

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 84920 / December 21, 2018**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 4007 / December 21, 2018**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18953**

**In the Matter of**

**CROWE HORWATH LLP,  
JOSEPH C. MACINA, CPA,  
and  
KEVIN V. WYDRA, CPA,**

**Respondents.**

**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 pursuant to Sections 4C<sup>1</sup> and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 102(e)(1)(ii) of the Commission's Rules of Practice ("CRP") against Respondents, Crowe LLP, f/k/a Crowe Horwath LLP ("Crowe"), Joseph C. Macina, CPA ("Macina") and Kevin V. Wydra, CPA ("Wydra"), (collectively, "Respondents").<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 . . . (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 violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations issued thereunder.

<sup>2</sup> Rule 102(e)(1)(ii) provides, in pertinent part, that:

## II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (“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 finds that:<sup>3</sup>

### SUMMARY

1. This matter involves improper professional conduct regarding the audit of Corporate Resource Services, Inc. (“CRS”), a temporary staffing services company, for the fiscal year ended January 3, 2014. Macina was the engagement partner on the audit who approved the issuance of Crowe’s audit report that contained an unqualified opinion that was included in CRS’s 2013 Form 10-K filed with the Commission on July 1, 2014. Wydra was the engagement quality reviewer (“EQR”) who concurred with the issuance of this report. However, the report was inaccurate in that it stated the audit was conducted in accordance with the standards of the Public Company Accounting Oversight Board (“PCAOB”) when it was not. Respondents’ audit deficiencies included, among other things, the failure to: (1) include procedures designed to provide reasonable assurance of detecting CRS’s material undisclosed payroll tax liabilities; (2) properly identify and audit related party transactions despite the pervasive risks of fraud; (3) obtain sufficient appropriate audit evidence to respond to identified fraud risks, support CRS’s recognition of revenues and cost of revenues, and otherwise support Crowe’s opinion; (4) evaluate substantial doubt about CRS’s ability to continue as a going concern; and (5) conduct a proper engagement quality review. The audit report was also inaccurate because Crowe was not independent. During both the period under audit and the period of the engagement, Crowe had a direct and ongoing business relationship with CRS where Crowe subcontracted staffing employees from a CRS subsidiary to serve as “consultants” for the purpose of providing professional non-audit services to Crowe’s clients. This independence violation together with the other audit failures caused CRS to file financial statements that were not audited by an independent accountant in compliance with PCAOB Standards.

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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.

<sup>3</sup> 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.

## RESPONDENTS

2. **Crowe** is a PCAOB-registered public accounting firm headquartered in Chicago, Illinois. It provides professional and accounting services through its offices in the United States, and is affiliated with Crowe Global. In 2013, it had approximately 2,600 professionals. Effective as of January 3, 2014, Crowe was retained to be CRS's independent auditor. At no time did Crowe serve as the auditor of CRS's related party, TS Employment ("TSE"). On June 30, 2014, Crowe issued an audit report that contained an unqualified opinion on CRS's 2013 financial statements and included an emphasis of matter paragraph regarding related parties. Crowe also conducted interim reviews of CRS's quarterly financial statements for the first through third quarters of CRS's fiscal year 2014.

3. **Joseph C. Macina ("Macina")**, age 47, is a resident of Bay Shore, New York, and a CPA licensed in the State of New York. Macina is a partner at Crowe and was the engagement partner on the audit of CRS's 2013 financial statements and interim reviews of CRS's quarterly financial statements for the first through third quarters of CRS's fiscal year 2014.

4. **Kevin V. Wydra ("Wydra")**, age 43, is a resident of Batavia, Illinois, and a CPA licensed in the State of Illinois. Wydra is a partner at Crowe and was the engagement quality reviewer on Crowe's audit of CRS's 2013 financial statements and interim reviews of CRS's quarterly financial statements for the first through third quarters of CRS's fiscal year 2014.

## RELEVANT ENTITIES

5. **Corporate Resource Services, Inc. ("CRS")** was a Delaware corporation headquartered in New York, New York, whose primary business was to provide temporary staffing services to customers. CRS's common stock (ticker "CRRS") was registered pursuant to Section 12(g) of the Exchange Act and quoted on the OTC Bulletin Board until September 4, 2013, at which time it was listed on NASDAQ CM. On March 20, 2015, NASDAQ delisted CRS for failure to timely file periodic reports. On July 23, 2015, CRS filed for Chapter 11 bankruptcy relief.

6. **TS Employment, Inc. ("TSE")** was a private Florida company headquartered in New York, New York, that provided professional employer organization ("PEO") services to CRS. It was wholly owned by CRS's controlling shareholder and Board of Director member ("Director"). At all times, TSE's only customer and sole source of revenues was CRS. As a PEO, TSE co-employed CRS's staffing employees, and through funds received from CRS was responsible for remitting to authorities all payroll taxes concerning CRS's employees. On February 2, 2015, due to an approximately \$100 million federal payroll tax liability related to CRS's staffing employees, TSE filed for Chapter 11 bankruptcy relief.

## FACTS

### **Background of CRS and its Pervasive Related Party Transactions**

7. CRS was primarily a temporary staffing services company that reported approximately \$680 million in revenues and approximately \$600 million in cost of revenues for the year ended December 28, 2012, and approximately \$820 million in revenues and approximately \$723 million in cost of revenues for the year ended January 3, 2014. Although CRS contracted with its customers to place employees at job sites, it was at all times the common law employer of these employees and obligated by law to pay their wages and payroll taxes.

8. CRS outsourced the handling of these obligations and other human resources and administrative functions solely to TSE as its PEO. TSE had no other customers. By virtue of the PEO arrangement, CRS and TSE co-employed the temporary staffing employees, and TSE served as the third party payer of the wages and payroll taxes that otherwise would have been handled by CRS itself. Thus, CRS remained the common law employer, and TSE was the employer of record. TSE and its affiliates also handled CRS's revenue invoicing and receivables collections, administration of employee benefits, and workers compensation insurance coverage. As a result, nearly all of CRS's cost of revenues consisted of TSE charges.

9. Through this PEO relationship and Director's common control, CRS was operationally and financially dependent on TSE. Many of CRS's operations and finance personnel, managers, executives and board members including CRS's President, CEO and Chairman of the Board, worked for TSE and/or its affiliates, which were also solely owned and controlled by Director. CRS was also dependent on Director, TSE and its affiliates to provide CRS with working capital, liquidity and financing for acquisitions. Director guaranteed CRS's \$80 million revolving receivables-backed facility. Also, because the funds from this facility did not meet CRS's cash flow needs, TSE provided working capital by allowing CRS to delay payment for PEO services. It was only through such "loans" that CRS had funds to operate. Even after TSE had extinguished \$14.1 million of CRS's PEO-related debt in exchange for CRS stock, CRS's indebtedness to TSE still exceeded \$12.7 million at December 28, 2012, and \$15.7 million by the end of 2013. Though CRS's debt to TSE continued to mount, CRS still depended on TSE for liquidity and ongoing wage and tax payments.

### **Crowe's Engagement to Audit CRS's 2013 Financial Statements**

10. On September 6, 2013, CRS was listed on NASDAQ. In order to increase liquidity and pay down PEO debt, CRS planned to execute a \$100 million public offering by the end of 2013 or early 2014. CRS also sought to replace its \$80 million receivables-backed facility with a \$100 million asset-based loan. However, after learning that its auditor at that time had received significant deficiency comments from the PCAOB related to the audit of CRS's 2011 financial statements and hearing from its underwriters that CRS would be more successful with a capital raise if another firm audited its financials, CRS hired Crowe effective as of January 3, 2014. Crowe then served as CRS's purported independent auditor for the 2013 year-end financial statements and the first three quarters of 2014.

11. Macina, as the engagement partner, immediately encountered significant challenges to completing the audit and issuing an audit report that contained an unqualified opinion.

- a. First, he learned of the PCAOB's comments on the predecessor auditor's audit of CRS's 2011 financial statements. He also had reason to believe, based on Crowe's analysis, that the predecessor auditor's working papers did not support the unqualified opinions in the predecessor's audit report concerning CRS's September 2012 financial statements and the unfiled audit report originally dated as of December 20, 2013, on CRS's December 2012 financial statements. He also concluded that the predecessor auditor's working papers did not support Crowe's reliance on the 2013 opening balance sheet.
- b. Second, Macina discovered numerous errors in prior period financial statements that needed to be corrected.
- c. Third, Macina discovered that CRS had no IT general controls and numerous material weaknesses and significant deficiencies in its internal control over financial reporting, including, for example, a lack of controls over related party transactions and the absence of detailed support and approval for CRS's journal entries, revenues and cost of sales.
- d. Fourth, Macina and the engagement team learned in March 2014 that CRS's lender did not intend to renew its receivables-backed facility when it expired in June 2014, resulting in substantial doubt at that time about CRS's ability to continue as a going concern.

12. These issues caused Macina and Crowe to expand the scope of their audit procedures, which in turn prevented CRS from timely filing its 2013 Form 10-K and resulted in delisting notices from NASDAQ. Although the lender ultimately renewed the facility on June 20, 2014, the new agreement imposed significant financial covenants and fees. It also imposed a financing milestone that required CRS to immediately secure a commitment for alternate financing to fully repay its indebtedness to the lender. Thus, the renewal did not itself alleviate the substantial doubt.

13. Notwithstanding these problems and the risks posed by CRS's pervasive related party transactions and the dependency on the related parties, Crowe provided CRS an audit report that contained an unqualified opinion and an emphasis paragraph concerning related party transactions, which CRS filed with its Form 10-K for the 2013 fiscal year on July 1, 2014.

14. In February 2015, CRS disclosed that TSE had a material unpaid federal payroll tax liability. This liability of approximately \$100 million, most of which had been due and owing since December 2013, forced TSE to file for bankruptcy on February 2, 2015. The liability also caused CRS's secured lender to cut almost all funding and put CRS on a path to liquidation. Crowe then resigned on February 9, 2015, after informing CRS that its audit report could no longer be relied upon due to material uncertainties as to whether CRS was contingently liable for any or all of the outstanding payroll taxes. CRS also disclosed that its prior financial statements could not be relied upon due to the material uncertainties related to the payroll tax

liability. Consequently, CRS was delisted from NASDAQ in April 2015 for failing to timely file financial statements. In July 2015, CRS filed for bankruptcy.

### **Failure to Detect Undisclosed Liabilities for Unpaid Payroll Taxes**

15. Crowe's audit of CRS's 2013 financial statements failed to include procedures designed to obtain reasonable assurance that CRS did not have material undisclosed contingent liabilities for unpaid payroll taxes despite evidence to the contrary.

16. Macina should have known that CRS had payroll tax obligations as a co-employer of its staffing employees. The work papers stated that "[e]ven though the flexible staff are hired by customers, they are the true employees of the company placing them with the customers," namely CRS. The work papers and CRS's filings also noted that CRS was subject to employee/employer tax withholding and reporting laws and requirements to "provide for worker's compensation, medical and state unemployment taxes within placement fees charged." CRS filings further stated that "[i]n conducting our business, we are required to pay a number of payroll and related expenses, including unemployment taxes, workers' compensation and medical insurance, for our personnel."

17. In recognition of CRS's payroll tax obligations despite its use of a PEO, the payroll controls testing work papers identified the risk that CRS's "liabilities for penalties for late payments, underpayments or nonpayments of payroll taxes are not recorded or are understated." They also identified the risk that CRS's "recorded compensation and related costs do not include all amounts paid or due to employees and related obligations for taxes...." For both of these risks, the engagement team noted that controls were not adequate and that a substantive test of details and a substantive analytical review were required. Macina also recognized the fraud risk presented by the unique structure of CRS and its reliance on TSE when, in a brain-storming session about possible risks, he wrote "hiding liabilities" and "looking for how they are window dressing" the financial statements while discussing CRS's audit with another Crowe partner.

18. Further, treasury regulations in effect in 2013 specifically stated that the "employment tax liability cannot be altered by a private agreement between an employer and a third-party payor." 78 FR 6056 (Jan. 29, 2013). A subsequent treasury regulation, issued in March 2014, while Crowe was auditing CRS's 2013 financial statements, also stated that a business contracting with a PEO remains subject to payroll tax obligations notwithstanding the PEO arrangement. 79 FR 17860 (Mar. 31, 2014). Indeed, Crowe's own tax group issued a press release in April 2014 stating that the IRS had just issued regulations clarifying existing rules that "the business contracting with the PEO remains subject to all employment tax obligations with respect to the PEO arrangement and is expected to remit payroll taxes if the PEO does not do so." Despite these facts, CRS never disclosed or accounted for any direct or contingent liability for payroll taxes on its balance sheet, its notes to the financial statements, or otherwise.

