UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 77207 / February 23, 2016

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3746 / February 23, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17126

In the Matter of **JASON MAIHER,** **Respondent.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 4C, 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, AND RULE 102(e) OF THE COMMISSION'S RULES OF PRACTICE**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 4C, 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(iii) of the Commission's Rules of Practice against Jason Maiher ("Respondent" or "Maiher").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. **Maiher**, age 41, was KeyBanc Capital Markets Inc.'s ("KBCM") Chief Financial Officer ("CFO") from April 2007 through November 2011 and Series 27 Financial and Operations Principal ("FinOp") from April 2007 through December 2011. KBCM terminated Maiher's employment in May 2012. Maiher was primarily responsible for maintaining KBCM's financial records. He submitted KBCM's Annual Audited Report to the Commission and oversaw the filing of its monthly Financial and Operational Combined Uniform Single Reports ("FOCUS Reports") with FINRA, which then furnished the FOCUS Reports to the Commission. Pursuant to internal policies and procedures that were applicable to KBCM, Maiher was required to certify after the close of each month that KBCM's general ledger balance sheet information had been compared with, and

reconciled to, the underlying back-office system information. Maiher is currently an assistant controller for a wholly owned banking subsidiary of a publicly traded company.

B. RELEVANT ENTITY

2. **KBCM** is a broker-dealer registered with the Commission and is a subsidiary of KeyCorp, a financial services company headquartered in Cleveland, Ohio.

C. KBCM'S BOOKS AND RECORDS WERE INACCURATE

3. Beginning at some point prior to January 2011, and through January 2012, Maiher, who was KBCM's CFO (until November 2011) and FinOp, directed that unsubstantiated or "plug" entries be made to one or more accounts in KBCM's general ledger, in order to complete KBCM's monthly close-the-books process. The amount of the plug entries varied over time.

4. The plug entries resulted in KBCM overstating its assets and income in its fiscal year 2010 financial statements, which were included in its fiscal year 2010 Annual Audited Report filed with the Commission in February 2011. Maiher signed this report, affirming that the accompanying financial statements were "true and correct."

5. The plug entries to the general ledger also resulted in inaccurate financial information being included in KBCM's monthly FOCUS Reports that Maiher caused to be filed with FINRA, which then furnished the FOCUS Reports to the Commission, for some point prior to January 2011 through January 2012. In 2012, KBCM filed amended FOCUS Reports.

6. In its Annual Audited Report for the year ended December 31, 2011, KBCM disclosed that its prior period financial statements (for fiscal year 2010) included unsubstantiated assets of $13,679,000 ($8,591,000 net of taxes) and omitted liabilities of $4,305,000 ($2,701,000 net of taxes). Specifically, the 2011 Annual Audited Report stated "[t]he December 31, 2010, Statement of Financial Condition included $13,679[,000] in net trade date receivables that was found to be unsubstantiated during 2011." KBCM's write-off of the unsubstantiated assets and accrual of the unrecorded liabilities resulted in restated net income of $3,136,000, a 78% reduction versus the previously reported $14,428,000, and restated shareholder's equity of $316,796,000, an $11,292,000 reduction, from the previously reported $328,088,000.

D. RESPONDENT DIRECTED THAT PLUG ENTRIES BE MADE TO KBCM'S GENERAL LEDGER

7. KeyCorp's written policies and procedures[1] that were applicable to KBCM required KBCM's finance department, led by Maiher, to reconcile certain general ledger accounts to the back office securities trading and inventory software system. The general ledger system was referred to as MSA. MSA was the source of the official books and records of KBCM. The back office system for KBCM was referred to as Broadridge.

8. The purpose of reconciling accounts was to ensure that the information in MSA was accurate. Generally, reconciliation is an accounting process used to compare two sets of records to ensure the figures are in agreement. During the relevant period, KeyCorp's Reconcilement Process & Account Certification Procedure stated that the goal of reconciliation was "to verify that the balance and activity in the [general ledger] account agrees with the expected balance and activity as recorded elsewhere." This document further explained that "[w]hen external reports are published to our shareholders and government agencies, it is critical that the general ledger system from which those reports are prepared be correct."

9. The applicable policies and procedures required accounts to be reconciled on a periodic basis, which was generally daily or weekly "unless the account has very low transaction volume." At a minimum, all accounts were to be reconciled monthly.

10. Among the accounts that Maiher and his team were required to reconcile were the firm's inventory accounts. According to a KBCM Inventory Accounting Process Narrative, "KBCM buys, sells, and maintains inventory positions in federal, municipal, and corporate bonds and stocks in order to make markets, earn trading profits, or act as a wholesaler. KBCM makes markets for approximately 200 (OTC/NASDAQ) stocks." Despite the fact that the inventory accounts did not have "very low transaction volume," they were reconciled only monthly.

11. The applicable policies and procedures required Maiher to segregate the duties of preparing, reviewing, and certifying the inventory accounts reconciliations. Accordingly, one of KBCM's accountants was responsible for preparing the reconciliations, KBCM's Controller was responsible for reviewing the reconciliations, and Maiher was responsible for certifying them. Specifically, Maiher was responsible for timely certifying the inventory accounts in KeyCorp's On-Line Certification System.

12. As explained in KeyCorp's policies and procedures, Maiher's certification of a general ledger account was a formal attestation that: properly documented controls and procedures were in place; reconciliations were routinely performed according to an established schedule; the reconciliation for the account was current; and the

[1] The policies and procedures include "Policy ACC-403: KeyCorp Reconciliation and Certification Policy" and "Procedure AR-5001: Reconcilement Process & Account Certification."

supporting sub-system, which is Broadridge in this instance, was in agreement with the general ledger.

13. Further, as stated in the policies and procedures, by certifying an account, Maiher was making himself "personally accountable for the integrity of the account" and stating that "a formal reconciliation, with all pertinent documentation, has been prepared and reviewed, and that all reconciling items have been adequately documented."

14. As part of KBCM's reconciliation process, any difference between related account balances in MSA and Broadridge needed to be identified and was considered a reconciling item. Reconciling items needed to be researched and resolved within established time limits. The inventory accounts were subject to a 30-day aging period, after which any unresolved differences between MSA and Broadridge were to be written off consistent with KeyCorp policy. The approval needed to charge off an item depended on the dollar amount. Maiher's write-off authority was capped at $100,000 per KeyCorp policy. Stale items in excess of $100,000 were only to be written off with the approval of KeyCorp's Chief Accounting Officer, CFO or Corporate Controller.

15. If a reconciling item was deemed a "reportable exception," it needed to be recorded in the on-line certification system. A "reportable exception" was defined as a reconciling item "deemed significant enough to alert senior management to a potential problem which may indicate a breakdown of internal controls or present the possibility of significant loss." Variances between MSA and Broadridge of $10,000 or more, which had not cleared through the normal transaction life cycle, fell into this category.

16. It was Maiher's responsibility, as certifier of the inventory accounts, to describe any reportable exception in clear language, explain the efforts being made to correct the exception, and provide the anticipated date of resolution. Maiher had until the 20th of each month to timely certify the prior-month inventory account balances and document any reportable exceptions in the on-line certification system. Certifications submitted after the 20th were considered late. A monthly report summarizing the results of the certification program, including any reported exceptions, was provided to senior finance management of KeyCorp. As explained in the policies and procedures, "[t]his [exception reporting] afford[ed] senior management reasonable assurance that appropriate internal controls are in place and that problems are identified and resolved in a timely manner."

17. Beginning at some point prior to 2011, and through January 2012, Maiher directed that "plug" entries be made to the general ledger in order to balance and be able to close the books on a monthly basis.

