

ORDER

over Respondent and the subject matter of these proceedings, which is admitted, Respondent consents to the entry of this Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions ("Order") as set forth below.²

III.

On the basis of Respondent's Offer, the Board finds³ that:

A. Respondent

1. Kent M. Bowman, 61, of Salt Lake City, Utah, is a certified public accountant licensed by the State of Utah Department of Professional Licensing (License No. 141654-2601). Bowman is a partner in the registered public accounting firm Tanner LLC ("Tanner" or the "Firm"), located in Salt Lake City, Utah, and he served as engagement partner on the audits discussed below. At all relevant times, Bowman was an associated person of a registered public accounting firm as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i).

B. Summary

2. This matter concerns Bowman's violations of PCAOB rules and standards in connection with the audits of the financial statements of ActiveCare, Inc. ("AC") for the years ended September 30, 2012 and September 30, 2013. As detailed below, Bowman failed to exercise due professional care and professional skepticism, and failed to obtain sufficient appropriate audit evidence in connection with each of these audits (the "AC Audits").

3. Specifically, during the AC Audits, Bowman was aware of red flags and audit evidence that contradicted AC's practice of recognizing revenue immediately upon making bulk shipments of certain health care products to health care plans or intermediaries. The revenue AC recognized on those products constituted

² The findings herein are made pursuant to Respondent's Offer, and are not binding on any other person or entity in this or any other proceeding.

³ The Board finds that Respondent's conduct described in this Order meets the conditions set out in Section 105(c)(5) of the Act, 15 U.S.C. § 7215(c)(5), which provides that certain sanctions may be imposed in the event of: (1) intentional or knowing conduct, including reckless conduct, that results in a violation of the applicable statutory, regulatory, or professional standard; or (2) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

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approximately 46% and 85% of AC's reported revenue in fiscal years ("FY") 2012 and 2013, respectively. Bowman was aware that (1) AC's revenue recognition practices were contrary to the terms of AC's written contracts; (2) in both AC Audits, an AC "customer" indicated that it did not owe, or did not yet owe, amounts that AC had recognized as revenue; and (3) AC had undertaken a significant unusual transaction *after* its fiscal year-end 2013, pursuant to which it purported to transfer products from one customer to another retroactive to *before* its fiscal year-end 2013.

4. Despite his awareness of these red flags and contradictory audit evidence, Bowman abandoned his obligation to exercise due professional care and professional skepticism, failed to perform sufficient procedures to resolve inconsistencies and contradictions in the audit evidence, and, as a result, failed to obtain sufficient appropriate audit evidence to support Tanner's audit opinions.

5. In October 2014, AC disclosed that its prior revenue recognition policy—to recognize revenue immediately upon making bulk shipments of products to health care plans or intermediaries—was incorrect. AC restated its FY 2013 financial statements in November 2014, reducing originally reported revenue by \$5.5 million, or more than 56%.

C. Respondent Violated PCAOB Rules and Standards

Applicable PCAOB Rules and Standards

6. In connection with the preparation or issuance of an audit report, PCAOB rules require that a registered public accounting firm and its associated persons comply with all applicable Board auditing and related professional practice standards.⁴ An auditor may express an unqualified opinion on an issuer's financial statements only

⁴ See PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*; PCAOB Rule 3200T, *Interim Auditing Standards*. All references to PCAOB standards are to the versions of those standards in effect at the time of the AC Audits. As of December 31, 2016, the PCAOB reorganized its auditing standards using a topical structure and a single, integrated numbering system. See *Reorganization of PCAOB Auditing Standards and Related Amendments to PCAOB Standards and Rules*, PCAOB Rel. No. 2015-002 (Mar. 31, 2015); see also *PCAOB Auditing Standards Reorganized and Pre-Reorganized Numbering* (Jan. 2016), <https://pcaobus.org/Standards/Auditing/Documents/PrintableReferenceTable.pdf>.

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when the auditor has formed that opinion on the basis of an audit performed in accordance with PCAOB standards.⁵

7. Those standards require, among other things, that an auditor must plan and perform audit procedures to obtain sufficient appropriate audit evidence to provide a reasonable basis for the auditor's opinion.⁶ PCAOB standards also require, if audit evidence obtained from one source is inconsistent with that obtained from another, or if the auditor has doubts about the reliability of information to be used as audit evidence, that the auditor should perform the audit procedures necessary to resolve the matter and should determine the effect, if any, on other aspects of the audit.⁷

8. Although management representations "are part of the evidential matter the independent auditor obtains, . . . they are not a substitute for the application of those auditing procedures necessary to afford a reasonable basis for an opinion regarding the financial statements under audit."⁸ Moreover, if a management representation "is contradicted by other audit evidence, the auditor should investigate the circumstances and consider the reliability of the representation made."⁹

9. PCAOB standards further require that an auditor exercise due professional care and professional skepticism in performing the audit.¹⁰ Professional

⁵ See AU § 508.07, Reports on Audited Financial Statements; Auditing Standard No. 1, References in Auditors' Reports to the Standards of the Public Company Accounting Oversight Board, ¶ 3.

⁶ See Auditing Standard No. 15, *Audit Evidence*, ("AS 15") ¶ 4.

⁷ See *id.* at ¶ 29. PCAOB standards also require the auditor, in forming an opinion on whether the financial statements are presented fairly, in all material respects, in conformity with the applicable financial reporting framework, to take into account all relevant audit evidence, regardless of whether it appears to corroborate or to contradict the assertions in the financial statements. See Auditing Standard No. 14, *Evaluating Audit Results*, ("AS 14") ¶ 3.

⁸ AU § 333.02, Management Representations.

⁹ *Id.* at ¶ .04.

¹⁰ See AU § 150.02, *Generally Accepted Auditing Standards*; AU § 230, *Due Professional Care in the Performance of Work*.

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skepticism, PCAOB standards explain, "is an attitude that includes a questioning mind and a critical assessment of audit evidence."¹¹

10. In the case of significant transactions that are outside the normal course of business for the entity, or that otherwise appear to be unusual given the auditor's understanding of the entity and its environment, PCAOB standards require the auditor to "design and perform procedures to obtain an understanding of the business purpose (or the lack thereof) of each significant unusual transaction that the auditor has identified" and to "evaluate whether the business purpose (or the lack thereof) indicates that the significant unusual transaction may have been entered into to engage in fraudulent financial reporting or conceal misappropriation of assets."¹²

11. As described below, Bowman failed to comply with PCAOB rules and standards in connection with the AC Audits.

2012 AC Audit

12. Bowman was the engagement partner on the Firm's audit of AC's year ended September 30, 2012 financial statements ("2012 Audit"). AC's filings with the Securities and Exchange Commission ("Commission") disclosed that it provided products and services related to chronic illness monitoring and personal emergency response monitoring services. At all relevant times, AC's common stock was registered under Section 12(g) of the Securities Exchange Act of 1934 and was quoted on the OTCQB under the symbol "ACARD." At all relevant times, AC was an "issuer" as that term is defined in Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

13. Bowman, as engagement partner, authorized the Firm's issuance of an audit report, dated January 15, 2013, expressing an unqualified audit opinion on AC's financial statements for the year ended September 30, 2012 ("FY 2012"). The report, which included an explanatory paragraph indicating that there was substantial doubt about AC's ability to continue as a going concern, was included in AC's FY 2012 Form 10-K filed with the Commission on January 15, 2013.¹³

¹¹ AU § 230.07.

¹² See AU §§ 316.66A, .67, Consideration of Fraud in a Financial Statement Audit.

¹³ In connection with a Form 10-K/A filed by AC to correct a transpositional error in the originally filed financial statements, which had resulted in an \$8

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Revenue Recognition: CIM Products

14. During the 2012 Audit, Bowman identified improper revenue recognition as a fraud risk. Bowman understood, and AC's public filings disclosed, that AC had acquired during FY 2012 a company specializing in the sale of chronic illness monitoring ("CIM") products, including diabetes testing kits with blood glucose monitors and test strips. Sales of CIM products were one of three primary revenue sources AC reported for FY 2012.¹⁴

15. AC's Form 10-K disclosed that the Company entered into agreements with self-insured companies with respect to CIM products. The Company further disclosed that it recognized CIM-related revenues "when persuasive evidence of an arrangement with the customer exists, title passes to the customer, prices are fixed or determinable, and collection is reasonably assured."¹⁵

16. Bowman documented his understanding during the 2012 Audit that, upon signing a contract with a company to provide CIM products, AC would (a) obtain lists of diabetic patients from the company; (b) send letters directly to the company's diabetic patient end-users informing them of the opportunity to receive the product at no cost; then (c) after a brief opt-out period, ship CIM products directly to the identified diabetic end-users. Bowman further documented his understanding that AC recognized revenue upon shipment of the products to the identified end-users.

Health Plan X Transaction

17. During the 2012 Audit, Bowman became aware that, shortly before fiscal year-end ("FYE") 2012, AC recognized a substantial amount of revenue in a manner contrary to his understanding of how the Company had been recognizing CIM revenue. Specifically, just two days before FYE 2012, AC recognized \$331,000 in revenue—nearly half of its reported CIM revenue and more than 20 percent of its total reported revenue for FY 2012—immediately upon shipping CIM products in bulk to a health plan entity ("Health Plan X"), rather than directly to Health Plan X's diabetic end-users. Bowman failed to properly evaluate AC's recognition of the Health Plan X revenue and failed to adequately consider contrary audit evidence indicating that the Company's

misstatement, Bowman also authorized the Firm's issuance of a second unqualified audit report dated January 25, 2013. See AC 2012 Form 10-K/A (Jan. 25, 2013).

¹⁴ See id. at F-7.

¹⁵ Id. at F-15.

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recognition of that revenue may not have been in conformity with U.S. generally accepted accounting principles.

18. As Bowman was aware during the 2012 Audit, AC's recognition of the Health Plan X revenue was not only inconsistent with his understanding of how AC had historically been recognizing CIM revenue, it also appeared to be inconsistent with the terms of the agreement between AC and Health Plan X. Bowman reviewed AC's written service contract with Health Plan X during the 2012 Audit. The contract, executed on September 28, 2012, just prior to FYE 2012, stipulated that Health Plan X would undertake certain implementation steps to identify for AC eligible diabetic patients, all of whom would be provided an opportunity to opt out of receiving CIM products from AC. According to the contract, AC would then distribute CIM products directly to eligible patients who had not opted out ("Covered Patients"), and Health Plan X would "reimburse" AC "for all claims submitted on" Covered Patients.

19. Despite reviewing those terms and despite knowing that AC had neither shipped any CIM Products to Covered Patients nor submitted any claims to Health Plan X on Covered Patients, Bowman failed to adequately question the appropriateness of AC immediately recognizing \$331,000 in revenue in connection with the bulk shipment of CIM products to Health Plan X.

20. Bowman also encountered contradictory audit evidence when Health Plan X responded to a confirmation request the engagement team had sent. Health Plan X's confirmation response stated that, although the \$331,000 balance was correct based on the amount of CIM products shipped to Health Plan X, "payment [would] be made on a claim incurred basis."

21. Under Bowman's direction, the engagement team called Health Plan X management to address the confirmation response. Based on that call, Bowman understood that Health Plan X expected to deploy CIM products to Covered Patients at a future point. Bowman agreed with AC management's decision to recognize this revenue, but neither Bowman, nor anyone else on the engagement team, documented why the discussion with Health Plan X management supported AC's determination to recognize \$331,000 in revenue on the same day it executed the Health Plan X contract.

22. Bowman's failure to appropriately evaluate AC's recognition of the Health Plan X revenue, particularly in light of his awareness of significant contradictory audit evidence, represented a failure to exercise due professional care and professional skepticism, a failure to perform audit procedures necessary to resolve inconsistencies

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and contradictions, and a failure to obtain sufficient appropriate audit evidence to provide a reasonable basis for Tanner's opinion on AC's FY 2012 financial statements.¹⁶

2013 AC Audit

23. Bowman was the engagement partner on the Firm's audit of AC's year ended September 30, 2013 financial statements ("2013 Audit"), and authorized the Firm's issuance of an audit report, dated January 13, 2014, expressing an unqualified audit opinion on AC's financial statements. The report, which included an explanatory paragraph indicating that there was substantial doubt about AC's ability to continue as a going concern, was included in AC's 2013 Form 10-K filed with the Commission on January 14, 2014.

Revenue Recognition: CIM Products

24. As in the prior year audit, Bowman identified improper revenue recognition as a fraud risk. During the 2013 Audit, Bowman understood that, for the majority of its CIM product sales, AC immediately recognized revenue, as it had in connection with the Health Plan X transaction, upon shipment to its contracting counterparty, rather than upon distribution to Covered Patients. Bowman also knew that AC's reported CIM sales for FY 2013 had increased more than 13-fold, to approximately \$9.7 million, which represented more than 85 percent of AC's total reported revenue for FY 2013. Bowman was also aware that AC's receivables outstanding over 30 days had increased substantially in FY 2013, to 90%, from 24% in FY 2012.

25. Despite identifying the risk that AC would recognize revenue improperly, and despite the increasing amount of AC's reported CIM product sales for FY 2013, Bowman again during the 2013 Audit failed to properly evaluate AC's recognition of CIM revenue. More specifically, Bowman again concluded that AC's practice of recognizing CIM revenue immediately upon making bulk shipments to its contracting counterparties was appropriate, notwithstanding (1) his awareness of contract terms that appeared to be squarely inconsistent with AC's revenue recognition practices; and (2) AC's entry into a significant unusual transaction due to an exception in a counterparty's confirmation response.

¹⁶ See AU § 230.07; AS 14 ¶ 3; AS 15 at ¶¶ 29, 4.

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The Contracts Bowman Reviewed Were Inconsistent with AC's Revenue Recognition Practice

26. As part of the 2013 Audit, Bowman reviewed four service contracts AC executed during FY 2013. Shortly after entering each of those contracts, AC made a bulk shipment of CIM products to its counterparty (or to a third-party warehouse) and immediately recognized revenue for the products shipped. AC recorded revenue of \$8.9 million pursuant to those four contracts, representing 91% of total CIM revenue, and 78% of its total reported revenue, for FY 2013.

27. As Bowman was aware, each contract stated that: AC's counterparty would identify Covered Patients; AC would distribute CIM products directly to those Covered Patients; and AC would then make "claims" for "reimbursement" for the products it had distributed. Further, in three of the four contracts, AC agreed to submit those claims for reimbursement, not to its contracting counterparty, but rather to a health care benefits provider that was not a party to the contract. Thus, under the written terms of those three contracts, AC's counterparty appeared to have no payment obligations.

28. Despite reviewing those contracts during the 2013 Audit, Bowman failed to obtain any acceptable explanation from management that reconciled the contracts' written terms with AC's revenue recognition approach. Further, Bowman failed to obtain sufficient appropriate audit evidence concerning the amount of CIM products, if any, that had been deployed to Covered Patients under the contracts, or the status of any claims for reimbursement that AC had made.

Bowman Failed to Appropriately Evaluate a Significant Unusual Transaction AC Undertook in Response to an Exception to a Confirmation Response

29. One of the four service contracts Bowman reviewed during the 2013 Audit was executed by AC and a "disease management provider" ("DMP") in March 2013. The DMP contract was one of those in which AC agreed not only to distribute CIM products directly to Covered Patients, but also to submit claims for reimbursement to a health care benefits provider that was not a party to the contract.

30. Bowman understood that AC originally recognized revenue for a "sale" of CIM products to DMP on March 29, 2013, for approximately \$3.7 million, or approximately 32% of AC's overall reported revenue for the year. Bowman understood that the sale to DMP was a significant transaction, and understood that AC had shipped CIM products to a third party warehouse rather than to Covered Patients.

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31. During the 2013 Audit, the engagement team sent a confirmation request to DMP that listed an accounts receivable balance for CIM products of approximately \$2.1 million.¹⁷ DMP responded to the confirmation request by stating: "The above balance is not correct. [DMP] does not have any balance due to ActiveCare." The response was received on November 19, 2013, after FYE 2013.

32. After the Tanner engagement team contacted DMP and asked it to elaborate on its initial response, DMP's CFO provided the following supplemental response, dated December 10, 2013: "I was asked to expand upon my first comment. [DMP] has a relationship with ActiveCare, where [DMP] never takes title to any equipment, but upon the successful implementation [DMP] is then due a commission. The only balance sheet entry [DMP] has recorded is a Commission Receivable."

33. Upon receiving DMP's supplemental response, Bowman discussed the response with AC management, which maintained that the transaction with DMP was legally enforceable and that the associated revenue had been appropriately recognized.

34. Notwithstanding AC's contention that the DMP shipment was an enforceable sale, the engagement team's work papers document that, on or about December 30, 2013 (three months after FYE 2013), AC entered into an agreement that purported: (1) to transfer the CIM products originally "sold" to DMP to another entity; and (2) to make the "transfer" retroactive to September 27, 2013, three days prior to FYE 2013. After reviewing that "transfer agreement" and discussing the issue with AC's management, Bowman documented his conclusion "concur[ring] with the client's assertion that revenue [originally associated with DMP] should be recorded for the year-ended 9-30-13, and the receivable exists and remains appropriate."

35. Bowman failed to obtain sufficient appropriate audit evidence to support that conclusion. In particular, he failed to exercise due professional care and skepticism in evaluating: (a) the significance of DMP's exception in the confirmation response; and (b) the retroactive "transfer" of CIM products. Moreover, he failed to perform adequate audit procedures to resolve inconsistencies and contradictions in the audit evidence.¹⁸

¹⁷ During the 2013 Audit, Bowman learned that DMP had returned a portion of the original \$3.7 million of CIM product to AC at some point in FY 2013, so that the outstanding receivable balance recorded for DMP was approximately \$2.1 million as of FYE 2013.

¹⁸ See AS 14 at ¶ 3; AS 15 at ¶¶ 4, 29; AU § 230.07.

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36. PCAOB standards provide that, in evaluating the results of confirmation procedures, an auditor should, among other things, consider "the nature of any exceptions, including the implications, both quantitative and qualitative, of those exceptions."¹⁹ Bowman failed to sufficiently undertake those steps after receiving the exception in the confirmation response from DMP. Although Bowman and his team followed up on that exception, DMP management explained that, consistent with the contract Bowman had reviewed, DMP did not owe AC any amounts and, in fact, DMP was itself due a commission upon "successful implementation" of the contract. That response should have caused Bowman to question not only AC's recognition of CIM revenue under the DMP contract, but also its recognition of CIM revenue under the other contracts he had reviewed, all of which had similar terms.

37. With respect to the December 2013 "transfer" of CIM products from DMP to another entity, that purported transfer was a significant unusual transaction that Bowman should have evaluated in considering whether AC's FY 2013 financial statements were materially misstated due to fraud. Among other things, he needed to consider "[w]hether management [wa]s placing more emphasis on the need for a particular accounting treatment than on the underlying economics of the transaction."²⁰

38. Bowman agreed with AC management's contention that the "transferred" DMP shipment was appropriately recognized as revenue during FY 2013, but failed to make the required evaluation of the transaction. Among other things, he failed, to appropriately consider that: (1) the agreement that purported to transfer the CIM products from DMP to the other entity as of FYE 2013 was not executed until several months after FYE 2013; and (2) DMP, the purported owner of the CIM products, was not even a party to the transfer agreement. Bowman also failed to consider that the transfer agreement contained no payment schedule, or date certain by which the transferee was required to pay AC, or date by which the transferee was required to deploy the products to Covered Patients.

39. As a result of the failures described above, Bowman did not obtain sufficient appropriate audit evidence to provide a reasonable basis for Tanner's opinion on AC's FY 2013 financial statements.²¹

¹⁹ AU § 330.33, The Confirmation Process.

²⁰ AU § 316.67.

²¹ See id.

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Restatement

40. On October 3, 2014, AC filed a Form 8-K with the Commission, disclosing that its financial statements for FY 2013 included accounting errors, and could no longer be relied upon. Specifically, AC disclosed that its prior revenue recognition policy—to immediately recognize revenue on certain diabetes products upon shipment to "distributors"—was incorrect, and that it was "better practice to defer revenue recognition until the products are shipped to the end users as opposed to the distributors."

41. On November 10, 2014, AC filed with the Commission an amended Form 10-K containing restated FY 2013 financial statements. Bowman authorized the issuance of an audit report expressing an unqualified opinion on those restated financial statements, and AC included that audit report its amended Form 10-K. AC's restated financial statements reduced originally stated FY 2013 revenue by \$5.5 million, or more than 56%.

IV.

In view of the foregoing, and to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports, the Board determines it appropriate to impose the sanctions agreed to in Respondent's Offer. Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 105(c)(4)(E) of the Act and PCAOB Rule 5300(a)(5), Kent M. Bowman is hereby censured;
- B. Pursuant to Section 105(c)(4)(B) of the Act and PCAOB Rule 5300(a)(2), Kent M. Bowman is barred from being an associated person of a registered public accounting firm, as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i);²²

²² As a consequence of the bar, the provisions of Section 105(c)(7)(B) of the Act will apply with respect to Bowman. Section 105(c)(7)(B) provides: "It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any issuer, broker, or dealer in an accountancy or a financial management capacity, and for any issuer, broker, or dealer that knew, or in the exercise of reasonable care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission."

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- C. After one (1) year from the date of this Order, Kent M. Bowman may file a petition, pursuant to PCAOB Rule 5302(b), for Board consent to associate with a registered public accounting firm.
- D. If Kent M. Bowman is permitted to associate once again with a registered public accounting firm, pursuant to Section 105(c)(4)(B) of the Act and PCAOB Rule 5300(a)(3), for a period of two (2) years from the date of this Order, his role in any "audit," as that term is defined in Section 110(1) of the Act and PCAOB Rule 1001(a)(v), shall be restricted as follows: Bowman shall not (1) serve, or supervise the work of another person serving, as an "engagement partner," as that term is used in the Board's Auditing Standard No. 10 or AS 1201, *Supervision of the Audit Engagement*; (2) serve, or supervise the work of another person serving, as an "engagement quality reviewer," as that term is used in the Board's Auditing Standard No. 7 or AS 1220, *Engagement Quality Review*; (3) serve, or supervise the work of another person serving, in any role that is equivalent to, but differently denominated from, engagement partner (such as "lead partner" or "practitioner-in-charge") or engagement quality reviewer (such as "concurring partner"); (4) exercise authority, or supervise the work of another person exercising authority, either to sign a registered public accounting firm's name to an audit report, or to consent to the use of a previously issued audit report, for any issuer, broker, or dealer; (5) serve, or supervise the work of another person serving, as the "other auditor," or "another auditor," as those terms are used in the Board's Interim Auditing Standard AU Section 543 or AS 1205, *Part of the Audit Performed by Other Independent Auditors*; or (6) serve, or supervise the work of another individual serving as a professional practice director; and
- E. Pursuant to Section 105(c)(4)(D) of the Act and PCAOB Rule 5300(a)(4), a civil money penalty in the amount of \$25,000 payable by Kent M. Bowman is imposed. All funds collected by the Board as a result of the assessment of this civil money penalty will be used in accordance with Section 109(c)(2) of the Act. Kent M. Bowman shall pay this civil money penalty within 10 days of the issuance of this Order by (1) wire transfer in accordance with instructions furnished by Board staff; or (2) United States Postal Service money order, bank money order, certified check, or bank cashier's check (a) made payable to the Public Company Accounting Oversight Board, (b) delivered to the Controller, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington D.C. 20006, and (c) submitted under a cover letter which identifies Kent M.

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Bowman as the Respondent in these proceedings, and states that payment is made pursuant to this Order, a copy of which cover letter and money order or check shall be sent to the Office of the Secretary, Attention: Phoebe Brown, Secretary, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington, D.C. 20006.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

July 25, 2017