19. AU 333, *Management Representations*,<sup>4</sup> makes clear that management representations "are not a substitute for the application of those auditing procedures necessary to

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<sup>4</sup> References to auditing standards in this Order are to PCAOB standards in effect at the time the audit work was performed.

afford a reasonable basis for an opinion regarding the financial statements under audit.” AU 333.02. Macina and the engagement team, however, accepted CRS’s representation that it was not liable for payroll taxes without (1) obtaining any corroborating or reliable evidence for management’s incorrect assertion; (2) performing any audit procedures to test whether CRS’s omission was proper; and (3) addressing the identified risks that CRS had undisclosed liabilities for payroll taxes.

20. CRS was also contractually exposed to a contingent liability for any unpaid payroll taxes under the terms of a Master Services Agreement executed between CRS and TSE. This agreement stated that CRS was responsible for supervising its employees, maintaining and providing time and other payroll records upon which payroll would be based, and paying TSE for all compensation paid to or on behalf of CRS’s employees including taxes. In effect, TSE was nothing more than a pass-through entity that paid the wages and taxes by virtue of the money and documentation that CRS provided.

21. The agreement also included clauses whereby (i) TSE indemnified CRS “from and against any and all losses, liabilities, claims, suits, demands, damages, injuries, costs and expenses arising solely out of the negligent or willful failure of any [TSE] employee . . . to comply with applicable worker’s compensation, payroll tax or withholding tax laws, rules, and regulations;” and (ii) CRS indemnified TSE “from and against all claims, demands, causes of action, suits, liabilities and expenses (including court costs and attorney’s fees) of every kind or character . . . without regard to the cause or causes thereof or the negligence of any party . . . .” The CRS indemnification clause was a disclosable guarantee under ASC 460, *Guarantees*. However, CRS never disclosed it, and Crowe neither inquired about nor audited the basis for its omission.

22. These clauses also provided another reason for Crowe to include audit procedures to determine whether TSE had remitted payroll taxes. Yet, the engagement team did not perform procedures related to the indemnity or perform procedures to understand the impact of the indemnity on CRS’s financial statements. The engagement team also failed to perform sufficient procedures designed to detect whether CRS had material undisclosed contingent liabilities—both under tax law and under contract—arising from any non-payment of payroll taxes by its related party PEO.

23. Macina also knew that CRS’s controlling shareholder, Director, and sole owner of CRS’s PEO and affiliates had a history of unpaid payroll tax liabilities. A background check Crowe conducted on Director during the new client acceptance process revealed numerous state and federal tax liens for payroll taxes that had been filed against Director or entities affiliated with TSE. The liens covered a 10-year period from 2003 through 2013. Several were still unpaid or outstanding at the time of the background check. One concerned CRS itself. Yet neither Macina nor anyone else at Crowe addressed the issues raised during the background check.

24. Macina was also aware of CRS’s mounting debt to TSE caused by CRS’s failure to pay invoiced gross wages, including payroll tax amounts. In fact, by the time CRS filed its 2013 Form 10-K in July 2014, Macina and the engagement team knew that the debt had risen to approximately \$34 million and that Director had agreed to waive and subordinate \$15 million of that amount for one year to meet lender’s condition for renewing the facility. Macina and others at Crowe also knew that CRS was TSE’s only customer and sole source of revenues. Thus,

absent funding from an outside source or capital to cover CRS’s shortfall—which did not exist—it was not clear how TSE could remit the payroll taxes due. Yet Macina and the engagement team did not design or perform audit procedures to assess Director’s or TSE’s financial condition and their ability to fund CRS’s operations and working capital while also remitting the payroll taxes due. In fact, Crowe asked CRS to provide TSE’s financial statements for the purpose of assessing whether TSE was a variable interest entity (“VIE”). However, when CRS refused to provide them, Macina and the engagement team dropped the request without further inquiry or assessment of risk.

### **Failure to Properly Identify Related Party Transactions**

25. Macina did not properly identify and understand who was providing PEO services to CRS, despite identifying related party transactions as a pervasive fraud risk.

26. Macina knew that all of CRS’s “main service transactions flow[ed] through the PEO,” but learned through controls testing that “there is no formal review process between CRS employees and those of the PEO” and “[n]o controls ... over the identification and tracking of related party transactions.”

27. Macina and the engagement team also learned from controls testing that there was no meaningful distinction between CRS, TSE and their affiliates. For example, although the Master Services Agreement identified TSE as the PEO, certain of the PEO services were being handled by other entities wholly-owned by Director, including Tri-State Employment Services, Inc., and other similarly named and affiliated entities. They also learned that many of CRS’s key operations and finance personnel were “dual” employees of CRS, TSE and their affiliates, including Tri-State Employment Services, Inc., and that all of these “entities” were located in the same building.

28. The engagement team, however, did not perform appropriate procedures to understand CRS’s material transactions with related parties and assess the appropriateness of CRS’s disclosure. Rather, the engagement team simply referred to CRS’s PEO variously and interchangeably as any one of a number of Director-affiliated entities, including “TS Employment,” “TSE,” “Tri-State Employment,” “Tri-State Employer Services,” “TSS,” “TS Staffing,” or, more generically, “Tri-State.” In fact, although the team initially sent a related party questionnaire to identify the parties and their material transactions, they abandoned this effort when CRS and its affiliates failed to complete it. When they sought confirmation of balances due from or owed to “TS Employment” as the PEO, Crowe accepted and relied upon a confirmation of balances due from or to “Tri-State Employment,” a different related entity. Ultimately CRS aggregated the myriad known and unknown Director-affiliated entities into the vague moniker, “Tri-State,” and Macina added to Crowe’s audit report an explanatory paragraph noting that CRS “has significant transactions with related parties.”

29. By not performing procedures to accurately identify and understand CRS’s material related party transactions—especially who was providing CRS with PEO services and whether that PEO was actually paying the required wages and taxes for CRS employees—Macina did not comply with AU 334, *Related Parties*.

## **Additional Failures to Audit Related Party Transactions**

30. AU 334.09 requires auditors to perform procedures related to related party transactions by “obtaining and evaluating sufficient appropriate evidential matter” which “should extend beyond inquiry of management.” AU 334.10 also makes clear that, when necessary to fully understand a particular transaction, the auditor should consider, among other things, “inspect[ing] evidence in possession of the other party or parties to the transaction” and “confirm[ing] or discuss[ing] significant information with intermediaries, such as banks, guarantors, agents, or attorneys to obtain a better understanding.” AU 334.10 also states that auditors should consider “obtain[ing] information about the financial capability of the other party or parties to the transaction” when there are material uncollected balances, and advises auditors to consider obtaining from the related party audited and unaudited financial statements, income tax returns, and reports issued by regulatory agencies, taxing authorities, financial publications or credit agencies. AU 9334, *Related Parties: Auditing Interpretations of Section 334*, further provides that, to understand the transaction or obtain evidence regarding it, “the auditor may have to refer to audited or unaudited financial statements of the related party, apply procedures at the related party, or in some cases audit the financial statements of the related party.” AU 9334.19 also states that the “higher the auditor’s assessment of risk regarding related party transactions, the more extensive or effective the audit tests should be.”

31. Macina, however, did not substantively test CRS’s transactions with TSE. He never sought nor obtained sufficient appropriate audit evidence that TSE’s purported extension of liquidity and working capital to CRS was based on an actual financial capability to continue paying wages and taxes despite nonpayment by CRS. He never sought nor obtained sufficient appropriate evidence—including, for example, any evidence specifically outlined within AU 334 itself—that TSE was actually paying the wages and remitting the taxes due so that he could address CRS’s risk of undisclosed liabilities.

32. Macina and the engagement team also did not obtain sufficient appropriate audit evidence to support CRS’s cost of sales. Macina had identified related party transactions as a fraud risk and knew that CRS’s cost of sales came from the related party PEO. Yet he assessed the specific risk over cost of sales as “low.” Further, Macina criticized the predecessor auditor for treating TSE as a true third party and failing to test payroll charges. Yet Macina’s cost of sales testing also treated TSE as a reliable third party. In fact, the work papers stated that the risk was assessed as “low” because the “amounts are invoiced directly from the PEO.” The work paper also inaccurately stated that “costs incurred are not determined or affixed by internal management ... [but] are supported by and driven externally by the invoiced amount directly from the PEO.” Thus the cost of sales testing did not properly address the related party nature of the PEO transactions, the identified fraud risks, and the overlap in employees, management, and ownership between CRS and TSE.

33. Although Macina had identified by email the need to “test that CRS is being charged (invoiced) the costs that are appropriate” and determine whether they could “trace to payroll records to see that costs (hours worked and charged to customers) are being accurately captured,” the engagement team ultimately treated the PEO invoices as accurate. They did not obtain any supporting documentation. Rather, the team’s cost of sales testing essentially consisted of aggregating CRS payments to TSE over days or weeks until the payments generally

added up to invoiced amounts, treating any differences between invoiced and paid amounts as increases or decreases to PEO debt.

34. By relying on TSE invoices, though, the engagement team did not properly consider critical information about their lack of reliability. The controls testing had revealed that the PEO was involved with entering information concerning customer contracts, new employees and pay rates, and employee timesheets directly into CRS's operational database, and that CRS neither reviewed the entries nor had any controls to consider their accuracy. The controls testing also revealed that the PEO used this database to create and send CRS's revenue-generating invoices to customers as well as PEO invoices upon which CRS's cost of sales were based. Indeed, the work papers had identified the risk that CRS's "recorded compensation is not for real services performed by real employees" and that "recorded compensation and related costs do not include all amounts paid or due to employees and related obligations for taxes."

35. CRS payments to TSE also provided no evidence that CRS had properly recorded cost of sales or PEO debt. As documented in the work papers, CRS: (1) did not review TSE's payroll invoices prior to payment; and (2) made "recurring wire transfer[s] to the PEO ... [from amounts] left over from daily operations," which could "either be in surplus or deficit of the respective invoice payable." In short, CRS sent money to TSE on a daily or weekly basis without regard to invoices.

### **Failures to Respond to Fraud Risks**

36. Under AS 13, *The Auditor's Responses to the Risks of Material Misstatement*, the auditor's "identification of pervasive weaknesses in the company's control environment" requires the auditor to "obtain more persuasive audit evidence from substantive procedures." AS 13.06. AS 13.09 further requires the auditor to "[o]btain more persuasive audit evidence the higher the auditor's assessment of risk. Moreover, AS 13.11 states that for significant risks, which include fraud risks (as defined in AS 12.71), the "auditor should perform substantive procedures, including tests of details, that are specifically responsive to the assessed risks." The standard further provides that (1) "[s]ubstantive procedures generally provide persuasive evidence when they are designed and performed to obtain evidence that is relevant and reliable"; (2) "[i]nquiry alone does not provide sufficient appropriate evidence to support a conclusion about a relevant assertion"; and (3) "increasing the extent of an audit procedure cannot adequately address an assessed risk of material misstatement unless the evidence to be obtained from the procedure is reliable and relevant." AS 13.39; AS 13.42. AU 316.13, *Consideration of Fraud in a Financial Statement Audit*, further provides: "Because of the characteristics of fraud, the auditor's exercise of professional skepticism is important when considering the fraud risks" and this requires "a questioning mind and a critical assessment of audit evidence." AU 316.13 also states that "[i]n exercising professional skepticism in gathering and evaluating evidence, the auditor should not be satisfied with less-than-persuasive evidence because of a belief that management is honest."

37. Macina and the engagement team repeatedly failed to obtain sufficient appropriate audit evidence. They did not perform substantive testing using reliable evidence to corroborate management's assertions related to payroll tax liabilities or cost of sales, despite identifying related party transactions as a fraud risk.

38. Though the engagement team obtained some third-party bank statements, it did not obtain sufficient underlying source documents to address the fraud risks related to CRS's journal entries and revenues. In fact, the work papers documented the fact that CRS's journal entries were 100% manual and lacked any audit trail, documentary support, or other controls, stating: "During our journal entry testing it was noted that the Company was unable to provide contemporaneous detailed support for selected journal entries." The work papers further stated that "[t]here was also no documentation or process surrounding the review and posting of journal entries to the general ledger" and that "the Company was unable to provide support for certain cost of sales, revenue and lease transactions." Without such source documents, the engagement team did not obtain sufficient appropriate audit evidence to respond to the fraud risk related to CRS's journal entries.

39. With regard to the audit of revenues, Macina and the engagement team originally planned to obtain customer-signed contracts and customer-approved timesheets to address documented risks that customer invoices reflected inaccurate hours and rates and that CRS inflated its revenues by not adhering to its revenue recognition policy. However, they never obtained such documentation, and instead conducted testing solely on the basis of invoice and cash receipt testing. Macina and the engagement team also, for example, did not obtain customer confirmations of invoiced amounts or agreement terms. As a result, Crowe had no evidence of an arrangement pursuant to which services were actually delivered at set fees that were not subject to a side agreement or rebate. Crowe had *no* third-party substantiated, relevant and reliable audit evidence for its conclusion that CRS's revenues were recognized in accordance with GAAP or their own revenue recognition policy as disclosed in the 2013 Form 10-K.

### **Failure to Properly Evaluate Going Concern**

40. AU 341, *The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern*, requires auditors to evaluate whether there is substantial doubt of the entity's ability to continue as a going concern for a reasonable period of time. AU 341.02 states that this evaluation "is based on his or her knowledge of relevant conditions and events that exist at or have occurred prior to the date of the auditor's report." AU 341.06 provides examples of such conditions and events that may, when considered in the aggregate, indicate there could be substantial doubt, including recurring operating losses, working capital deficiencies, negative cash flows from operating activities, adverse key financial ratios, defaults on loan agreements, denial of usual trade credit and restructuring of debt, need to seek new source and methods of financing, and substantial dependence on the success of a particular project.

41. AU 341.07 also requires that if an auditor determines that there is substantial doubt, he should consider management's plans to deal with the adverse effects of the conditions and events and whether such plans can be effectively implemented. When plans involve borrowing money or restructuring debt, AU 341 directs auditors to consider the availability of debt financing and the sufficiency of available collateral. AU 341.08 further requires auditors to obtain evidential matter about management's plans and, for example, "consider the adequacy of support regarding the ability to obtain additional financing." When prospective financial information is important to management's plans, AU 341.09 suggests auditors should consider the adequacy of support for significant assumptions underlying the information. When plans include reduced or delayed expenditures, AU 341.07 states that the auditor's considerations

relating to management plans may include the “possible direct or indirect effects” of such reductions and delays.

42. Macina and the engagement team’s going concern analysis did not comply with AU 341 because they failed to: (1) document and appropriately consider material information of which he was aware or should have been aware when assessing the existence of substantial doubt; (2) consider the ability of management to effectively implement its plans; and (3) obtain appropriate evidential matter to support management’s plans. Although they knew that CRS’s lender and primary source of liquidity had issued a termination letter in March, 2014, this was not documented in the going concern work paper. Macina and the engagement team also did not consider the reasons for the lender’s initial decision to terminate, including that CRS was in default and lacked sufficient working capital and liquidity due to its rising PEO debt. Although the lender ultimately renewed the facility on June 20, 2014, the going concern analysis did not consider the fact that the renewal required CRS to obtain by July 30, 2014, a commitment for full take-out financing so that the lender could exit the facility. Nor did the analysis consider that CRS’s all-but-certain failure to comply would be an event of termination. The analysis also failed to account for increasing material fees the longer it took CRS to complete the take-out financing. And the covenant analysis did not accurately capture the terms of the covenants or the formula for the calculation stated in the agreement. Had the analysis been done correctly, it would have revealed CRS’s probable non-compliance with the covenants.

43. Although Macina had an internal valuation expert conduct a finance-ability analysis, Macina and the engagement team did not provided him with complete information regarding CRS’s lending arrangements and historical and projected financial performance. Macina and the engagement team never provided him with the terms of the renewal or informed him of the agreement’s July 30 financing milestone. Macina also should have known that the analysis did not consider the fact that CRS would be missing filing deadlines, correcting prior-period errors in revised financial statements, and newly disclosing pervasive material weaknesses in internal control over financial reporting.

44. Macina also did not properly assess and respond to the risks posed by CRS’s financial dependence on TSE, especially in light of CRS’s inability to fund the payroll that it nevertheless needed TSE to keep paying in order to stay in business. Macina did not consider the “direct or indirect effects” of CRS’s plan to not pay down \$15 million of PEO debt for one year, even though he knew that TSE had no other revenue source. Macina did not obtain evidence about TSE’s financial condition or its ability to provide the “liquidity” and working capital essential to CRS’s ability to continue as a going concern, despite knowing that CRS’s term sheets from other lenders had noted that an analysis of TSE’s and Director’s financials would be part of their due diligence.

45. Because Macina failed to consider significant negative conditions and events of which he was aware and did not obtain appropriate audit evidence to support his going concern analysis, he failed to evaluate the existence of substantial doubt and comply with AU 341.

### **Failure to Properly Conduct an Engagement Quality Review**

46. AS 7, *Engagement Quality Review*, requires an EQR to “evaluate the significant judgments made by the engagement team and the related conclusions reached in forming the

overall conclusion on the engagement and in preparing the engagement report.” AS 7.2. This means that the EQR should “evaluate” significant judgments as to planning, including “risks identified in connection with the firm’s client acceptance and retention process.” Under AS 7.9 and AS 7.10, the EQR should also evaluate the assessment of, and responses to, identified fraud risks through discussions with the engagement team and his review of documentation. If the EQR becomes aware of a significant engagement deficiency, such as a failure to obtain sufficient appropriate evidence in accordance with PCAOB standards, AS 7.12 states that he cannot provide concurring approval of issuance of the audit report.

47. Despite these requirements, Wydra failed to identify significant engagement deficiencies in the CRS audit, including the lack of sufficient appropriate audit evidence. Wydra knew that CRS was a high risk audit client and that the PCAOB had previously found deficiencies in the predecessor auditor’s audit of CRS’s 2011 financial statements due, in part, to failures to trace journal entries and revenues to source documents. He also knew that CRS had no IT general controls and multiple material weaknesses in its internal control over financial reporting such that CRS’s prior financial statements contained actual errors and misstatements that required correction.

48. Wydra, however, did not evaluate the team’s response to identified fraud risks or the lack of source documents. None of the work papers Wydra reviewed provided sufficient detail to enable him to evaluate whether the team’s testing had appropriately responded to the identified fraud risks. Wydra accepted conclusions in those work papers without further inquiry or review of documentation.

49. As a result, Wydra failed to evaluate the significant judgments as to the sufficiency of audit evidence and whether the team had appropriately responded to fraud risks related to CRS’s journal entries and revenues. As for the related party fraud risks, Wydra reviewed a number of planning documents that revealed CRS’s financial and operational dependence on TSE, the amount of PEO debt, and the fact that TSE was itself dependent on CRS as its sole client and revenue source. Yet despite this knowledge, Wydra did not question how the team could have properly responded to the fraud risk given the absence of any evidence in the work papers that, for example, the related party had the financial capability to provide liquidity to CRS while still paying employee wages and taxes upon which CRS relied, or that the cost of sales were what the related party said they were in PEO invoices.

50. Wydra also failed to properly evaluate the engagement team’s significant judgments concerning CRS’s ability to continue as a going concern in disregard of his obligations under AS 7 and the requirements of AU 341. Relying on the fact that the lender had renewed the financing, Wydra did not review the analyses included within the work paper that led to the team’s unsupported conclusion that there was no substantial doubt. He did not consider, for example, the finance-ability analysis, the covenant analysis, or the term sheets.

### **Failure to Obtain Sufficient Appropriate Audit Evidence to Support the Audit Opinion**

51. AS 15.04, *Audit Evidence*, requires the auditor to “plan and perform audit procedures to obtain sufficient appropriate audit evidence to provide a reasonable basis for his or her opinion.” Macina did not obtain sufficient appropriate audit evidence to support management’s assertions regarding CRS’s recognition of revenue, cost of sales, and related party

transaction disclosures. Macina also did not obtain sufficient appropriate evidence to properly evaluate CRS's ability to continue as a going concern. Thus, Macina improperly approved Crowe's issuance of an audit report containing an unqualified audit opinion. Wydra, in turn, improperly concurred in the issuance of the audit report despite significant engagement deficiencies in the audit arising from a lack of audit evidence.

### **Failures to Exercise Due Care and Professional Skepticism**

52. AU 230, *Due Professional Care in the Performance of Work*, requires auditors to exercise due professional care throughout the audit. AU 230.01. Due professional care requires that the auditor exercise professional skepticism, which means "an attitude that includes a questioning mind and a critical assessment of audit evidence." AU 230.07. Under this standard, "the auditor should not be satisfied with less than persuasive evidence because of a belief that management is honest." AU 230.09. As described above, Macina failed to exercise the required due care and professional skepticism when he failed to obtain sufficient appropriate evidence to respond to fraud risks concerning CRS's journal entries, revenues, cost of sales and related party transaction disclosures, in addition to failures to evaluate CRS's ability to continue as a going concern. Similarly, through Wydra's failure to review the going concern analysis, evaluate the responses (or lack thereof) to fraud risks, and identify the significant engagement deficiencies arising from the lack of sufficient appropriate audit evidence to support the unqualified opinion, Wydra also failed to meet the requirements of AU 230.

### **Failure to be Independent**

53. Crowe also was not independent of CRS during both the period under audit and the professional engagement period as a result of an ongoing direct business relationship.

54. Beginning in approximately June 2012, Crowe and CRS's subsidiary, Accountabilities, entered into an "Agreement to Provide Consultants" whereby Crowe's Risk Practice Group subcontracted staffing employees from Accountabilities to serve as "consultants" and provide professional non-audit services to Crowe's clients. Under this Agreement, CRS's subsidiary, Accountabilities, stood "ready, willing, and able to provide consultants as may be required by Crowe or its clients from time to time" on an "as-needed basis" "for the benefit of Crowe and Crowe's clients." These "consultants" provided loan review services to Crowe's banking clients, as well as other regulatory compliance consulting work, including bank secrecy act reviews, anti-money laundering customer due diligence, and enhanced due diligence. Crowe billed its third party clients at a profit for the time and services provided by the "consultants" on their respective non-assurance engagements.

55. Macina first learned of the direct business relationship between CRS's subsidiary and Crowe in December 2013. Through internal inquiries and discussions with CRS, he also understood the business was ongoing throughout the period under audit in 2013 and the period of Crowe's engagement. Despite this knowledge, Macina allowed the relationship to be inaccurately described as a one-time, past event in a new client acceptance form that Crowe partners relied upon to evaluate whether to accept CRS as an audit client. He also did not document in any of the work papers the facts of the ongoing business relationship or the basis for his incorrect conclusion that "no independence issues existed."

56. Macina also never informed CRS’s Audit Committee of the ongoing direct business relationship and instead sent CRS’s Audit Committee an “Independence Representation Letter” on December 18, 2013, that stated his belief that Crowe was independent under PCAOB and SEC Rules and that he was unaware of any relationships that “may reasonably be thought to bear on independence.” In reality, the subcontracting relationship between CRS’s subsidiary and Crowe created a mutuality of interest that impaired Crowe’s independence.

57. There also were at least two occasions during the engagement period that Crowe became aware of the independence impairing activity. First, the audit team’s revenue and rebates testing included procedures on Crowe invoices for the prohibited services. Second, Macina emailed the national office in August 2014 about an additional business opportunity between CRS and Crowe that also indicated the existence of the ongoing direct business relationship. Again, however, no one properly analyzed the relationship with respect to Crowe’s independence.

### **Crowe National Office Involvement in the Audit**

58. The failure to conduct the audit in compliance with PCAOB standards also occurred despite the involvement of Crowe’s national office, including in some of the areas of deficiency. For example, the CRS engagement had a dedicated national office pre-issuance reviewer, who along with other members of the national office, knew that the CRS engagement was high risk, that the PCAOB had found deficiencies in the predecessor’s audit of CRS’s 2011 financials, and that CRS had no IT general controls and numerous material weaknesses in its internal control over financial reporting such that CRS’s prior financial statements contained actual misstatements that needed to be corrected.

59. The pre-issuance reviewer also participated in the going concern analysis and signed off on the going concern consultation. The reviewer helped draft portions of the going concern work paper that lacked sufficient evidentiary support. He also was aware of inaccuracies in the information upon which the finance-ability analysis was based. He also ignored the risks posed by CRS’s dependence on TSE to provide liquidity and pay employee wages and taxes despite CRS’s mounting indebtedness and alternate lender term sheets stating that analysis of TSE’s and Director’s financials would be a critical part of due diligence.

60. Another national office partner, who had one or more telephone conversations with the engagement team about its inability to obtain customer contracts, customer-approved timesheets, or other source documents to support CRS’s revenues and journal entries, nevertheless did not object to the engagement team’s improper use of invoice and cash receipts testing.

61. Crowe’s national office also performed an internal inspection on the CRS audit that included a review of how the engagement team had addressed identified fraud risks. Although it identified the failure to obtain evidence to support CRS’s revenues, it did not uncover the failures to obtain sufficient evidence to address each of the fraud risks, including related party transactions. Also, although the original inspection report was issued in September 2014, the national office only finalized the results in mid-January 2015—after they had revised the language of the original finding (without obtaining the inspector’s sign-off on the revisions) and suggested changes to Macina’s response.

62. In terms of policies and procedures, although a background check performed during the client acceptance process had revealed that entities owned by Director had a history of incurring and sometimes resolving tax liens regarding payroll taxes, no steps were taken to make the EQR or the national office pre-issuance reviewer aware of the results of Director's background check or the payroll tax issues it identified.

63. Crowe also lacked proper independence controls and controls over the client acceptance process. Prior to accepting CRS as an audit client, Crowe had no mechanism other than the independence inquiry email to ascertain whether an independence impairing business relationship existed. Crowe's policies also did not require the independence inquiry email to be sent prior to client acceptance. Even in those instances that an independence inquiry email was sent, Crowe had no database or other system that captured all vendors, subcontracts or other entities that conducted business with Crowe. Thus, despite the ongoing business relationship between Crowe and CRS during both the period under audit and the professional engagement period itself, Crowe had insufficient policies or procedures in place to prevent the independence violation.

### **COOPERATION**

64. In determining to accept their Offers, the Commission considered Respondents' cooperation. The Commission also considered Crowe's remedial efforts.

### **VIOLATIONS**

65. Section 10A(a) of the Exchange Act requires each audit to include (1) procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts, (2) procedures designed to identify related party transactions that are material to the financial statements or otherwise require disclosure therein, and (3) an evaluation of whether there is substantial doubt about the ability of the issuer to continue as a going concern during the ensuing fiscal year. No showing of scienter is necessary to establish a violation of Section 10A. As a result of the conduct described above, Crowe violated, and Macina and Wydra caused Crowe to violate, Sections 10A(a)(1), 10A(a)(2) and 10A(a)(3) of the Exchange Act.

66. 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" ("GAAS"). "[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." *See* SEC Release No. 34-49708 (May 14, 2004). Thus, and through the conduct described above, Crowe violated, and Macina and Wydra caused Crowe to violate, Regulation S-X Rule 2-02(b)(1) when Crowe issued its audit report dated June 30, 2014, stating that Crowe had conducted its audit in accordance with PCAOB standards when it had not.

67. An issuer violates Section 13(a) of the Exchange Act and Rule 13a-1 thereunder when such issuer files with the Commission annual reports that contain materially false or misleading information or if they file annual reports that fail to include independently audited financials. Scienter is not required for a violation of Section 13(a). In administrative

proceedings, the Commission may impose sanctions upon any person that is, was, or would be a cause of a violation, due to an act or omission the person knew or should have known would contribute to such violation. In order to establish that a person caused a non-scienter based violation, a showing of negligence will suffice. By not conducting the audits of CRS's financial statements in accordance with PCAOB standards, and issuing audit reports stating that Crowe was independent when it was not, Crowe, Macina and Wydra were a cause of CRS's violations of Section 13(a) and Rule 13a-1.

68. Section 4C of the Exchange Act and CRP Rule 102(e)(1)(ii) provide, in part, that the Commission may censure or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to any person who is found by the Commission to have engaged in improper professional conduct. With respect to persons licensed to practice as accountants, "improper professional conduct" includes either of the following two types of negligent conduct: (1) a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted; or (2) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission. CRP Rule 102(e)(1)(iv)(B). As a result of the conduct described above, Crowe, Macina and Wydra engaged in "improper professional conduct" within the meaning of Exchange Act Section 4C(a)(2) and CRP Rule 102(e)(1)(ii).

### **FINDINGS**

69. Based on the foregoing, the Commission finds that Crowe violated, and Macina and Wydra caused Crowe to violate, Sections 10A(a) of the Exchange Act and Rule 2-02(b)(1) of Regulation S-X.

70. Based on the foregoing, the Commission finds that Respondents were a cause of CRS's violations of Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.

71. Based on the foregoing, the Commission finds that Respondents engaged in improper professional conduct pursuant to Sections 4C(a)(2) of the Exchange Act and CRP Rule 102(e)(1)(ii).

### **UNDERTAKINGS**

72. Respondent Crowe has undertaken to retain, within 120 days after the entry of this Order, an independent consultant ("Independent Consultant"), not unacceptable to the Commission staff. Crowe shall provide to the Commission staff a copy of the engagement letter detailing the scope of the Independent Consultant's responsibilities. The Independent Consultant's compensation and expenses shall be borne exclusively by Crowe.

#### **A. Independence.**

- a. To ensure the independence of the Independent Consultant, Crowe (1) shall not have the authority to terminate the Independent Consultant or substitute another independent consultant for the initial Independent Consultant, without the prior written approval

of the Commission staff; and (2) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.

- b. Crowe will 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 Crowe, 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 the performance of his/her duties under this Order shall not, without prior written consent of the Division of Enforcement, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Crowe, or any of its present or former affiliates, directors, officers, partners, 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.

B. Areas Independent Consultant Is to Review. Within the periods specified in paragraph 72.C below, the Independent Consultant will review and evaluate Crowe's audit policies and procedures regarding:

- a. The exercise of due professional care and professional skepticism regarding reliance on management representations;
- b. Obtaining sufficient appropriate audit evidence in significant audit risk areas and those subject to fraud risk;
- c. Responding to fraud risks and documenting responses to such risks;
- d. Auditing related party transactions;
- e. Detecting illegal acts that have a direct and material effect on the determination of financial statement amounts including fraud;
- f. Evaluating substantial doubt about the ability of the issuer to continue as a going concern;
- g. Performing engagement quality reviews according to the guidance set forth in AS 7; and
- h. Independence.

Crowe shall cooperate fully with the Independent Consultant and shall provide reasonable access to firm personnel, information, and records as the Independent Consultant may reasonably request for the Independent Consultant's review and evaluation described herein and

the reports specified in paragraph 72.C below.

C. Independent Consultant Reports and Certifications.

- a. Within five (5) months of the Independent Consultant being retained, Crowe shall require the Independent Consultant to issue a detailed written report (“Report”) to Crowe: (a) summarizing the Independent Consultant’s review and evaluation of the areas identified in paragraph 72.B. above; and (b) making recommendations, where appropriate, reasonably designed to ensure that audits conducted by Crowe comply with Commission regulations and with PCAOB standards and rules. Crowe shall require the Independent Consultant to provide a copy of the Report to the Commission staff when the Report is issued.
- b. Crowe will adopt all recommendations of the Independent Consultant in the Report. Provided, however, that within thirty (30) days of issuance of the Report, Crowe may advise the Independent Consultant in writing of any recommendation that it considers to be unnecessary, unduly burdensome, or impractical. Crowe need not adopt any such recommendation at that time, but instead may propose in writing to the Independent Consultant and the Commission Staff an alternative policy or procedure designed to achieve the same objective or purpose. Crowe and the Independent Consultant will engage in good-faith negotiations in an effort to reach agreement on any recommendations objected to by Crowe.
- c. In the event that the Independent Consultant and Crowe are unable to agree on an alternative proposal within sixty (60) days, Crowe either will abide by the determinations of the Independent Consultant or seek approval from the Commission staff pursuant to paragraph 72.A.a. above to engage, at Crowe’s expense, a qualified third party acceptable to the Commission staff to promptly resolve the issue(s).
- d. Within sixty (60) days of issuance of the Report, but not sooner than thirty (30) days after a copy of the Report is provided to the Commission staff, Crowe will certify to the Commission staff in writing that it has adopted and has implemented or will implement all recommendations of the Independent Consultant (“Certification of Compliance”). Crowe will provide a copy of the Certification of Compliance to the Commission staff.
- e. Within six (6) months of the issuance of the Report, Crowe shall require the Independent Consultant to test whether Crowe has

implemented and enforced its written policies and procedures concerning the areas specified in paragraph 72.B. above and assess the effectiveness of those policies and procedures. Within thirty (30) days of the test, Crowe shall require the Independent Consultant to issue a written final report summarizing the results of the Independent Consultant's test and assessment ("Final Report") and to provide a copy of the Final Report to the Commission Staff. At this time, if the Independent Consultant determines that the undertakings discussed herein have been completed to the satisfaction of the Independent Consultant, Crowe shall require the Independent Consultant to certify in writing that the undertakings have been so completed ("Independent Consultant Certification") and provide a copy of this certification to the Commission staff. In all events, Crowe must complete the undertakings discussed herein and provide the Independent Consultant Certification to the Commission staff no later than eighteen (18) months after the entry of this Order.

- f. The Report, Final Report, Certification of Compliance, Independent Consultant Certification, and any related correspondence or other documents shall be submitted to Anita B. Bandy, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, DC 20549, with a copy to the Office of Chief Counsel of the Enforcement Division.
- D. Crowe shall also 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 Crowe agrees to provide such evidence. This certification and supporting material shall be submitted to Anita B. Bandy, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, DC 20549, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.
- E. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.
- F. Crowe agrees that if the Division of Enforcement believes that Crowe has not satisfied these undertakings, it may petition the Commission to reopen the

matter to determine whether additional sanctions are appropriate.

#### 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. Respondents, Crowe, Macina and Wydra, shall cease and desist from committing or causing any violations and any future violations of Sections 10A(a) of the Exchange Act, Section 13(a) of the Exchange Act and Rule 13a-1 promulgated thereunder; and Rule 2-02(b)(1) of Regulation S-X.

B. Respondent Crowe is censured.

C. Respondent Crowe shall comply with its undertakings as enumerated in Paragraph 72 of Section III. above.

D. Respondent Macina is denied the privilege of appearing or practicing before the Commission as an accountant.

E. After three years from the date of this Order, Respondent Macina 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:

1. 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 (other than as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934). Such an application must satisfy the Commission that Macina's work in his practice before the Commission as an accountant 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
2. 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 as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934. Such an application will be considered on a facts and circumstances basis with respect to such membership, and the applicant's burden of demonstrating good cause for reinstatement will be particularly high given the role of the audit committee in financial and accounting matters; and/or

3. an independent accountant. Such an application must satisfy the Commission that:
  - a) Macina, 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;
  - b) Macina, 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 firm's quality control system that would indicate that Macina will not receive appropriate supervision;
  - c) Macina 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
  - d) Macina acknowledges his responsibility, as long as Macina 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.

F. The Commission will consider an application by Macina 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 Macina's character, integrity, professional conduct, or qualifications to appear or practice before the Commission as an accountant. Whether an application demonstrates good cause will be considered on a facts and circumstances basis with due regard for protecting the integrity of the Commission's processes.

G. Respondent Wydra is denied the privilege of appearing or practicing before the Commission as an accountant.

H. After one year from the date of this Order, Respondent Wydra 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:

1. 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 (other than as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of

1934). Such an application must satisfy the Commission that Wydra's work in his practice before the Commission as an accountant 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

2. 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 as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934. Such an application will be considered on a facts and circumstances basis with respect to such membership, and the applicant's burden of demonstrating good cause for reinstatement will be particularly high given the role of the audit committee in financial and accounting matters; and/or
3. an independent accountant. Such an application must satisfy the Commission that:
  - a) Wydra, 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;
  - b) Wydra, 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 firm's quality control system that would indicate that Wydra will not receive appropriate supervision;
  - c) Wydra 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
  - d) Wydra acknowledges his responsibility, as long as Wydra 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.

I. The Commission will consider an application by Wydra 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 Wydra's character,

integrity, professional conduct, or qualifications to appear or practice before the Commission as an accountant. Whether an application demonstrates good cause will be considered on a facts and circumstances basis with due regard for protecting the integrity of the Commission's processes.

J. Respondent Crowe shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$1,500,000 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.

K. Respondent Macina shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$25,000 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.

L. Respondent Wydra shall, within 10 days of the entry of this Order, pay a civil money penalty 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). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

M. Payments must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 as Respondents, Crowe LLP, Joseph C. Macina, and Kevin V. Wydra, in these proceedings, and the file number of these proceedings. A copy of the cover letter and check or money order must be simultaneously sent to Anita B. Bandy, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, DC 20549.

N. 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 Respondents' 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 Respondents Macina and Wydra, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents Macina and Wydra 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 Respondents Macina and Wydra 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