

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 75028 / May 21, 2015**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3658 / May 21, 2015**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16171**

**In the Matter of**

**MAYER HOFFMAN McCANN,  
P.C.**

**Respondent.**

**ORDER MAKING FINDINGS AND  
IMPOSING REMEDIAL SANCTIONS,  
CENSURE, AND A CEASE-AND-DESIST  
ORDER PURSUANT TO SECTIONS 4C  
AND 21C OF THE EXCHANGE ACT AND  
RULE 102(e)(1)(ii) OF THE  
COMMISSION'S RULES OF PRACTICE**

**I.**

On September 25, 2014, the Securities and Exchange Commission (“Commission”) issued the Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C<sup>1</sup> and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice<sup>2</sup> and Notice of Hearing against Mayer Hoffman McCann P.C. (“MHM” or

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<sup>1</sup> Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

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

Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in unethical or improper professional conduct.

“Respondent”). Respondent has submitted an Offer of Settlement (“Offer”) which the Commission has determined to accept.

## **II.**

Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or in which the Commission is a party, and without admitting or denying the findings contained in the Order, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Making Findings and Imposing Remedial Sanctions, Censure, and a Cease-and-Desist Order Pursuant to Sections 4C and 21C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice (“Order”) as set forth below.

## **III.**

On the basis of this Order and the Offer of MHM, the Commission finds<sup>3</sup> that:

### **SUMMARY**

Mayer Hoffman McCann P.C. (“MHM”) is a public accounting firm associated with CBIZ, Inc. (“CBIZ”), a publicly traded company, through a business model referred to as an alternative practice structure (“APS”). CBIZ’s APS model with MHM utilizes an administrative service agreement (“ASA”) under which MHM leases from CBIZ virtually all of the human capital, equipment and overhead MHM requires to perform its attest work, in exchange for a majority of MHM’s revenue.

CBIZ is an associated entity of MHM, and CBIZ and MHM are viewed as a single entity for Commission auditor independence purposes.

MHM has numerous attest clients that file reports with the Commission. One of those clients was Tradebot Systems, Inc. (“Tradebot”), a privately-owned registered broker-dealer with no customers. Pursuant to Rule 17a-5 promulgated under Section 17(a) of the Exchange Act, Tradebot is required to file annual reports with the Commission containing financial statements audited by an independent public accountant (“Annual Reports”).

MHM audited Tradebot’s Annual Reports from 2004 through 2012. From 2008 to at least 2013, Tradebot periodically invested in CBIZ stock (using an algorithmic computerized trading program), thereby impairing MHM’s independence with respect to its audits of Tradebot’s 2008 through 2012 financial statements. As a result, Tradebot’s Annual Reports did not comply with Rule 17a-5 for those periods.

In addition to MHM’s independence violations related to the Tradebot audits, MHM’s procedures were deficient to prevent such independence violations for all of its broker-dealer and investment fund audit clients.

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<sup>3</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

MHM lacked an appropriate system of quality controls to detect transactions in CBIZ stock by its attest clients in order to ensure that those engagements complied with the firm's legal and ethical requirements. MHM's quality control and audit procedures failed to meet adequate professional standards with respect to its audits of Tradebot.

During the audit of its 2012 year, Tradebot was made aware that trading in CBIZ stock would impair MHM's independence. Tradebot continued to trade in CBIZ stock.

**A. RESPONDENT**

1. **Mayer Hoffman McCann P.C.**, is a Missouri professional corporation headquartered in Leawood, Kansas, with offices throughout the U.S. MHM's Commission-related attest practice includes registered broker-dealers, investment funds and publicly traded companies.

**B. RELATED ENTITIES**

2. **CBIZ, Inc.**, is a Delaware corporation headquartered in Cleveland, Ohio, that provides products and services to businesses throughout the U.S. CBIZ associates with several U.S. public accounting firms through its APS model, with MHM being the largest. CBIZ's stock is traded on the New York Stock Exchange.

3. **Tradebot Systems, Inc.**, is a broker dealer registered with the Commission, and is located in Kansas City, Missouri.

**C. FACTS**

4. In about 1996, CBIZ began using the APS model to expand its revenue base by acquiring the non-attest practices of public accounting firms and forming relationships with those public accounting firms by means of ASAs.

5. From about 1998 to present, CBIZ entered into periodic ASAs with MHM which provide, among other things, that virtually all of MHM's shareholders are salaried employees of CBIZ and are leased to MHM along with other CBIZ professional and non-professional staff, office space, equipment, and marketing and other services, to enable MHM to perform its attest practice, in exchange for approximately 85% of MHM's revenues.

6. On November 2, 1998, the Commission's Office of Chief Accountant ("OCA") became aware of CBIZ's use of the APS model and its acquisition of non-attest practices of accounting firms. OCA notified CBIZ of the application of the Commission's independence rules:

[Y]our affiliation with certain accounting firms ... may subject you to the application of the independence rules set forth in Rule 2-01 of Regulation S-X.

... [A]ny accounting firm and the acquirer ("acquirer") of that accounting firm that employs any accountants that work on SEC clients of the accounting firm should continue to fully comply with the SEC's independence requirements.

In determining whether an accountant may in fact not be independent with respect to a particular person, the Commission will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant and that person or any affiliate thereof and will not confine itself to the relationships existing in connection with the filing of reports with the Commission.

7. On August 13, 1999, OCA sent guidance to CBIZ related to independence disclosures provided in a CBIZ Form S-4 filing then under review. In that letter, OCA stated:

[T]he Commission and the staff are concerned about the significant public policy issues that are raised in situations where audits of public companies are performed by auditors under an alternative business structure. . . . [CBIZ] has acquired the non-attest businesses of several accounting firms (“the Attest Firms”) that have audited clients required to file financial statements with the [Commission]. . . .

. . . [I]n the application of the independence rules, the SEC staff will view [CBIZ] and all Attest Firms as a single entity. As a result, [CBIZ] must abide by all of the independence rules that the Attest Firm must follow in order for the Attest Firm to be independent of an SEC audit client. . . .

The revised disclosure should also state that an Attest Firm would not be independent from entities involved in the [CBIZ] offering process and in making a market for or otherwise facilitating the trading of [CBIZ] shares in the secondary market. Accordingly, the revised document should indicate that an Attest Firm’s independence would be impaired with respect to all members of the syndicate underwriting the [CBIZ] offering and to broker-dealer firms that exercise discretionary buy and sell authority over customer accounts holding significant positions in [CBIZ] or employ securities analysts who follow [CBIZ].

Further, the disclosure should indicate that because [CBIZ] and its officers, directors and affiliates, and the Attest Firm are viewed as one entity for purposes of the independence rules, [CBIZ] or its officers, directors or affiliates would impair the independence of the Attest Firms if they held any financial interest in or entered into any business relationships with or sold any services to an SEC audit client of an Attest Firm that the Attest Firm itself would be precluded from under the SEC independence rules.

On this same date, CBIZ sent correspondence to OCA stating that CBIZ and the CPA firms with which it had a relationship through an ASA believed that the CPA firms could perform audits on SEC reporting clients holding 5% or less of CBIZ stock.

8. In 2000, the Commission promulgated an extensive revision of its auditor independence requirements under Rule 2-01 of Regulation S-X. 17 C.F.R. § 210.2-01. The revised rule was adopted in response to “an increasingly complex web of business and financial

relationships” of public accounting firms. Included in the revision was subsection 2-01(c)(1)(iv)(A). It provides:

(iv) Audit clients' financial relationships. An accountant is not independent when:

(A) Investments by the audit client in the accounting firm. An audit client has, or has agreed to acquire, any direct investment in the accounting firm, such as stocks, bonds, notes, options, or other securities, or the audit client's officers or directors are record or beneficial owners of more than 5% of the equity securities of the accounting firm.

9. Rule 2-01(f)(2) of Regulation S-X defines “accounting firm” as “an organization . . . that is engaged in the practice of public accounting . . . and all of the organization’s . . . associated entities . . . .” Rule 2-01 did not define the term “associated entities.”

10. CBIZ is an associated entity of MHM by virtue of its APS relationship and ASA with MHM.

11. Pursuant to Rule 17a-5(d) of the Exchange Act, Tradebot is required to file an annual report (“Annual Report”) which contains its audited financial statements. Rules 17a-5(d), (e) and (f) specifically require that the Annual Report be audited by an “independent public accountant” and a “public accountant who shall be in fact independent” as defined by Rule 2-01(b) and (c). From 2004 through 2012, Tradebot engaged MHM to audit its financial statements included in the Annual Report.

12. Commencing in 2008, unbeknownst to MHM, Tradebot began to regularly trade in CBIZ stock and continued to trade in that stock through 2013.

13. Prior to 2012, Tradebot was unaware of any prohibition against it acquiring any interest in the securities of CBIZ. Prior to the 2012 audit period, MHM never inquired whether Tradebot traded in CBIZ stock.

14. In about mid-2012, MHM’s engagement shareholder learned from Tradebot’s CFO that Tradebot had traded in CBIZ stock and discussed with Tradebot’s CFO the possibility that such trades may impact MHM’s independence.

15. In response, MHM’s engagement shareholder contacted MHM’s Director of Quality Control and asked “whether or not that was something we need to be concerned about from an independence issue.” MHM’s Director of Quality Control forwarded the question to MHM’s national director of professional standards, MHM’s president, and members of MHM’s executive committee.

16. On September 4, 2012, Tradebot’s CFO emailed MHM’s engagement shareholder seeking further guidance on the impact of Tradebot’s trading in CBIZ, asking: “Can you send me the link pointing to the independence issue related to trading public stock.”

17. On September 6, 2012, MHM's engagement shareholder responded to Tradebot's CFO's email, stating: "I do not have anything specific to this situation to send (as it does not exist). It is basically an interpretation of the SEC rules. Our New York office had inquired of a similar situation in which the entity holds CBIZ stock and it was determined to be an issue.... Unfortunately our chief independence officer is on a long vacation and I am trying to get a hold of him for thoughts."

18. On October 3, 2012, before resolving whether MHM was independent, Tradebot engaged MHM for the 2012 audit. In connection with that engagement, MHM did not discuss with Tradebot the unresolved independence issue and proceeded to sign the engagement letter.

19. MHM's potential independence conflict should have been resolved prior to signing the engagement letter.

20. On October 28, 2012, MHM's director of quality control contacted MHM's national director of professional standards and MHM's president regarding the Tradebot independence issue. On October 30, 2012, MHM's national director of professional standards provided guidance to MHM's director of quality control and MHM's engagement shareholder, citing Rule 2-01(c)(1)(iv)(A) and instructing them that he thought MHM would have to resign if Tradebot would be able to acquire more than 5% of the equity securities of CBIZ.

21. MHM's national director of professional standards' guidance to MHM's director of quality control and MHM's engagement shareholder did not comply with Rule 2-01(c)(1)(iv)(A).

22. In October 2012, MHM requested a meeting with the Commission staff ("Staff") to discuss matters relevant to the investigation, including a response to a request by the Staff to know whether MHM monitored the holdings of its broker-dealer clients for CBIZ stock, and whether there were instances of a broker-dealer client taking a position in CBIZ stock.

23. The Staff met with MHM on December 4, 2012; MHM's president attended the meeting with MHM's counsel. At that meeting the Staff conveyed to MHM that an audit client holding even one share of CBIZ would impair MHM's independence.

24. On December 5, 2012, MHM's engagement shareholder emailed Tradebot concerning MHM's conclusion regarding the independence question posed in September 2012, stating:

Following up on the independence issues we discussed earlier this year, below is the SEC rule. I am assuming Tradebot has not become the beneficial owner of more than 5% of the CBIZ stock at one time, however, I would like to propose perhaps you put a limit on the number of shares to be acquired at any one time. Is that possible??

Reg. SX §210.2-01(c)(1)(iv)(A)-

An accountant is not independent when:

(A) Investments by the audit client in the accounting firm. An audit client has, or has agreed to acquire, any direct investment in the accounting firm, such as stocks, bonds, notes, options, or other securities, or the audit client's officers or directors are record or beneficial owners of more than 5% of the equity securities of the accounting firm.

25. MHM's engagement shareholder's instruction to Tradebot was erroneous because the 5% threshold referenced in the rule does not apply to Tradebot; rather, it only applies to Tradebot's officers and directors.

26. Tradebot responded to MHM's engagement shareholder's email by indicating it would place a 10,000 share limit on trades in CBIZ, an amount that was below 5% of CBIZ's outstanding shares.

27. Tradebot continued to trade in CBIZ stock through 2013.

28. Until 2013, MHM did not have any quality control or audit procedures to ensure clients did not trade in CBIZ stock or to otherwise comply with Rule 2-01(c)(1)(iv)(A). Until 2013, MHM provided no guidance to any audit client, including Tradebot, regarding trading prohibitions in CBIZ stock by the audit client. Further, MHM did not implement any audit procedures during its audits of Tradebot, or any other broker-dealer clients, to review the securities they were trading to ensure compliance with Rule 2-01(c)(1)(iv)(A).

29. MHM performed audits of Tradebot's financial statements for the periods 2008 through 2012 in connection with Tradebot's Annual Reports filed with the Commission. MHM provided audit opinions for those audits which indicated, among other things, that MHM was independent of Tradebot for those audits, when in fact, MHM was not independent.

## **D. VIOLATIONS**

### **MHM's IMPROPER PROFESSIONAL CONDUCT**

30. Section 4C(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice allow the Commission to censure, or deny temporarily or permanently, an accounting firm's privilege of practicing before it if the firm is found to have "engaged . . . in improper professional conduct."

31. Pursuant to Section 4C(2) and Rule 102(e)(1)(ii), improper professional conduct involves a violation of applicable professional standards through intentional, knowing or reckless conduct, and two types of negligent conduct: a single instance of highly unreasonable conduct for which heightened scrutiny is warranted; or repeated instances of unreasonable conduct that indicate a lack of competence to practice before the Commission.

32. "Because of the importance of an accountant's independence to the integrity of the financial reporting system, the Commission has concluded that circumstances that raise questions about an accountant's independence always merit heightened scrutiny." Amendment

to Rule 102(e) of the Commission’s Rules of Practice, Release No. 33-7593 (Oct. 19, 1998), 63 Fed. Reg. 57168.

## **1. Relevant Audit Standards**

33. The term “applicable professional standards” primarily refers to generally accepted accounting principles (“GAAP”), generally accepted auditing standards (“GAAS”), the AICPA Code of Professional Conduct, and Commission regulations, but is broad enough to accommodate changes in the body of professional guidance routinely used by accountants.

34. For auditors of registered broker-dealers, such as Tradebot, the applicable professional standards related to GAAS are those that have been issued by the AICPA.<sup>4</sup>

35. Both Rule 2-01 and GAAS require auditors to maintain strict independence from their audit clients. AICPA Auditing Standards AU Section 150.02 requires that the auditor “maintain independence . . . in all matters relating to the audit.” AICPA Auditing Standards AU Section 220.03 states “[i]t is of utmost importance to the profession that the general public maintain confidence in the independence of auditors.”

36. GAAS requires that an auditor have policies and procedures designed to prevent independence impairment, and client acceptance and continuance procedures that ensure compliance with legal requirements, discussed below.

37. MHM was negligent in its failure to comply with those professional standards.

## **2. MHM’S Independence Was Impaired When It Audited Tradebot’s 2008 – 2012 Financial Statements**

### **a. Rule 17a-5**

38. Rule 17a-5 of the Exchange Act requires registered broker dealers to file periodic reports with the Commission including, pursuant to Rule 17a-5(d)(1)(i), an annual report “which shall be audited by an independent public accountant.” Rule 17a-5(e)(1)(i) further states: “An audit shall be conducted by a public accountant who shall be in fact independent as defined in paragraph (f)(3) of this section herein, and shall give an opinion covering the statements filed pursuant to paragraph (d). . . .”

39. Rule 17a-5(f)(3) defines independence as “in accordance with the provisions of § 210.2-01(b) and (c) of this chapter.”

### **b. Rule 2-01(b) and (c)**

40. The general standard of auditor independence is described in Rule 2-01(b).

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<sup>4</sup> The AICPA auditing standards are applicable for the audits of broker-dealers, *Commission Guidance Regarding Auditing, Attestation, and Related Practice Standards Related to Brokers and Dealers*, Release No. 34-62991, Sept. 24, 2010.



41. Additionally, Rule 2-01(c)'s subsections set forth "a non-exclusive specification of circumstances inconsistent with" Rule 2-01(b)'s general requirement. The Commission stated: "As to circumstances specifically set forth in our rule, we have set forth a bright-line test: an auditor is not independent if he or she maintains the relationships, acquires the interests, or engages in the transactions specified in the rule." Revision of the Commission's Auditor Independence Requirements, Release No. 33-7919, 65 Fed. Reg. 76008 at 76030.

42. When MHM audited Tradebot's financial statements during the audit periods in which Tradebot had acquired direct investments in CBIZ stock, namely 2008 through 2012, MHM's independence was impaired as to those audits.

### **3. MHM Violated Other Applicable Professional Standards**

43. MHM violated professional standards that require an accounting firm to establish policies and procedures designed to assure independence, and client engagement procedures that ensure compliance with legal requirements and risks associated with the engagement.

#### **a. MHM Failed to Design Policies and Procedures That Assured Independence**

44. AICPA quality control standards are professional standards under GAAS. Pursuant to AICPA QC Section 10 Paragraph 22, an auditor is required to have policies and procedures "designed to provide with reasonable assurance that the firm ... maintain independence ..."

45. In about 2012, MHM had well over a hundred broker dealer and investment fund clients, including Tradebot, which regularly trade in the securities of thousands of public companies. Despite the risks of audit clients trading in CBIZ securities, until 2013 MHM did not have any written policies or procedures to address the independence issues established by Rule 2-01(c)(1)(iv)(A) of audit clients trading in CBIZ securities.

46. Further, until 2013 MHM did not have any written procedures to inform audit clients of the transactional proscriptions of trading in CBIZ securities or any written procedures to follow if audit clients traded in CBIZ securities in violation of Rule 2-01(c)(1)(iv)(A).

47. Until 2013, MHM's audit clients were unaware of restrictions on the trading of CBIZ securities.

#### **b. MHM Failed To Follow Proper Client Engagement Procedures**

48. Pursuant to AICPA QC Section 10 Paragraph 27, an auditor is required to have adequate policies and procedures for client continuance that are "designed to provide the firm with reasonable assurance that it will ... continue ... engagements only when the firm can comply with legal and relevant ethical requirements."

49. After learning in 2012 of Tradebot's CBIZ transactions, MHM failed to perform adequate client acceptance procedures to ensure it was independent when being engaged and

beginning substantive field work. Shortly after internal consultation over the independence question was initiated but before MHM's national director of professional standards had provided any guidance to the engagement shareholder, MHM proceeded with the engagement. By doing so, MHM entered into an engagement without determining whether it could continue with the audit.

#### **4. MHM Violated AICPA Professional Standards**

50. Through the conduct described above, MHM violated GAAS provisions AU Sections 150.02 and 220.03, AICPA QC Section 10 Paragraphs 22 and 27 and thereby negligently engaged in improper professional conduct.

51. Through its repeated instances of unreasonable conduct resulting in violations of applicable professional standards, MHM demonstrated a lack of competence to practice before the Commission.

#### **5. MHM CAUSED TRADEBOT'S VIOLATION OF SECTION 17(a) AND RULE 17a-5**

52. Under Section 21C of the Exchange Act, a person is a "cause" of another's primary violation if the person knew or should have known that its act or omission would contribute to the primary violation. Negligence is sufficient to establish "causing" liability under Section 21C when a person is alleged to have caused a primary violation that does not require scienter.

53. MHM caused Tradebot's violations of Section 17(a) and Rule 17a-5 by certifying, as independent public accountants, Tradebot's financial statements contained in its Annual Reports, when, in fact, MHM was not independent of Tradebot.

54. Further, MHM lacked an adequate system of controls to maintain independence and failed to inform Tradebot of the proscription against trading in CBIZ stock. Those failures impaired MHM's independence and thereby caused Tradebot to file Annual Reports that did not contain audits by an independent accountant.

55. MHM was negligent in certifying it was independent of Tradebot and having an inadequate system of controls and by failing to notify Tradebot of the proscription against trading in CBIZ stock.

### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. MHM shall cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rule 17a-5 thereunder;

B. Pursuant to Section 4C of the Exchange Act and Rule 102(e) of the Commission's Rules of Practice, MHM is hereby censured;

C. MHM shall, within 14 days of entry of the Order, pay disgorgement of \$65,245, which represents profits gained as a result of the conduct described herein, prejudgment interest of \$9,755, and civil penalties of \$675,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Mayer Hoffman McCann P.C. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Karen Martinez, Regional Director, Salt Lake Regional Office, Securities and Exchange Commission, 351 South West Temple, Suite 6.100, Salt Lake City, Utah 84101.

By the Commission.

Brent J. Fields  
Secretary