PCAOB
Public Company Accounting Oversight Board

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ORDER INSTITUTING DISCIPLINARY PROCEEDINGS, MAKING FINDINGS, AND IMPOSING SANCTIONS

In the Matter of Gregory & Associates, LLC, and Alan D. Gregory, CPA

Respondents.

PCAOB Release No. 105-2019-018

August 21, 2019

By this Order, the Public Company Accounting Oversight Board (the "Board" or "PCAOB") is: censuring Gregory & Associates, LLC (the "Firm"), a registered public accounting firm, and revoking the Firm's registration;[1] imposing a civil money penalty in the amount of $15,000 on the Firm; and censuring Alan D. Gregory, CPA ("Gregory") and barring him 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 the Firm and Gregory (collectively, "Respondents") violated PCAOB rules and standards in connection with four audits of two issuer clients.

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 each have submitted an Offer of Settlement (the "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,

[1] The Firm may reapply for registration after two (2) years from the date of this Order.

[2] Gregory may file a petition for Board consent to associate with a registered public accounting firm after two (2) years from the date of this Order.

and without admitting or denying the findings herein, except as to the Board's jurisdiction over them and the subject matter of these proceedings, which is admitted, Respondents consent to 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. Respondents

1. **Gregory & Associates, LLC** is, and at all relevant times was, a limited liability company organized under the laws of the State of Utah and headquartered in Salt Lake City, Utah. The Firm is registered with the Board pursuant to Section 102 of the Act and PCAOB rules. The Firm was licensed to practice public accountancy by the Utah Board of Accountancy (License No. 5541392-2603). Its license expired on December 31, 2018. At all relevant times the Firm was the external auditor for the issuers discussed below.

2. **Alan D. Gregory, CPA**, of Salt Lake City, Utah, is a certified public accountant who was licensed by the Utah Board of Accountancy (License No. 271609-2601). His license expired on December 31, 2018. At all relevant times, Gregory was the sole proprietor of the Firm and served as engagement partner on the audits discussed below. Gregory is 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

3. This matter concerns Respondents' violations of PCAOB rules and auditing standards in connection with four audits—comprised of consecutive Firm audits

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[3] The findings herein are made pursuant to Respondents' Offers and are not binding on any other persons or entities 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 (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.

of two issuers' consolidated financial statements as of and for the years ended December 31, 2016 ("FY 2016") and December 31, 2017 ("FY 2017").

4. During consecutive audits of one of the issuers, Respondents failed to exercise due professional care and professional skepticism and failed to plan and perform sufficient audit procedures to obtain sufficient appropriate audit evidence in the area of inventory.

5. In addition, during each of the four audits, Respondents identified revenue as a significant risk and fraud risk. Notwithstanding the assessed risks, Respondents failed during three of the four audits to exercise due professional care and professional skepticism, and failed to plan and perform sufficient audit procedures to obtain sufficient appropriate audit evidence with respect to the issuers' stated revenue.

C. Respondents Violated PCAOB Rules and Standards

6. In connection with the preparation or issuance of any audit report, PCAOB rules require that a registered public accounting firm and its associated persons comply with the Board's auditing and related professional practice standards.[5] An auditor may express an unqualified opinion on an issuer's financial statements only when the auditor has formed such an opinion on the basis of an audit performed in accordance with PCAOB standards.[6] Those standards require, among other things, that an auditor plan

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[5] See PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*; PCAOB Rule 3200, *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 relevant audits.

[6] See AS 3101.07, *Reports on Audited Financial Statements (*applicable to the relevant audits for the year ended December 31, 2016) ("The auditor's standard report states that the financial statements present fairly, in all material respects, an entity's financial position, results of operations, and cash flows in conformity with generally accepted accounting principles. This conclusion may be expressed only when the auditor has formed such an opinion on the basis of an audit performed in accordance with the standards of the PCAOB."); AS 3101.02, *The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion*, (applicable to the relevant audits for the fiscal years ending on or after December 15, 2017) ("The auditor is in a position to express an unqualified opinion on the financial statements when the auditor conducted an audit in accordance with the standards of the Public Company Accounting Oversight Board ("PCAOB") and concludes that the financial statements, taken as a whole, are presented fairly, in all material respects, in conformity with the applicable financial reporting framework.").

and perform audit procedures to obtain appropriate audit evidence that is sufficient to provide a reasonable basis for the opinion expressed in the auditor's report.[7]

7. PCAOB standards also require that an auditor exercise due professional care and professional skepticism in performing the audit.[8] PCAOB standards further require that auditors evaluate whether the financial statements are presented fairly, in all material respects, in conformity with the applicable financial reporting framework.[9]

8. The auditor considering whether he may serve as principal auditor may have performed all but a relatively minor portion of the work, or significant parts of the audit may have been performed by other auditors. In the latter case, he must decide whether his own participation is sufficient to enable him to serve as the principal auditor and to report as such on the financial statements. If the auditor decides that it is appropriate for him to serve as the principal auditor, he must then decide whether to make reference in his report to the audit performed by another auditor.[10]

9. Whether or not a principal auditor decides to make reference to the audit of another auditor, the principal auditor is required to make inquiries concerning the professional reputation and independence of the other auditor. The principal auditor should adopt appropriate measures to assure the coordination of his or her activities with those of the other auditor in order to achieve a proper review of matters affecting the consolidating or combining of accounts in the financial statements.[11] In addition, when the principal audit decides not to make reference to the audit of the other auditor, he or she must obtain, and review and retain, certain information from the other auditor.[12]

10. PCAOB standards also require auditors to design and perform audit procedures in a manner that addresses the assessed risks of material misstatement for

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[7] See AS 1105.04, *Audit Evidence*.

[8] See AS 1015.01 &.07, *Due Professional Care in the Performance of Work*; AS 2301.07, *The Auditor's Responses to the Risks of Material Misstatement*.

[9] See AS 2810.30, *Evaluating Audit Results*.

[10] See AS 1205.02, *Part of the Audit Performed by Other Independent Auditors*.

[11] Id. at AS 1205.10.

[12] Id. at AS 1205.12.

each relevant assertion of each significant account and disclosure.[13] For significant risks, the auditor is required to perform substantive procedures, including tests of details, that are specifically responsive to the assessed risks.[14]

11. PCAOB standards also require auditors to evaluate the reasonableness of accounting estimates made by management in the context of the financial statements taken as a whole, in order to obtain sufficient appropriate evidential matter to provide reasonable assurance that those accounting estimates are reasonable under the circumstances.[15]

12. PCAOB standards further require auditors to evaluate the results of the audit to determine whether the audit evidence obtained is sufficient and appropriate to support the opinion to be expressed in the auditor's report.[16] If the auditor has not obtained sufficient appropriate audit evidence about a relevant assertion or has substantial doubt about a relevant assertion, the auditor is required to perform procedures to obtain further audit evidence to address the matter.[17]

Audits of Issuer A's FY 2016 and FY 2017 Financial Statements

13. "Issuer A" is a Nevada corporation headquartered in Ballerup, Denmark. Issuer A's public filings disclose that, at all relevant times, it manufactured and sold ceramic membranes and systems for the filtration of liquid and diesel exhaust particles. At all relevant times, Issuer A was an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

14. Issuer A filed Forms 10-K with the Securities and Exchange Commission ("Commission" or "SEC") on March 30, 2017 for FY 2016 and on March 23, 2018 for FY 2017. These filings included the Firm's audit reports containing unqualified audit opinions dated March 30, 2017 and March 23, 2018, respectively.

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[13] See AS 2301.08, *The Auditor's Responses to the Risks of Material Misstatement*.

[14] See id. at 11.

[15] See AS 2501.04 & .07, *Auditing Accounting Estimates*.

[16] See AS 2810.02.

[17] See id. at .35.

15. For both the Firm's FY 2016 and FY 2017 audits of Issuer A (collectively, the "Issuer A Audits"), Respondents identified inventory as a "medium" risk, and revenue was identified as a significant risk and a fraud risk.[18]

16. As detailed below, notwithstanding the assessed risks, Respondents failed to exercise due professional care and professional skepticism,[19] and failed to plan and perform sufficient audit procedures to obtain sufficient appropriate audit evidence in the areas of inventory and revenue.[20]

Inventory

17. Issuer A reported net inventories of $5.2 million and $4.7 million as of December 31, 2016 and 2017, respectively, representing approximately 45% and 40% of Issuer A's total assets. More than 89% of these inventories were held in Issuer A's two Danish subsidiaries as of December 31, 2016 and 2017.

18. Respondents were aware that Issuer A had engaged a Danish auditor (the "statutory auditor") to perform statutory audits of the Danish subsidiaries in FY 2016 and FY 2017. They understood that the statutory auditor had performed audit procedures related to Issuer A's Danish-held inventory. Although Respondents obtained and reviewed the statutory auditor's work papers related to the inventory, they failed to perform any other audit procedures regarding the Danish inventory.

19. In addition, in using the statutory auditor's work, Respondents failed to adopt appropriate measures to assure coordination of their activities with those of the statutory auditor.[21] Respondents failed to: document any inquiries concerning the professional reputation and standing of the other auditor; obtain representations from the statutory auditor that it was independent under the requirements of the PCAOB and the requirements of the Commission; and ascertain through communications with the statutory auditor that he or she was familiar with U.S GAAP and standards of the PCAOB and would conduct the audit in accordance with them. Respondents also failed to obtain, and review and retain, among other things, an engagement completion document

[18] See generally AS 2110.65;.70-.71, *Identifying and Assessing Risks of Material Misstatement*.

[19] See AS 1015.01 and .07; AS 2301.07.

[20] See AS 1105.04.

[21] See AS 1205.10.

consistent with PCAOB standards.[22] Respondents also failed to evaluate whether the work performed by the statutory auditor complied with AS 2510, Auditing Inventories.

Revenue

20. Issuer A reported total revenue of approximately $13.9 million in FY 2016, derived from product sales and long-term contracts and government grants.[23]

Product Sales Revenue

21. Included in the product sales revenue that Respondents selected for testing during the FY 2016 audit were sales based on two key customer contracts from a subsidiary, from which Issuer A recognized approximately $1.8 million, or approximately 13% of its FY 2016 revenue.

22. During the 2016 audit, Respondents failed to evaluate whether Issuer A appropriately recognized the $1.8 million in revenue in conformity with U.S GAAP.[24] They obtained two key contracts, but one of the contracts was unexecuted. Respondents failed to evaluate whether a valid agreement had been reached and whether persuasive evidence of an arrangement existed. In addition, both contracts made references to appendices containing deliverables under the contracts and the contracted price for one of the contracts, but no copy of the appendices was attached. As a result, Respondents could not evaluate whether Issuer A had completed the delivery of products or services prior to the recognition of revenue from these contracts, and whether the contract price had been fixed or determinable. Respondents also failed to obtain and inspect the appendices, or to evaluate the effect of provisions in those appendices on revenue recognition. As a result, Respondents failed to have a reasonable basis for evaluating whether revenue was recognized in conformity with GAAP.

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[22] See id. at .12 (describing certain information that the principal auditor must obtain, review, and retain).

[23] Issuer A's financial statements disclosed that its recognition of revenue was in accordance with Commission Staff Accounting Bulletin No. 101, *Revenue Recognition in Financial Statements*, and FASB ASC 605, *Revenue Recognition*, and that it recognized product sales revenue when all of the following had been met: (1) rights and the risk of ownership passed to the customer, (2) there was persuasive evidence of an arrangement, (3) the product had been shipped or delivered to the customer, (4) the price and terms were finalized, and (5) collection of the resulting receivable was reasonably assured.

[24] See FASB ASC 605, *Revenue Recognition*; AS 2810.30.

Long-term Contracts and Government Grant Revenue

23. With respect to its other source of revenue, long-term contracts and government grants, Issuer A reported revenue in FY 2016 of approximately $3 million, or 23% of FY 2016 revenue. Issuer A disclosed that it used the percentage of completion ("POC") method of accounting for these contracts and grants.[25]

24. In order to apply POC, a basis or standard for measuring the progress to completion for each contract at particular interim dates is necessary. Issuer A disclosed that its basis for measuring progress to completion was contract costs (*i.e.,* "cost-to-cost"). Under the POC cost-to-cost method, the incurred cost as a percentage of total estimated costs measures the progress to completion. Therefore, revenue and gross profit are recognized based on the estimated progress to completion for each incomplete contract.

25. To test revenue from long-term contracts and government grants, Respondents obtained an issuer-prepared POC schedule, which contained the total estimated cost to complete that Issuer A used in measuring the progress towards completion for each contract. Other than relying on management representations, Respondents failed to perform any audit procedures to test the reasonableness of Issuer A's total estimated costs to complete.[26] As a result, Respondents failed to obtain sufficient appropriate evidence to determine whether revenue from long-term contracts and government grants was properly valued and was recorded in the proper period.[27]

Audit of Issuer B's FY 2016 and FY 2017 Financial Statements

26. "Issuer B" is a Nevada corporation headquartered in Pittsburgh, Pennsylvania. Issuer B's public filings disclose that, at all relevant times, it was a podcast service provider offering hosting and distribution tools, including storage, bandwidth, RSS creation (i.e., "really simple syndication" scripts to generate subscribers to podcasts), distribution, and statistics tracking. At all relevant times, Issuer B was an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

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[25] See FASB ASC 605-35, *Revenue Recognition–Construction-Type and Production Type Contracts*.

[26] See AS 2501.07.

[27] See AS 1105.04.

27. Issuer B filed Forms 10-K with the Commission on March 31, 2017 for FY 2016 and on March 26, 2018 for FY 2017. These filings included Firm audit reports containing unqualified audit opinions dated March 31, 2017 and March 26, 2018, respectively.

Revenue

28. For both the Firm's FY 2016 and FY 2017 audits (collectively, the "Issuer B Audits"), Respondents identified revenue as a significant risk and fraud risk. Notwithstanding the assessed risks, Respondents failed to perform sufficient audit procedures to obtain sufficient appropriate audit evidence in connection with Issuer B's FY 2016 and FY 2017 reported revenue.[28]

29. For FY 2016 and FY 2017, Issuer B reported approximately $8.8 million and $10.5 million in revenue, respectively. One hundred percent (100%) of Issuer B's FY 2016 revenue was derived from a group of services termed "podcast hosting services," and nearly all its revenue came from provision of these services in FY 2017.[29]

30. Issuer B disclosed that its podcast hosting services revenue was broken down into multiple sources, including providing data storage and distribution services to podcasters. Issuer B also disclosed that it provided customized solutions and specialized support to its customers, and earned revenue based on bandwidth used, advertising revenue from insertion of digital advertising to podcasts ("ad insertion"), and sale of premium podcasts. Issuer B further disclosed that the majority of its contracts consisted of providing multiple products or services *(i.e.,* multiple-element arrangements).[30]

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[28] See id.

[29] Similar to Issuer A, Issuer B disclosed that it recognized revenue when there is persuasive evidence of an arrangement; the service has been or is being provided to the customer; the collection of the fees is reasonably assured; and the amount of fees to be paid by the customer is fixed or determinable.

[30] See ASC 605-25, *Revenue Recognition (Topic 605) - Multiple-Deliverable Revenue Arrangements*, which provides guidance regarding revenue recognition when a company provides multiple products or services ("deliverables") to a customer in a single arrangement, but the deliverables may occur at different times.

31. Respondents failed to evaluate whether Issuer B's revenue recognition for its multiple-element arrangements was in conformity with U.S. GAAP.[31] To test revenue, Respondents selected certain revenue transactions recorded in Issuer B's accounting records, and agreed the recorded revenue to invoices and/or cash receipts. This procedure failed, however, to provide reasonable assurance that revenue in fact came from the sale of podcast products and services, and was properly valued; and failed to provide a reasonable basis to determine whether Issuer B had actually delivered the products or services (whether, *e.g.*, asserted revenue from a podcast with ad insertion had been downloaded by an end-user prior to the recognition of revenue),[32] or whether revenue was recognized in the appropriate period.

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), Gregory & Associates, LLC, and Alan D. Gregory, CPA are hereby censured;

B. Pursuant to Section 105(c)(4)(B) of the Act and PCAOB Rule 5300(a)(2), Alan D. Gregory, CPA 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);[33]

C. After two (2) years from the date of this Order, Alan D. Gregory, CPA may file a petition, pursuant to PCAOB Rule 5302(b), for Board consent to associate with a registered public accounting firm;

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[31] See generally AS 2810.30.

[32] See AS 1105.04.

[33] As a consequence of the bar, the provisions of Section 105(c)(7)(B) of the Act will apply with respect to Gregory. 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."

D. Pursuant to Section 105(c)(4)(A) of the Act and PCAOB Rule 5300(a)(1), the registration of Gregory & Associates, LLC, is revoked; and

E. After two (2) years from the date of the Order, Gregory & Associates, LLC, may reapply for registration by filing an application pursuant to PCAOB Rule 2101.

F. Pursuant to Section 105(c)(4)(D) of the Act and PCAOB Rule 5300(a)(4), a civil money penalty in the amount of $15,000 is imposed upon Gregory & Associates, LLC. 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. Gregory & Associates, LLC shall pay this civil money penalty within 10 days of the issuance of this Order by (a) wire transfer in accordance with instructions furnished by Board staff; or (b) United States postal money order, certified check, bank cashier's check or bank money order; (c) made payable to the Public Company Accounting Oversight Board; (d) delivered to the Controller, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington, D.C. 20006; and (e) submitted under a cover letter which identifies Gregory & Associates, LLC 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 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

August 21, 2019