18. During 2010, 2011, and January 2012, as part of the monthly close-the-books process, at Maiher's direction, the staff accountant populated the reconciliation spreadsheet for the inventory accounts. The initial iteration of this spreadsheet showed the variances between the general ledger and Broadridge. At Maiher's direction, the staff accountant also prepared a corresponding "correcting entry" spreadsheet that, in more

summary fashion, compared the month-end MSA long and short inventory balances with the long and short inventory trade date balances in Broadridge. The "correcting entry" spreadsheet was a tool that served as the basis for a series of manual adjusting entries that were then made to the general ledger to make the general ledger match Broadridge. These adjusting entries were described as "Trade Date Long" or "Trade Date Short" and were made to the 129186 "Trading Inv-Other" and 273500 "Liab for Shrt Positions" accounts. The number of such adjusting entries, as well as the dollar amounts, varied by month. In 2011, there were typically 10 or more such adjusting entries made during the monthly close. After these entries were posted to the general ledger, the staff accountant updated the reconciliation spreadsheet; certain variances that appeared on the pre-close version of the spreadsheet were thus absent from the final version that was signed by Maiher as certifier, post-close.

19. The securities inventory reconciliation and the related "correcting entry" spreadsheet also computed manual adjustments that were made each month to general ledger accounts 196727 "Trade Date Receivable" and 299220 "Trade Date Payable." Maiher directed these adjustments, in combination with the manual adjustments to accounts 129186 and 273500, to be made in order to purportedly reflect the MSA inventory account balances on a trade date basis for regulatory reporting purposes. An interface or graph between Broadridge and MSA automatically computed the firm's trade date receivable and payable data on a daily basis. In approximately April 2011, Maiher had the interface turned off so that the trade date receivable and payable data was no longer being automatically fed into MSA and had to be computed manually.

20. If all of the month-end adjusting entries did not result in MSA balancing, the staff accountant, at Maiher's direction, would include an additional adjusting entry to plug the unexplained difference in order to be able to close the books in the firm's internal system. In most instances, Maiher directed that this plug entry be described as a "Trade Date Adjustment." All of the manual adjusting entries were typically made on either day 1 or day 2 after the month-end and the books were closed on day 3.

21. For February, July, August, September, November, and December, Maiher directed that the additional plug entry, without which the books would not balance, be made to the "Trade Date Receivable" account. For March and October, Maiher directed that this additional adjusting entry be made to the "Trading Inv–Other" account. For January, April, May, and June, Maiher directed that this additional adjusting entry be made to an income statement account. Below are the additional adjusting entries that were made to balance and close the books monthly for December 2010 through December 2011:

DATE	**ACCOUNT**	**ENTRY**	**DESCRIPTION**
Dec. 2010	**482434 P/L**	**76,754.36**	**Inventory Adjustment**
Jan. 2011	**482439 P/L**	**2,239,211.72**	**P&L Adjustment**
Feb. 2011	**196727 Trade Date Receivable**	**2,949,720.49**	**Trade Date Adjustment**
Mar. 2011	**129186 Trading Inv-Other**	**(3,751,660.38)**	**Trade Date Adjustment**
Apr. 2011	**482439 P/L**	**440,170.57**	**Trade Date Adjustment**
May 2011	**482439 P/L**	**1,893,944.88**	**Trade Date Adjustment**
June 2011	**482439 P/L**	**152,539.67**	**Trade Date Adjustment**

July 2011	**196727 Trade Date Receivable**	**12,502,416,22**	**GPS Placeholder Offset**
Sept. 2011	**196727 Trade Date Receivable**	**17,607,368.97**	**Trade Date Adjustment**
Oct. 2011	**129186 Trading Inv-Other**	**31,618,733.55**	**Trade Date Adjustment**
Nov. 2011	**196727 Trade Date Receivable**	**22,804,384.26**	**Trade Date Adjustment**
Dec. 2011	**196727 Trade Date Receivable**	**18,674,052.00**	**Trade Date Adjustment**

22. Although the purpose of the KBCM inventory reconciliation process was to identify, research and timely resolve any differences between corresponding account balances in MSA and the Broadridge subsystem, through the process undertaken by Maiher and his staff, differences were routinely eliminated through the expedient of adjusting entries made during the monthly close, after which the inventory account balances were certified by Maiher as reconciled. For example, for February, March, April and June 2011, Maiher certified the inventory accounts without an exception of any kind. For other months, he certified with exception(s) but did not disclose that there was an unexplained variance. Rather, he gave assurances the variance was or would be properly resolved. Maiher also repeatedly failed to certify the inventory accounts or report exceptions within the time period required by KeyCorp policy.

