

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 82736 / February 16, 2018**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3922 / February 16, 2018**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18374**

**In the Matter of**

**SIMCHA BAER, CPA,**

**Respondent.**

**ORDER INSTITUTING PUBLIC**  
**ADMINISTRATIVE PROCEEDINGS**  
**PURSUANT TO SECTION 4C OF THE**  
**SECURITIES EXCHANGE ACT OF 1934**  
**AND RULE 102(e) OF THE**  
**COMMISSION’S RULES OF PRACTICE,**  
**MAKING FINDINGS, AND IMPOSING**  
**REMEDIAL SANCTIONS**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative proceedings be, and hereby are, instituted against Simcha Baer, CPA (“Respondent” or “Baer”), pursuant to Section 4C<sup>1</sup> of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.<sup>2</sup>

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<sup>1</sup> 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 . . . to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct . . . .

<sup>2</sup> 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.

## II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) 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 him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative Proceedings Pursuant to Section 4C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

## III.

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>3</sup> that:

### A. SUMMARY

These proceedings arise out of Respondent’s failure to comply with relevant Public Company Accounting Oversight Board (“PCAOB”) standards with respect to the performance of proper engagement quality reviews (“EQRs”) for the audits and interim reviews of the financial statements of seven issuers. During the relevant period, Baer also repeatedly failed to comply with relevant documentation requirements while performing EQRs. Indeed, in many instances years later, Respondent back-dated and falsified audit and review documentation that subsequently was produced to the Commission’s staff.

As a result, Respondent violated auditing standards and engaged in improper professional conduct.

### B. RESPONDENT

**Simcha Baer**, 60, resides in Baltimore, Maryland, and is licensed as a CPA in Maryland. His license currently is inactive. During the relevant period, he was a partner at, and a 1.5-percent owner of, a public accounting firm that is based in Baltimore, Maryland and registered with the PCAOB (“the Accounting Firm”). Baer served as the EQR partner for the audits and interim reviews of the financial statements included in filings with the Commission for seven issuers (the “Issuers”) between 2011 and 2016.

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<sup>3</sup> The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

## C. FACTS

1. Between 2011 and 2016, the Accounting Firm audited and reviewed the Issuers' financial statements that were included in filings with the Commission on Form S-1, Form 10-K, and Form 10-Q. Respondent served as the EQR partner for these audits and reviews.

### **Failure to Perform and Document EQRs.**

2. PCAOB Standards provide that an engagement quality reviewer should, among other things, "evaluate the significant judgments made by the engagement team and the related conclusions reached in forming the overall conclusion on the engagement." PCAOB Auditing Standard ("AS") No. 7.09.<sup>4</sup> The EQR should be documented sufficiently and include the information that identifies: (1) the engagement quality reviewer; (2) the documents reviewed by the engagement quality reviewer; and (3) the date that the engagement quality reviewer provided concurring approval of issuance. In addition, PCAOB Standards provide that the firm may grant permission to the client to use the engagement report in an audit only after the engagement quality reviewer has performed the review and provides concurring approval of issuance. AS No. 7.12-.13 and .19.

3. The Accounting Firm's standard audit program for EQRs included several audit procedures that the EQR partner was required to consider. In response to subpoenas issued by the Commission's staff, the Accounting Firm produced numerous EQR audit programs purportedly performed by Respondent from audits or interim reviews of the Issuers' financial statements. At least forty of these EQR audit programs were not filled out at all. The Accounting Firm also did not produce any other documentation demonstrating that the requisite EQR procedures had been performed for those audits and reviews.

4. For example, with regard to an audit conducted by the Accounting Firm of one Issuer's financial statements, the Accounting Firm's audit program required the reviewer to affirm that he had evaluated the engagement team's assessment of, and audit responses to, significant risks identified by the engagement team, including fraud risks and other significant risks identified by the engagement quality review. PCAOB Standards require the reviewer to "[e]valuate the engagement team's assessment of, and audit responses to . . . [s]ignificant risks identified by the engagement team, including fraud risks." AS No. 7.10(b). The work papers produced by the Accounting Firm in response to the Commission's subpoenas, however, did not contain any evidence that Respondent had considered this procedure or any other EQR procedures during the Accounting Firm's audit.

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<sup>4</sup> Citations to "AU" and "AS" refer to PCAOB Standards that were in effect at the time of the relevant conduct.

5. With regard to an audit conducted by the Accounting Firm of another Issuer's financial statements, the Accounting Firm's audit program required the reviewer to confirm with the engagement partner that there were no significant unresolved matters, including unresolved matters relating to significant unusual transactions. PCAOB Standards require the reviewer to "[r]eview the engagement completion document and confirm with the engagement partner that there are no significant unresolved matters." AS No. 7.10(e). However, the work papers produced by the Accounting Firm in response to the Commission's subpoenas did not contain any evidence that Respondent had considered this procedure or any other EQR procedures during the Accounting Firm's audit.

6. Respondent's failure to perform engagement quality reviews violated AS No. 7.

### **Falsifying and Back-Dating Documents.**

7. After the Commission's staff questioned the engagement partner on the audits and interim reviews about the deficient EQR work papers referenced above, the Accounting Firm produced additional purported EQR work papers for certain of the audits and reviews that it had conducted of the Issuers' financial statements. At least twenty-one of these additional purported work papers were completed and signed electronically by Respondent and dated with dates consistent with the respective audit or review periods. The relevant metadata in these purported work papers also were consistent with the dates that the corresponding audits or interim reviews supposedly were completed.

8. In fact, however, Respondent had created those purported work papers after the Commission staff had served a subpoena for them. Respondent also had altered the metadata in those purported work papers so that they reflected the dates of the respective audits or interim reviews of financial statements, rather than the actual dates on which he later had created the documents.

9. Respondent failed to prepare or maintain any work paper documentation showing that he had completed the underlying steps of the engagement quality reviews. Respondent also did not maintain notes or any other documentation demonstrating that the requisite steps of the engagements quality reviews had been performed.

10. PCAOB Standards provide that a "complete and final set of audit documentation should be assembled for retention as of a date not more than 45 days after the report release date" (referred to as the "documentation completion date"). AS No. 3.15. PCAOB Standards further provide that if documentation is added after the documentation completion date, it "must indicate the date the information was added, the name of the person who prepared the additional documentation, and the reason for adding it." AS No. 3.16. These requirements apply to engagement quality reviews. AS No. 7.21.

11. AS No. 7.4 requires that "an engagement quality reviewer must have competence, independence, integrity, and objectivity."

12. Respondent's backdating and falsification of audit documentation violate AS Nos. 3 and 7.

#### **D. VIOLATIONS**

As a result of the conduct described above, Respondent engaged in improper professional conduct as defined by Rule 102(e)(1)(iv). Respondent committed intentional and knowing or reckless conduct that resulted in violations of applicable professional standards, and committed repeated instances of unreasonable conduct, each resulting in violations of applicable professional standards, that indicate a lack of competence to practice before the Commission.

#### **E. FINDINGS**

Based on the foregoing, the Commission finds that Respondent 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.

### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Baer's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that Respondent is denied the privilege of appearing or practicing before the Commission as an accountant.

By the Commission.

Brent J. Fields  
Secretary