. Auditing Standard No. 14, *Evaluating Audit Results*, ¶ 31; AU 508, *Reports on Audited Financial Statements*, .20 and .41.

F. VIOLATIONS

50. As a result of the conduct described above, PMBHD willfully⁶ violated, and Bauer and Jamieson willfully aided and abetted PMBHD's violations of, Section 10A(j) of the Exchange Act and Rule 10A-2 thereunder which makes it unlawful for an auditor not to be independent with respect to, among other requirements, the partner rotation requirements.

51. As a result of the conduct described above, PMBHD violated, and Bauer and Jamieson willfully aided and abetted PMBHD's violations of, Rule 2-02 of Regulation S-X which requires an accountant's report to state whether the audit was made in accordance with generally accepted auditing standards.

52. As a result of the conduct described above, PMBHD, Bauer, and Jamieson caused issuers to violate Section 13(a) of the Exchange Act and Rule 13a-1 thereunder which require every issuer of a security registered pursuant to Section 12 of the Exchange Act file with the Commission periodic reports as the Commission may require. The obligation to file such reports embodies the requirement that they be true and correct. PMBHD authorized issuers to include audit reports that falsely stated that the audits had been conducted in accordance with PCAOB standards. Similarly, PMBHD, Bauer, and Jamieson caused issuers to violate Section 13(a) of the Exchange Act and Rule 13a-13 thereunder when the issuers failed to include in their Forms 10-Q interim financial statements that had been reviewed in accordance with PCAOB standards.

G. FINDINGS

Based on the foregoing, the Commission finds that:

- a. PMBHD, Bauer, and Jamieson engaged in improper professional conduct pursuant to Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice;
- b. PMBHD (i) willfully violated Section 10A(j) of the Exchange Act and Rule 10A-2 thereunder, and Rule 2-02 of Regulation S-X; and (ii) caused issuers to violate Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder;
- c. Bauer (i) willfully aided and abetted PMBHD's violations of Section 10A(j) of the Exchange Act and Rule 10A-2 thereunder, and Rule 2-02 of Regulation S-X; and (ii) caused issuers to violate Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder; and

⁶ A finding of willfulness does not require intent to violate, but merely intent to do the act which constitutes a violation. *SEC v. K.W. Brown & Co.*, 555 F. Supp. 2d 1275, 1309 (S.D. Fla.2007), citing *Wonsover v. SEC*, 205 F.3d 408, 413-15 (D.C. Cir. 2000); *SEC v. Steadman*, 603 F.2d 1126, 1135 (5th Cir. 1979); *Arthur Lipper Corp. v. SEC*, 547 F.2d 171, 180 (2d Cir. 1976).

d. Jamieson (i) willfully aided and abetted PMBHD's violations of Section 10A(j) of the Exchange Act and Rule 10A-2 thereunder, and Rule 2-02 of Regulation S-X; and (ii) caused issuers to violate Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder.

H. REMEDIAL EFFORTS

In determining to accept the Offer, the Commission considered remedial acts undertaken by PMBHD.

I. UNDERTAKINGS

Respondent PMBHD undertakes:

- a. to retain, within 60 days of the date of the Order, at its own expense, the services of an Independent Consultant not unacceptable to the Division of Enforcement of the Commission ("Division of Enforcement"), to review PMBHD's written policies and procedures concerning (i) audit client acceptance, (ii) audit partner and engagement quality review partner assignment, and (iii) auditor independence including audit partner and engagement quality review partner rotation;
- b. to require the Independent Consultant, at the conclusion of the review, which shall be no more than 120 days after the entry of the Order, to submit a Report of the Independent Consultant to PMBHD and the Division of Enforcement. The report shall address the issues described above and shall include a description of the review performed, the conclusions reached, the Independent Consultant's recommendations for changes or improvements to the policies, procedures and practices of PMBHD and a procedure for implementing the recommended changes or improvements to such policies, procedures, and practices to provide reasonable assurance that PMBHD's audits are conducted in compliance with (i) the relevant Commission's regulations and (ii) auditing standards relevant to appearing and practicing before the Commission;
- c. to adopt, implement, and thereafter maintain all policies, procedures, and practices recommended in the Report of the Independent Consultant within 180 days from the date of the entry of the Order; provided however, that within 150 days from the date of the entry of the Order, PMBHD will in writing advise the Independent Consultant and the Division of Enforcement of any recommendations that it considers to be unnecessary or inappropriate. With respect to any such recommendation, PMBHD need not adopt that recommendation at that time but will propose in writing an alternative policy, procedure, or system designed to achieve the same objective or purpose. As to any of the Independent Consultant's recommendations about which PMBHD and the Independent Consultant do not agree, such parties shall attempt in good faith to reach agreement within 180 days of the date of the entry of the Order. In the event that PMBHD and the Independent Consultant are unable to agree on an alternative proposal, PMBHD will abide by the determinations of the Independent

Consultant and adopt those recommendations deemed appropriate by the Independent Consultant;

- d. to cooperate fully with the Independent Consultant in its review, including making such information and documents available as the Independent Consultant may reasonably request, and by permitting and requiring PMBHD's employees and agents to supply such information and documents as the Independent Consultant may reasonably request;
- e. that, in order to ensure the independence of the Independent Consultant, PMBHD (i) shall not have the authority to terminate the Independent Consultant without prior written approval of the Division of Enforcement; and (ii) shall compensate the Independent Consultant, and persons engaged to assist the Independent Consultant, for services rendered pursuant to the Order at their reasonable and customary rates;
- f. to require the Independent Consultant to enter into an agreement that provides that, for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with PMBHD, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division of Enforcement's Fort Worth office, enter into any employment, consultant, attorney-client, auditing or other professional relationship with PMBHD, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement; and
- g. to certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to David L. Peavler, Associate Regional Director, with a copy to the Office of Chief Counsel of the Division of Enforcement, no later than sixty (60) days from the date of the completion of the undertakings.
- h. For good cause shown and upon timely application by the Independent Consultant or PMBHD, the Commission's staff may extend any of the deadlines set forth above.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Pursuant to Section 21C of the Exchange Act, PMBHD, Bauer and Jamieson shall cease and desist from committing or causing any violations and any future violations of Sections 10A(j) and 13(a) of the Exchange Act and Rules 10A-2, 13a-1, and 13a-13 thereunder, and Rule 2-02 of Regulation S-X.

B. Pursuant to Sections 4C and 21C of the Exchange Act and Rules 102(e)(1)(ii) and (iii) of the Commission's Rules of Practice PMBHD is censured.

C. PMBHD shall comply with the undertakings enumerated in Section III.I. above.

D. PMBHD shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$160,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

E. Pursuant to Sections 4C and 21C of the Exchange Act and Rules 102(e)(1)(ii) and (iii) of the Commission's Rules of Practice, Bauer is denied the privilege of appearing or practicing before the Commission as an accountant.

1. After one year from the date of this order, Bauer may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

a. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Bauer's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

b. an independent accountant. Such an application must satisfy the Commission that:

(1) Bauer, or the public accounting firm with which he is associated, is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

- (2) Bauer, or the registered public accounting firm with which he is associated, has been inspected by the PCAOB and that inspection did not identify any criticisms of or potential defects in the Bauer's or the firm's quality control system that would indicate that the Bauer will not receive appropriate supervision;
- (3) Bauer has resolved all disciplinary issues with the PCAOB, and has complied with all terms and conditions of any sanctions imposed by the PCAOB (other than reinstatement by the Commission); and
- (4) Bauer acknowledges his responsibility, as long as Bauer appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the PCAOB, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

2. The Commission will consider an application by Bauer to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Bauer's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

F. Bauer shall pay civil penalties in the amount of \$15,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following installments:

- a. \$5,000 within 14 days of the entry of this Order;
- b. \$5,000 within 365 days of the entry of this Order; and
- c. \$5,000 within 729 days of the entry of this Order.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717 shall be due and payable immediately, without further application.

G. Pursuant to Sections 4C and 21C of the Exchange Act and Rules 102(e)(1)(ii) and (iii) of the Commission's Rules of Practice, Jamieson is denied the privilege of appearing or practicing before the Commission as an accountant.

1. After one year from the date of this order, Jamieson may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

- a. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Jamieson's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or
- b. an independent accountant. Such an application must satisfy the Commission that:
 - (1) Jamieson, or the public accounting firm with which he is associated, is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;
 - (2) Jamieson, or the registered public accounting firm with which he is associated, has been inspected by the PCAOB and that inspection did not identify any criticisms of or potential defects in the Jamieson's or the firm's quality control system that would indicate that the Jamieson will not receive appropriate supervision;
 - (3) Jamieson has resolved all disciplinary issues with the PCAOB, and has complied with all terms and conditions of any sanctions imposed by the PCAOB (other than reinstatement by the Commission); and
 - (4) Jamieson acknowledges his responsibility, as long as Jamieson appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the PCAOB, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

2. The Commission will consider an application by Jamieson to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The

Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Jamieson's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

H. Jamieson shall pay civil penalties in the amount of \$15,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following installments:

- a. \$5,000 within 14 days of the entry of this Order;
- b. \$5,000 within 365 days of the entry of this Order; and
- c. \$5,000 within 729 days of the entry of this Order.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717 shall be due and payable immediately, without further application.

I. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying PMBHD, Bauer or Jamieson as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to David Peavler, Division of Enforcement, Securities and Exchange Commission, 801 Cherry Street, Suite 1900, Fort Worth, TX 76102.

J. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of

any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Bauer and Jamieson, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Bauer or Jamieson under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Bauer or Jamieson of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary