PCAOB
Public Company Accounting Oversight Board

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ORDER INSTITUTING DISCIPLINARY PROCEEDINGS, MAKING FINDINGS, AND IMPOSING SANCTIONS

In the Matter of BDO Auditores, S.L.P., Santiago Sañé Figueras, and José Ignacio Algás Fernández

Respondents.

PCAOB Release No. 105-2017-039

September 26, 2017

By this Order, the Public Company Accounting Oversight Board ("Board" or "PCAOB") is (1) censuring BDO Auditores, S.L.P. ("BDO Spain" or "Firm"), Santiago Sañé Figueras ("Sañé"), and José Ignacio Algás Fernández ("Algás") (collectively, "Respondents"); (2) imposing a civil money penalty in the amount of $40,000 on BDO Spain and $7,500 on Sañé; (3) requiring the Firm to undertake certain remedial measures, including to establish policies and procedures, directed toward the quality control deficiencies identified in this Order; (4) requiring the Firm to provide additional professional education and training to its associated persons; (5) barring Sañé from being an associated person of a registered public accounting firm;[1] and (6) barring Algás from being an associated person of a registered public accounting firm.[2]

The Board is imposing these sanctions on the basis of its findings that: (a) the Respondents violated PCAOB rules and standards in connection with the audits of the December 31, 2011 and December 31, 2012 financial statements of Private Media Group, Inc. ("PMG" or the "Company"); and (b) BDO Spain violated PCAOB rules and standards by failing to effectively implement and monitor policies and procedures to provide it with reasonable assurance that it only accepted engagements governed by PCAOB rules and standards that it could reasonably expect to be completed with professional competence, and that its engagement personnel were appropriately assigned, qualified and adequately trained to perform audits in accordance with PCAOB rules and standards.

[1] Sañé may file a petition for Board consent to associate with a registered public accounting firm after three (3) years from the date of this Order.

[2] Algás may file a petition for Board consent to associate with a registered public accounting firm after one (1) year from the date of this Order.

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I.

The Board deems it necessary and appropriate, for the protection of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports, that disciplinary proceedings be, and hereby are, instituted pursuant to Section 105(c) of the Sarbanes-Oxley Act of 2002, as amended (the "Act"), and PCAOB Rule 5200(a)(1) against Respondents.

II.

In anticipation of institution of these proceedings, and pursuant to PCAOB Rule 5205, Respondents have submitted Offers of Settlement ("Offers") that the Board has determined to accept. Solely for purposes of these proceedings and any other proceedings brought by or on behalf of the Board, or to which the Board is a party, and without admitting or denying the findings herein, except as to the Board's jurisdiction over Respondents and the subject matter of these proceedings, which are admitted, Respondents each consent to the entry of this Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions ("Order") as set forth below.[3]

III.

On the basis of Respondents' Offers, the Board finds that:[4]

A. <u>Respondents</u>

1. **BDO Auditores, S.L.P.** is a limited liability partnership organized under the laws of Spain, and is headquartered in Madrid, Spain. The Firm is licensed in Spain by the Official Register of Auditors (R.O.A.C.) (license no. S1273). The Firm is a foreign

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[3] The findings herein are made pursuant to the Respondents' Offers and are not binding on any other person or entity in this or any other proceeding.

[4] The Board finds that Respondents' 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: (A) intentional or knowing conduct, including reckless conduct, that results in a violation of the applicable statutory, regulatory, or professional standard; or (B) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

registered public accounting firm as that term is defined in PCAOB Rule 1001(f)(ii). The Firm registered with the PCAOB on May 17, 2004, pursuant to Section 102 of the Act and PCAOB rules. The Firm is a member of BDO International Limited and forms part of the international BDO network of independent member firms. The Firm currently does not serve as the principal auditor[5] for any issuer audit clients[6] and does not currently play a substantial role in any issuer audits.[7] The Firm has approximately 23 partners and 346 employees.

2. **Santiago Sañé Figueras**, age 48, of Barcelona, Spain, is a registered public accountant who is licensed under the laws of Spain (license no. 18614). At all relevant times, Sañé was a partner in the Barcelona, Spain office of BDO Spain and 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). Sañé served as the engagement partner for the audits of PMG for the years ending December 31, 2010 through December 31, 2012.

3. **José Ignacio Algás Fernández**, age 43, of Barcelona, Spain, is a registered public accountant who is licensed under the laws of Spain (license no. 21841). At all relevant times, Algás was a partner in the Barcelona, Spain office of BDO Spain and 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). Algás served as the engagement quality reviewer for the audits of PMG for the years ending December 31, 2011 and December 31, 2012.

B. Issuer

4. **Private Media Group, Inc.** is a Nevada corporation headquartered in Barcelona, Spain. At all relevant times, PMG was a holding company with subsidiaries engaged in the acquisition, refinement and distribution of branded adult media in digital and physical formats. The Company's stock was previously quoted on OTC Link, under

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[5] See AU § 543, *Part of Audit Performed by Other Independent Auditors* (describing role of the principal auditor).

[6] See Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii) (defining "issuer").

[7] See PCAOB Rule 1001(p)(ii) (containing definition of "play a substantial role in the preparation or furnishing of an audit report").

the symbol "PRVT." At all relevant times, PMG was an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).[8]

C. Summary

5. This matter concerns Respondents' repeated violations of PCAOB rules and standards during the course of the Firm's audits of the Company's December 31, 2011 and December 31, 2012 financial statements (the "Audits"), as well as the Firm's violations of PCAOB quality control standards. During the Audits, the Firm and Sañé failed to exercise due professional care and professional skepticism and failed to: (1) perform procedures to test journal entries for the existence of fraud; (2) address appropriately a departure from U.S. generally accepted accounting principles ("GAAP") related to the extinguishment of certain liabilities during 2012; (3) perform sufficient procedures to evaluate the reporting of certain stock transactions during 2012; (4) perform procedures to test the valuation of the Company's library of photographs and videos at year end 2012; (5) perform sufficient procedures to evaluate the appropriateness of reporting certain costs as assets at year end 2012; (6) perform sufficient procedures to test the occurrence and valuation of revenue; and (7) timely assemble for retention all audit documentation for the Audits and document all changes to the audit documentation after the documentation completion date. Further, Sañé failed to adequately supervise and document his supervision of the engagement teams for the Audits.

6. In connection with the Audits, Algás also violated PCAOB rules and standards by failing to perform an appropriate engagement quality review. The Firm also violated PCAOB rules and quality control standards by failing to effectively implement policies and procedures from 2011 through 2013 to provide it with reasonable assurance that (1) it only accepted engagements governed by PCAOB rules and standards that it could reasonably expect to be completed with professional competence, (2) its auditors were sufficiently familiar with and trained in PCAOB rules and standards, U.S. GAAP, and applicable SEC reporting requirements at the time they were assigned to PCAOB audits, and (3) its engagement teams would perform their

[8] The Company was delinquent in its periodic filings with the U.S. Securities and Exchange Commission ("Commission" or "SEC"), having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2013. The June 30, 2013 Form 10-Q reported a net loss of over $1.38 million for the prior six months. On July 25, 2016, three years after the last audit by BDO Spain, pursuant to Section 12(j) of the Securities Exchange Act of 1934, the Commission revoked the registration of each class of registered securities of PMG.

PCAOB audits in accordance with PCAOB rules and standards. Finally, the Firm failed to appropriately monitor its quality control system from 2011 through 2013.

D. The Firm and Sañé Violated PCAOB Rules and Standards in Connection with the Audits

7. The Firm was the external auditor for PMG since 2002. On May 21, 2013, the Firm issued an unqualified opinion on PMG's December 31, 2011 financial statements in an audit report that was included in the Company's Form 10-K filed with the Commission on May 23, 2013. On June 25, 2013, the Firm issued an unqualified opinion on PMG's December 31, 2012 financial statements in an audit report that was included in the Company's Form 10-K filed with the Commission on June 28, 2013. The Audit reports stated that, in the Firm's opinion, the Company's financial statements presented fairly, in all material respects, the Company's financial position, and the results of its operations and cash flows in conformity with GAAP. Both Audit reports included an explanatory paragraph expressing substantial doubt as to the Company's ability to continue as a going concern. The Audit reports also stated that the Audits were conducted in accordance with PCAOB standards. Sañé, the engagement partner for the Audits, had served as the engagement partner for the Company's audits since 2010. Sañé had overall responsibility for the Audits, including overall responsibility for supervising the engagement team members for the Audits.

8. In connection with the preparation or issuance of an audit report, PCAOB rules require that registered public accounting firms and their associated persons comply with applicable PCAOB auditing and related professional practice standards.[9] Among other things, those standards require that an auditor express an unqualified opinion on an issuer's financial statements only when the auditor has performed the audit in compliance with PCAOB standards.[10]

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9 See PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards;* PCAOB Rule 3200T*, Interim Auditing Standards.* All references to PCAOB rules and standards are to the versions of those rules and standards in effect at the time of the 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.

10 See AU § 508.07, *Reports on Audited Financial Statements.*

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9. PCAOB standards require that auditors exercise due professional care and professional skepticism, and plan and perform audit procedures to obtain sufficient appropriate audit evidence to provide a reasonable basis for the audit opinion.[11]

10. PCAOB standards provide that the engagement partner is responsible for planning the audit[12] and properly supervising the work to be performed in the audit.[13] They also provide that the engagement partner and, as applicable, other engagement team members performing supervisory activities, should, among other things, review the work of engagement team members to evaluate whether: (1) the work was performed and documented; (2) the objectives of the procedures were achieved; and (3) the results of the work support the conclusions reached.[14]

11. PCAOB standards provide that, "[w]hen using information produced by the company as audit evidence, the auditor should evaluate whether the information is sufficient and appropriate for purposes of the audit by performing procedures to:

- Test the accuracy and completeness of the information, or test the controls over the accuracy and completeness of that information; and
- Evaluate whether the information is sufficiently precise and detailed for purposes of the audit."[15]

12. PCAOB standards provide that the auditor must evaluate whether the financial statements are presented fairly in all material respects, and contain the

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[11] See AU § 150.02, *Generally Accepted Auditing Standards*; AU § 230, *Due Professional Care in the Performance of Work;* see also Auditing Standard No. 15 ¶ 4, *Audit Evidence (*"AS15").

[12] See Auditing Standard No. 9 ¶ 3, *Audit Planning (*"AS9").

[13] See Auditing Standard No. 10 ¶ 3, *Supervision of the Audit Engagement (*"AS10").

[14] Id. at ¶ 5.

[15] AS15 ¶ 10.

information essential for a fair presentation of the financial statements in conformity with the applicable financial reporting framework.[16]

13. PCAOB standards provide that "[t]o obtain reasonable assurance about whether the financial statements are free of material misstatement, the auditor should plan and perform audit procedures to detect misstatements that, individually or in combination with other misstatements, would result in material misstatement of the financial statements."[17] Performing substantive procedures at an interim date without performing procedures at a later date increases the risk that a material misstatement could exist in the year-end financial statements that would not be detected by the auditor."[18]

14. PCAOB standards provide that "the auditor is responsible for evaluating the reasonableness of accounting estimates made by management in the context of the financial statements taken as a whole. . . . Accordingly, when planning and performing the procedures to evaluate accounting estimates, the auditor should consider, with an attitude of professional skepticism, both the subjective and objective factors."[19]

15. PCAOB standards also provide that "[s]ample items should be selected in such a way that the sample can be expected to be representative of the population. Therefore, all items in the population should have an opportunity to be selected."[20] "Auditing procedures that are appropriate to the particular audit objective should be applied to each sample item."[21]

16. PCAOB standards also provide that the auditor must prepare audit documentation in connection with each engagement conducted pursuant to the

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[16] See Auditing Standard No. 14 ¶¶ 30, 31, *Evaluating Audit Results (*"AS14").

[17] Auditing Standard No. 11 ¶ 3, *Consideration of Materiality in Planning and Performing an Audit* ("AS11").

[18] Auditing Standard No. 13 ¶ 43, *The Auditor's Responses to the Risk of Material Misstatement* ("AS13").

[19] AU § 342.04, *Auditing Accounting Estimates*.

[20] AU § 350.24, *Audit Sampling.*

[21] AU § 350.25.

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standards of the PCAOB.[22] The auditor must document the procedures performed, evidence obtained, and conclusions reached with respect to relevant financial statement assertions.[23] This documentation requirement applies to the work of all those who participate in the engagement.[24]

17. As described below, Respondents failed to comply with PCAOB rules and standards in connection with the 2011 and 2012 audits of PMG.

The Firm and Sañé Failed to Test Journal Entries During the Audits

18. PCAOB standards provide that "[t]he auditor has a responsibility to plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud."[25] The auditor should identify and address the risks of material misstatement due to fraud, including the risk of management override of controls.[26] Specifically, the auditor should examine journal entries and other adjustments for evidence of possible material misstatement due to fraud.[27]

19. During planning for the Audits, the Firm and Sañé identified the recording of journal entries as a fraud risk factor related to potential management override of controls. However, the Firm and Sañé failed to plan and perform sufficient procedures to respond to the fraud risk they had identified and, in fact, did not perform any journal entry testing.[28] Specifically, the Firm failed to (a) obtain an understanding of the entity's controls over journal entries and other adjustments; (b) identify and select journal entries and other adjustments for testing; and (c) determine the timing of the testing. As a result, during both Audits, the Firm and Sañé violated PCAOB standards by failing to

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[22] See Auditing Standard No. 3, *Audit Documentation,* ¶ 4 ("AS3").

[23] Id. at ¶ 6.

[24] Id.

[25] AU § 110.02, *Responsibilities and Functions of the Independent Auditor*; AU § 316.01, *Consideration of Fraud in a Financial Statement Audit*.

[26] See AU § 316.57.

[27] See AU §§ 316.58 - .62.

[28] Id.

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exercise due professional care and professional skepticism, failing to obtain reasonable assurance that PMG's 2011 and 2012 financial statements were free of material misstatement, whether caused by error or fraud, failing to obtain sufficient appropriate audit evidence to provide a reasonable basis for the opinion, and failing to plan to test, or test, journal entries for possible misstatements due to fraud.[29]

The Firm and Sañé Failed to Appropriately Address a Departure from GAAP During 2012

20. According to the Firm's work papers for the 2012 audit, in February 2013, external lawyers for the Company forgave certain legal fees owed by the Company. Although the legal fees were not forgiven until 2013, the Company recorded the extinguishment of this liability in its December 31, 2012 financial statements. The Firm's work papers for the 2012 audit reflect that PMG accounted for the forgiven legal fees as a reduction in accounts payable and a corresponding reduction in general and administrative expenses, which had the effect of reducing the Company's reported net loss by approximately eight percent.

21. Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Subtopic 405-20-40, *Extinguishments of Liabilities,* requires that a liability be derecognized only if it has been extinguished by meeting either of the following conditions: (1) the debtor pays the creditor and is relieved from its obligation for the liability, or (2) the debtor is legally released from being the primary obligor under the liability, either judicially or by the creditor. Because neither of these conditions was met until after December 31, 2012, it was inappropriate for the Company to derecognize the liability in 2012.

22. The Firm and Sañé initially concluded that the accounting treatment for these legal fees was not in conformity with GAAP. A partner responsible for performing the cross-border regulatory review of the 2012 audit, which was required by PCAOB quality control standards, reached the same conclusion.[30] Nonetheless, the Firm and

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[29] See AU § 230.02, .05 - .09; AU § 316.57, .58, .61, AS9 ¶ 5; AS15 ¶ 4.

[30] The Firm obtained the review pursuant to policies and procedures intended to be consistent with Appendix K of the American Institute of Certified Public Accountants' former SEC Practice Section Reference Manual. See SECPS 1000.45, *Appendix K—SECPS Member Firms With Foreign Associated Firms That Audit SEC Registrants.* Appendix K is incorporated in PCAOB quality control standards through PCAOB Rule 3400T(b), *Interim Quality Control Standards*. Appendix K is meant to enhance the quality of SEC filings for companies whose financial statements are audited by international affiliates of U.S. firms. Appendix K provides that financial

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Sañé ultimately did not object to PMG's derecognizing the forgiven legal fees in its December 31, 2012 financial statements and, as explained above, issued an unqualified opinion on those financial statements.

23. The Firm and Sañé violated PCAOB standards by failing, with respect to PMG's derecognition of the forgiven legal fees, to exercise due professional care and professional skepticism.[31] In addition, they violated PCAOB standards by failing to appropriately address PMG's apparent departure from GAAP,[32] including (a) by failing to document any evaluation of the effects of that departure on PMG's financial statements as a whole,[33] and (b) by failing to evaluate whether they should have expressed a qualified or adverse audit opinion and, if practicable, provided information in the report indicating that the Company had not met the conditions for derecognizing the legal fees in its 2012 financial statements.[34]

<u>The Firm and Sañé Failed to Evaluate PMG's Reporting of Certain Stock Transactions and a Potential Change in Control During 2012</u>

24. In its 2012 financial statements, PMG disclosed that it issued 800,000 shares of convertible preferred stock to a related entity to settle an outstanding debt to that entity. The shares came with the right to vote on all matters, including the election of directors on an "as converted" basis, which gave the related entity the ability to elect

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statement filings of audits performed by a foreign associated firm should be reviewed by a person knowledgeable in accounting, auditing, and independence standards generally accepted in the U.S.

31 <u>See</u> AU § 150.02, AU § 230.

32 An auditor's opinion that an issuer's financial statements are presented in conformity with GAAP must be based on an audit performed in accordance with PCAOB standards. PCAOB standards require an auditor to perform audit procedures sufficient to evaluate the issuer's adherence to GAAP. This Order's description of audit failures relating to GAAP departures in an issuer's financial statements necessarily reflects the Board's judgment concerning the proper application of GAAP. Any such description of GAAP departures, however, should not be understood as an indication that the Commission has considered or made any determination concerning the issuer's compliance with GAAP.

33 <u>See</u> AS3 ¶ 4.

34 <u>See</u> AS14 ¶ 31.

a majority of the members of the Company's board of directors. PMG's work papers included an unexecuted copy of the preferred share agreement with the related party for the issuance of the preferred stock that included various additional elements that, if they were included in the executed agreement, would appear to have resulted in the related entity holding greater than 50 percent of the aggregate voting power of the issuer's capital stock and having the ability to elect a majority of the members of the issuer's board of directors. This would have resulted in a change in control of the issuer, with related consequences for the financial statements. The Firm and Sañé failed to appropriately evaluate whether the unexecuted copy of the agreement reflected the final terms of the transaction.

25. Accordingly, the Firm and Sañé failed to gather sufficient appropriate evidence to evaluate the presentation and disclosure in PMG's 2012 financial statements of the issuance of the preferred shares and whether the issuance of the preferred stock, and the preferred share agreement as executed, resulted in a change in control of the Company.[35] The Firm's and Sañé's conduct violated PCAOB standards requiring them to exercise due professional care and professional skepticism and to obtain sufficient appropriate audit evidence to provide a reasonable basis for their audit opinion.[36]

<u>The Firm and Sañé Failed to Test the Valuation of Certain Assets at December 31, 2012</u>

26. The Company reported that its library of photographs and videos represented approximately 40 percent of its total assets at year end 2012, and was reported at the lower of amortized cost or net realizable value. In the 2012 audit, the Firm identified a fraud risk with respect to the valuation of the library of photographs and videos, which was a significant accounting estimate. Nonetheless, during the 2012 audit, the Firm and Sañé failed to evaluate the reasonableness of the Company's valuation of the library of photographs and videos.[37] As a result of this conduct, during the 2012 audit, the Firm and Sañé violated PCAOB standards requiring them to exercise due professional care and professional skepticism, appropriately respond to

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[35] <u>See</u> AS14 ¶¶ 30 - 31. <u>See also</u> ASC 505-10-50, *Equity Disclosure* (describing the disclosure requirements associated with the separate accounts comprising shareholders' equity and the specific outstanding securities issued by an entity).

[36] <u>See</u> AU § 150.02; AU § 230; AS14 ¶¶ 32 - 33; AS 15 ¶ 4.

[37] <u>See</u> AU § 342.04.

identified fraud risks, and obtain sufficient appropriate audit evidence to provide a reasonable basis for their audit opinion.[38]

The Firm and Sañé Failed to Evaluate PMG's Reporting of Certain Costs as of Year End 2012

27. In its 2012 financial statements, PMG reported certain estimated costs within a non-current asset identified as "Library of photographs and videos." Those estimated costs substantially exceeded planning materiality and equaled approximately 20 percent of PMG's reported net loss for 2012. The Firm and Sañé failed to appropriately evaluate whether the costs related to the library of photographs and videos and, if so, whether the estimate was reasonable.[39] These failures constituted violations of PCAOB standards requiring the Firm and Sañé to exercise due professional care and professional skepticism and to obtain sufficient appropriate audit evidence to provide a reasonable basis for their audit opinion.[40]

The Firm and Sañé Failed to Perform Sufficient Procedures to Test PMG's Revenue During the Audits

28. PMG was a provider of branded adult media across a wide range of digital platforms and physical formats. During 2011 and 2012, the Company had three primary sources of revenue: (a) physical products at Peach Entertainment Distribution AB ("Peach"); (b) broadcasting at Fraserside Holdings Ltd. ("Fraserside") and Peach; and (c) internet services at Coldfair Holdings Limited ("Coldfair"), Fraserside, and Peach.

29. During the Audits, the engagement teams identified improper revenue recognition as a fraud risk and documented specific risks related to: (a) revenues from hard copy content sold to national distributors with rights of return; (b) monthly estimates concerning Internet Protocol Television ("IPTV") broadcasting revenues and revenues from mobile content; and (c) revenues from subscriptions to the Company's internet website.

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38 See AU § 150.02; AU § 230; AU §§ 316.01, .13; AS14 ¶¶ 32 - 33; AS 15 ¶ 4.

39 See AU § 342.10; AS14 ¶¶ 30 - 31.

40 See AU § 150.02; AU § 230; AS 15 ¶ 4.

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30. The Firm and Sañé did not test the accuracy and completeness of the Company's revenue information, as well as the appropriateness of the Company's revenue recognition practices. As described below, during both Audits, the Firm and Sañé failed to: (a) perform any testing on certain significant revenue sources; and (b) perform sufficient or appropriate procedures on other significant revenue sources.

<u>The Firm and Sañé failed to properly test PMG's broadcasting revenue during the Audits</u>

31. Peach, a consolidated subsidiary of PMG, generated total revenues of approximately €5.4 million and €4.6 million for the years ended December 31, 2011 and 2012, respectively. These amounts represented 68 percent of PMG's total revenue for each year. Peach's broadcasting revenue was approximately €2.8 million and €2.2 million for the years ended December 31, 2011 and 2012, respectively. These amounts represented 36 percent and 33 percent of PMG's total revenue for the years ended December 31, 2011 and 2012, respectively. Fraserside, another consolidated subsidiary of PMG, generated total broadcasting revenues of approximately €442,000 and €310,000 for the years ended December 31, 2011 and 2012, respectively. These amounts represented 6 and 5 percent of PMG's total revenue for those years.

32. During the Audits, the Firm and Sañé tested PMG's broadcasting revenue by selecting and testing transactions from sales reports provided by PMG. They used those sales reports to make their selections despite not having tested the accuracy and completeness of the reports or any controls over the accuracy and completeness of the reports, as required by PCAOB standards.[41]

33. The Firm's and Sañé's testing of broadcasting revenue during the Audits failed to comply with PCAOB standards in other ways as well. For example, during the 2011 audit, the Firm and Sañé tested PMG's broadcasting revenue by selecting and performing certain procedures with respect to a total of 25 items recorded by Peach and Fraserside during the first nine months of the year. The 25 items selected for testing represented approximately €890,000 and resulted in only subjecting 35 percent of the population to testing. Because the Firm and Sañé limited their selections to the first nine months of the year, they failed to select their sample in a way that could be expected to be representative of the entire population of PMG's broadcasting revenue transactions for 2011.[42] As a result of the flawed sample selection process, the Firm's

[41] AS15 ¶ 10.

[42] AU § 350.24.

and Sañé's testing did not provide any audit evidence for approximately 65 percent of PMG's broadcasting revenue for 2011.

34. The Firm and Sañé failed to appropriately test the broadcasting revenue during the 2012 audit as well. For 2012, they selected a sample of 31 broadcasting revenue items for testing, 24 Peach items and 7 Fraserside items. Those 31 items represented approximately €737,000, or 39 percent of PMG's 2012 broadcasting revenue. The 31 items consisted of transactions involving fixed fees and management estimates of material sales generated by affiliates. With respect to the items involving estimated sales, the Firm and Sañé limited their testing to agreeing the estimates to an email provided by PMG management. In doing so, they failed to exercise due professional care and professional skepticism and failed to comply with PCAOB standards for evaluating the reasonableness of the Company's accounting estimates.[43]

The Firm and Sañé failed to properly test PMG's revenue from internet sales during the Audits

35. PMG disclosed in its 2011 and 2012 financial statements that its internet revenue was generated primarily through subscriptions purchased by customers. Coldfair, a consolidated subsidiary of PMG, generated internet subscription revenues of approximately €1.4 million during both 2011 and 2012. Peach reported approximately €2 million and €250,000 of internet subscription revenues during 2011 and 2012, respectively. These combined internet subscription amounts represented approximately 44 percent and 23 percent of PMG's total revenue for 2011 and 2012, respectively.

36. The Firm's and Sañé testing of PMG's internet subscription revenue suffered from many of the same flaws as its broadcasting revenue testing, as well as from additional problems. First, as they had done in testing broadcasting revenue, the Firm and Sañé selected items for testing based on sales reports, which had been provided by PMG but which had not been tested for accuracy and completeness, as required by PCAOB standards.[44]

37. Second, during both Audits, the Firm and Sañé again selected items for testing in an unrepresentative manner, so that the results of their testing could not be extrapolated to the entire population of internet subscription revenue.[45] For example, in

[43] AU § 342.10.

[44] AS15 ¶ 10.

[45] AU § 350.24 - .25.

the 2011 audit, the Firm and Sañé only considered items from nine months of the year, and in the 2012 audit, they selected items from only one subsidiary that generated internet subscription revenue, Coldfair, but not the two other subsidiaries that did, Fraserside and Peach. As a result, the Firm and Sañé failed to subject 37 percent and 48 percent of PMG's internet subscription revenue to any testing in 2011 and 2012 respectively.

38. Finally, during the 2012 audit, for the items selected for testing, the Firm and Sañé failed to obtain sufficient appropriate evidence to support management's conclusions that revenue was appropriately recognized. In fact, they failed to examine documentation reflecting any actual payment information. Instead, they only obtained an untested PMG report concerning revenue account movement and agreed it to another untested PMG report that listed purported sales.[46]

39. As a result of this conduct, the Firm and Sañé failed to exercise due professional care and professional skepticism and failed to obtain sufficient appropriate audit evidence as to the occurrence and valuation of the Company's reported revenue for 2011 and 2012, in violation of PCAOB standards.[47]

The Firm and Sañé Failed to Timely Assemble Audit Documentation and Sañé Improperly Added Work Papers After the Documentation Completion Date

40. PCAOB standards provide that "[a] complete and final set of audit documentation should be assembled for retention as of a date not more than 45 days after the report release date (*documentation completion date*)."[48]

41. PCAOB standards also provide that "[c]ircumstances may require additions to audit documentation after the report release date. Audit documentation must not be deleted or discarded after the documentation completion date, however, information may be added. Any documentation added must indicate the date the information was added, the name of the person who prepared the additional documentation, and the reason for adding it."[49]

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[46] AS15 ¶ 10.

[47] See AS15 ¶ 10; AU § 230.

[48] AS3 ¶ 15.

[49] AS3 ¶ 16.

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42. For the 2012 PMG audit, the Firm and Sañé never assembled for retention the following required documents: (a) an evaluation of uncorrected misstatements;[50] (b) a written communication addressed to the audit committee concerning independence, as required by PCAOB Rule 3526, *Communication with Audit Committees Concerning Independence*; and (c) communications with the audit committee concerning the conduct of the audit, as required by AU § 380, *Communication With Audit Committees*. As a result of this conduct, the Firm and Sañé violated AS3[51] and AU § 380, and the Firm violated PCAOB Rule 3526.

43. In addition, after the documentation completion date for the 2012 PMG audit, Sañé and the engagement team added several work papers to the audit file without identifying when the additions were made, who made them, and why they were made, as required by AS3. As a result of this conduct, Sañé violated AS3.[52]

<u>Sañé Failed to Adequately Supervise and Document His Supervision of the Audits</u>

44. Sañé, as engagement partner, was responsible for proper supervision of the work of the engagement team members and for compliance with PCAOB standards. Sañé was required to review the work of engagement team members to evaluate whether the work was performed and documented, the objectives of the procedures were achieved, and the results of the work supported the conclusions reached.[53]

45. PCAOB standards provide that the audit documentation must contain sufficient information to enable an experienced auditor, having no previous connection with the engagement to determine who performed the work and the date such work was completed as well as the person who reviewed the work and the date of any review he performed.[54]

46. As evidenced by the numerous omitted or insufficient procedures identified above, Sañé failed to adequately review the work performed by other engagement team members on the Audits. In addition, the work paper files for the

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[50] <u>See</u> AS3 ¶ 12.

[51] <u>Id.</u>

[52] AS3 ¶ 16.

[53] <u>See</u> AS10 ¶¶ 2, 3 and 5.

[54] <u>See</u> AS3 ¶ 6.

Audits did not contain evidence of which work papers Sañé reviewed and the date of such review. As a result of this conduct, Sañé violated PCAOB standards requiring appropriate supervision of audit engagements,[55] as well as PCAOB audit documentation standards.[56]

E. <u>Algás Failed to Perform Appropriate Engagement Quality Reviews on the Audits in Violation of Auditing Standard No. 7</u>

47. PCAOB standards provide that an engagement quality review and concurring approval of issuance are required for each audit engagement and for each engagement to review interim financial information, among other types of engagements, conducted pursuant to the standards of the PCAOB.[57]

48. As the engagement quality reviewer, Algás was assigned by the Firm to "perform an evaluation of 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 . . . in order to determine whether to provide concurring approval of issuance."[58] Algás failed to identify multiple violations of PCAOB rules and standards in the engagement teams' work on the Audits, as described above. An engagement quality review performed with due care in compliance with AS7 should have detected, and resulted in the Firm addressing, each of the significant engagement deficiencies described above.[59] In addition, Algás did not evaluate the significant judgments made by the engagement team and the related conclusions reached in forming the overall conclusion on the engagement, or bring to the attention of the engagement team the absence of documentation necessary for Algás to perform that evaluation.[60] Thus, Algás failed to conduct appropriate engagement quality reviews in violation of AS7 in connection with both Audits.

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55 <u>See</u> AS10 ¶¶ 2, 3 and 5.

56 <u>See</u> AS3 ¶ 6.

57 Auditing Standard No. 7 ¶ 1, *Engagement Quality Review* ("AS7").

58 AS 7 ¶ 2.

59 <u>See</u> AS 7 ¶ 10.a - d, h and i.

60 AS 7 ¶¶ 2 and 9 - 12.

ORDER

F. From 2011 Through 2013 the Firm Violated PCAOB Quality Control Standards

49. PCAOB rules require that a registered public accounting firm comply with the Board's quality control standards.[61] PCAOB quality control standards, in turn, require that a registered firm "shall have a system of quality control for its accounting and auditing practice."[62] "The quality control policies and procedures applicable to a firm's accounting and auditing practice should encompass the following elements: (a) Independence, Integrity, and Objectivity; (b) Personnel Management; (c) Acceptance and Continuance of Clients and Engagements; (d) Engagement Performance; and (e) Monitoring."[63]

Acceptance and Continuance of Clients and Engagements

50. At the time that the Firm and its partners determined to accept the PMG audit engagements, the Firm's policies and procedures did not provide reasonable assurance that it undertook only engagements that it could reasonably expect to be completed with professional competence.[64] When it accepted the PMG engagement, the Firm was aware that it lacked sufficient professional staff with training or experience in conducting public company audits pursuant to PCAOB rules and standards, and applicable SEC reporting requirements. In addition, the Firm failed to provide sufficient relevant training to the staff it planned to assign to those audits. As a result, the Firm violated PCAOB quality control standards.[65]

Personnel Management

51. A firm's system of quality control should include policies and procedures to provide the firm with reasonable assurance that, among other things: (a) work is assigned to personnel having the degree of technical training and proficiency required in the circumstances; and (b) personnel participate in general and industry-specific

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[61] PCAOB Rule 3400T.

[62] QC § 20.01, *System of Quality Control for a CPA Firm's Accounting and Auditing Practice*.

[63] QC § 20.07.

[64] QC § 20.15(a).

[65] Id.

continuing professional education and other professional development activities that enable them to fulfill responsibilities assigned, and satisfy applicable continuing professional education requirements of the AICPA and regulatory agencies.[66]

52. From 2011 through 2013, the Firm did not effectively implement policies and procedures to provide it with reasonable assurance that its PCAOB audits were assigned to supervisory personnel having the requisite knowledge to perform PCAOB audits. Although the quality control policies and procedures that the Firm submitted to the Board in connection with its registration application stated that the Firm was "committed to developing and maintaining the highest possible standards of technical competence" and described continuing professional education as "the keystone of that effort," the Firm failed to fulfill that commitment. Specifically, the Firm did not have a system in place to ensure that individuals assigned to issuer audit work periodically received technical training related to GAAP, PCAOB rules and standards, and SEC reporting requirements, rules, and regulations.

53. When the Firm assigned Sañé to the 2011 PMG audit, it failed to sufficiently evaluate whether, prior to assuming the role of the engagement partner on the audit, Sañé had ever worked on an audit governed by PCAOB rules and standards, and applicable SEC reporting requirements, or whether he otherwise had sufficient professional education or experience to perform his role as engagement partner on the audit in accordance with PCAOB rules and standards.

54. When the Firm assigned Algás to the 2011 PMG audit, it failed to sufficiently evaluate whether, prior to assuming the role of engagement quality reviewer on the audit, Algás had also ever worked on an audit governed by PCAOB rules and standards, and applicable SEC reporting requirements, or whether he otherwise had sufficient professional education or experience to perform his role as engagement quality reviewer on the audit in accordance with PCAOB rules and standards.

55. From 2011 through 2013, the Firm did not have in place quality control policies and procedures to reasonably assure that auditors such as Sañé and Algás, were sufficiently familiar with and trained in PCAOB rules and standards, U.S. GAAP, and applicable SEC reporting requirements, at the time they were assigned as the engagement partner and the engagement quality reviewer respectively on PCAOB audits. As a result, the Firm violated QC § 20.13.

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[66] QC § 20.13; QC §§ 40.03 and .06, *The Personnel Management Element of a Firm's System of Quality Control – Competencies Required by a Practitioner-in-Charge of an Attest Engagement*. See also AU § 230.06.

ORDER

Engagement Performance

56. A firm's system of quality control should include policies and procedures to provide it with reasonable assurance that the work performed by engagement personnel meets applicable professional standards, including with respect to planning, performing, supervising, reviewing, documenting, and communicating the results of each engagement.[67] These policies and procedures should address engagement quality reviews pursuant to AS7.[68]

57. From 2011 through 2013, the Firm did not effectively implement policies and procedures to provide it with reasonable assurance that the work performed on its PCAOB audits met applicable professional standards, including with respect to planning, performing, supervising, reviewing, documenting, and communicating the results of each engagement. Further, from 2011 through 2013, the Firm did not have quality control policies and procedures in place to reasonably assure that an audit report was released only after the engagement team had completed all necessary auditing procedures and obtained sufficient evidence to support the representations in the auditor's report. This failure allowed the reports for the Audits to be issued notwithstanding the numerous and serious violations of PCAOB standards described above. As a result of this conduct, the Firm violated QC § 20.

Monitoring

58. A firm's system of quality control should include a monitoring element to provide it with a means of identifying and communicating circumstances that may necessitate changes to or the need to improve compliance with its policies and procedures.[69] Monitoring involves an ongoing consideration and evaluation of the: (a) relevance and adequacy of the firm's policies and procedures; (b) appropriateness of the firm's guidance materials and any practice aids; (c) effectiveness of professional development activities; and (d) compliance with the firm's policies and procedures.[70]

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[67] See QC §§ 20.17 - .18.

[68] See QC § 20.18.

[69] See QC § 30.02, *Monitoring a CPA Firm's Accounting and Auditing Practice*.

[70] See QC § 30.02.

Monitoring procedures taken as a whole should enable the firm to obtain reasonable assurance that its system of quality control is effective.[71]

59. The repeated violations of PCAOB rules and standards set forth above went undetected by the Firm, demonstrating that the Firm did not adequately consider and evaluate compliance with the Firm's policies and procedures, including policies and procedures regarding acceptance and continuance of clients and engagements, personnel management, and engagement performance.[72] As a result of its failure to monitor its quality control system, the Firm violated QC § 30.

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 Respondents' Offers. Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 105(c)(4)(E) of the Act and PCAOB Rule 5300(a)(5), BDO Auditores, S.L.P., Santiago Sañé Figueras, and José Ignacio Algás Fernández are hereby censured;

B. Pursuant to Section 105(c)(4)(B) of the Act and PCAOB Rule 5300(a)(2), Santiago Sañé Figueras 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);[73]

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[71] See QC § 30.03.

[72] See QC § 30.02.

[73] As a consequence of the bar imposed in this Order, the provisions of Section 105(c)(7)(B) of the Act will apply with respect to Sañé. 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."

ORDER

C. After three (3) years from the date of this Order, Santiago Sañé Figueras may file a petition, pursuant to PCAOB Rule 5302(b), for Board consent to associate with a registered public accounting firm;

D. Pursuant to Section 105(c)(4)(B) of the Act and PCAOB Rule 5300(a)(2), José Ignacio Algás Fernández 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);[74]

E. After one (1) year from the date of this Order, José Ignacio Algás Fernández may file a petition, pursuant to PCAOB Rule 5302(b), for Board consent to associate with a registered public accounting firm;

F. Pursuant to Section 105(c)(4)(D) of the Act and PCAOB Rule 5300(a)(4), civil money penalties in the amount of $40,000 payable by BDO Auditores, S.L.P. and $7,500 payable by Santiago Sañé Figueras are imposed. All funds collected by the Board as a result of the assessment of these civil money penalties will be used in accordance with Section 109(c)(2) of the Act. BDO Auditores, S.L.P. and Santiago Sañé Figueras shall pay these civil money penalties within 30 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 BDO Auditores, S.L.P. or Santiago Sañé Figueras as a respondent in these proceedings, sets forth the title and PCAOB Release number of 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 Office of the Secretary, Attention: Phoebe W. Brown, Secretary, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington, D.C. 20006.

G. Pursuant to Sections 105(c)(4)(F) and (G) of the Act and PCAOB Rules 5300(a)(6) and (9), the Board orders that:

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[74] As a consequence of the bar imposed in this Order, the provisions of Section 105(c)(7)(B) of the Act, discussed *supra*, at n. 73, will apply with respect to Algás.

ORDER

1. Undertakings: The Firm shall carry out the following Undertakings:

(a) *Initial Certification*.

Within ninety (90) days of the entry of this Order, the Firm shall provide a certification to the Director of the Division of Enforcement and Investigations, signed by its Managing Partner, stating that the Firm has adopted systems designed to provide reasonable assurance that (a) the Firm undertakes only those engagements that the Firm can reasonably expect to be completed with professional competence; (b) for any audit, review or specified procedures conducted pursuant to PCAOB rules and standards, work is assigned to personnel having the degree of technical training and proficiency required in the circumstances; (c) personnel involved in the performance of audits and reviews pursuant to PCAOB rules and standards participate in general and industry-specific continuing professional education and other professional development activities that enable them to fulfill responsibilities assigned, and satisfy applicable continuing professional education requirements of the AICPA and regulatory agencies; (d) the work performed by engagement personnel meets applicable professional standards, including with respect to planning, performing, supervising, reviewing, documenting, and communicating the results of each engagement, including policies and procedures addressing engagement quality reviews pursuant to PCAOB Auditing Standard No. 7, *Engagement Quality Review*; and (e) the Firm has in place monitoring procedures that taken as a whole enable the firm to obtain reasonable assurance that its system of quality control is effective.

(b) *Subsequent Certification*.

Within one hundred twenty (120) days of the entry of this Order, the Firm shall provide a certification, signed by its Managing Partner, stating that all professionals considered audit seniors or team leaders, managers, directors and partners involved in the performance of PCAOB audits have received forty (40) hours of training from January 1, 2017 through the initial certification described in Section G.1.(a) above concerning U.S. GAAP, PCAOB rules and standards, and SEC reporting requirements, rules, and regulations.

ORDER

(c) *Provision of Order.*

No later than thirty (30) days after the date of this Order, the Firm shall provide an electronic or paper copy of this Order to all of its associated persons who are audit professionals in the Firm.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

September 26, 2017