23. By coming up with the process by which the reconciler determined the adjusting entries, directing that they be made to the general ledger, and then certifying the inventory account reconciliations, Maiher also failed to ensure appropriate segregation of duties, in violation of the applicable policies and procedures.

24. KBCM hired a new CFO in November 2011. After he was hired, the new CFO discovered the variances after reviewing the most recent reconciliations and notified KBCM's and KeyCorp's management. Maiher did not begin to report that there was a potential unexplained variance until late in 2011, after the new CFO had been hired, and even then he was not transparent about the plug entries he had directed be made to balance the firm's books.

25. Maiher was subsequently terminated from KBCM in May 2012. In the Form U5 termination notice that KBCM filed with the Financial Industry Regulatory Authority, KBCM explained that Maiher was terminated for "involvement in inaccurate entries in the firm's general ledger, failure to ensure substantiating documentation relating to those entries and failure to ensure appropriate segregation of duties."

26. Through the conduct described above, Maiher caused unsubstantiated entries to be made in the records of KBCM; caused the records of KBCM to be inaccurate; and caused false FOCUS Reports and financial statements to be filed with FINRA, which then furnished the FOCUS Reports to the Commission.

E. VIOLATIONS

27. Section 17(a)(1) of the Exchange Act requires registered broker-dealers to make and keep records, and to make and disseminate reports prescribed by Commission rule. The requirements to make and keep required records includes the

requirement that such records be accurate. Rule 17a-3(a)(2) of the Exchange Act requires, among other things, that every broker-dealer make and keep current ledgers reflecting all assets and liabilities relating to the firm's business. As a result of the conduct described above, KBCM violated Section 17(a) of the Exchange Act and Rule 17a-3(a)(2) thereunder because its general ledger did not accurately reflect all of the firm's assets and liabilities. Section 17(e) of the Exchange Act requires registered broker-dealers to annually file with the Commission a balance sheet and income statement certified by a public accounting firm. Rule 17a-5(a) requires periodic FOCUS Reports. Rule 17a-5(d) requires registered broker-dealers to file with the Commission annual audited reports. KBCM violated Section 17(e) of the Exchange Act and Rules 17a-5(a) and 17a-5(d) thereunder by including unsubstantiated assets in its monthly FOCUS Reports filed with FINRA, which then furnished the FOCUS Reports to the Commission, prior to 2011 through January 2012, among other months, and in its fiscal year 2010 Annual Audited Report.

28. Respondent Maiher willfully aided and abetted and caused KBCM's violations of Sections 17(a) and 17(e) of the Exchange Act and Rules 17a-3(a)(2), 17a-5(a), and 17a-5(d) thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Maiher an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Maiher pursuant to Section 15(b) of the Exchange Act including, but not limited to, civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Maiher pursuant to Section 4C of the Exchange Act and Rule 102(e)(1) of the Commission's Rules of Practice; and

D. Whether, pursuant to Section 21C of the Exchange Act, Maiher should be ordered to cease and desist from committing or causing violations of and any future violations of Section 17 of the Exchange Act and Rules 17a-3 and 17a-5 thereunder, whether Maiher should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Maiher shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Maiher fails to file the directed answer, or fails to appear at a hearing after being duly notified, he may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Maiher as provided for in the Commission's Rules of Practice.

This Order shall be served upon Maiher as provided for in Rule 141(a)(2)(iv) of the Commission's Rules of Practice, 17 C.F.R § 201.141(a)(2)(iv), by any method specified in paragraph (a)(2) of that rule, or by any other method reasonably calculated to give notice, provided that the method of service used is not prohibited by the law of the foreign country where Respondent may be found.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary