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PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

In the Matter of Gale Moore, CPA,

Respondent

PCAOB File No. 105-2012-004

FINAL DECISION

August 23, 2016

Appearances

Raphael J. Larson, Esq., and Bernard A. McDonough, Esq., Washington, DC, for the Division of Enforcement and Investigations

Gale Moore, CPA, pro se

I.

Respondent Gale Moore seeks Board review of the hearing officer's initial decision in this disciplinary proceeding. Moore is charged with violating PCAOB rules and auditing standards in a 2007 audit of an issuer's financial statements. In leading that audit, she allegedly failed to exercise due professional care, including professional skepticism, failed to obtain and evaluate sufficient audit evidence, and failed to adequately supervise assistants, among other charges, in two high-risk audit areas: (1) the issuer's recognition of revenue from four transactions, the first of their kind for the company, with two newly created and thinly capitalized special purpose entities, together accounting for about 44% of the issuer's 2007 reported revenue; and (2) the issuer's reduction of its year-end 2007 estimate of future losses on multi-year service contracts, based on a changed assumption, not supported by any change in contractual commitment, that a certain contract would be expanded and become profitable for its last seven years. The issuer later restated its financial statements for 2007 and the prior year and disclosed that it had incorrectly recognized revenue from the four transactions and had under-accrued its contract loss reserve. The restatement reduced the issuer's reported 2007 revenue by $9.1 million (49%) and increased its reported 2007 net loss by $3 million (20%).

The initial decision described Moore's work on the 2007 Basin Water audit as "profoundly flawed" and concluded, "[I]t is abundantly clear that Moore violated applicable PCAOB Rules and professional standards, and her departure from those standards was extreme." The decision discussed what, in the hearing officer's view, were multiple warning signs that should have caused Moore to apply greater scrutiny in the audit. These included management's aggressive accounting approach, in Moore's judgment; the novelty, timing, and size of the four transactions; the structuring of those transactions to book revenue with little or no real economic benefit to the issuer; the issuer's failure to collect the first payments due under the agreements; and management's previous attempts to rely on what Moore concluded were insufficiently supported assumptions to estimate contract loss reserves. The decision found that, despite "the many red flags," and despite Moore's role as a specialist and trainer of other auditors in the particular accounting interpretation that should have informed her analysis of the four SPE transactions, she "failed to meet the most basic standards for professional conduct and the performance of an audit" as a result of her "unquestioning and virtually complete reliance on management's representations, her failure to obtain independent support for her conclusions, and her failure to investigate numerous inconsistencies and gaps in the audit evidence." Concluding that Moore's violations were repeated and "created a significant risk of harm to public investors and to the financial markets," the decision ordered that Moore be censured; that she be barred from associating with a registered public accounting firm (with the proviso that she be permitted to petition the Board to associate with such a firm after two years); that she be limited in her activities for an additional two years from serving as an engagement or concurring partner; and that she complete 50 hours of professional education.

Moore argues on appeal that she conducted the audit in a professional manner, that the issuer's management may have intentionally withheld information from the auditors, that documentation in the 2007 audit file was lost, and that the sanctions ordered are unwarranted. After *de novo* review of the record, in light of the arguments presented to us, we conclude that the violations found were proven by a preponderance of the evidence and we determine appropriate sanctions, in substantial agreement with the initial decision.

II.

On October 23, 2012, the Board issued an Order Instituting Disciplinary Proceedings (OIP) alleging violations of PCAOB rules and auditing standards by Gale Moore, CPA, in auditing the 2007 financial statements of Basin Water, Inc. It is undisputed in this proceeding that at all relevant times Basin Water was an issuer, as defined by Section 2(a)(7) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7201(7), and PCAOB rules, and that Moore was a person associated with SingerLewak LLP, a registered public accounting firm, as defined by Section 2(a)(9) of the Act, 15 U.S.C.

7201(9), and PCAOB rules. Moore filed her answer to the OIP on November 19, 2012. Following three days of hearings in July 2013, the hearing officer issued an initial decision on July 16, 2014. Moore petitioned for Board review of the initial decision, and, on November 28, 2014, briefing concluded. Neither party requested oral argument.

III.

The facts of this case are mostly uncontested, furnished to a large extent by admissions in Moore's answer, joint stipulations between Moore and the Division of Enforcement and Investigations, and Moore's hearing testimony.[1/]

A. Moore Was the Auditor With Final Responsibility for the 2007 Audit of a Water Treatment Company That Moore Understood Had an Aggressive Approach to Recognizing Revenue and Estimating Future Contract Losses.

Moore was the auditor with final responsibility, or engagement partner, for SingerLewak's audit of the financial statements of Basin Water, Inc., for the year ending December 31, 2007. R.D. 34d & 43, Joint Stipulations (Jt. Stip.) 2 ¶¶ 8, 9; *see, e.g.*, AU §§ 230.06, 311.02.[2/] Moore testified that, as such, she was the individual with final responsibility for the conduct of the audit and, on March 17, 2008, authorized the issuance of SingerLewak's audit report expressing an unqualified opinion on Basin Water's 2007 financial statements. Tr. 20-21; *see* R.D. 49a, Hearing Exhibit (Ex.) D-43 at 73. She also acknowledged that, in her role as engagement partner, she was responsible for obtaining reasonable assurance regarding whether the company's financial statements were presented in accordance with United States generally accepted accounting principles (GAAP); for planning, conducting, and reporting the

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[1/] After Moore filed her answer, she dismissed her counsel and since then has represented herself in this proceeding. Index to the Record on Review, Record Document (R.D.) 58, Initial Decision (I.D.) 7. We note that the initial decision stated, "The Hearing Officer is satisfied that Moore understood both the process for entering into joint stipulations and the significance of the content of the stipulations…[and also] that Moore understood the conduct of the hearing and how to present evidence in her favor…. In addition, she filed briefs (pre-hearing, post-hearing, and supplemental) that reflected a sound understanding of the issues." I.D. 7 n.24, 8 n.25.

All transcript (Tr.) citations in this opinion are to Moore's hearing testimony (R.D. 45a and 46a), unless otherwise noted.

[2/] References in this opinion to PCAOB rules and auditing standards are to those that were in effect at the time of the audit.

results of the audit in accordance with PCAOB auditing standards; for determining if the objectives of the audit were accomplished, which involved reviewing and evaluating the work of other members of the engagement team to see whether the results of the work performed were consistent with the audit opinion; and for determining whether the audit procedures performed were sufficient to support the audit opinion she developed. Tr. 21-26; *see, e.g.*, AU §§ 110, 311, 326.

Moore had been a Certified Public Accountant since 1996. Tr. 16. After working for one of the largest national audit firms from 1997 to 2004, Moore joined SingerLewak as a partner in January 2005 in its Irvine, California office. Tr. 15-16. SingerLewak designated Moore a specialist in revenue recognition and the consolidation of financial statements, and specifically in the application of the Financial Accounting Standards Board (FASB) interpretation designated FIN 46(R), which addresses whether the financial statements of a related entity must be consolidated with (and, among other things, its revenue from other consolidated entities netted against) the financial statements of the reporting company. Tr. 16-18; R.D. 13, Answer (Ans.) 8 ¶ 11. As a designated specialist, Moore trained other auditors at SingerLewak on the application of FIN 46(R). Tr. 320-21. She was assisted on the audit of Basin Water's 2007 financial statements by a senior manager, two "in-charges," and two staff accountants. Ex. J-5 at 3. All audit procedures were performed at Basin Water's California headquarters. Ex. J-5 at 2. Moore was actively involved in the audit. See R.D. 47b at 488 (senior manager on audit team agreeing with Moore that during the audit, Moore was "always available to the team on any sort of accounting issues as they arose," that she "often supplement[ed] research for the team," and was "often part of the management discussions.").

Basin Water was a Delaware corporation, headquartered in California, that designed, assembled, and serviced systems for treating contaminated groundwater for utilities, cities, municipalities, and other customers. Ex. D-43 at 5, 43. It operated as a privately held company from 1999 until May 2006, when it completed its initial public offering. Ex. D-43 at 5-6. In 2007, it traded on the Nasdaq Global Market. For the year ended December 31, 2007, it reported revenues of approximately $18.8 million, which was later restated to $9.7 million, discussed below. Jt. Stip. 1 ¶ 2, 8 ¶ 27.

Moore helped bring Basin Water to SingerLewak as a client in the fall of 2005 and proceeded to audit its financial statements back to 2002. Thus, she was familiar with the company and its accounting practices. In its Form 10-K for the year ended 2007, filed with the SEC on March 17, 2008, Basin Water reported that it prepared its financial statements in conformity with GAAP. Ex. D-43 at 47. Historically, as Moore knew, Basin Water derived most of its revenue from selling and leasing its systems to end users. Ex. D-43 at 5; Jt. Stip. 2 ¶ 11.b. Whether Basin Water sold or leased its systems could significantly affect the timing of its revenue recognition. If the customer leased the product, Basin Water recognized the revenue ratably over the life of the lease, typically five or more years. Ex. D-43 at 45; Jt. Stip. 2 ¶ 11.d. But if the customer purchased the system, Basin Water recognized the entire sales price as revenue within one to two quarters. Jt. Stip. 2 ¶ 11.c.

In 2007, Basin Water changed its business model to include selling already leased (or to be leased) treatment systems to two newly created special purpose entities (SPEs). Jt. Stip. 2 ¶ 11.e. Moore understood that management's goal in doing so was to accelerate revenue recognition. Ans. 5-6 ¶ 6; Tr. 64, 120. Basin Water management stated that it determined to recognize revenue from sales of water treatment systems to these SPEs in accordance with the provisions of SEC Staff Accounting Bulletin (SAB) No. 104, *Revenue Recognition*, which sets forth certain criteria for the recognition of revenue from a sale. Exs. J-1; D-15. In its 2007 financial statements, Basin Water recognized approximately $8.3 million in revenue—44% of its reported total 2007 revenue of $18.8 million—from the SPE transactions. Jt. Stip. 3 ¶ 11.m. Moore has not contested that, as the initial decision found (I.D. 63-64), the SPE transactions, collectively and individually, were material to Basin Water's 2007 financial statements. *See, e.g.*, Jt. Stip. 3 ¶ 11.q; *see also, e.g.*, AU §§ 110.02, 326.13, 326.25.

Furthermore, Basin Water management conveyed to Moore in an accounting memorandum prepared for a different transaction in 2007 that it applied FASB Interpretation No. 46, *Consolidation of Variable Interest Entities,* as revised in December 2003 (FIN 46(R)), to its determinations of whether Basin Water was required to consolidate into its financial statements those of the other entity involved in the transaction. *See* Ex. GM-1 at 2. The effect of a determination that consolidation is required under FIN 46(R) would be that revenue, even if it otherwise meets the criteria for recognition under SAB 104, may nevertheless have to be eliminated through consolidation of the company's and the variable interest entity's (i.e., the SPE's) financial statements. This would be the case if the SPE were determined to be a variable interest entity and if Basin Water was determined to be the "primary beneficiary" of the SPE. Basin Water's financial statements were not consolidated with those of the SPEs, with the result that the $8.3 million in revenue from the four SPE transactions appeared on Basin Water's financial statements and was not eliminated. Revenue recognized from the transactions thus contributed positively to the company's total 2007 revenues of $18.8 million and permitted it to avoid reporting a year-over-year loss compared to its total 2006 revenues of $17.1 million. Jt. Stip. 3 ¶ 11.m.

In addition to sales and leases of water treatment systems, Basin Water also generated revenue from service contracts under which it maintained the water treatment systems it sold and leased. Ex. D-43 at 45-46. There is no dispute that, during 2007, certain of Basin Water's service contracts operated at net cash flow losses. Moore understood that, under Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies*, Basin Water was required to record a reserve for all probable and reasonably estimable losses related to its contracts. Ans. 31 ¶ 67. Moore also understood that in the prior year, when Basin Water was preparing its first financial statements as a public company, management had built into its estimate some assumptions it had made about a current contract that were not supported by enforceable contract terms, or, as Moore described it, "built a lot of unenforceable assumptions into their reserve," which management revisited after discussions with SingerLewak. Tr. 343. In its 2007 financial statements, Basin Water recorded a reserve on its balance sheet for contract losses of approximately $7.3 million at December 31, 2007. Ex. D-43 at 46, 109; Jt. Stip. 7 ¶ 18.b. In calculating this reserve, management determined to eliminate the reserve that it had established in 2006 for the final seven years of a particular water district contract that had lost $179,052 in 2007 and was projected to lose $195,433 in 2008. Jt. Stip. 7 ¶¶ 18.f, 19, 20. Management assumed operations of the district's well could be expanded in the future and that the contract would become profitable after 2008 (Jt. Stip. 7 ¶ 20), and pursuant to this change in assumption, reduced its total loss reserve by $1.8 million. The amount of this reduction alone was more than two times the planning materiality threshold approved by Moore for the 2007 Basin Water audit. Jt. Stip. 3 ¶ 11.q.

In February 2008, in response to shareholder suits filed in late 2007 and early 2008 challenging Basin Water's accounting for its contract loss reserves, Basin Water's audit committee retained independent counsel to conduct an inquiry into the allegations and ultimately directed counsel to broaden the investigation to include the company's revenue recognition practices, including the 2007 SPE transactions. Jt. Stip. 8 ¶ 25. That investigation ultimately led to the company restating its 2006 and 2007 financial statements in February 2009, based on its incorrect recognition of $8.3 million in revenue for the four SPE transactions and under-accruing its contract loss reserve by $1.8 million. Ex. D-16, D-17; D-39; D-46 at 4, 5, 6 & 103.

B. Planning for the 2007 Basin Water Audit Identified a High Risk of Material Misstatement with Respect to Revenue Recognition and the Contract Loss Reserve.

In leading the planning of the 2007 Basin Water audit, Moore assessed the overall audit risk as "high." Ex. J-8 at 4. Moore admits in her appeal briefing that she was "acutely aware of the risks posed by the revenue transactions and contract loss estimates." R.D. 61, Moore Opening Brief (MB) 4. Moore understood Basin Water was a "young company" that was still "developing internal controls" (Tr. 266), so she did not rely on those controls in the audit. The work papers documenting the risk assessment noted that "the company's business strategy has changed significantly during 2007" and that Basin Water management's "operating style is more aggressive than before." Ex. J-8 at 2. Those work papers also identified management's accounting with respect to revenue recognition in particular as "aggressive." Specifically, the work papers stated, "Revenue recognition in the past has been aggres[s]ive" (Ex. J-6 at 2) and "[t]he Company has entered into and contemplated new sales structures that require more analysis to ensure that revenue recognition criteria has been met. Therefore, [SingerLewak] believes that there could be a risk of material misstatement due to error on revenue and its related accounts" (Ex. J-7 at 3). Further, the engagement team noted that it had "discussed and agreed that the significant audit risks come from the revenue related accounts, such as revenue, accounts receivable and reserve, unbilled receivable and reserve, notes receivable, deferred revenue, and contract loss reserve due to management aggres[s]ive revenue recognition approach and subjective estimates on reserve." Ex. J-7 at 3.

At the hearing, Moore further explained her concerns in audit planning, stating, "Management, throughout the course of Basin's life, had recorded sales—structured sales in very many different ways and, often, sought to recognize revenue without fully researching the accounting implications. And so we were always concerned about revenue recognition." Tr. 134. An example Moore gave of Basin Water's aggressive accounting approach was a certain transaction with a financial institution in 2006. At that time, management proposed to treat the transaction as a sale, which would have allowed it to recognize revenue immediately, but, according to Moore, "the audit team raised questions regarding continuing involvement and, ultimately, management determined that a sales leaseback accounting"—in which the transaction is treated not as a sale but as a form of financing—"was [the] appropriate accounting." Tr. 134.

In May 2007, prior to the planning of the 2007 audit, management discussed with Moore its plan to change Basin Water's business model to include selling already leased (or to be leased) treatment systems to newly created SPEs. Tr. 63-64; Jt. Stip. 2 ¶ 11.e. Management told her it was structuring the transactions so Basin Water could recognize future lease revenue at the time of the transaction and avoid consolidation of its financial statements with those of the SPEs. Tr. 64, 120; Ans. 5-6 ¶ 6. She testified that management told her Basin Water would seek to collect a 50% to 70% down payment for these sales. She pointed out to management that the transactions must have economic substance, that is, as she understood it, the transactions had to transfer risks and rewards from Basin Water to the SPE. Tr. 64-65. Moore led the engagement team in reviewing management's accounting for these four novel transactions in quarterly reviews of Basin Water's financial information during the course of 2007 and relied upon that work in conducting the 2007 audit. Jt. Stip. 4 ¶ 11.z.

As noted above, Moore also concluded that management's contract loss reserve posed a "significant audit risk." Ex. J-7 at 3. Moore identified the contract loss reserve as presenting "a risk of material misstatement because the reserve was based on management's subjective estimate and, as a result, could be insufficient or incomplete." Jt. Stip. 7 ¶ 18.e. Moore knew at the time of the 2007 audit that Basin Water had been sued in three separate shareholder suits from December 27, 2007, to January 31, 2008, for allegedly not adequately accounting for its contract loss reserve. Jt. Stip. 8 ¶ 24. And, as noted, she knew that management in the prior year revised its estimate to eliminate contractually unenforceable assumptions. Tr. 343. To address the risk presented by the contract loss reserve, Moore planned to assign more experienced staff and increase supervision of the staff assigned to this audit area. Jt. Stip. 7 ¶ 18.e.

C. Moore Ultimately Accepted Basin Water Management's Accounting for Four 2007 End-of-Quarter or End-of-Year SPE Transactions Despite Her Understanding That Their Purpose Was To Accelerate Revenue Recognition and Her Concern That They Lacked Economic Substance.

1. Moore Understood That the SPE Transactions Needed To Be Evaluated Both To Determine Whether Revenue Could Be Recognized and Whether the Financial Statements of Basin Water Needed To Be Consolidated With Those of the SPEs.

Basin Water entered into four transactions during 2007 with two SPEs that had the planned effect of accelerating revenue recognition. Ex. J-1; Tr. 64, 120. These four transactions were structured in a similar fashion. As illustrated below, each transaction featured an SPE that would secure funding from a financial institution. The SPE would use that funding to pay Basin Water a down payment to buy a water treatment system. The balance of the sales price would be financed by Basin Water over several years and recorded as a note receivable on Basin Water's books. The SPE would make the payments due to Basin Water using the proceeds it received from the lease payments made by the end user of the treatment system, but not until the cash flow from the leased system reimbursed the SPE for the amount of its down payment to Basin Water. Tr. 422 (R.D. 46b, Division's expert); Jt. Stip. 3-6 ¶¶ 11.s, .t, .gg, 15, 17.[3/]

Thus, as Moore understood, the practical effect of the transactions was to permit Basin Water to recognize a sizeable down payment as immediate revenue and then

[3/] Unbeknownst to Moore at the time of the 2007 audit, the reason for this grace period for the SPE to begin making installment payments is that the funding it received for the down payment was in the form of a loan—not equity—from the third-party financial institution. The grace period permitted the SPE to repay the loan (using end-user lease payments that Basin Water assigned to it) before it had to begin making payments to Basin Water. As explained below, Basin Water management told Moore the down payments were funded by infusions of equity, and she inquired no further. She learned during the restatement audit that this was not true, and that the SPEs in fact had "no meaningful capital infusion into the SPEs, other than the loan[s] from the Financial Institution[s]." Ex. D-17 at 2, n.2.

wait years to recoup the same amount of money it would have collected anyway from the system's lessee under the terms of the underlying lease. *See* Exs. J-1 at 1-2; D-1 at 1-2; D-14 at 3; D-15 at 1-2; D-33 at 2-3; Jt. Stip. 3-5 ¶¶ 11.t, .gg; Tr. 71-75. She testified she was concerned about whether the transactions had economic substance. Tr. 64-65. During the hearing, the senior manager agreed with Moore when she asked him whether the engagement team recognized during initial discussions with management about the SPE transactions that the overall economics of the transactions "weren't entirely different" from the company's standard leasing model, and that in "some instances…actually would be detrimental" to Basin Water. R.D. 47b at 484-85.

VL Capital, LLC (VLC) was an SPE formed on June 29, 2007. Jt. Stip. 2 ¶ 11.f. Basin Water entered into two transactions with VLC during 2007: one on June 28, 2007 (VLC I) and another on December 31, 2007 (VLC II). Jt. Stip. 3 ¶ 11.h. Water Services Solutions, LLC (WSS) was an SPE formed on September 27, 2007. Jt. Stip. 3 ¶ 11.i. Basin Water entered into two transactions with WSS during 2007: one on September 24, 2007 (WSS I) and another on December 26, 2007 (WSS II). Jt. Stip. 3 ¶ 11.k.[4/]

Moore understood that the SPEs were created specifically to enter into transactions with Basin Water. Jt. Stip. 2-3 ¶¶ 11.f-k. She knew that both SPEs were headquartered in Dallas, Texas, and that both SPEs had as their sole principal and managing member a Texas-based attorney. Jt. Stip. 2-3 ¶¶ 11.f, .j, .l.

[4/] These dates suggest that VLC and WSS entered into their first transactions with Basin Water before the SPEs formally existed, but there is no indication in the work papers that Moore considered this discrepancy.

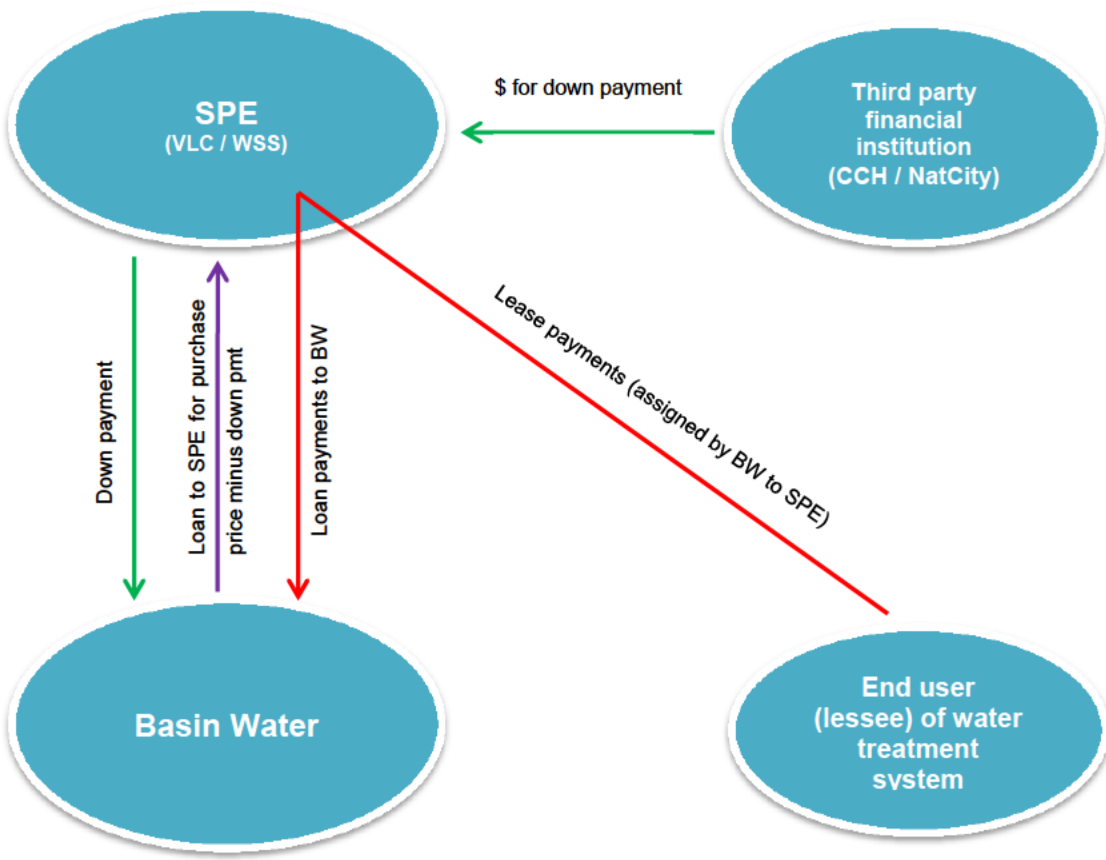

Figure adapted from Ex. D-17 at 4.

Basin Water management applied SAB 104 to determine whether it could recognize revenue from the SPE transactions in its financial statements. Exs. J-1; D-15. According to SAB 104, revenue is generally earned and realizable when all of the following criteria are met:

- Persuasive evidence of an arrangement exists;
- Delivery has occurred or services have been rendered;
- The seller's price to the buyer is fixed or determinable; and
- Collectibility is reasonably assured.

As discussed below, management concluded that all four criteria for revenue recognition under SAB 104 for the SPE transactions were met. Even if a company can satisfy itself that revenue can be recognized under SAB 104, however, the analysis does not necessarily end there. As Moore noted in the materials she used to train others on the proper accounting for transactions with SPEs, "Enron's collapse exposed a number of worrisome accounting issues," including the use of SPEs to "report illusory gains." Ex. D-36 at 2.[5/] FIN 46(R) was issued in January 2003 and amended in December 2003 to "improve financial reporting" by companies involved with such entities with which the company has a "controlling financial interest," termed "variable interest entities" (VIEs). FIN 46(R)-3. The effect of applying FIN 46 (R) is that revenue, even if the revenue otherwise meets the standards for recognition under SAB 104, may nevertheless have to be eliminated through consolidation of the company's and the SPE's financial statements if the company has a controlling financial interest in the SPE. FIN 46(R) addresses arrangements where a controlling financial interest is established through means other than a majority voting interest, and is instead identified by application of a "risk and rewards" model. Under this model, a party that "absorbs a majority of the [SPE's] expected losses, receives a majority of its expected residual returns, or both," must consolidate the SPE in its financial statements. Under this model, as Moore understood, an entity is a VIE if, by design, one or more of the following characteristics exist:

> a. The equity investment at risk is not sufficient to permit the entity to finance its activities without additional subordinated financial support provided by any parties, including the equity holders. An equity investment at risk of less than 10 percent of the entity's total assets is presumptively insufficient unless the equity investment can be demonstrated to be sufficient.
>
> b. The equity investors lack one or more of the following essential characteristics of a controlling financial interest:
>
> > i. The direct or indirect ability to make decisions about the entity's activities through voting rights or similar rights;
> >
> > ii. The obligation to absorb the expected losses of the entity; or
> >
> > iii. The right to receive the expected residual returns of the entity.

5/ *See* U.S. Securities and Exchange Commission, *Report and Recommendations Pursuant to Section 401(c) of the Sarbanes-Oxley Act of 2002 on Arrangements with Off-Balance Sheet Implications, Special Purpose Entities, and Transparency of Filings by Issuers* (July 30, 2003) at 91; Christopher L. Culp, "Credit Risk Management Lessons from Enron," *in Corporate Aftershock: The Public Policy Lessons from the Collapse of Enron and Other Major Corporations* (Chrstopher L. Culp et al., eds., 2003) at 211 ("As of June 1999, Enron had disclosed $34 billion in assets on its balance sheet, but another $51 billion in assets—many of which were troubled or impaired—lay hidden in Enron's unconsolidated special purpose entities (SPEs)."

c. The equity investors have voting rights that are not proportionate to their economic interests, and the activities of the entity involve or are conducted on behalf of an investor with a disproportionately small voting interest.

FIN 46(R) ¶ 5; Ex. D-36 at 4-5.

Therefore, as Moore put it, a FIN 46(R) analysis includes an examination of the level of control the investors have over the SPE's activities (Ex. D-36 at 5) and whether the SPE is "thinly capitalized" (Ex. D-36 at 4). If an entity is determined to be a VIE by satisfying one of the criteria above, the risks and rewards associated with the VIE must be analyzed to determine who is the "primary beneficiary." The party that is exposed to the majority of the entity's risks and rewards is the primary beneficiary and must consolidate the entity's financial statements with its own.[6/]

Importantly, as Moore explained in her training slides, a FIN 46(R) analysis is not a one-time event, because "[c]hanges in the entity's capital structure and/or its activities or assets can affect this analysis." Ex. D-36 at 7, 14-15; *see* FIN 46(R) ¶ 15. Thus, an unconsolidated entity in one period could become a consolidated entity in another. Ex. D-36 at 7 ("When these events [i.e., changes in the entity's capital structure and/or its activities or assets] occur, the primary beneficiary determination may also change."); *see* FIN 46(R) ¶ 15.

2. Moore Accepted Management's Conclusion That Recognition of Revenue for the VLC I Transaction Was Appropriate.

Moore reviewed the first SPE transaction (VLC I), entered into by Basin Water and VLC at the end of the second quarter of 2007, as part of the procedures performed for that quarter's review, and relied upon those procedures during the annual audit. Jt. Stip. 4 ¶ 11.z; Tr. 36. Moore had determined that the VLC I transaction (as with all the SPE transactions) was an unusual transaction that required greater attention and presented a risk that revenue might be improperly recognized during 2007. The SPE transactions were included in the section of the audit work papers identifying risks of material misstatement. Ex. J-7 at 3; *see* Jt. Stip. 3 ¶ 11.n; Tr. 43-47.

Moore was familiar with SAB 104 and understood that if a transaction did not meet the criteria in SAB 104, generally revenue could not be recognized. Tr. 88. Basin

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6/ Although not addressed in this case, under FIN 46(R), a company that holds "significant variable interests in a variable interest entity but is not the primary beneficiary" still has certain disclosure obligations in its financial reporting, even though it does not consolidate the VIE's financial statements with its own. *See* FIN 46(R) ¶ 24.

Water management concluded that the VLC I transaction met all four criteria in SAB 104 and therefore that it was appropriate to recognize revenue from the transaction. Ex. J-1 at 2-7; Jt. Stip. 4 ¶ 11.w.

According to a letter agreement between Basin Water and VLC that outlined the terms of the transaction, VLC promised to pay Basin Water a total of $5 million for the purchase of certain water treatment systems (less the estimated value of insurance costs and property taxes related to the equipment). Ex. D-1. VLC would make an initial down payment of $500,000 at the closing on June 30, 2007—not a 50%–70% down payment such as had been discussed in Moore's May meeting with Basin Water management—and, beginning after eight months, would make a total of 72 monthly payments of $62,500 each to Basin Water representing the balance due, which would be funded by lease payments made by end users of the water treatment systems. *Id.*; Ex. J-1 at 1-2; Jt. Stip. 3-4 ¶ 11.t. Basin Water management used this letter agreement in preparing a memorandum, dated August 8, 2007, analyzing the VLC I transaction and supporting management's accounting for the transaction. Jt. Stip. 4 ¶ 11.y; Ex. J-1. In that memorandum, management concluded that the VLC I transaction met the criteria necessary for revenue recognition under SAB 104. Ex. J-1 at 2-7; Jt. Stip. 4 ¶ 11.w. Based on the purchase commitment in the letter agreement, Basin Water recognized $3.8 million in revenue for the quarter. Ex. D-44 at 14, 17; Jt. Stip. 3-4 ¶¶ 11.s, .v. This represented the present value of the $5 million sales price less the expected insurance and taxes. Jt. Stip. 4 ¶ 11.u.

Moore questioned whether one of the criteria under SAB 104—persuasive evidence of an arrangement—was met (Tr. 90, 135-137; Ex. J-1 at 6), but, as discussed below, devoted little evident attention to the two criteria at issue here or to FIN 46(R).

a. Moore Relied on Management Representations To Conclude That Collectibility of the Sales Price to VLC Was Reasonably Assured Under SAB 104.

According to management's accounting memorandum, management concluded that collectibility of the sales price was reasonably assured because VLC was "formed by CCH Netherlands, a European bank," and "[a]s such, management believes that VLC has the resources to ensure collectibility of the purchase price. In addition, VLC has already placed the $500,000 in escrow as of June 29, 2007." Ex. J-1 at 4.

Moore testified that when she reviewed Basin Water's accounting for the VLC I transaction, the involvement of CCH Netherlands was a material factor in her analysis and conclusion that VLC had the resources to ensure that Basin Water would be able to collect the purchase price in the first SPE transaction. Tr. 94-96. Moore's review included reading the letter agreement between Basin Water and VLC and management's memorandum discussing the transaction. In addition, during the year-end 2007 audit, Moore relied on a third document, a 2008 confirmation from the managing member of VLC I.

Moore testified that she understood, based on management representations, that CCH Netherlands had "caused VLC to be formed" and had the wherewithal to support VLC. Tr. 96-97; Ex. J-1. Moore also testified that at the time she evaluated the VLC I transaction she had never heard of CCH Netherlands, did not know its size, total assets, capitalization, or credit rating. Tr. 100. Yet Moore testified that she did not contact CCH Netherlands to verify its obligations to VLC and was not aware of any procedures or steps taken by anyone else on the engagement team, either during the second quarter 2007 review or during the 2007 audit, to do so. Tr. 97-98. Moore satisfied herself only that CCH Netherlands existed, by doing research on the internet. Tr. 100-101. She testified that this basic internet research, and management's representations in its accounting memorandum for the VLC I transaction, were the only evidence she gathered regarding CCH Netherlands' relationship with VLC. Tr. 101; 138. Only when Moore led the restatement audit in 2008 did she receive a copy of the operating agreement for VLC, which revealed the SPE had been formed with a capital contribution by its sole member, the Texas-based attorney, of only $1,000, and CCH Netherlands had not contributed any equity but had instead agreed to loan VLC the money to make the down payments due to Basin Water. Ex. D-13 at 29; Tr. 378-80.

Moore also testified that, during the 2007 audit, she understood from management that CCH Netherlands had provided a $500,000 equity investment in VLC. Tr. 73, 96-97. Yet Moore stated that she did not contact VLC or the escrow agent to confirm that the $500,000 down payment had been made as of June 29, 2007, as represented by management's accounting memorandum, and she was unaware of any efforts by others on the engagement team to contact VLC or the escrow agent to confirm it. Tr. 103-104.

When Moore did see the VLC I escrow documents for the first time in 2008 in connection with the restatement audit, those documents demonstrated that the $500,000 down payment for the VLC I transaction had not been placed in escrow on June 30, 2007, as represented in the letter agreement. Instead, VLC and Basin Water had amended the escrow agreement on October 19, 2007 to provide that VLC would deposit only $311,000 into escrow, while Basin Water itself was to supply $189,000 to make up the aggregate $500,000 down payment. Ex. D-10 at 19. The escrow account had been fully funded on October 19, 2007, but Basin Water received no proceeds in 2007—that is, the down payment sat uncollected in the account through the end of 2007 and, as Moore learned from the restatement, for most of 2008. Ex. D-11 at 20; Tr. 201. The escrow documents show that Basin Water did finally receive some of the down payment in September 2008, but only $200,000—representing $50,000 for each of only four (out of ten) consents from end users to assign their leases to VLC that Basin Water needed to collect. Ex. D-11 at 20. Thus, even as late as the third quarter of 2008, Basin Water had done little more than recoup its initial $189,000 contribution to its own down payment.

During the 2007 audit Moore continued to rely on management's representation that placement of the down payment into escrow on June 29, 2007 supported collectibility even though she became aware of contrary evidence. Namely, management provided Moore with a purchase agreement executed by VLC and Basin Water on September 14, 2007 that called for placing the down payment into escrow on September 7, 2007, over six weeks after it had purportedly already been placed in escrow. Ex. D-9 at 3; Tr. 161-62. This contradicted Basin Water's Form 10-Q filing for the quarter ended June 30, 2007, in which management disclosed that the net proceeds of the transaction included $500,000 in cash paid by VLC. Jt. Stip. 4 ¶ 11.v; Tr. 218.[7/]

In a November 2, 2007 email, while engagement team members began to evaluate a later SPE transaction from the third quarter (WSS I, discussed below), Moore asked the team's senior manager, "[D]id they ever fund the VLC transaction?" Ex. D-27 at 1. Moore noted further that "there was some funding or something that was supposed to occur and hadn't even by the time the [Form 10-]Q had [been] filed [in August 2007]. I remember being irritated by that." Ex. D-27 at 1; *see* Jt. Stip. 4 ¶ 11.v. The senior manager replied, "[Y]ou're thinking of the 500K down payment that was not received—I'm calling [the CFO] and I'll find out because this one has a down payment as well. A much bigger one." Ex. D-27 at 1. Moore testified she did not recall the senior manager ever reporting back to her on this issue, did not recall doing anything with the knowledge that the funding had not occurred by the time the Form 10-Q had been filed on August 14, 2007, and did not recall asking management anything about it. Tr. 220-222.

During the 2007 audit, Moore was provided with additional information that contradicted management's representations that Basin Water had received the down payment for the VLC I transaction. Specifically, Moore knew that the year-end

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[7/] Moore testified that she did not notice when she saw the purchase agreement at the time of the 2007 audit that the execution date of the agreement postdated the purported closing date. Tr. 161. The agreement referenced four exhibits: an asset list, a loan agreement, a security agreement, and an escrow agreement. Ex. D-9 at 1, 3. Moore claimed at the hearing that she saw those exhibits but conceded that she did not obtain copies for the files and that no copies of the exhibits exist in the 2007 audit work papers. Tr. 167-68. Later during the hearing, she testified that she did not recall reviewing the escrow agreement, which would have been attached to the September purchase agreement. Tr. 180. This escrow agreement appears in SingerLewak's work papers for the restatement audit, as discussed below.

receivables reconciliation schedule provided by management showed that the down payment was still due from VLC as of December 31, 2007. Jt. Stip. 5 ¶ 11.ee; Tr. 174-75; Ex. D-2 at 2. Yet Moore testified that she did not recall anyone on the engagement team contacting the escrow agent during the 2007 audit, did not recall instructing any other team member to do so, and did not recall anyone on the team receiving any escrow agreement. Tr. 178-180. She further testified that if someone had received the escrow agreement in the 2007 audit, she would expect that to be documented in the audit work papers and that she was not aware of any such documentation. Tr. 180. Moore testified that she had a “recollection of the team seeing an escrow statement during the audit of 2007” but didn’t “really recall the details” and conceded she saw no evidence of such a document in the audit files. Tr. 138-39.

Also during the 2007 audit, Moore received a confirmation letter from VLC dated March 4, 2008 that purported to confirm the amount VLC owed to Basin Water for the VLC I transaction as of December 31, 2007. Ex. J-4; Tr. 201-202. On its face, the letter confirmed VLC owed Basin Water $3.85 million, but that figure reflected the internally discounted amount that Basin Water considered due to it, not the $4.5 million that VLC actually had to pay for the transaction (*i.e.*, $5 million purchase price minus the $500,000 down payment, to be paid in 72 monthly installments of $62,500 each). Ex. J-4; Tr. 201-202. At the hearing, Moore acknowledged that the letter was part of the 2007 audit work papers, that she had reviewed it during the audit, and that “[t]here is clearly a difference between the face value of the note that VL Capital signed and the discounted balance per the books of Basin.” Tr. 209. She testified that, given that discrepancy, she “would have expected an explanation,” but conceded that none was documented. Tr. 209-210.

b. Moore Relied on Management Representations To Conclude That Basin Water Delivered the Water Treatment Systems to the Buyer Under SAB 104.

With regard to the SAB 104 revenue recognition criterion that delivery has occurred or services have been rendered, Basin Water management commented in its accounting memorandum that the water treatment systems sold to VLC “have already been delivered to customers and placed into operation by [Basin Water],” and thus, Basin Water had “substantially accomplished what it must do pursuant to the terms of the arrangement to complete delivery of the systems.” Ex. J-1 at 3. Moore testified that she agreed with this conclusion during the second quarter 2007 review and the 2007 audit. Tr. 90-91.

Moore understood at the time of the 2007 audit, however, that Basin Water had to take other steps to meet its performance obligations. She knew that Basin Water was required to obtain consent to assign the lease payments from each of its end-user customers. Jt. Stip. 5 ¶ 11.aa. She testified that, at the time of the VLC I transaction, she had a concern that, if management did not receive these consents, revenue recognition could be inappropriate because the transaction would be incomplete. Tr. 171; Ans. 17 ¶ 33; *see* Ex. D-151 at 34-35.

Moore tried to address this concern by orally requesting that engagement team members sample the end user contracts to see whether Basin Water had a contractual right to assign the leases. Tr. 172; Ans. 16-17 ¶ 32. The team members reported back that the sample they tested appeared to give Basin Water the right to assign the leases. Ans. 16-17, ¶ 32. Moore did not recall reviewing any documentation of the team's sampling of leases subject to the VLC I transaction (Tr. 172), but she understood that nothing prohibited consents from being obtained, "so it was perfunctory" (Ans. 17 ¶ 33).

Moore testified that Basin Water management told her they had received the required consents. Tr. 171; *see* Jt. Stip. 5 ¶ 11.bb; Ans. 17 ¶ 33. Moore obtained no evidence to corroborate this assertion. She testified that she never saw copies of written consents and she did not recall anyone else on the engagement team doing so. Tr. 171. Moore's understanding that the consents had actually been obtained was based entirely on conversations with Basin Water management. Tr. 171-72.

In fact, by the end of 2007, Basin Water had obtained no consents. As noted above, the company showed the $500,000 down payment on its books as an unbilled receivable as of December 31, 2007. Jt. Stip. 5 ¶ 11.ee; Ex. D-2 at 2. Under the terms of the escrow agreement for the $500,000 down payment, which Moore did not obtain until the restatement audit, Basin Water would receive a $50,000 disbursement for each end user consent it provided. Ex. D-10 at 3, 19-20; Tr. 178-181; *see* note 5 above. Thus, Basin Water would receive all of the $500,000 due to it only after collecting and providing the consents relating to all ten equipment leases.

c. Moore Relied on Management Representations To Conclude That VLC Was Not Thinly Capitalized, and Therefore Not a VIE Possibly Requiring Consolidation of Basin Water's Financial Statements With VLC's, Under FIN 46(R).

Moore understood that an entity is a VIE if it is "thinly capitalized." Ex. D-36 at 4. An entity is thinly capitalized where the "total equity investment is not sufficient to finance its activities without additional subordinated financial support" such as loans and lease guarantees. Once an entity is identified as a VIE, then the "risks and rewards model should be applied," and "the party who participates in the majority of the entity's economics" by virtue of "contractual arrangements" should consolidate its financial statements with those of the VIE. Ex. D-36 at 4.

Moore was also aware that American Institute of Certified Public Accountants (AICPA) Practice Alert 2005-1, entitled *Auditing Procedures with Respect to Variable Interest Entities* (Practice Alert 2005-1), "provides guidance to auditors in planning and performing auditing procedures with respect to VIEs." Ex. D-36 at 9. This Practice Alert, included in Moore's own training materials as a handout, states that an auditor should, among other things, review any operating agreements or other contracts to determine whether the nature and extent of such transactions may necessitate consolidation of the entity's financial statements. Ex. D-36 at 13-20; Tr. 324-26. It also specifies various procedures that should be considered in investigating the capital structure of a potential VIE, including inspecting evidence in the possession of the auditee's counterparties, confirmation of significant information with intermediaries, and performing tests to determine whether the auditee correctly applied FIN 46(R). Ex. D-36 at 15-16. Moore's training presentation concludes with a slide that states, "When in doubt? ***CONSOLIDATE***." Ex. D-36 at 9 (emphasis in original).

Moore understood when leading the second quarter 2007 review of the VLC I transaction that VLC was a special purpose entity and that VLC had been newly created for the transaction. Tr. 77-78. Moore knew that it was necessary to evaluate whether Basin Water had to consolidate its financial statements with VLC's because, if consolidation were required, then any revenue Basin Water recognized on the SPE transaction would be eliminated. Tr. 120-21; Ans. 18-19 ¶ 36; Jt. Stip. 3, ¶ 11.o. She also understood, from discussions with management in May 2007, that management had been contemplating structuring the transaction such that rules requiring consolidation would not apply. Tr. 120.

Basin Water management's memorandum in support of revenue recognition for the VLC I transaction contained no discussion of FIN 46(R), and Moore does not recall receiving or seeing a documented analysis of FIN 46(R) from management. *See* Ex. J-1; Tr. 118. When the company restated its 2006 and 2007 financial statements in a Form 10-K/A filed February 10, 2009, Basin Water disclosed that it had "incorrectly recognized" $8.3 million of revenue in connection with the four SPE transactions "as a result of the failure to apply Financial Accounting Standards Board Interpretation No. 46, *Consolidation of Variable Interest Entities—Deferral for Certain Interests, Revised December 2003* (FIN 46(R))." Ex. D-46 at 4; *see also* Ex. D-46 at 5, 103. According to the memorandum Basin Water management prepared during the restatement discussing the accounting for the SPE transactions, the company had determined that the SPEs were "thinly capitalized" and unable to absorb the losses if the end users of the water treatment systems did not make their lease payments. Ex. D-17 at 3. The memorandum that SingerLewak prepared, and Moore reviewed, assessing whether fraud was involved in the original Basin Water financial statements for 2006 and 2007 concluded with regard to the VLC transactions that "the restatement was caused by Management's negligence to assess the FIN 46(R)." Ex. D-39 at 4; Tr. 386. Moore testified that she never requested that the company prepare a documented analysis of FIN 46(R) (Tr. 118), and there is no documentary evidence in the record that SingerLewak performed a FIN 46(R) analysis for the SPE transactions, though it had performed and documented one for a different 2007 transaction.[8/]

Despite the lack of a documented FIN 46(R) analysis by management, Moore testified that she concluded that VLC "did not need to be consolidated with Basin [Water]" as a result of the application of FIN 46(R). Tr. 121-22. In support of her conclusion, Moore testified it was her understanding that VLC was not thinly capitalized. Tr. 122-23. She testified this understanding was based on the receipt by Basin Water of a $500,000 down payment, whose source management characterized as an "equity" contribution by CCH Netherlands. Tr. 122-23. But Moore admitted she never requested or saw any documents showing that the $500,000 down payment was to be contributed to VLC as an equity investment, as compared to a loan. Tr. 123-24. Moore conceded that she depended entirely on Basin Water management's representation that the money would be contributed to VLC as equity. Tr. 120-24.[9/]

Moore testified that, in connection with the 2007 audit, she requested the operating agreement for VLC or some other documentation such as VLC financial statements that would show the equity structure of the SPE, but Basin Water management said that it did not have the information. Tr. 141-45. She testified that she had a "conversation" with the SingerLewak concurring partner for the audit about management's lack of information about VLC, but conceded that when management informed her that it felt it had no right to request such information from VLC, she ended her inquiry into the capitalization of VLC at that point. Tr. 141-45.

Furthermore, Moore did little to inquire into whether, besides the sufficiency of its capitalization, VLC had other characteristics enumerated in FIN 46(R) that might render it a VIE and, in turn, require further analysis as to whether Basin Water was the primary beneficiary and thus had to consolidate VLC's financial statements with its own. Moore testified that she recalled asking management "a couple questions regarding VLC's rights on the [water treatment] units, whether they could sell the units or not," but did not confirm that VLC's rights were necessarily representative of its equity investors' rights.

[8/] As noted *supra* in Section III.A and *infra* in Section VI.A, on March 13, 2008, management had prepared, and Moore approved, an accounting memorandum discussing a different 2007 transaction that included a FIN 46(R) analysis. Ex. GM-1.

[9/] In fact, as discussed below, Moore learned during the restatement audit that CCH Netherlands committed only to a loan, not an equity investment, in backing the VLC I transaction, and that VLC's only capital was a $1,000 contribution by the Texas attorney who was the sole member of VLC.

Tr. 149-50. She did not obtain any evidence establishing the equity investors' obligation to absorb expected losses of VLC and did not recall instructing anyone else on the engagement team to do so. Tr. 150-51. Nor did she or any other team member obtain evidence regarding the proportionality of equity investors' voting rights. Tr. 152-54.

When asked if she instructed anyone else on the engagement team to obtain evidence to establish the primary beneficiary of VLC, the required next step in a FIN 46(R) analysis when deciding whether to consolidate financial statements, Moore did not directly answer the question, but rather testified generally that "I believe I discussed making sure that we had FIN 46 documented correctly in our files. I had that discussion with [the engagement team's senior manager]." Tr. 154. But she conceded that no such documentation appears in the record. Tr. 154-55. For his part, the senior manager testified that the engagement team "requested management to put forth in a memo their—their analysis of FIN 46," but he could not recall whether it appeared in the work paper files. Nor did he recall, in response to Moore's question, an incident in which Moore became "very concerned" when she could not locate any FIN 46(R) documentation during the restatement audit. R.D. 47b at 478-79. The senior manager recalled that there were "many instances" in which the audit software SingerLewak used "crashed, and we had to redo work that was already performed," including during the audit of Basin Water. R.D. 47b at 481-82. He also testified, however, that, as far as he was aware, any work that needed to be redone was, in fact, redone. R.D. 47b at 500-01. As noted above, Basin Water, during the restatement that followed the 2007 audit, disclosed that it had incorrectly recognized revenue from the SPE transactions "as a result of the failure to apply Financial Accounting Standards Board Interpretation No. 46, *Consolidation of Variable Interest Entities—Deferral for Certain Interests, Revised December 2003* (FIN 46(R))." Ex. D-46 at 4; *see also* Ex. D-46 at 5, 103.

3. Moore Accepted Management's Conclusion That Recognition of Revenue for the WSS I Transaction Was Appropriate.

Moore reviewed the second SPE transaction (WSS I), entered into by Basin Water and WSS at the end of the third quarter of 2007, as part of the procedures performed for that quarter's review, and relied upon those procedures during the annual audit. Jt. Stip. 5 ¶ 11.jj. As noted, Moore understood that the WSS transaction required greater attention and presented a risk that revenue might be improperly recognized during 2007. *See* Ex. J-7 at 3; Jt. Stip. 3 ¶ 11.n; Tr. 43-47.

During Moore's review, management provided her with a letter agreement dated September 14, 2007, that described the terms of the transaction. Jt. Stip. 5 ¶ 11.ff. As Moore knew at the time of the 2007 audit, under the terms of that agreement, Basin Water agreed to sell to WSS water treatment systems being constructed for lease to a city. The sales price was $4,400,000 (less the estimated present value of expected costs of insurance and property taxes). WSS agreed to make an initial deposit of $25,000 to be held in escrow pending the execution of definitive documentation. Once the city accepted the treatment systems, WSS would make a $2 million down payment (minus approximately $500,000 for insurance and property taxes). The balance of the purchase price would be financed by Basin Water; that is, Basin Water would receive an interest-bearing note with monthly payments to begin the 61st month of the underlying lease term. In return, Basin Water agreed to assign to WSS the lease payments to be paid by the city to Basin Water. Tr. 210-12; Jt. Stip. 5 ¶¶ 11.ff, .gg.

a. Moore Relied on Management Representations To Conclude That Collectibility of the Sales Price to WSS Was Reasonably Assured Under SAB 104.

Management provided Moore with a memorandum, dated October 31, 2007, that explained the basis for its accounting for the WSS I transaction. Jt. Stip. 5 ¶ 11.hh; Ex. D-15. This memorandum was similar to the VLC I memorandum and addressed three issues, of which the relevant one here is revenue recognition under SAB 104, and more specifically the collectibility of the sales price from WSS.

In the WSS I memorandum, management concluded that all four SAB 104 criteria were satisfied, just as it had in connection with VLC I, and that revenue for the WSS I transaction could be recognized in the third quarter of 2007. Ex. D-15 at 7. The WSS I memorandum stated that the letter agreement constituted persuasive evidence of an arrangement, that the agreement set a fixed price, and that Basin Water's commitment to the particular city involved to place the equipment with it and the fact that Basin Water had substantially completed manufacturing the equipment satisfied that delivery requirement. Ex. D-15 at 3-7. At issue is Moore's assessment of management's conclusion that the sales price to WSS was collectible, for which the WSS I memorandum relied on two facts: (1) that WSS was "backed" by National City (described as a large Chicago bank), which Basin Water management concluded had "the resources to ensure collect[i]bility," and (2) that $25,000 had "been placed in an escrow account." Ex. D-15 at 4.

The engagement team's notes show that the team agreed with management that revenue recognition was appropriate but noted that revenue should be calculated on the percentage-of-completion basis, because Basin Water was still in the process of manufacturing the equipment for the system. Ex. D-15 at 7. These notes further indicate that the team relied on the letter agreement between Basin Water and WSS for its conclusions regarding the four SAB 104 criteria. Ex. D-15 at 7. Moore testified that she reviewed the memorandum and the notations made by the other team members and concluded at the time of the 2007 audit that the procedures performed were sufficient and properly documented. Tr. 227-28.

As noted, two facts were critical to Basin Water's conclusion in the memorandum that revenue for the WSS I transaction could be recognized. First was National City's "backing" of WSS. Moore testified that she understood that "[i]f National City was not able to support WSS, WSS would not be able to perform its obligations under this contract." Tr. 243-44. She stated that National City was a member and equity contributor to WSS, but she acknowledged that the only basis for this belief was Basin Water management's representation. Tr. 242-45. She did not herself contact National City, nor did she instruct anyone else to do so. Tr. 237-38. Moore testified that she had a "vague recollection of seeing some communication or something" from National City but could not recall specifics. Tr. 239-240. The 2007 audit work papers contain no support for the relationship between National City and WSS. Tr. 240-41.

The second fact critical to Basin Water's conclusion on collectibility was that a $25,000 deposit had purportedly been placed in escrow. Yet Moore testified she did not believe she or anyone else on the engagement team performed any procedures to determine whether that in fact had occurred. Tr. 245. At any rate, she conceded at the hearing that a $25,000 deposit on a $4.4 million transaction was not a sufficient basis for determining that collectibility was reasonably ensured. Tr. 245-46. Moore learned during the restatement audit that National City had never actually provided the $25,000 and concluded that "the sale [h]as not met criteria to recognize revenue when contract was signed." Ex. D-13 at 29; Ex. D-16 at 3; Ex. D-39 at 3-6; Tr. 378-80.

b. Moore Relied on Management Representations To Conclude That WSS Was Not Thinly Capitalized, and Therefore Not a VIE Possibly Requiring Consolidation of Basin Water's Financial Statements With WSS's, Under FIN 46(R).

Moore was aware at the time of the 2007 audit that WSS was an SPE formed for the specific purpose of entering into sales transactions with Basin Water. Jt. Stip. 3 ¶ 11.j. The WSS I memorandum prepared by management, like the VLC I memorandum before it, did not address consolidation or FIN 46(R). Ex. D-15; Tr. 247. Moore testified that she did not have a specific conversation with management related to FIN 46(R), and did not recall seeing any FIN 46(R) analysis prepared by management in connection with this transaction. Tr. 247-48.

Moore testified that she concluded that WSS did not need to be consolidated because it was sufficiently capitalized, and that she based her conclusion on management's assertions. Tr. 250-51. Moore stated that she did not obtain the operating agreement for WSS or any evidence about the equity holders of WSS or their rights and obligations. Tr. 283. During the restatement audit, Moore learned that National City had not promised to furnish equity funding to WSS but only to provide a loan, and, as noted above, that National City had not actually provided even that. Ex.

D-13 at 29; Tr. 378-80. Moore testified that this information caused her to conclude during the restatement that WSS was thinly capitalized and that, had the transactions been completed, the financial statements of WSS should have been consolidated with Basin Water's. Tr. 378-79, 384.

When the hearing officer asked Moore whether she believed that "FIN 46 is a fairly important analysis in this kind of context," Moore replied, "That is correct." Tr. 249-50. Moore testified she "would recall" seeing a FIN 46(R) analysis if the engagement team had prepared one, and conceded she could not recall seeing one. Tr. 250.

4. Moore Relied on Management Representations To Conclude That Recognition of Revenue for the WSS II Transaction Was Appropriate Under SAB 104 and Did Not Consider Whether Consolidation of the Financial Statements of Basin Water and WSS Was Necessary Under FIN 46(R).

The engagement team evaluated the third SPE transaction (WSS II), entered into by Basin Water and WSS at the end of the fourth quarter of 2007. As part of that process, Basin Water management provided to the team a purchase agreement dated December 26, 2007, which described the terms of the transaction. Ex. D-33; Tr. 287-88. Moore testified that she didn't "recall right now at this point" whether she actually saw the WSS II purchase agreement during the 2007 audit. Tr. 288.

As Moore understood, the purchase agreement provided that Basin Water would sell to WSS for $1,353,079 certain water treatment systems being constructed for lease to a municipality. Jt. Stip. 6 ¶ 13.a; Ex. D-33. WSS was to deposit $5,000 into an escrow account, which would be payable to Basin Water 30 days after the municipality accepted the treatment systems. Jt. Stip. 6 ¶ 15; Ex. D-33. WSS was to pay another $561,606 directly to Basin Water 30 days after delivery, and the balance of the sales price ($786,473) plus 5% interest was to be paid beginning five years later. Jt. Stip. 6 ¶¶ 13, 15; Ex. D-33. In return, Basin Water agreed to assign all lease payments due to it from the end user. Jt. Stip. 6 ¶ 15. Basin Water recognized approximately $1.3 million in revenue in 2007 in connection with the WSS II transaction, using the percentage-of-completion method of accounting. Jt. Stip. 6 ¶ 13.b.

The audit file contains no memorandum by Basin Water management to support its accounting for WSS II. Tr. 301. Moore testified that she did not ask Basin Water management to prepare any such memorandum, and to her knowledge, no one else on the engagement team asked management to prepare one. Tr. 301-02. Nonetheless, Moore testified that she understood that management concluded that the criteria in SAB 104 for revenue recognition in the WSS II transaction were satisfied and that the company's rationale for that conclusion was the same as for the WSS I transaction.

Tr. 303. As with the WSS I transaction, neither Moore nor anyone else on the engagement team performed any procedures to assess whether collectibility under SAB 104 was supported by National City's "backing" of the WSS II transaction. Tr. 304. As with the WSS I transaction, Moore learned during the restatement process that National City never provided the $5,000, and thus the transaction was reversed, eliminating the revenue based on it.[10/]

Moore testified that, at the time of the 2007 audit, she understood that a FIN 46(R) analysis of the WSS II transaction was required. Tr. 304-05. She also testified that even if a conclusion had been reached that the WSS I transaction did not require consolidation of WSS's financial statements with Basin Water's, that conclusion needed to be reassessed after the WSS II transaction, including an examination of whether WSS's capital structure had changed. Tr. 305; *see* Ex. D-36 at 14-15. Yet Moore testified that during the 2007 audit she was never aware of management performing a FIN 46(R) analysis in connection with the WSS II transaction and that she did not perform one. Tr. 304. At no time after the WSS II transaction and before the issuance of the 2007 audit report did Moore obtain any evidence about WSS's capital structure, nor, to her knowledge, did anyone else on the engagement team. Tr. 305-06. As noted above, Moore learned during the restatement audit that National City had not promised to furnish equity funding to WSS but only to provide a loan, which led her to conclude that, had the transactions been completed, the financial statements of WSS should have been consolidated with Basin Water's. Ex. D-13 at 29; Tr. 378-80.

5. Moore Relied on Management Representations To Conclude That Recognition of Revenue for the VLC II Transaction Was Appropriate Under SAB 104 and Did Not Consider Whether Consolidation of the Financial Statements of Basin Water and VLC Was Necessary Under FIN 46(R).

The engagement team was provided with a copy of a letter agreement describing the fourth and final SPE transaction (VLC II), entered into by Basin Water and VLC on

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10/ The $1.332 million in revenue Basin Water recognized for this transaction was based on the WSS II contract price ($1.353 million) plus an additional $285,000 in fees due from the end user. Ex. D-33 at 1; Jt. Stip. 6, ¶ 14. A confirmation the engagement team received showed that WSS agreed to the sales price of $1.353 million but did not mention the $285,000 fee. Ex. D-34. The team noticed the difference but did not explain in the related audit documentation or elsewhere in the work papers why the $285,000 was an appropriate addition to revenue. *See* Tr. 291. This was the subject of a charge against Moore in the OIP, but it was not specifically addressed in the initial decision's findings of violations or by the parties on appeal, so we do not consider it.

the last day of the year, December 31, 2007, five days after the WSS II transaction. Jt. Stip. 6 ¶¶ 16, 17; Ex. D-14. As Moore was aware during the 2007 audit, under that agreement, Basin Water was to sell for $763,330 certain water treatment systems to VLC that were still being constructed for lease to an end user. Jt. Stip. 6 ¶ 16.a. In the agreement, the end user was identified in the purchase agreement only as "client," and the description of the property covered by the agreement was left blank. Ex. D-14; Tr. 312-13. VLC was to pay a down payment of $10,000 immediately into a trust account. Upon acceptance of the system by the end user, the down payment would be released, and VLC was to pay Basin Water directly an additional $30,568 and give Basin Water a note payable for $722,761, which was the balance of the purchase price to be repaid in monthly installments. The monthly installments would begin 255 days after acceptance of the system by the end user. Jt. Stip. 6 ¶ 17. In return, Basin Water agreed to assign to VLC all lease payments due to it. But the amortization schedule attached to the agreement showed that, even after all monthly installments were paid, a balance due to Basin Water of $321,000 would remain. Ex. D-14. During the fourth quarter of 2007, the company started recognizing revenue in connection with VLC II on a percentage-of-completion basis. Jt. Stip. 6 ¶ 16; Ex. D-39 at 4; Tr. 307.

Moore understood at the time of the 2007 audit that period-end transactions, such as the WSS II and VLC II transactions, which occurred within five days of year end, generally require additional scrutiny. Tr. 309-10. She knew that there is a risk with such transactions that management might be trying to recognize revenue earlier than is appropriate. Tr. 310. She conceded that recording a transaction at the very end of a period could suggest that management is trying to reach some kind of revenue or income goal for the period. Tr. 310-11. Nevertheless, Moore did not recall performing or reviewing any specific procedures related to the VLC II transaction. Tr. 311-12. Moore testified that some red underlining that appears on the letter agreement was "not inconsistent with" marks that the engagement team would make during its testing (Tr. 309), but there is otherwise no evidence of any work the team did to support its conclusion that management's decision to recognize revenue for the VLC II transaction was appropriate. Moore acknowledged that there is no documentation in the audit work papers of any discussions between her and Basin Water management relating to the transaction. Tr. 312. Basin Water did not prepare a memorandum in support of its accounting for the VLC II transaction, as it had done with the VLC I transaction. Tr. 314.

Moore testified that she understood at the time of the 2007 audit, based on management representations, that CCH Netherlands was involved with the VLC II transaction. Tr. 314. Moore was unaware of any procedures undertaken to assess whether CCH Netherlands was, in fact, involved in any capacity. Tr. 314. Moore did not know if the engagement team performed any procedures to determine how the $321,000 outstanding balance on the amortization schedule was to be paid, and she was unaware of any documentation in the work papers explaining how it would be paid.

Tr. 315-18; Ex. D-14. Moore also was unaware if any procedures were performed by anyone else on the engagement team to determine if the $10,000 down payment had been made into the trust account, as provided in the purchase agreement. Tr. 315.

Although Moore testified that she had concluded in connection with VLC I that the financial statements of VLC did not need to be consolidated with Basin Water's under FIN 46(R), she also testified that she knew that the new transaction, VLC II, required that she reexamine her earlier conclusion. Tr. 319. She understood that the new transaction represented a change in circumstances, which might affect the capitalization of the SPE and therefore her conclusion as to whether VLC had to be consolidated. Tr. 319-20. But Moore testified that she did not recall performing a FIN 46(R) analysis in connection with VLC II and that she was unaware of anyone else on the engagement team doing so. Tr. 319. As noted above, when Moore received the operating agreement for VLC during the restatement audit in 2008, she learned that the SPE was capitalized with only $1,000 and that CCH Netherlands had not contributed any equity to the transaction, leading her to conclude during the restatement that the financial statements of VLC should have been consolidated with Basin Water's. Ex. D-13 at 29; Tr. 378-80.

D. Moore Failed to Question Management's Basis for Reducing Its Contract Loss Reserve Despite Knowing the Company Previously Revised Its Estimate to Avoid Reliance on Certain Assumptions.

As Moore knew at the time of the 2007 audit, Basin Water management recorded a reserve for all probable and reasonably estimable contract losses generated by service contracts under which the company maintained the water treatment systems it sold and leased. Ans. 31 ¶ 67. In its 2007 financial statements, Basin Water determined to eliminate the reserve for the final seven years of a particular ten-year water district contract entered into in January 2006 that had lost $179,052 in 2007 and was projected to lose $195,433 in 2008. Jt. Stip. 7 ¶¶ 18.f, 19. As Moore knew, management had identified this contract during the third quarter as among "the top 5 problem wells for 2007." Jt. Stip. 7 ¶ 21. Even so, management reduced the reserve for that contract by approximately $1.8 million in the 2007 financial statements, a reduction of almost 20% of the total loss reserve. Jt. Stip. 7 ¶ 20; Ex. D-46 at 6, 130.

Management's stated reason for that decision is documented in a SingerLewak work paper reviewed by Moore. Ex. D-68; Tr. 333-49. According to that document, management noted that "[t]his client is requesting" to expand its water treatment facility and that, with the "ability to increase pricing, it is expected that this will be a profitable plant." Tr. 340 (quoting full electronic version of Ex. D-68 at 157); Jt. Stip. 7 ¶ 23. Management decided that it would "assume breakeven (after noncontrollable expenses, including capital) from 2008 on." Ex. D-68.

Moore testified that this was the second year in which the client had prepared this contract loss reserve estimate, and there "had been an issue in the first year that they had built a lot of unenforceable assumptions into their reserve, and they had to go back and revisit it once we had discussions with them." Tr. 343. Aware of management's decision to revise its estimate in 2006, Moore testified that she discussed the estimate with the engagement team's senior manager during the third quarter review and specifically instructed him that the team "can't rely on assumptions that aren't legally enforceable" and it "couldn't rely on the note that management had put in that—that spreadsheet." Tr. 342-44. Moore concedes that she did not document these instructions. Tr. 352-53. Nonetheless, Moore believed that her instructions had been followed because "we did audit testing during the audit to test through the assumptions that are used to build up the reserve," but she conceded that this particular contract was not selected for the 2007 audit test work and had been reviewed only in connection with work done during the third quarter review. Tr. 341-55, 394-95.

There is no evidence in the work papers that Moore or any other member of the team questioned the basis for management's determination to reduce the reserve or that they gathered any evidence to support management's conclusion that the reduction was appropriate. Nevertheless, Moore testified at the hearing that when she "looked at the assumptions" management made about the well's increased capacity during the 2007 audit, she learned that "the well had become profitable" in the fourth quarter of 2007. Tr. 345-46; Ex. D-147 at 60. She testified that this uptick in profitability at the end of the year (though for 2007 as a whole it had still generated a loss and was projected to generate a loss in 2008) is what caused her to conclude that management's estimate was still appropriate, but she admitted there was no evidence that management itself considered this uptick in its own calculations. Tr. 344-48, 367-68. Moore also conceded that the work papers contain no indication that this late-2007 profitability, and not the ill-supported assumption of increased capacity, was the basis for her conclusion that management's estimate was reasonable. Tr. 347-48, 367-68. The only documentation in the work papers for the water district contract loss estimate stated that management did not estimate losses beyond 2008 because it assumed future increased capacity and that the auditors accepted this as reasonable. Tr. 340 (specifically discussing district contract loss estimate as referenced in full electronic version of Ex. D-68 at 157); *see* Ex. D-68 at 1, D-97 at 1 (generally referring to future contract losses and mentioning "some of the older contracts" but not discussing in particular the district contract, which was recent).

When Basin Water restated its 2006 and 2007 financial statements in 2009, it disclosed in its Form 10-K/A that the company had under-accrued its contract loss reserve by approximately $1.8 million. Jt. Stip. 8 ¶ 27; Ex. D-46 at 5-6. The filing explained that Basin Water had "assumed that a possible facility expansion would result in higher service fees to the customer, thus eliminating estimated operating losses on this contract beyond 2008." Ex. D-46 at 6, 105. According to the Form 10-K/A, the possible expansion, which was not "contractually committed," should not have been considered in estimating the contract loss reserve. Ex. D-46 at 6, 105.

IV.

As summarized in the OIP, Moore is alleged to have "failed to exercise due professional care and professional skepticism in performing her work on the audit and failed to obtain sufficient competent evidential matter to afford a reasonable basis for the Firm's unqualified opinion expressed regarding Basin Water's 2007 financial statements. Among other things, she failed to obtain and evaluate sufficient audit evidence to form conclusions concerning the validity of Basin Water's financial statement assertions in (a) recognizing revenue for four transactions with special purpose entities and (b) valuing Basin Water's contract loss reserve." R.D. 1, OIP 1 ¶ 2.

Specifically, with regard to Moore's evaluation of Basin Water's accounting for the four SPE transactions, the OIP charged, as relevant here, that Moore violated PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*, and Rule 3200T, *Interim Auditing Standards*, by:

- failing to exercise due professional care and skepticism, in violation of AU § 150, *Generally Accepted Auditing Standards*, and AU § 230, *Due Professional Care in the Performance of Work*;

- failing to obtain sufficient competent evidential matter to afford a reasonable basis for an opinion, in violation of AU § 150 and AU § 326, *Evidential Matter*;

- failing to obtain sufficient competent evidential matter to form conclusions concerning the validity of assertions in Basin Water's financial statements as to the revenue recorded for the SPE transactions, in violation of AU § 326.13;

- failing to evaluate the business rationale for the SPE transactions and whether that rationale (or lack thereof) suggested the transactions might have been entered into to engage in fraudulent financial reporting, as required by AU § 110.02, *Responsibilities and Functions of the Independent Auditor*, and AU §§ 316.66, .67, *Consideration of Fraud in a Financial Statement Audit*;

- failing to adequately evaluate the audit evidence obtained concerning Basin Water's transactions with VLC and WSS, as required by AU § 326.25, including relevant audit evidence contradicting Basin Water's financial statement assertions as to the revenue recorded for the SPE transactions;

- failing to evaluate the results of confirmation procedures used concerning the VLC I transaction, in accordance with AU §§ 330.15, .33, *The Confirmation Process*; and

- failing to prepare or to ensure the preparation of appropriate audit documentation demonstrating the procedures performed, the evidence obtained or considered, or the conclusions reached concerning SingerLewak's consideration of the application of FIN 46(R) to the SPE transactions, as required by Auditing Standard (AS) No.3, *Audit Documentation*, ¶ 6.a.

With regard to Moore's assessment of Basin Water's contract loss reserve, the OIP charged, as relevant here, that Moore violated PCAOB Rules 3100 and 3200T by:

- failing to exercise due professional care and skepticism, in violation of AU §§ 150 and 230;

- failing to obtain sufficient competent evidential matter to afford a reasonable basis for an opinion, in violation of AU §§ 150 and 326;

- failing to obtain sufficient competent evidential matter to provide reasonable assurance that Basin Water's contract loss reserve estimates were reasonable under the circumstances and presented in accordance with applicable accounting principles, as required by AU § 342.07.b, .07.c, *Auditing Accounting Estimates*;

- failing to obtain sufficient competent evidential matter to form conclusions concerning the corresponding assertions in Basin Water's financial statements, as required by AU § 326.13;

- failing to adequately evaluate the audit evidence obtained concerning Basin Water's contract loss reserve, as required by AU § 326.25;

- failing to adequately direct the efforts of assistants who were involved in accomplishing the objectives of the audit and determining whether those objectives were accomplished and failing to adequately review the work of assistants to determine whether it was adequately performed and to evaluate whether the results are consistent with the conclusions to be presented in the auditor's report, in violation of AU § 150 and AU §§ 311.11, .13, *Planning and Supervision*.

V.

The charges against Moore all concern audit work she has acknowledged performing or reviewing, as the auditor with final responsibility for the audit of Basin Water's financial statements for the year ending December 31, 2007, relating to the four SPE transactions and the year-end 2007 contract loss reserve. The Division bears the burden of proving by a preponderance of the evidence that Moore engaged in an act or practice, or omitted to act, in violation of PCAOB rules and auditing standards, as charged in this case. PCAOB Rule 5204; *see* Sarbanes-Oxley Act Section 105(c)(4), 15 U.S.C. § 7215(c)(4); PCAOB Rules 5202(a)(1) and 5300(a). Our findings are based on a *de novo* review of the record. PCAOB Rules 5460(c) and 5465. We apply the auditing standards as they existed at the time of the alleged violations.

PCAOB standards require an auditor to exercise due professional care and maintain an "independence in mental attitude," including a "questioning mind and a critical assessment of [the] audit evidence" throughout the audit. AU §§ 150.02, 230.07. They require an auditor, who 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 fraud or error," to "gain an understanding of the business rationale" for "significant transactions that are outside the normal course of business for the entity," such as the SPE transactions, and, in understanding that rationale, to consider "whether management is placing more emphasis on the need for a particular accounting treatment than on the underlying economic substance of the transaction" and whether the transactions involve "parties that do not have the substance or the financial strength to support the transactions without assistance from the entity under audit." AU §§ 110.02; 316.66, .67.

The standards also require the auditor to perform procedures to obtain and evaluate sufficient competent evidential matter to afford a reasonable basis for the opinion expressed regarding the financial statements under audit and to form conclusions concerning the validity of assertions embodied in the financial statements, here involving the revenue recognized by Basin Water for the four SPE transactions and the amount of Basin Water's contract loss reserve, as well as to provide the necessary support that significant accounting estimates, such as the reserve, are "reasonable in the circumstances" and "presented in conformity with applicable accounting principles." AU §§ 150; 326, 326.13, .25; 330.15, .33; 342.07.b, .c. And the standards require that, when supervising the work of audit assistants, such as those assisting Moore in evaluating Basin Water's contract loss reserve, the auditor with final responsibility for the audit direct the assistants' efforts, which includes, among other things, "instructing assistants, keeping informed of significant problems encountered, [and] reviewing the work performed," and review their work to "determine whether it was adequately performed and to evaluate whether the results are consistent with the conclusions to be presented in the auditor's report." AU § 311.11, .13.

The application of these fundamental auditing standards is often informed by other standards that apply in certain contexts. Of particular importance here is the principle in AU § 333, *Management Representations,* that when management makes representations to the auditor, they "are part of the evidential matter the independent auditor obtains, but 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." AU § 333.02. Rather, management representations are "a complement to other auditing procedures." *S.W. Hatfield, C.P.A.*, SEC Rel. No. 34-69930, 2013 SEC LEXIS 1954, *6 (July 3, 2013).

It is undisputed that Moore was aware that "significant audit risks" were associated with revenue-related accounts and the contract loss reserve "due to management aggres[s]ive revenue recognition approach and subjective estimates on reserve." Ex. J-7 at 3. The skepticism and audit procedures an auditor must incorporate into her work only increase when, as here, an audit presents high risk. *Gregory M. Dearlove*, SEC Rel. No. 34-57244, 2008 SEC LEXIS 223, *60-61 (Jan. 31, 2008) (the "unquestioning acceptance" of management's position was "a clear—and at least unreasonable—departure from the requirements of [applicable auditing standards] to apply greater than normal skepticism and additional audit procedures in order to corroborate management representations in a high-risk environment"), *aff'd*, 573 F.3d 801 (D.C. Cir. 2009).

Moore argues that she conducted the audit in a professional manner, that management may have intentionally withheld information from the auditors, and that documentation in the Basin Water audit file was lost due to computer malfunctions. MB 2, 3, 14. The Division urges us to "affirm the Hearing Officer's findings and sanctions" because, in the Division's view, nothing in Moore's submissions undermines the determinations in the initial decision or the "undisputed evidence in the hearing record" that demonstrates Moore's "pattern of simply relying on uncorroborated management representations for accounting conclusions in high risk areas." R.D. 62, Division of Enforcement and Investigations' Opposition Brief (DB) 2.

We find that the Division proved by a preponderance of the evidence that in the 2007 Basin Water audit Moore showed inattention to two high-risk audit areas and merely accepted management representations instead of performing audit procedures to obtain sufficient competent evidential matter. The Division also proved that Moore's evaluation of Basin Water's contract loss reserve estimate demonstrated a failure to gather evidence to support her audit conclusions and the need to follow up on the work of her audit assistants. As discussed in detail below, Moore violated multiple PCAOB auditing standards.

A. Moore's Evaluation of the Four SPE Transactions Violated PCAOB Auditing Standards.

1. Moore Failed To Appropriately Evaluate Management's Conclusion that Recognition of Revenue for the VLC Transactions Was Appropriate.

Basin Water management concluded that it could properly recognize revenue from the VLC I transaction because the criteria in SAB 104 were met. According to management, collectibility of the sales price was reasonably assured because VLC was "formed by CCH Netherlands, a European bank" and because VLC had placed a $500,000 down payment "in escrow as of June 29, 2007." Ex. J-1 at 4. Moore's acceptance of that reasoning and conclusion was based on nothing more than management's representation. Moore and the others on the engagement team performed no procedures and obtained no evidence to corroborate management's collectibility analysis. Moore did not contact CCH Netherlands to verify its obligations to VLC or instruct anyone else on the engagement team to do so, even though she had never heard of CCH Netherlands before the VLC I transaction and even though this transaction would account for 60% of Basin Water's revenue for the quarter and more than 20% of Basin Water's revenue for the year.

Moore also failed to perform procedures or obtain evidence to corroborate management's assertion that the $500,000 down payment had been paid into escrow on June 29, 2007. Neither she nor any other engagement team member contacted the escrow agent or VLC to confirm that, in fact, the payment had been made. Moore relied on management's representation that placement of the down payment into escrow on June 29, 2007 supported collectibility even though she was aware of contradictory evidence, including (1) a purchase agreement dated September 14, 2007 that still called for the payment of the down payment into escrow; (2) learning in the third quarter that the down payment had not been received by Basin Water prior to the second quarter 10-Q filing; and (3) a year-end receivables reconciliation schedule showing that the down payment was still due from VLC as of December 31, 2007.

Moore did not address clear discrepancies in the document the auditors obtained to verify the valuation of the VLC I note receivable. The March 4, 2008 confirmation letter, which she reviewed and accepted in the 2007 audit, confirmed a balance that was not consistent with the amount recorded on the books of Basin Water by more than $500,000. Yet the audit documentation stated that there were no discrepancies, and the confirmation was accepted as valid evidence of collectibility.

Moreover, Moore's acceptance of management's representations that consents had been obtained from end users—and that therefore deliverability of the promised asset was reasonably assured—also failed to meet basic auditing standards. Moore knew that Basin Water was required to obtain consent to assign the lease payments from each of its end-user customers, and she knew that without consents, revenue recognition could be inappropriate because the transaction would be incomplete. Moore testified that management told her the consents had all been obtained, but she admittedly gathered no evidence to corroborate this. All the engagement team did to address this contingency—which was critical to Basin Water's ability to collect the down payment and to completion of the contract—was to test a sample of leases to determine if the end users could legally provide the consents, thus failing to engage the issue of whether the end users actually had provided them. If Moore had requested to see the escrow statements, she would have learned that, as of December 31, 2007, no portion of the $500,000 down payment had been disbursed to Basin Water.

Moore's assessment of the VLC II transaction was even less rigorous, and so deviated even further from PCAOB standards. This transaction occurred on the last day of 2007, and Moore conceded that the timing of the transaction at the end of a reporting period could suggest that management was trying to reach some kind of revenue or income goal for the period. Tr. 310-11. Management did not prepare a memorandum to support its accounting for this transaction, and the letter agreement evidencing the transaction that is included in the work papers is incomplete and reflects that the monthly installments would result in a shortfall to Basin Water of $321,000. Despite these circumstances, Moore was aware of no procedures performed to address the clear discrepancy in the letter agreement, none to confirm that CCH Netherlands was involved in any capacity, and none to confirm that the $10,000 down payment required by the agreement was made. Moore's evaluation of management's conclusions as to revenue recognition for the VLC II transaction was essentially non-existent.

2. Moore Failed To Appropriately Consider Whether the VLC Transactions Required VLC To Be Consolidated into Basin Water's Financial Statements Under FIN 46(R).

Moore, an avowed specialist in the application of FIN 46(R), admitted that she knew it was necessary to consider whether, as a result of the VLC I transaction, VLC was required to be consolidated into Basin Water's 2007 financial statements under FIN 46(R). She also knew that if VLC were consolidated into Basin Water's financial statements, the revenue recorded in connection with the VLC I transaction would be eliminated as an intercompany transaction. Yet there is no evidence in the 2007 work papers of any consideration of FIN 46(R) by management, and there is no evidence in the work papers that Moore or anyone else on the engagement team considered FIN 46(R) with respect to the VLC I transaction or indeed any of the SPE transactions.

Moore claims she discussed consolidation under FIN 46(R) with management in May 2007. This discussion is undocumented, but in any event, two pieces of information she supposedly gained from it should have driven her to apply heightened scrutiny to the SPE transactions generally and to the VLC I transaction specifically. First, management told her the company was structuring the transactions to achieve revenue recognition and to avoid consolidation, which was consistent with the "aggressive" accounting approach that caused Moore to assess the audit as presenting an overall high risk of material misstatement. Second, management told Moore that the SPE transactions would feature substantial down payments in the range of 50%-70% of the sales price. Yet after she assessed the VLC I transaction as part of the second-quarter 2007 review, Moore did not question that the down payment was only 10%. (Nor did she question the size of down payments made in subsequent transactions, which were even smaller.)

Moore testified that she thought the information necessary to a FIN 46(R) analysis was contained in management's accounting memorandum for VLC I, although the memorandum did not expressly address FIN 46(R). Tr. 247-51. That memorandum, however, was concerned with the criteria in SAB 104 for determining whether revenue should be recognized, whether it was recognizable in the second quarter, and whether the transactions had to be treated as sale-leasebacks. The document does not even cursorily address issues critical to understanding the flow of economic risks and rewards that FIN 46(R) addresses, such as VLC's capital structure or VLC's equity investors' ability to control VLC's activities. As the Division's expert noted, it is a commonly held view in the accounting and auditing profession that "a FIN 46(R) analysis is a complex and detailed analysis" that cannot be done with a casual mental calculation. Ex. D-151 at 38. The information in management's memorandum does not contain the information necessary to support a competent FIN 46(R) analysis.

Although there is no supporting documentation in the record, Moore claimed at the hearing that she concluded that consolidation was not required under FIN 46(R) because VLC had enough equity to absorb any losses; that is, VLC was sufficiently capitalized because CCH Netherlands had contributed $500,000 to VLC as equity, which was in turn to be paid to Basin Water as the VLC I down payment. But as discussed above, Moore's conclusion as to VLC's capitalization—documented or not—was admittedly based solely on Basin Water management's uncorroborated assertions. No documents were obtained by the auditors evidencing VLC's equity structure or any contributions to VLC by CCH Netherlands, nor was evidence obtained about VLC's equity investors' ability to control VLC's activities or establishing its primary beneficiary.

Moreover, Moore does not dispute that, even if it were appropriate to conclude at the time of the VLC I transaction that FIN 46(R) did not require consolidation, that conclusion had to be revisited with the second VLC transaction. Yet she did not recall any FIN 46(R) analysis conducted specifically in connection with VLC II, for which management did not even prepare an accounting memorandum. Indeed, there is no evidence in the record that management or the auditors ever considered the question.

3. Moore Failed To Appropriately Evaluate Management's Conclusion that Recognition of Revenue for the WSS Transactions Was Appropriate.

Basin Water management asserted that collectibility of the WSS I sales price was reasonably assured because WSS was "backed by National City, a large Chicago Bank" and because $25,000 had been placed in escrow as an initial deposit against the $4,400,000 sales price. As with the VLC I transaction, Moore's agreement with management's reasoning and conclusion concerning collectibility was based solely on management's representations. Moore and the rest of the engagement team performed no procedures and obtained no evidence to corroborate management's assertions that National City had any relationship with WSS that might provide support for collectibility or that a $25,000 deposit had actually been placed in escrow. In addition, Moore conceded at the hearing that a $25,000 deposit on a $4.4 million transaction was not a sufficient basis for determining that collectibility was reasonably assured.

Moore did even less to evaluate the second WSS transaction than the first. The WSS II transaction occurred late in December 2007, just days before the end of the reporting period. Management prepared no memorandum to support its accounting for the transaction, but Moore understood that management's rationale for revenue recognition in the WSS II transaction was similar to its rationale in the WSS I transaction. Moore and others on the engagement team received the contract and a contract confirmation but performed no procedures to assess whether the collectibility of the $1.3 million sales price was reasonably assured, including any procedures to determine if National City actually backed the transaction.

4. Moore Failed To Appropriately Consider Whether the WSS Transactions Required WSS To Be Consolidated into Basin Water's Financial Statements Under FIN 46(R).

As with the VLC transactions, Moore needed to consider whether FIN 46(R) required WSS to be consolidated with Basin Water as a result of the WSS I transaction. She knew that WSS, like VLC, was a special purpose entity and was created specifically to enter into transactions with Basin Water and had no other operations. The WSS I transaction occurred near the end of the third quarter and involved a $4.4 million sales price (though the revenue would not be recognized all at once, but under the percentage-of-completion method). She also knew that under the terms of the transaction, WSS was obligated to pay only $25,000 up front plus an additional $1.5 million upon acceptance of the systems by the end user, with the balance payable beginning five years later. Thus, she knew that, as of year-end 2007, Basin Water was, in essence, financing 99.4% of the sales price and would continue to finance the sales price for ten years. There is no evidence that Moore considered whether the application of FIN 46(R) to the WSS I transaction required consolidation of Basin Water's financial statements with those of WSS. But to the extent Moore actually considered whether consolidation was required and concluded that it was not, her conclusion depended on Basin Water management's unsupported assertion that the SPE was sufficiently capitalized. No procedures were performed by the auditors to determine the capital structure of WSS or the economic relationships among the entities involved in the transaction, or even to confirm the participation of National City.

Moore testified that she understood that the WSS II transaction, occurring in late December and involving a $1.35 million sales price, also required her to consider whether consolidation was necessary. Yet, as she conceded, she did not perform such an analysis and was not aware of management performing one. Moore also admitted that she understood that the WSS II transaction was reason to cause her to reevaluate her prior conclusion about the WSS I transaction, and that she needed to consider whether WSS's capital structure had changed due to the WSS II transaction. Yet she testified that she obtained no evidence after the WSS II transaction about WSS's capital structure.

5. Moore's Defenses to the Charges Arising from the Audit Work on the SPE Transactions Lack Merit.

Moore makes several arguments in defense of the audit work on the SPE transactions. Although some of them appear focused only on the VLC I transaction, we broadly construe her arguments as defenses related to all of the SPE transactions. None of her arguments overcomes the evidence of violations.

a. Moore's Claim that Enough Audit Work Was Done To Address the Issue of Consolidation of Basin Water's Financial Statements with Those of VLC and WSS Is Refuted by the Evidence.

Moore claims enough was done in the audit with regard to the SPE transactions to satisfy applicable auditing standards. She points specifically to AICPA Practice Alert 2005-1, which provides guidance to auditors of nonissuers in planning and performing auditing procedures with respect to variable interest entities, and claims that the "audit team utilized this guidance in determining the procedures that we deemed, using our professional judgment, to be appropriate." MB 6. She asserts that the team "did send audit confirmations as part of our revenue and receivable audit procedures"; "did get and review the sales agreements noting significant provisions and assignment provisions in the related leases"; "did interview the Company's attorney related to [the] transaction (his opinion was that the sales were valid)" and "did call the managing member of the VIE entities for each transaction to discuss the nature of the transaction"; "researched the purported owners of the VIE entities on the internet and confirmed that the entity that was reported as providing the equity was in the business of underwriting/purchasing major equipment subject to leases such as Basin's"; "understood that the assets that were being sold generated sufficient funds to repay the notes receivable"; "discussed" the transactions with the audit committee; and believed the management-provided memorandum "covered the significant aspects of variable interests that Basin retained in the VIE." MB 6-8.

To begin with, although Moore seems to be implying in her brief that the team followed this guidance at the time of the audit, she specifically testified that she did not instruct her assistants to consult this practice alert in connection with the 2007 audit and that, to her knowledge, none of them did consult it. *See* Tr. 327-28. Moreover, her argument is inconsistent with the specific actions she claims were taken in the audit.

First, to the extent Moore claims to have carefully followed the guidance described in the practice alert, she departed from that guidance by admittedly neglecting to "review any operating agreements or other contracts to determine whether the nature and extent of such transactions create variable interests in VIEs." Ex. D-36 at 14. Although this guidance was incorporated into her own FIN 46(R) training materials, Moore testified that she failed to obtain any operating agreements related to VLC and WSS because "Basin [Water] wasn't a party to those operating agreements." Tr. 326-27. Regardless of whether Basin Water was a party to the operating agreements, however, Moore could not rely on Basin Water management's representations alone to conclude that (1) VLC and WSS were sufficiently capitalized to justify revenue recognition and (2) consolidation under FIN 46(R) was not required. That Basin Water was not a party to the operating agreements only makes her reliance on management's representations more unreasonable.

Second, Moore's mention of confirmations hurts, not helps, her defense, for, as discussed above, one of the confirmations for the VLC I transaction showed an obvious discrepancy of more than $500,000 yet was accepted as supporting management's accounting treatment for the transaction. Third, the letter agreement for the VLC II transaction was on its face incomplete as to the assets to be sold, indicating that Moore's review of the agreements could not have been as rigorous as she now claims. Fourth, discussion of the enforceability of the agreement with outside counsel occurred only with respect to the VLC I transaction and was irrelevant to collectibility and consolidation. Fifth, searching the internet to see if CCH Netherlands existed and engaged in certain types of business is not a substitute for determining if the bank was actually contributing the equity it supposedly promised, and there is no evidence that Moore did even that minimum amount of research with respect to the WSS transactions.

Sixth, there is no evidence to support Moore's claim that she or anyone else on the engagement team "called the managing member" (the Texas attorney behind the SPEs) during the 2007 audit. Seventh, to the extent Moore discussed the transactions with the audit committee, the import of those discussions is unknown and Moore does not offer specifics to support her argument.

Finally, although Moore claims that she believed the accounting memorandum provided to her by management covered the substance of a FIN 46(R) analysis, that memorandum did not contain the information necessary to a FIN 46(R) analysis, and it is clear that management did not share her belief: the company disclosed in its restated financial statements that it had not performed a FIN 46(R) analysis. Moreover, there is no accounting memorandum at all for the VLC II or WSS II transactions. In sum, the procedures that Moore claims were done in reference to Practice Alert 2005-1 were incomplete and did not corroborate the management representations that were Moore's basis for concluding that consolidation was not called for by FIN 46(R).

b. Moore's Claim that FIN 46(R) Audit Documentation Was Lost Is Unsupported, Inconsistent with Her Admissions that She Performed No FIN 46(R) Analysis with Respect to Two of the SPE Transactions, and Unavailing Because the FIN 46(R) Analysis Moore Claims To Have Performed Was Inadequate.

Moore contends that some of the audit documentation demonstrating the FIN 46(R) audit analyses was lost through a defect in the software used by SingerLewak. She asserts that the Basin Water electronic audit file "crashed and was restored several times during the audit. Restorations were performed with back-up copies and risk that work would be lost, despite efforts to review files, was significant." According to Moore, "Basin's audit file is missing documents, the extent of which is not entirely determinable given that it is impossible to have perfect recollection of the entire contents of the file. We do know that there is a standard Variable Interest Entity audit program (that existed in the Basin Water audit file under the prior repository system) that is not present as well as other summary documentation (i.e. our summary of waived adjustments)." MB 14.

Moore's claim of missing documentation that would have shown that she complied with PCAOB auditing standards is vague and contrary to the evidence. At the hearing, Moore acknowledged that if she had seen a FIN 46(R) analysis at the time of the 2007 audit she would have remembered it, and she remembered no such work paper. Tr. 249-50. Likewise, the engagement team's senior manager was unable to identify any relevant lost documents during the hearing and in fact, testified that any audit work that was lost in the transition to the new software system was, ultimately, redone. R.D. 47b at 500-01. And, significantly, management stated in its restated financials in 2008 that the SPE transactions were incorrectly accounted for "as a result of the failure to apply" FIN 46(R). If management conducted no FIN 46(R) analysis, Moore could not have evaluated one, and that is consistent with the lack of any evidence the engagement team conducted a FIN 46(R) analysis. Moreover, Moore's suggestion that the concepts necessary to form a conclusion as to consolidation were indirectly addressed in management's accounting memorandum discussing revenue recognition for the VLC I transaction supports the idea that, if Moore drew a conclusion that the SPEs did not need to be consolidated, she did not separately document it.

In an attempt to corroborate her claim that some documentation is missing from the audit work papers, Moore points to one document—a letter from CCH Netherlands confirming its obligations to VLC—that is referenced in a district court opinion in a pending SEC enforcement case against Basin Water's chief executive officer and chief financial officer, *SEC v. Jensen*, 2013 WL 6499699 (C.D. Cal. Dec. 10, 2013), appeal filed, No. 14-55221 (9th Cir. Feb. 7, 2014), but does not appear in the record before the Board. R.D. 59 at 1. In *Jensen*, the SEC alleged, in part, that the defendants improperly recognized revenue in connection with six transactions, including the four SPE transactions at issue here, to disguise the company's true financial performance in its 2006 and 2007 quarterly and annual reports, in violation of the antifraud provisions of the securities laws and related rules. The *Jensen* opinion only cursorily references the document cited by Moore, describing it as a "letter from CCH to VLC confirming binding agreement to pledge assets for CCH's purchase of units from Basin." 2013 WL 6499699, *18. The opinion does not explain how the court concluded it was "review[ed]" by SingerLewak during the 2007 quarterly reviews or audit, since no one from SingerLewak was called to testify at the trial of the Basin Water executives. Moore has acknowledged that the information she was provided during the SEC's investigation had all been included in the restatement work papers. Tr. 387-88.

Additionally, Moore testified that during the 2007 quarterly reviews and audit, she was not aware of any evidence of the relationship between CCH Netherlands and VLC. Tr. 138. Yet the letter she cites, at least as described by the district court opinion in *Jensen*, addresses that relationship. And the letter does so in such a way that, even if it had been given to the engagement team in the 2007 audit, only serves to raise unanswered questions. The document identifies the purchaser of the water treatment systems as CCH Netherlands, but by agreement VLC, not CCH Netherlands, was buying the systems from Basin Water.

Moore is thus unable to support her vague claim of lost audit documentation, which cannot overcome the extensive admissions, testimony, and stipulations in which she has conceded that she repeatedly accepted uncorroborated management representations about facts critical to deciding whether the SPEs' financial statements needed to be consolidated with Basin Water's. Tr. 123, 149-54, 250-51. Nor does it overcome Moore's admissions that she performed no FIN 46(R) analysis at all with respect to the VLC II and WSS II transactions, despite knowing these analyses were necessary. *See* Tr. 304, 319. We reject Moore's non-specific, unsupported claim that hypothetical lost work papers would show she performed a proper FIN 46(R) analysis.[11/]

c. Moore's Claim that Management Withheld Information from the Auditors Is Unavailing.

Moore also argues that Basin Water management withheld information about the SPE transactions from the auditors. She asserts, "I believe that I conducted my audit in a professional manner and that circumstances outside of my (professional) control led to a restatement of the financial statements, an SEC trial and this PCAOB investigation." MB 2. According to Moore, "During the restatement process, management provided the audit team information that had not been provided during the original audit. Much of the information appeared to be information that management had in its possession, or should have had in its possession, an indication to us that management may have intentionally withheld information from the audit team that would have influenced our conclusion that the financial statements were (as originally filed) in accordance with Generally Accepted Accounting Principles." MB 3. Following the restatement an SEC investigation ensued, in which Moore was questioned. Moore testified that she saw materials in that context that indicated that "information had been kept from the audit team." But Moore could not clarify what she was referring to, and she acknowledged that the information she was provided at the SEC deposition had all been included in the restatement work papers. Tr. 387-88.

11/ Moore does not argue before us, as she did before the hearing officer, that the district court's decision (now on appeal) in favor of the defendants in the *Jensen* case has any bearing on the present case. In any event, the hearing officer correctly pointed out that *Jensen* features different charged parties and charges, distinct legal standards, and separate records. This proceeding seeks to determine whether Moore violated PCAOB standards in her conduct of the 2007 Basin Water audit in light of the specific circumstances presented to her as an auditor. That issue was not before the *Jensen* court, whose disposition of the case that was before it does not change the set of standards to which Moore was expected to adhere, eliminate the warning signs that are established by the record in this case, or mitigate her duty to exercise due care in light of them. *See, e.g., Hatfield,* 2013 SEC LEXIS 1954, *84 (noting that whether the issuers "ultimately filed materially misleading financial statements is not the issue" in that PCAOB case against the auditor); *cf. Michael J. Marrie*, SEC Rel. No. 34-48246, 2003 WL 21741785, *8 (July 29, 2003) ("An auditor who fails to audit properly…should not be shielded because the audited financial statements fortuitously are not materially misleading."), *rev'd on other grounds*, *Marrie v. SEC*, 374 F.3d 1196 (D.C. Cir. 2004).

The record shows that Moore asked for only one piece of information that management told her it did not have and could not obtain: VLC's operating agreement. Moore's response was simply to end her inquiry there. And any other information she lacked was due, according to her own testimony, to her failure to ask for it and her over-reliance on uncorroborated management assertions. Even assuming that Moore's characterization of management's interactions with her were accurate, such conduct did not relieve Moore of her responsibilities under PCAOB auditing standards. *See, e.g.,* AU § 326.25 ("To the extent the auditor remains in substantial doubt about any assertion of material significance, he or she must refrain from forming an opinion until he or she has obtained sufficient competent evidential matter to remove such substantial doubt, or the auditor must express a qualified opinion or a disclaimer of opinion."); *see also Hatfield*, 2013 SEC LEXIS 1954, *87 ("Whether the companies withheld documents or made misrepresentations…did not relieve Applicants of their auditing responsibilities"); *cf. John J. Aesoph, CPA,* SEC Rel. No. 34-78490, 2016 WL 4176930,*17 & n.86 (Aug. 5, 2016) (issuer's fraud "did not cause Respondents' auditing standards violations; those violations resulted from Respondents' failures to" comply with the standards); *Wendy McNeeley, CPA*, SEC Rel. No. 34-68431, 2012 SEC LEXIS, *40 (Dec. 13, 2012) ("The gravamen of the charge against [respondent] … is not her failure to uncover the fraud itself, but her failure to adhere to [applicable auditing standards] during the audit."); *Barry C. Scutillo*, SEC Rel. No. 34-48238, 2003 SEC LEXIS 1777, *24 (July 28, 2003) ("Scutillo cannot shift the blame for his actions to [management]. The fraud committed by [] management did not relieve him of his obligation to conduct a proper audit in accordance with established standards."); *Michael S. Hope, CPA*, SEC Rel. No. 34-23513A, 1986 SEC LEXIS 1041, *98 (Aug. 6, 1986) (stating that SEC has repeatedly held that "being lied to" is not an automatic defense to charges of improper professional conduct); *see also Ernst & Ernst*, SEC Rel. No. AS-248, 1978 SEC LEXIS 1451, *95 (May 31, 1978) ("That [the auditors] were deliberately deceived and that material information was kept from them is clear. But such deception did not relieve them of their responsibility to perform audits in conformity with [applicable] auditing standards.").[12/]

[12/] Moore's conduct of interim reviews of Basin Water's financial statements is not at issue in this proceeding, and we express no view on whether she satisfied the obligations applicable to those interim reviews. We note, however, that the standards applicable to interim reviews contain direction similar to that applicable to year-end audits with respect to an auditor's choices when confronted with management's refusal to provide information the auditor deems necessary. *See* AU § 722.28, *Interim Financial Information* ("When an accountant is unable to perform the procedures he or she considers necessary to achieve the objective of a review of interim financial information, or the client does not provide the accountant with the written representations the accountant believes are necessary, the review will be incomplete. An incomplete review is not an adequate basis for issuing a review report.").

B. Moore Violated PCAOB Auditing Standards in Evaluating Basin Water's Contract Loss Reserve Estimate.

It is undisputed that Basin Water's contract loss reserve was a significant accounting estimate identified by Moore as a risk of material misstatement because it was largely subjective and, as a result, could be manipulated by management. The fact that Basin Water had been sued by shareholders challenging the company's accounting for its contract loss reserves called even further attention to that estimate.

Moore was aware during the 2007 audit that management assumed that a possible future expansion of the water district's facility would cause the contract to break even beginning in 2009 and that therefore no loss reserve was necessary after 2008. Moore knew that management had revised its reserve estimate in the prior year because it had relied on ill-supported assumptions and instructed her audit assistants to devote specific attention to this account. Yet Moore took no steps to follow up with them to see if her instructions were followed and to discover if they had made any attempt to understand whether the estimate was reasonable or to corroborate the basis for it. Instead, Moore reviewed and approved the work paper that documented management's ill-supported basis for its estimate without further comment or action.

Moore contends that her evaluation of the reserve estimate was reasonable because she "determined that, based on the current positive cash flow and management's assertions that the cash flow would continue to be positive, that management's position that no additional reserve was required was appropriate." MB 9. There is no documentation in the work papers, as Moore admits, that the purported new profitability of the well at the end of 2007 was the actual basis for her conclusion that management's contract loss estimate was reasonable, nor any documentation showing that management itself considered this as a factor in its analysis. Thus, Moore's defense lacks support. *See Aesoph,* 2016 WL 4176930,*11 ("'if audit documentation does not exist for a particular procedure or conclusion related to a significant matter, it casts doubt as to whether the necessary work was done") (quoting AS No. 3 ¶ 6, App. A ¶ A10); *Dearlove*, 2008 SEC LEXIS 223, *32 n.39 (noting that "workpapers are ordinarily the foundation on which support for audit conclusions is demonstrated" and concluding that "[w]e consider the absence of work papers to be evidence that the audit team did not devote substantial, if any, effort to review the areas in question"); *Hatfield,* 2013 SEC LEXIS 1954, *43-46 (rejecting respondent's hearing testimony in which he claimed for the first time to have done a materiality assessment).

In addition, the schedule to which Moore points as support for the water district contract becoming profitable at the end of 2007 (Ex. D-147; Tr. 357-58) conflicts with the contract loss reserve schedule that showed an estimated loss for 2007 and 2008 (Ex. D-68 at 3, 157-58). If Moore had, in fact, relied on the former schedule during the audit, the record provides no explanation for why she failed to get clarification from management as to its reasons for recording a loss reserve for 2007 and 2008 when the water district contract had purportedly become profitable.

C. Summary of Findings of Violations

Based on the foregoing analysis, the Board finds that the Division proved by a preponderance of the evidence that Moore violated PCAOB Rules 3100 and 3200T by failing to comply with numerous PCAOB standards in the 2007 Basin Water audit.

Moore's evaluation of management's decisions to recognize revenue under SAB 104 for the four SPE transactions failed to comply with fundamental auditing standards. Moore was aware that revenue recognition generally, and the SPE transactions specifically, presented a high risk of material misstatement. *See Dearlove*, 2008 SEC LEXIS 223, *104 ("As audit risk increases, so does the need for care and skepticism."). She testified that she was concerned about whether these unusual transactions had economic substance and that she recognized that the transactions might even be detrimental to the company. And she was aware of gaps and discrepancies in the documentation with respect to, among other things, the company's receipt of down payments (such as evidence that Basin Water had not received its $500,000 down payment) and end-user consents, including evidence contradicting Basin Water's financial statement assertions about the revenue recorded for the SPE transactions.

Yet Moore admittedly accepted management's representations as the sole basis for her conclusions that (1) VLC and WSS were sufficiently capitalized to support collectibility under SAB 104; (2) the down payments had been received as promised in all four SPE transactions; and (3) the required consents from end users had been obtained and thus the deliverability factor of SAB 104 had been met for the VLC I transaction. Management representations are not a substitute for procedures designed to gather and evaluate evidence sufficient to support conclusions about financial statement assertions and afford a reasonable basis for an audit opinion. *Hatfield,* 2013 SEC LEXIS 1954, *6, n.10; *cf. Peat, Marwick, Mitchell & Co.*, SEC Rel. No. AS-173, 1975 SEC LEXIS 2516, *6 (July 2, 1975) ("While the Commission does not suggest that management representations are not a significant source of evidence, it is apparent that if the independent professionalism inherent in the auditor's role is to be maintained, evidence beyond these assertions must be obtained in significant audit areas.").

Under the circumstances, Moore thus violated (1) AU §§ 150 and 230 by failing to exercise due professional care, which requires observing the standards of field work, "diligently perform[ing]" the "gathering and objective evaluation of evidence," and exercising professional skepticism, "an attitude that includes a questioning mind and a critical assessment of the audit evidence," according to which the auditor "should not be satisfied with less than persuasive evidence because of a belief that management is honest"; (2) AU §§ 150 and 326 by failing to be "thorough" in her "search for evidential matter" and to obtain sufficient competent evidential matter to provide a reasonable basis for forming an audit opinion and to form conclusions regarding the validity of assertions in Basin Water's financial statements as to the revenue recorded for the SPE transactions; and (3) AU §§ 110, 316.66, and 316.67 by failing to consider whether management was "placing more emphasis on the need for a particular accounting treatment than on the underlying economics of the transaction" and whether the SPEs had "the substance or the financial strength to support the transaction," which Moore needed to do in order to understand whether management's business rationale for the "significant unusual" SPE transactions suggested "fraudulent financial reporting."

Moreover, Moore's disregard of clear discrepancies in the confirmation obtained for the VLC I note receivable was also a violation of her duty under AU §§ 330.15 and 330.33 to "evaluate the combined evidence provided by the confirmations…to determine whether sufficient evidence has been obtained about all the applicable financial statement assertions." *See Marrie,* 2003 WL 21741785, *15 (finding failure to exercise appropriate professional skepticism and obtain sufficient evidential matter by failing to inquire further about confirmation discrepancies).

Moore also violated PCAOB standards in failing to conduct an adequate—or, as she admits for the VLC II and WSS II transactions, any—FIN 46(R) analysis of the SPE transactions. Her uncritical acceptance of management's representations as to the capitalization of VLC and WSS without obtaining corroborating evidence violated auditing standards requiring her to exercise due professional care and skepticism and to obtain sufficient competent evidential matter to form conclusions regarding the validity of assertions in Basin Water's financial statements as to the revenue recorded for the SPE transactions and to afford a reasonable basis for forming an audit opinion. AU §§ 150, 230, 326; *see McNeeley,* 2012 SEC LEXIS 3880, *43 (failing to follow up on unsupported and contradictory management representations was "a clear failure to exercise due care"). To the extent Moore performed any FIN 46(R) analysis, as she claims, she also violated AS No. 3, which requires an auditor to "document the procedures performed, evidence obtained, and conclusions reached with respect to relevant financial statement assertions," because there is no evidence in the work papers that she conducted such an analysis.

Moore's work in the 2007 audit on the contract loss reserve estimate also fell far short of compliance with basic auditing standards. Moore knew the reserve presented a high risk of material misstatement. Thus, she needed to exercise increased care and skepticism in assessing the estimate. *See Dearlove,* 2008 SEC LEXIS 223, *104. Her acceptance of management's assumption about the future profitability of the water district well—concerned as she was about whether the assumption was adequately supported and about the history of the company having to correct its assumptions in prior years—constituted (1) a failure to exercise due professional care, including professional skepticism, in violation of AU §§ 150 and 230; (2) a failure to obtain and evaluate sufficient competent evidential matter to form conclusions regarding the validity of assertions in Basin Water's financial statements related to the contract loss reserve and to afford a reasonable basis for forming an audit opinion, in violation of AU §§ 150 and 326; and (3) a failure to obtain sufficient competent audit evidence that a significant accounting estimate was reasonable under the circumstances and was presented in conformity with applicable accounting principles, in violation of AU § 342.07.

Additionally, Moore's failure to follow up with her audit assistants after specifically instructing them to devote attention to the assumptions underlying the contract loss reserve was an abdication of her responsibilities to direct and review the work of her assistants "to determine whether it was adequately performed and to evaluate whether the results are consistent with the conclusions to be presented in the auditor's report," in violation of AU §§ 150, 311.11, and 311.13.[13/]

VI.

Sarbanes-Oxley Act Section 105(c)(4) authorizes the Board to impose "such disciplinary or remedial sanctions as it determines appropriate," subject to certain limitations, on registered public accounting firms or associated persons of such firms if the Board "finds, based on all of the facts and circumstances," that the firm or person has violated PCAOB rules and auditing standards. 15 U.S.C. 7215(c)(4). With respect to a proceeding against an associated person, such as here, Section 105(c)(5) specifies that a suspension, bar, or limitation on the activities or functions of such person, as well as a civil monetary penalty in excess of $110,000 "for each violation," "shall only apply" to "intentional or knowing conduct, including reckless conduct, that results in violation of the applicable statutory, regulatory, or professional standard" or to "repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard." 15 U.S.C. 7215(c)(5); 17 C.F.R. 201.1003, Table III. In this

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13/ We need not reach the additional charge that Moore "improperly authorized the issuance by SingerLewak of a standard audit report expressing an unqualified opinion" on Basin Water's 2007 financial statements, in violation of AU § 150 (fourth standard of reporting) and AU § 508.07 ("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 [GAAP]. This conclusion may be expressed only when the auditor has formed such an opinion on the basis of an audit performed in accordance with [applicable] auditing standards."). This charge was not the subject of any particular discussion by the parties or the hearing officer. The violations we have found amply support our determination of sanctions, which follows.

context, recklessness "represents an 'extreme departure from the standards of ordinary care, … which presents a danger' to investors or the markets 'that is either known to the (actor) or is so obvious that the actor must have been aware of it.'" *Hatfield,* 2013 SEC LEXIS 1954, *77 (citation omitted). Applicable PCAOB auditing standards provide the standard of care for assessing the auditor's conduct. *Id*.

A. Moore Recklessly Violated PCAOB Auditing Standards.

In high-risk areas involving transactions with a substantial impact on the company's publicly reported revenue, Moore's conduct in leading the 2007 Basin Water audit fell far short of her responsibilities under basic auditing standards and constituted "an egregious refusal to investigate the doubtful and to see the obvious." *Marrie,* 2003 SEC LEXIS 1791, *54-*55 (cited in *Gately*, 2010 SEC LEXIS 2535, *39 & n.40); *see Hatfield*, 2013 SEC LEXIS 1954, *80. Moore acted recklessly, at investors' peril.

Moore determined that Basin Water had an "aggressive" approach to its accounting for revenue and knew that the SPE transactions were a significant change in Basin Water's business model that allowed the company to accelerate revenue recognition and avoid consolidation of its financial statements with those of the SPEs. She knew that the SPE transactions represented a substantial portion of Basin Water's revenues and permitted the company to avoid reporting a year-over-year decline in revenue. Jt. Stip. 3 ¶ 11.m. And she knew that management had, in the past, relied in estimating its contract loss reserve on what, in her judgment, were ill-supported assumptions that had to be corrected. Yet Moore knowingly relied uncritically, time and again, on management representations about the financial backing for the SPEs instead of obtaining and evaluating sufficient audit evidence, skipped basic audit procedures such as confirming that promised down payments and end-user consents were actually received, and failed to follow up with other engagement team members to confirm how management was supporting its estimate of the contract loss reserve. As the hearing officer found, Moore could not have failed to be "aware of a danger that Basin Water's financial statements were not accurate and that revenues were overstated." I.D. 81.

Where, as here, circumstances call for increased skepticism and the auditor nevertheless exercises little or none, that conduct is reckless. *See Scutillo*, 2003 SEC LEXIS, *25-26 (finding recklessness where auditor, "faced with a highly unusual transaction that accounted for more than half [the issuer's] assets" "conducted a perfunctory audit that, under the circumstances, was totally inadequate"). Moore must have known, for example, that relying on uncorroborated assertions about the participation and capitalization of entities central to several of the company's most novel and significant transactions presented a danger to those expecting its financial statements to "have been subjected to the rigors of independent and objective investigation and analysis" (*McCurdy v. SEC*, 396 F.3d 1258, 1261 (D.C. Cir. 2005)).

Moore was an experienced auditor who was a firm-designated specialist on revenue recognition and FIN 46(R), and she trained firm personnel on how to apply FIN 46(R).

Although Moore broadly claims that any violations in which she may have engaged do not "rise to the level of reckless" (R.D. 64 (Moore's Reply Brief, MBR) 3), this contention is at odds with our detailed and extensive examination of the evidence and findings of violations. Moore suggests, for example, that the overall complexity of the audit should mitigate a finding that her conduct was reckless. MB 12. As support, she asserts that Basin Water had completed a $12 million transaction in the fall of 2007 that "had to be analyzed for VIE implications too" and points to an accounting memorandum management prepared in March 2008 and provided to Moore, which concluded that the company was not required to consolidate the entity under FIN 46(R). *See* MB 12; Ex. GM-1; Tr. 110-12. The fact that Moore recognized the need to evaluate a management FIN 46(R) analysis for one transaction only highlights how egregious was her lack of such evaluation for the SPE transactions. And the violations found in this case do not turn on complicated interpretations or applications of governing principles but on flaws in carrying out basic audit tasks. In any event, complexity of an audit does not absolve an auditor of applying the required level of care. *Dearlove*, 2008 SEC LEXIS 223, *20, *78-79 (noting that auditing standards "apply to audits of all sizes and complexity" and rejecting argument that complexity excuses failure to observe obligations described by auditing standards). Moore has provided no basis for minimizing the nature or extent of her pronounced departures from the fundamental auditing principles at issue here.

B. Sanctions

In determining the sanctions that are appropriate for Moore's violations, we consider the nature, seriousness, and circumstances of the violations and any potentially aggravating or mitigating factors supported by the record, to carry out our statutory responsibility to protect investors' interests and further the public interest in the preparation of informative, accurate, and independent issuer audit reports. *See* Sarbanes-Oxley Act Section 101(a), 15 U.S.C. 7211(a); *see also* Section 101(c)(5), 15 U.S.C. 7211(c)(5) (in identifying duties of Board, referring to objective "to promote high professional standards among, and improve the quality of audit services offered by, registered public accounting firms and associated persons thereof" or "otherwise to carry out this Act, in order to protect investors, or to further the public interest"); *Hatfield*, 2013 SEC LEXIS 1954, *95 ("'[T]he appropriate sanction depends upon the facts and circumstances of each particular case and cannot be determined precisely by comparison with actions taken in other proceedings.'") (citation omitted). The gravity and extent of Moore's misconduct, under aggravating circumstances, outweigh the arguments offered in mitigation and call for the imposition of strong sanctions.

Moore's work in leading the 2007 Basin Water audit was severely deficient in multiple, important respects. She committed violations in two high-risk audit areas, involving four separate transactions and a reserve estimate for a fifth transaction, that required rigorous, objective audit inquiry and analysis and had a substantial impact on reported revenue. As the Division points out, "[b]y year-end, she had four different opportunities to audit the SPE transactions correctly," but "[e]ach time, she failed and, in fact, despite additional red flags, performed fewer procedures each successive transaction." R.D. 50, Division's Post-Hearing Brief 23. Her repeated lack of diligence in that audit work and failure to apply skepticism to management's representations, especially in light of the "surfeit of red flags" of which she was aware, betrays an approach to her audit responsibilities that was "perfunctory at best" (*McCurdy*, 396 F.3d at 1264) and created an "obvious, significant, and ongoing risk to investors" who were entitled to believe that the financial statements had been audited with due professional care (*Hatfield*, 2013 SEC LEXIS 1954, *85-*86). As the hearing officer concluded, Moore's violations were extensive, extreme, and "created a significant risk of harm to public investors and to the financial markets." I.D. 80, 81, 98. The more serious a violation, the stronger the inference that it will be repeated. *See generally Geiger v. SEC*, 363 F.3d 481, 489 (D.C. Cir. 2004).

All the more troubling for our consideration of Moore's willingness and ability to comply with PCAOB auditing standards is the fact that she committed the violations despite being an experienced auditor, indeed a firm-designated specialist and trainer of other auditors in FIN 46(R), which should have helped equip her to understand her auditing responsibilities. *See, e.g., Hatfield,* 2013 SEC LEXIS 1954, *91 (imposing permanent bar on "experienced auditors, who nevertheless knowingly, intentionally, and repeatedly failed to exercise the basic professional skepticism and due care that are the touchstones of an auditor's responsibilities"); *Dearlove*, 2008 SEC LEXIS 223, *109, *111 (imposing a bar from appearing or practicing before the Commission with leave to reapply after four years for having "violated fundamental principles of auditing" despite "lengthy audit experience"). In her briefing to us, Moore represents, without elaboration, that she has "not participated as a partner on a public audit for several years." MB 21. But Moore's statements that she retains her CPA license in California (Tr. 16), intends to continue to work at a firm that audits issuers (MB 21), and is concerned that, if sanctioned, "I will lose all attest responsibilities (public and private because our practice is so interdependent)" (*id.*), as well as the fact that she is only about 50 years old (OIP 4 ¶ 11; Ans. 8 ¶ 11), indicate that at any time she could return to auditing public companies as a partner, if she has not already been doing so at a less senior level.

Moore may be accepting responsibility to some extent for her conduct when, at times in this proceeding, she suggests the possibility that "mistakes [were] made during the execution of the audit" and that "shortcomings [existed in] the efforts that we (the audit team) earnestly put forward." R.D. 64, Moore Reply Brief 2, 3. Although Moore has also stated that she was "mortified by the restatement and deeply troubled [by] the nature of the errors that were restated" and that, in addition to the "personal and professional price" she paid, "[t]he investors in Basin were also deeply affected" (R.D. 52, Moore Post Hearing Brief 13), those statements seem less an acceptance of responsibility for her own conduct than an expression of regret that errors were made by someone in a context in which there was a restatement. Overall, Moore's defense of her conduct leaves us with no assurance that she properly understands her auditing responsibilities and would respond appropriately if faced with similar circumstances in a future issuer audit. *See Hatfield*, 2013 SEC LEXIS 1954, *79-*80, *87, *92 ("That Applicants admit all of the facts forming the bases for their departures from professional standards without grasping the extent of their wrongdoing raises serious questions about their ability to comply with those standards in the future."); *see generally, e.g., Aesoph,* 2016 WL 4176930, *17 & n.81 (citing *Seghers v. SEC*, 548 F.3d 129, 136-37 (D.C. Cir. 2008)); *Horning v. SEC*, 570 F.3d 337, 346 (D.C. Cir. 2009); *SEC v. Commonwealth Chem. Sec., Inc.*, 574 F.2d 90, 100 (2d Cir. 1978); *Rita J. McConville*, SEC Rel. No. 34-51950, 2005 SEC LEXIS 1538 at *60 (June 30, 2005), *aff'd*, 465 F.3d 780 (7th Cir. 2006).

Additionally, Moore argues that she should not be sanctioned in this case because she has "never been subjected to any professional sanctions" and because Basin Water's 2006 audit was "subject to [PCAOB] inspection and received no comments," and two 2009 audits unrelated to Basin Water received just one comment after PCAOB inspection. MB 21. Moore does not explain how inspection of some audit work that predated the significant changes to Basin Water's business model or of later audit work done for unrelated companies is relevant to our assessment of the deeply and extensively flawed work she did on the 2007 Basin Water audit, about which we have ample, detailed, and direct evidence. Moreover, we cannot agree with Moore that her argument about unrelated audit work is entitled to significant weight, as she is obligated to comply with PCAOB rules and standards at all times as an associated person of a registered public accounting firm. *E.g.,* PCAOB Rules 3100, 3200T; *see generally, e.g., Siegel v. SEC*, 592 F.3d 147, 156-57 (D.C. Cir. 2010); *Rooms v. SEC*, 444 F.3d 1208, 1214 (10th Cir. 2006).

Moore further contends that sanctions are unnecessary because, according to her brief, she has "already paid a significant personal and professional price" as a consequence of this proceeding, in that she has "not participated as a partner on a public audit for several years" and her "compensation and [her] role as a partner has been deeply affected by this matter." MB 21. These asserted effects do not diminish the Board's imperative to "protect the interests of investors and further the public interest" by, among other things, investigating and sanctioning conduct that threatens those interests. *See* 15 U.S.C. 7211(a), 7211(c)(5); *see also Gary M. Kornman*, SEC Rel. No. 34-59403, 2009 WL 367635, *9 (Feb. 13, 2009) (concluding that "'[f]inancial loss to a wrongdoer as a result of his wrongdoing' does not mitigate the gravity of his conduct") (quoting *Robert L. Wallace*, SEC Rel. No. 34-40654, 1998 WL 778608, *5 (Nov. 10, 1998)), *aff'd*, 592 F.3d 173 (D.C. Cir. 2010); *Hunter v. SEC*, 879 F. Supp. 494, 501 (E.D. Pa. 1995) (there is no general right "not to be injured in one's reputation or business prospects" by the fact of investigative or disciplinary actions that are authorized by Congress) (citing cases).

Finally, Moore contends that she should not be sanctioned because she has been "forthcoming and cooperative with PCAOB inquiries and requests" and has "the u[t]most respect for the PCAOB's mission." MB 22. PCAOB policy regarding how extraordinary cooperation may be considered in connection with an investigation does permit the extension of some credit for such cooperation under certain circumstances but would not apply to efforts that are not "beyond what is required to comply with legal and regulatory obligations." *Policy Statement Regarding Credit for Extraordinary Cooperation in Connection with Board Investigations*, PCAOB Rel. No. 2013-003 (Apr. 24, 2013) at 1, 4. Moore fails to identify any conduct that rises to a level above what is expected of all persons who elect to register with the PCAOB. *Cf. Kent M. Houston*, SEC Rel. No. 34-71589A, 2014 WL 936398, *7 & n.56 (Feb. 20, 2014) (citing *Philippe N. Keyes*, SEC Rel. No. 34-54723, 2006 WL 3313843, *6 n.22 (Nov. 8, 2006) (applicant's "cooperation in the [FINRA] investigation was consistent with the responsibilities he agreed to when he became an associated person and does not constitute substantial assistance" and therefore mitigative credit under FINRA Sanction Guidelines)); *see* PCAOB Rules 5110(a), 5200(a)(3). And it hampers her attempt to claim credit for forthrightness in acknowledging facts during the litigation to at the same time refuse to accept responsibility for auditing standards violations established by those facts, standards it is the PCAOB's mission to enforce.

Based on consideration of all of the facts and circumstances of this case, we find that Moore poses a substantial, continuing risk of harm to those who trust to the reliability of issuer audit reports. Accordingly, we bar Moore from association with a registered public accounting firm. *See Dearlove*, 2008 SEC LEXIS 223, *111 & n.120 (citing certain litigated SEC Rule 102(e) cases against auditors involving violations in a single audit); *Aesoph*, 2016 WL 4176930, *17 (Rule 102(e) case sanctioning auditor based on violations in one audit). The Division has not urged that Moore be permanently barred (nor has the Division requested that we impose a civil money penalty). But because Moore's conduct was particularly incompatible with her role as the auditor with final responsibility for the audit, while we provide that she may petition the Board to associate with a registered public accounting firm after two years,[14/] we

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[14/] In considering any such petition, the Board will assess all of the factors described in PCAOB Rule 5302(b) and, among other things, will give weight to whether, since the effective date of the order accompanying this final decision, Moore has completed a have additionally determined to limit her activities by restricting her for a further two years from serving as an engagement partner or an engagement quality reviewer on issuer audit engagements, or from exercising authority either to sign a registered public accounting firm's name to an audit report for any issuer or to consent to an issuer's use of a previously issued audit report. These measures will serve the purpose of encouraging more rigorous compliance with PCAOB auditing standards by Moore and other auditors. To further impress on Moore the egregiousness of her violations and the seriousness of her auditing responsibilities, we also censure her. This sanction additionally serves the public interest by "notif[ying] the public of [Moore's] past misconduct" even after the terms of the other sanctions have been fulfilled. *Salvatore F. Sodano*, SEC Rel. No. 34-59141, 2008 WL 5328801, *3 (Dec. 22, 2008). We believe that together these sanctions protect investors and further the public interest, and none of Moore's arguments, and none of the circumstances presented by this case, suggest to us that the sanctions are in any way excessive or oppressive. *See* 15 U.S.C. 7217(c)(3).[15/]

VII.

As set forth above, we have found that the Division proved by a preponderance of the evidence that Moore violated PCAOB rules and auditing standards, and we have determined appropriate sanctions for those violations.

An appropriate order will issue.[16/]

By the Board.

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combined total of 50 hours of professional education directly related to revenue recognition, financial statement consolidation, management estimates, and professional skepticism.

[15/] Even if Moore had not acted recklessly, she engaged, at the very least, in repeated instances of negligent conduct, and the instances were sufficiently numerous and serious to warrant the sanctions we impose. 15 U.S.C. 7215(c)(4), (c)(5)(B); *Hatfield*, 2013 SEC LEXIS 1954, *97 n.169 ("given the scope of [the auditor's] repeated auditing failures" finding that sanctions were appropriate "regardless of whether [the auditor's] conduct is deemed to be knowing, reckless, or negligent").

[16/] We have considered all of the parties' contentions regarding the issues addressed in this opinion and we have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

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PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

In the Matter of Gale Moore, CPA, Respondent	PCAOB File No. 105-2012-004 **ORDER IMPOSING SANCTIONS** August 23, 2016

On the basis of the Board's opinion issued this day it is

ORDERED that Gale Moore is censured; and it is further

ORDERED that Gale Moore is barred from associating with any registered public accounting firm, provided that, after two (2) years, she may petition for Board consent to associate with a registered public accounting firm[1/]; and it is further

ORDERED that, if Gale Moore is permitted to associate once again with a registered public accounting firm, she may not, until after four (4) years from the effective date of this order, serve on any audit with respect to an issuer in the role of "engagement partner," as that term is defined in PCAOB Auditing Standard No. 10, *Supervision of the Audit Engagement*, or in the role of "engagement quality reviewer," as that term is used in PCAOB Auditing Standard No. 7, *Engagement Quality Review*, or exercise authority either to sign a registered public accounting firm's name to an audit report for an issuer or to consent to an issuer's use of a previously issued audit report.

Effective Date of Sanctions: If Respondent does not file an application for review by the Securities and Exchange Commission (Commission) and the Commission does not order review of the sanction on its own motion, the effective date of the sanction shall be the later of the expiration of the time period for filing an application for

1/ In considering any such petition, the Board will assess all of the factors described in PCAOB Rule 5302(b) and, among other things, will give weight to whether, since the effective date of this order, Moore has completed a combined total of 50 hours of professional education directly related to revenue recognition, financial statement consolidation, management estimates, and professional skepticism.

Commission review or the expiration of the time period for the Commission to order review. If Respondent files an application for review by the Commission or the Commission orders review of the sanction, the effective date of the sanction shall be the date the Commission lifts the stay imposed by Sarbanes-Oxley Act Section 105(e), 15 U.S.C. 7215(e).

By the Board.

Phoebe W. Brown
Secretary

August 23, 2016