

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 84921 / December 21, 2018**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 4008 / December 21, 2018**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18954**

**In the Matter of**

**MITCHELL J. RUBIN, CPA,**  
**and**  
**MICHAEL BERNSTEIN, CPA,**

**Respondents.**

**ORDER INSTITUTING PUBLIC  
ADMINISTRATIVE AND CEASE-  
AND-DESIST PROCEEDINGS  
PURSUANT TO SECTIONS 4C AND 21C  
OF THE SECURITIES EXCHANGE  
ACT OF 1934 AND RULE 102(e) OF THE  
COMMISSION’S RULES OF  
PRACTICE, MAKING FINDINGS, AND  
IMPOSING REMEDIAL SANCTIONS  
AND A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 4C<sup>1</sup> and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice (“CRP”) against Respondents, Mitchell J. Rubin, CPA (“Rubin”) and Michael Bernstein, CPA (“Bernstein”), (collectively, “Respondents”).<sup>2</sup>

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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 issued thereunder.

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

“The 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.”

## II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (“Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

## III.

On the basis of this Order and Respondents’ Offers, the Commission finds that:<sup>3</sup>

### SUMMARY

1. Respondents, Rubin and Bernstein, in their capacities as former partners of Rosen, Seymour, Shapps, Martin & Company, LLP (“RSSM”), performed deficient audits of the financial statements of Corporate Resource Services, Inc. (“CRS”) for the fiscal years ended September 28, 2012 and December 28, 2012. Rubin, as the engagement partner, approved the issuance of audit reports that were included in the 2013 Form 10-K and 2012 Form 10-K that CRS filed with the Commission on July 1, 2014, and December 21, 2012, respectively. Bernstein, as the engagement quality reviewer (“EQR”), provided his concurrence. However, these reports were false in that they stated the audits were conducted in accordance with the standards of the Public Company Accounting Oversight Board (“PCAOB”)<sup>4</sup> when they were not. Respondents’ audit deficiencies included the failure to, among other things: (1) include procedures designed to provide reasonable assurance that CRS did not have material undisclosed contingent liabilities for unpaid payroll taxes; (2) properly identify and audit related party transactions despite the risks of fraud by CRS; (3) obtain sufficient appropriate audit evidence to respond to identified fraud risks and otherwise support their unqualified opinions; and (4) conduct engagement quality reviews. Respondents’ audit of CRS’s revised December 2012 financial statements also amounted to no audit at all. Moreover, Bernstein was not independent during the 2012 audits given that he had served as the engagement partner on CRS’s audits for five consecutive years and then immediately served as the EQR for CRS from 2011 through 2013.

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<sup>3</sup> The findings herein are made pursuant to Respondents’ Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>4</sup> References to auditing standards in this Order are to PCAOB standards in effect at the time the audit work was performed.

## RESPONDENTS

2. **Mitchell J. Rubin**, age 63, is a resident of Chappaqua, New York, and a CPA licensed in the State of New York. As a non-equity partner at RSSM, Rubin served on the CRS engagement from 2009 through 2013, and was the engagement partner during the audits of CRS's 2012 financial statements (the "Relevant Period").

3. **Michael Bernstein**, age 78, is a resident of New York, New York, and a CPA licensed in the State of New York. He joined RSSM as a result of a business combination in 2009. Bernstein became the Managing Partner at RSSM in or about August 2012, and continued in that role until he resigned on October 31, 2014. Bernstein served on the audit engagement of CRS (including its predecessor entity) from 2006 through 2013, and was the EQR during the Relevant Period.

## RELEVANT ENTITIES

4. **Corporate Resource Services, Inc. ("CRS")** was a Delaware corporation headquartered in New York, New York, whose primary business was to provide temporary staffing services to customers. CRS's common stock (ticker "CRRS") was registered pursuant to Section 12(g) of the Exchange Act and quoted on the OTC Bulletin Board until September 4, 2013, at which time it was listed on NASDAQ CM. On March 20, 2015, NASDAQ delisted CRS for failure to timely file periodic reports. On July 23, 2015, CRS filed for Chapter 11 bankruptcy relief.

5. **TS Employment, Inc. ("TSE")** was a private Florida company headquartered in New York, New York, that provided professional employer organization ("PEO") services to CRS. It was wholly owned by CRS's controlling shareholder and Board of Director member ("Director"). At all times, TSE's only customer and sole source of revenues was CRS. As a PEO, TSE co-employed CRS's staffing employees, and through funds received from CRS was responsible for remitting to authorities all payroll taxes concerning CRS's employees. On February 2, 2015, due to an approximately \$100 million federal payroll tax liability related to CRS's staffing employees, TSE filed for Chapter 11 bankruptcy relief.

6. **RSSM CPA LLP ("RSSM")**, formerly known as Rosen Seymour Shapss Martin & Company LLP, was registered with the PCAOB and headquartered in New York, New York during the relevant period. It provided accounting, auditing, tax, and other professional services. As of March 31, 2013, it had nine issuer clients and 136 accountants. RSSM served as CRS's auditor from 2009 through 2013. It was dismissed as CRS's auditor on December 27, 2013. On February 22, 2017, RSSM filed for bankruptcy and was subsequently dissolved.

## FACTS

### **Background of CRS and its Pervasive Related Party Transactions**

7. CRS was primarily a temporary staffing services company that reported approximately \$680 million in revenues and approximately \$600 million in cost of revenues for the year ended December 28, 2012, and approximately \$820 million in revenues and

approximately \$723 million in cost of revenues for the year ended January 3, 2014. Although CRS contracted with its customers to place employees at job sites, it was at all times the common law employer of these employees and obligated by law to pay their wages and payroll taxes.

8. CRS outsourced the handling of these obligations and other human resources and administrative functions to TSE as its PEO. TSE had no other customers. By virtue of the PEO arrangement, CRS and TSE co-employed the temporary staffing employees, and TSE served as the third party payer of the wages and payroll taxes that otherwise would have been handled by CRS itself. Thus, CRS remained the common law employer, and TSE was the employer of record. TSE and its affiliates also handled CRS's revenue invoicing and receivables collections, administration of employee benefits, and workers compensation insurance coverage. As a result, nearly all of CRS's cost of revenues consisted of TSE charges.

9. Through this PEO relationship and Director's common control, CRS was operationally and financially dependent on TSE. Many of CRS's operations and finance personnel, managers, executives and board members including CRS's President, CEO and Chairman of the Board, worked for TSE and/or its affiliates, which were also solely owned and controlled by Director. CRS was also dependent on Director, TSE and its affiliates to provide CRS with working capital, liquidity and financing for acquisitions. Director guaranteed CRS's \$80 million revolving receivables-backed facility. Also, because the funds from this facility did not meet CRS's cash flow needs, TSE provided working capital by allowing CRS to defer payment for PEO services. It was only through this arrangement that CRS had funds to operate. Even after TSE had exchanged \$14.1 million of CRS's PEO-related debt for CRS stock, CRS's indebtedness to TSE still exceeded \$12.7 million on December 28, 2012, and \$15.7 million by the end of 2013. Though CRS's debt to TSE continued to mount, CRS still depended on TSE for liquidity and ongoing wage and tax payments.

### **RSSM'S Audits of CRS's Financial Statements**

10. RSSM audited CRS's financial statements for the fiscal years 2009 through 2012, and issued audit reports containing unqualified opinions each year. For the 2006 through 2010 audits of CRS's financial statements, Bernstein served as the engagement partner and, for 2009 and 2010, Rubin served as the EQR. For the 2011 and 2012 audits of CRS's financial statements, Rubin served as the engagement partner and Bernstein served as the EQR. In their respective roles, Bernstein and Rubin also performed reviews of CRS's quarterly filings through the third quarter of 2013.

11. Because CRS changed its fiscal year end from the Friday closest to September 30 to the Friday closest to December 31 in early 2013, RSSM audited two different 2012 year-end financial statements for CRS. First, RSSM audited CRS's financial statements for the fiscal year ended September 28, 2012 and issued its audit report on December 21, 2012, both of which were included within the Form 10-K CRS filed on December 21, 2012. Second, on December 20, 2013, RSSM issued an audit report containing an unqualified opinion on CRS's financial statements for the fiscal year ended December 28, 2012. Although CRS received this audit report, it did not make a filing containing this report or the related financial statements. After CRS replaced RSSM as its auditor on December 27, 2013, CRS learned of prior period misstatements from its successor auditor and ultimately revised its financial statements for the

fiscal year ended December 28, 2012. Some of the adjustments incorporated within the revised financial statements had previously been proposed by RSSM but rejected by CRS at that time. CRS included the revised December 2012 financial statements within the 2013 Form 10-K it filed on July 1, 2014. The 2013 Form 10-K also included a new audit report issued by RSSM containing an unqualified opinion on these revised and filed December 2012 financial statements. RSSM dual-dated its report as of December 20, 2013, and June 30, 2014.

12. In February 2015, and more than a year after CRS had replaced RSSM as its auditor, CRS disclosed that TSE had a material unpaid federal payroll tax liability. This liability, which amounted to approximately \$100 million, forced TSE to file for bankruptcy on February 2, 2015, and caused CRS's secured lender to put CRS on a path to liquidation. The successor auditor then resigned on February 9, 2015, after informing CRS that its audit report containing an unqualified opinion for the fiscal year ended January 3, 2014, could no longer be relied upon due to material uncertainties as to whether CRS was contingently liable for any or all of the outstanding payroll taxes. CRS also disclosed that its prior financial statements could not be relied upon due to the material uncertainties related to the payroll tax liability. Consequently, CRS was delisted from NASDAQ in April 2015 for failing to timely file financial statements. In July 2015, CRS filed for bankruptcy.

### **Failures to Detect Undisclosed Liabilities for Unpaid Payroll Taxes**

13. RSSM failed to include procedures during the Relevant Period designed to obtain reasonable assurance that CRS did not have material undisclosed contingent liabilities for unpaid payroll taxes.

14. As early as the 2010 audit, RSSM identified certain fraud risk factors concerning CRS's related party transactions with TSE and Director, including the potential for the misappropriation of CRS's assets and unpaid payroll tax liabilities. RSSM work papers also identified each year the potential going concern risk presented by CRS's mounting debt to and ongoing financial dependence on the liquidity and working capital provided by TSE and Director.

15. As documented in the work papers describing CRS's internal controls for the 2010 and subsequent audits RSSM performed, RSSM identified that CRS had direct liability for payroll taxes in certain states that did not recognize the PEO relationship. More significantly, the 2010 engagement team, noted in a work paper entitled "Fraud Risk Factors" the fact that CRS "is dependent on the PEO to remit payroll taxes. The Internal Revenue Service may view the Company as an extension of the PEO and seek remittance from the Company."

16. The "Fraud Risk Factors" work paper also noted: "The Company is dependent on the fiduciary relationship with the PEO. Unchecked, the PEO may have the opportunity to place the obligation onto the Company. The PEO may represent to the Company that they have paid the payroll taxes but that they have actually kept the money and made no remittance of payroll taxes." The work paper further stated: "Those controlling the Company may forsake the entity and let it be the scapegoat for the majority shareholder's fraud."

17. These risks remained throughout the entire period of RSSM's CRS engagement and thereafter. Yet, during the Relevant Period, RSSM, through Rubin as the engagement partner, failed to perform adequate procedures designed to detect whether CRS had material undisclosed contingent liabilities arising from any non-payment of payroll taxes by its related party PEO.

18. AU 334.09, *Related Parties*, requires auditors to perform procedures related to related party transactions "he considers necessary to obtain satisfaction concerning the purpose, nature, and extent of these transactions and their effect on the financial statements" by "obtaining and evaluating sufficient appropriate evidential matter" which "should extend beyond inquiry of management." AU 334.10 also makes clear that, when necessary to fully understand a particular transaction, the auditor should consider, among other things, "inspect[ing] evidence in possession of the other party or parties to the transaction" and "confirm[ing] or discuss[ing] significant information with intermediaries, such as banks, guarantors, agents, or attorneys to obtain a better understanding." AU 334.10 also states that auditors should consider "obtain[ing] information about the financial capability of the other party or parties to the transaction" when there are "material uncollected balances, guarantees, and other obligations," and advises auditors to consider obtaining from the related party audited and unaudited financial statements, income tax returns, and reports issued by regulatory agencies, taxing authorities, financial publications or credit agencies. AU 9334, *Related Parties: Auditing Interpretations of Section 334*, further provides that, to understand the transaction or obtain evidence regarding it, "the auditor may have to refer to audited or unaudited financial statements of the related party, apply procedures at the related party, or in some cases audit the financial statements of the related party." AU 9334.19 also states that the "higher the auditor's assessment of risk regarding related party transactions, the more extensive or effective the audit tests should be."

19. Despite this guidance, during the Relevant Period, RSSM and Rubin did not obtain from CRS or TSE any of the evidence specifically highlighted in AU 334 and AU 9334. In fact, instead of getting evidence that the payroll taxes had been remitted as appropriate, the engagement team told CRS to stop separately recording the payroll tax and administration fee amounts that were listed in the PEO's invoices, so as to avoid "potential liabilities if audited by the IRS."

20. RSSM, through Rubin, also did not obtain any evidence that TSE could provide CRS with liquidity and working capital while simultaneously performing its PEO obligations. They should have known that TSE had no customers or revenue sources other than CRS. The work papers also indicated that the PEO typically remitted the taxes to the IRS only after receiving payment on invoiced amounts from CRS. Yet RSSM and Rubin did not obtain sufficient appropriate audit evidence that TSE was actually performing its PEO obligation and remitting the taxes due despite CRS's nonpayment of certain invoiced amounts.

21. Evidence of financial capability was also necessary to RSSM's evaluation during the Relevant Period of CRS's ability to continue as a going concern. CRS's increasing debt to TSE resulting from CRS's inability to pay for PEO services was identified in RSSM's 2012 audit work papers as an indication of CRS's financial difficulties. The work papers further noted that the company had recurring net losses and negative working capital. Together, these facts raised

substantial doubt that the company could continue as a going concern. However, RSSM, through Rubin and Bernstein in their respective roles of engagement partner and EQR, ultimately concluded that, in their judgment, the doubt was sufficiently mitigated because management represented that Director would not demand payment and CRS's otherwise negative working capital would be a positive \$7.1 million if the debt was removed from the balance sheet. The work papers also noted that "TSE is investing sufficient resources to maintain or improve the Company's financial position" and had already helped CRS "improve its balance sheet" by converting \$14.1 million from debt to equity.

22. However, AU 341.07, *The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern*, states that if an auditor believes that there is substantial doubt, he should consider whether management's plans to deal with the adverse effects of the conditions and events can be effectively implemented. AU 341.08 further directs auditors to obtain evidential matter about management's plans that are particularly significant to overcome the adverse effect. When those plans include reduced or delayed expenditures, the auditor should consider the "feasibility" and "possible direct or indirect effects" of such reductions and delays. AU 341.07. Yet RSSM and Rubin did not consider the feasibility or direct or indirect effects of CRS not paying the PEO for essential services. Despite the documented need for ongoing financial support and their knowledge that CRS "has an over reliance on debt financing and amounts received from related parties," RSSM, through Rubin, never obtained evidence that TSE in fact had the resources "to maintain or improve" CRS's financial position by paying the wages and payroll taxes for CRS's staffing employees—services critical to CRS's operations—without first receiving payment. Bernstein, as EQR, also did not challenge that decision.

### **Additional Failures to Audit CRS's Related Party Transactions and Disclosures**

23. RSSM also failed to include adequate procedures to identify and fully understand CRS's material related party transactions, and who specifically was providing CRS with PEO services, to determine the appropriateness of related party disclosures.

24. Through its history with CRS, including its audits of CRS's financial statements and review of CRS's quarterly filings, RSSM knew of CRS's PEO relationship with TSE and CRS's operational and financial dependence on TSE and Director. It was during the period that Bernstein was the engagement partner and Rubin was the EQR that Director obtained controlling ownership of CRS and established the mutually-exclusive PEO relationship between CRS and TSE. RSSM also documented within its 2012 work papers its knowledge that "related party transactions with their Professional Employer Organization (PEO) are a particularly sensitive area in the financial statements requiring proper disclosure."

25. RSSM also was aware that the obligations of both CRS and TSE under the PEO arrangement were documented in a Master Services Agreement ("MSA"). The MSA stated that CRS was responsible for supervising its employees, maintaining and providing time and other payroll records upon which payroll would be based, and paying TSE for all compensation that would be paid to or on behalf of CRS's employees, including taxes. TSE essentially paid the wages and taxes based on the money and documentation that CRS provided, for which services TSE charged CRS an administrative fee.

26. Though aware that the MSA was a material related party agreement, RSSM, through Rubin, never performed any audit procedures on the MSA, and Bernstein as EQR did not challenge that decision or otherwise identify the deficiency. RSSM's work papers only contained an incomplete portion of the MSA that was attached to CRS's September 2010 Form 8-K. This copy of the MSA identified the PEO to be TSE but (1) redacted the amount of administrative fee that TSE agreed to charge CRS for PEO and other administrative services and (2) omitted the two Schedules identified on the face of the agreement. The excluded "Schedule A" contained the material terms of the PEO arrangement as described above and included a clause whereby CRS indemnified TSE "from and against all claims, demands, causes of action, suits, liabilities and expenses (including court costs and attorney's fees) of every kind or character...without regard to the cause or causes thereof or the negligence of any party...."

27. This indemnification clause was a disclosable guarantee by CRS under ASC 460 *Guarantees*. The clause also provided yet another reason for RSSM, through Rubin during the Relevant Period, to include certain audit procedures to determine whether TSE had remitted payroll taxes because it exposed CRS to potential liability for any gross wage and tax amounts that TSE had not paid—even if CRS had already paid TSE, who in turn had misappropriated the funds. As a result, CRS's contingent liability for any unpaid payroll taxes existed not only because it was the common law employer of its staffing employees, but also because CRS agreed to indemnify TSE for certain unpaid payroll taxes.

28. CRS, however, repeatedly failed to disclose its guarantee as required under ASC 460. And, at least during the Relevant Period, RSSM and Rubin failed to obtain and perform any audit procedures on the MSA. Bernstein similarly failed to identify the resulting audit deficiencies.

29. Additionally, although both the MSA and CRS's 2012 Form 10-K filed on December 21, 2012, specifically identified the PEO to be TSE, the work papers for the 2012 audit reveal inconsistencies in the identification of who specifically was providing CRS with PEO services. For example, the work papers refer to the PEO as any one of a myriad of entities, including "Tri-State Services," "Tristate (related party)," "TSE," "TS Employment," or "TriState." The work papers do not identify the number, nature or names of the entities and individuals that were conglomerated into the "Tristate" moniker. Other work papers note that while CRS wired funds daily to TSE "to cover payroll and payroll related expenses," it was "TriState" that sent invoices and issued paychecks from a "TriState bank account." Despite these apparent inconsistencies, RSSM, through Rubin, did not resolve the issue and obtain evidence that CRS's disclosures were accurate.

30. This omission also resulted in RSSM's failure to realize that CRS's related party disclosures did not comply with generally accepted accounting principles ("GAAP"). For example, CRS's 2012 Form 10-K stated: "TS Employment charges the Company its current market rate for services, which is consistent with the amounts that it charges its other customers." However, ASC 850, *Related Party Disclosure*, prohibits disclosures that related party transactions are done at fair market value or essentially carried out on an arms-length basis, unless such disclosures can be substantiated. AU 334.12 also specifically states that "it is difficult to substantiate representations that a transaction was consummated on terms equivalent

to those that prevail in arm's length transactions.”

31. Despite these accounting and auditing provisions, RSSM, through Rubin, failed to obtain audit evidence to corroborate CRS's disclosure that TSE charged CRS a market rate for its PEO services or to substantiate the accuracy of the administrative fee charged. Bernstein, as the EQR, also failed to identify the departure from GAAP in CRS's related party disclosures. The disclosure was also inaccurate. Given that TSE's only customer was CRS, TSE could not charge CRS amounts consistent with what it charged “others.”

### **Failures to Audit CRS's Cost of Revenues**

32. CRS's reported cost of revenues was almost wholly comprised of the amounts due to TSE for PEO services, a material related party transaction that presented fraud risk. However, RSSM failed to substantively test CRS's transactions with TSE or otherwise perform audit procedures to obtain sufficient appropriate evidence to support CRS's cost of revenues.

33. During the 2010 audit, the engagement team identified fraud risks concerning cost of revenues. They noted that Director had managerial control of operations and “may sacrifice the interest of the minority shareholders for its own benefit,” “manipulate the financial data to project the desired results,” and “manipulate certain ratios (i.e. gross profit margins) that would make the stock seem profitable and enticing to investors.” RSSM further identified that “the most significant financial statement areas in the audit are receivable, revenue, and payroll.”

34. During the 2011 audit's fraud risk assessment procedures and management interviews, RSSM learned that CRS's cost of revenues could be manipulated and materially misstated by management and TSE. For example, when asked how someone could overstate net income if they wanted to, CRS's CEO, who was also TSE's Executive Vice President, said: “I would withhold expense (i.e. lower my costs).” CRS's Controller further suggested that someone could “[u]nderstate the payable to the PEO.” The 2011 audit work papers further highlighted that the company used TSE to process its cost of sales and that “an invoice could be easily manipulated to be less.”

35. Moreover, the 2012 internal controls work papers noted that “PEO invoices are not reconciled to the payroll registers” and that “any errors in the amounts billed on the PEO invoice would not be encountered” or detected and corrected by CRS. In fact on January 22, 2013, RSSM, through Rubin and Bernstein, identified the lack of reconciliation of PEO invoices as a significant deficiency in CRS's internal controls in a letter to CRS's Board of Directors. RSSM also reported in the letter that there were some discrepancies between TSE invoices received and used to record payroll expense and CRS's actual payroll registers. RSSM also noted that CRS relied on the amounts charged by TSE and did not obtain support to verify the charges.

36. Thus, RSSM, Rubin and Bernstein knew of risks of material misstatement related to CRS's cost of revenues that could only be addressed by obtaining persuasive audit evidence through substantive tests of details. Under AS 13.09, *The Auditor's Responses to the Risks of Material Misstatements*, an auditor should “[o]btain more persuasive audit evidence the higher the auditor's assessment of risk.” Moreover, AS 13.11 states that for significant risks, the

“auditor should perform substantive procedures, including tests of details, that are specifically responsive to the assessed risks.” The standard further provides that (1) “[s]ubstantive procedures generally provide persuasive evidence when they are designed and performed to obtain evidence that is relevant and reliable”; (2) “[i]nquiry alone does not provide sufficient appropriate evidence to support a conclusion about a relevant assertion”; and (3) “increasing the extent of an audit procedure cannot adequately address an assessed risk of material misstatement unless the evidence to be obtained from the procedure is reliable and relevant.” AS 13.39; AS 13.42. AU 333, *Management Representations*, and AU 334 also provide that sufficient persuasive audit evidence must extend beyond management representations and unverified or uncorroborated representations from related parties.

37. Nonetheless, RSSM, through Rubin, did not perform appropriate substantive tests of details during the Relevant Period. It did not perform procedures to assess whether TSE’s invoices reflected an accurate calculation of wages, taxes and benefits. Rather, its cost of sales testing consisted of obtaining management’s uncorroborated explanations of gross margin fluctuations. RSSM also obtained a confirmation of costs from TSE. However, in contravention of AU 333 and AU 334, RSSM labeled the confirmation as being from a third party. This confirmation also did not provide relevant and reliable evidence because it was signed by a dual employee of CRS and TSE and was not received until one month after RSSM, through Rubin, issued its audit report on the September 2012 financial statements.

38. In his role as the EQR during the Relevant Period, Bernstein failed to exercise the requisite due care and professional skepticism when he evaluated the engagement team’s planned procedures for the testing of cost of revenues. He failed to identify that the engagement team had not planned, performed and documented sufficient substantive testing. He failed to identify that the engagement team had not obtained sufficient appropriate audit evidence to address the known fraud risks, in contravention of AS 13, AU 333, and AU 334.

### **Failure to Obtain Sufficient Appropriate Audit Evidence to Support CRS’s Revenue Recognition**

39. AS 12.68, *Identifying and Assessing Risks of Material Misstatement*, and AU 316.83, *Consideration of Fraud in a Financial Statement Audit*, provide that improper revenue recognition is a presumptive fraud risk for all audits. However, without evidence or analysis of information sufficient to overcome the presumption, RSSM, through Rubin, did not identify CRS’s revenues as such during the Relevant Period. Although aware of “managements [sic] inclination to inflate the bottom line for its potential investors,” RSSM identified revenues as only a significant risk in the September audit, and as no risk at all in the December audit.

40. However, because revenues did in fact present fraud risks, RSSM failed to comply with AS 13 when the engagement team did not conduct substantive tests of details to obtain persuasive audit evidence. As with cost of revenues, RSSM, through Rubin, essentially relied on a weekly sales and margin report provided by CRS to see if there were any unusual fluctuations. As a result, RSSM did not obtain sufficient appropriate and persuasive evidence that CRS’s revenues were based on an arrangement pursuant to which services were actually delivered at set fees that were not subject to a side agreement or rebate. RSSM did not have sufficient appropriate audit evidence to support its conclusion that CRS’s revenues were

recognized in accordance with GAAP.

41. Bernstein, as the EQR, should have known that the engagement team's performance of only analytical procedures was not sufficient to audit revenues under PCAOB standards. Yet he did not identify this as a significant engagement deficiency or object to the issuance of RSSM's audit reports containing unqualified opinions for the 2012 financial statements.

42. These lapses occurred despite Rubin's and Bernstein's knowledge before completing the September and December 2012 audits that the PCAOB had inspected RSSM's audit of CRS's 2011 financial statements and found significant audit deficiencies that rendered RSSM's unqualified opinion unsupported. Among other things, the PCAOB noted that RSSM did not perform sufficient procedures to test the completeness, existence, accuracy and valuation of revenue. They also found that RSSM had failed to vouch and agree information presented by management to source documents.

#### **Failure to Obtain Sufficient Appropriate Audit Evidence to Address Fraud Risks Associated with CRS's Journal Entries**

43. Rubin and Bernstein were also aware during the Relevant Period that the PCAOB had previously found deficiencies in RSSM's testing of journal entries. For example, the PCAOB had commented that RSSM did not examine, during its audit of CRS's 2011 financial statements, underlying support for journal entries selected for testing and inappropriately limited journal entry testing to just two out of twelve months.

44. They also knew that CRS lacked adequate controls over journal entries and that this posed fraud risks. As noted in their "Journal Entry Testing" work paper, "one of the major deficiencies" in CRS's journal entry process was that CRS used one IT system to prepare its financial reports, and a wholly separate IT system for "sales invoices, cash receipts and payroll calculations," to which related parties had access without CRS oversight. RSSM also identified as a significant deficiency the fact that CRS made manual batch journal entries at month end without review and did not keep a detailed general ledger. The engagement team further documented within the work papers the fact that CRS had a tendency to compound "multiple concepts" in journal entries, such as depreciation with accrued expense and cash transactions, and recorded adjustments on a "top-sided" basis that were not assigned to specific accounts or communicated on a timely basis.

45. Nevertheless, RSSM and Rubin failed to obtain sufficient support for the 2012 journal entries that were tested. The work papers, for example, reflect that they failed to examine evidence for the authorization, accuracy and completeness of journal entries related to (1) CRS's reclassifications of temporary employee salaries to related party interest expense, (2) expenses labeled as "[Director] Commissions," (3) entries for a corporate acquisition and purchases of intangibles, (4) top-side entries, (5) non-standard entries made by CRS's controller, and (6) entries for the conversion of \$14.1 million of related party debt to equity so as to improve CRS's balance sheet.

46. In addition, AU 316.62 provides that an auditor's journal entry testing should ordinarily include a focus on adjustments made at the end of a reporting period, as fraudulent entries can be made at that time. Despite this requirement, RSSM did not examine, for example, any support for year-end journal entries, except those for one subsidiary.

### **Failure to Obtain Sufficient Appropriate Audit Evidence to Support the Audit Opinion**

47. AS 15.04, *Audit Evidence*, requires the auditor to "plan and perform audit procedures to obtain sufficient appropriate audit evidence to provide a reasonable basis for his or her opinion." However, RSSM, through Rubin as the engagement partner during the Relevant Period, did not obtain sufficient appropriate audit evidence to support management's assertions regarding CRS's recognition of revenue, cost of sales, related party transaction disclosures, and journal entries. Thus, Rubin improperly approved RSSM's issuance of audit reports containing unqualified audit opinions regarding CRS's 2012 financial statements. Bernstein, in turn, improperly concurred in the issuance of these audit reports despite significant engagement deficiencies in the audit arising from a lack of audit evidence.

### **Failure to Perform an Audit on CRS's December 2012 Revised Financial Statements**

48. Although RSSM issued an audit report containing an unqualified opinion on the December 2012 financial statements included within CRS's 2013 Form 10-K, the engagement team, in effect, did not perform audit procedures on those statements. Bernstein was aware of this fact but still provided his concurrence.

49. By email dated January 13, 2014, CRS notified RSSM, through Rubin and Bernstein, that the successor auditor had completed its initial review of RSSM's September 2012 and December 2012 work papers and concluded that in its judgment there were deficiencies in the RSSM work papers. The claimed deficiencies included a lack of adequate audit procedures concerning related party transactions and lack of testing for journal entries, revenues and significant contracts.

50. RSSM did not properly assess the importance of the deficiencies identified by the successor auditor, perform additional audit procedures, or otherwise supplement the documentation within the 2012 work papers.

51. Rubin and Bernstein also learned that the successor auditor had identified a number of prior-period misstatements that impacted CRS's financial statements for periods including the fiscal years ended September 28, 2012, and December 28, 2012. The misstatements concerned, for example, incorrect accounting for the receivables-backed facility, stock based compensation, deferred tax assets and liabilities, and the deconsolidation of a joint venture. Certain of these items resulted in quantitatively material changes to CRS's balance sheet and the statements of cash flows, for example. The items also changed certain financial statement metrics used by investors and lenders, and occurred at a time when CRS was working to be listed on NASDAQ, raise additional capital through an offering of stock, and increase its borrowings under a new asset-based lending arrangement.

52. CRS ultimately revised its December 2012 financial statements and included a Note to its 2013 financial statements regarding the revisions. At CRS's request, Rubin issued with Bernstein's concurrence RSSM's audit report containing an unqualified opinion for the revised December 2012 financial statements and the accompanying Note. The audit report was dated as of December 20, 2013, to reflect when RSSM had originally and purportedly completed the December 2012 audit, and as of June 30, 2014, to cover the revisions. By issuing and dual dating the audit report, which CRS included in its 2013 Form 10-K, RSSM, through Rubin and Bernstein, stated that: (1) RSSM had audited the December 2012 financial statements as of December 20, 2013, in accordance with PCAOB standards, and (2) RSSM had also audited the revisions to the 2012 financial statements as of June 30, 2014, in accordance with PCAOB standards.

53. These two statements, however, were false. RSSM did not quantify the issues raised by the successor auditor, obtain evidence to support the revisions, audit CRS's materiality assessment or otherwise perform audit procedures required by PCAOB standards to provide reasonable assurance that CRS's financial statements were not materially misstated. RSSM's work papers also failed to support any sign off by Rubin or Bernstein on any work related to any revisions. Further, RSSM did not take steps to assess and remedy any potential audit deficiencies within its September and December 2012 work papers, noted by the successor auditor. Rubin, as the engagement partner, was aware of these facts but nevertheless issued the dual-dated audit report for filing within CRS's 2013 Form 10-K. Bernstein, as the EQR, was also aware of these facts, but nevertheless provided his concurrence.

### **Bernstein's Failure to Conduct Engagement Quality Reviews and Lack of Independence**

54. AS 7.02, *Engagement Quality Review*, requires an EQR to evaluate the significant judgments made by the engagement team and the related conclusions reached in forming the overall conclusion on the engagement and in preparing the engagement report to determine whether to provide concurring approval of issuance of the audit report.

55. For both the September 2012 and December 2012 audits, and as discussed above, Bernstein did not comply with AS 7.10 and AS 7.11 in that he did not properly: (1) evaluate significant judgments made by the engagement team related to engagement planning and materiality; (2) evaluate the engagement team's assessment of and responses to significant risks, including fraud risks; (3) review the engagement completion documents; and (4) evaluate the sufficiency and completeness of the audit documentation to support the conclusions reached by the engagement team.

56. Further, Bernstein, and therefore RSSM, was not independent beginning with the audit of CRS's 2011 financial statements, and continuing through RSSM's issuance of its dual-dated audit report for the December 2012 financial statements. Bernstein failed to meet the qualification requirements of an EQR under AS 7.08, which prohibits an auditor from serving as an EQR if he has served as the engagement partner in either of the previous two audits. He also failed to comply with Rule 2-01(c)(6)(i)(B)(1) of Regulation S-X which prohibits an auditor from serving as either an engagement partner or an EQR on any engagement for more than five consecutive years. As a result, he improperly concurred with the issuance of RSSM's audit

reports, and Rubin failed to ensure that the audits adhered to PCAOB Standards and SEC independence rules.

### **RESPONDENTS' COOPERATION**

57. In determining to accept Respondents' Offers, the Commission considered their cooperation.

### **VIOLATIONS**

58. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit, in connection with the purchase or sale of securities, (a) employing any device, scheme, or artifice to defraud, (b) making any material misrepresentation or omission, or (c) engaging in any act, practice, or course of business that operates as a fraud or deceit upon any person. As a result of the actions described above, Rubin and Bernstein violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by making, preparing, authorizing and issuing audit reports filed with the Commission that falsely stated they had conducted the December 2012 audit in accordance with PCAOB standards when, in fact, the audit was so deficient that it amounted to no audit at all.

59. Section 10A(a)(1) of the Exchange Act requires each audit of an issuer to include procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts. Section 10A(a)(2) of the Exchange Act requires each audit of an issuer to include procedures designed to identify related party transactions that are material to the financial statements or otherwise require disclosure therein. No showing of scienter is necessary to establish a violation of Section 10A. As a result of the conduct described above, Rubin and Bernstein caused RSSM's violations of Sections 10A(a)(1) and 10A(a)(2).

60. Rule 2-02(b)(1) of Regulation S-X requires an accountant's report to state "whether the audit was made in accordance with generally accepted auditing standards" ("GAAS"). "[R]eferences in Commission rules and staff guidance and in the federal securities laws to GAAS or to specific standards under GAAS, as they relate to issuers, should be understood to mean the standards of the PCAOB plus any applicable rules of the Commission." *See* SEC Release No. 34-49708 (May 14, 2004). Thus, and through the conduct described above, Rubin and Bernstein caused RSSM to violate Regulation S-X Rule 2-02(b)(1) when they issued audit reports stating that they had conducted their audits in accordance with PCAOB standards when they had not.

61. An issuer violates Section 13(a) of the Exchange Act and Rule 13a-1 thereunder when such issuer files with the Commission annual reports that contain materially false or misleading information or if they file annual reports that fail to include independently audited financials. Scienter is not required for a violation of Section 13(a). In administrative proceedings, the Commission may impose sanctions upon any person that is, was, or would be a cause of a violation, due to an act or omission the person knew or should have known would contribute to such violation. In order to establish that a person caused a non-scienter based violation, a showing of negligence will suffice. By not conducting the 2012 audits of CRS's

financial statements in accordance with PCAOB standards, and issuing audit reports stating that RSSM was independent when it was not, Rubin and Bernstein were a cause of CRS's violations of Section 13(a) and Rule 13a-1.

62. Section 4C of the Exchange Act and CRP Rule 102(e)(1)(ii) provide, in part, that the Commission may censure or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to any person who is found by the Commission to have engaged in improper professional conduct. With respect to persons licensed to practice as accountants, "improper professional conduct" includes "intentional or knowing conduct, including reckless conduct that results in a violation of applicable professional standards." CRP Rule 102(e)(1)(iv)(A). In addition, under CRP Rule 102(e)(1)(iv)(B), negligent conduct can constitute "improper professional conduct." The conduct described above, including Rubin's and Bernstein's violations of PCAOB standards and Rubin's issuance of and Bernstein's concurrence with issuances of audit reports that falsely stated that they had conducted CRS audits in accordance with PCAOB standards when they had not, constituted "improper professional conduct" within the meaning of Exchange Act Section 4C(a)(2) and CRP Rule 102(e)(1)(ii).

### **FINDINGS**

63. Based on the foregoing, the Commission finds that Respondents violated Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder.

64. Based on the foregoing, the Commission finds that Respondents caused violations of Exchange Act Sections 10A(a)(1), 10A(a)(2), 13(a), and Rule 13a-1 thereunder, and Rule 2-02(b)(1) of Regulation S-X.

65. Based on the foregoing, the Commission finds that Respondents engaged in improper professional conduct pursuant to Section 4C(a)(2) of the Exchange Act and CRP Rule 102(e)(1)(ii).

### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

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

A. Respondents, Rubin and Bernstein, shall cease-and-desist from committing or causing any violations and any future violations of Sections 10(b), 10A(a)(1), 10A(a)(2), and 13(a) of the Exchange Act, Rules 10b-5 and 13a-1 promulgated thereunder; and Rule 2-02(b)(1) of Regulation S-X.

B. Respondents, Rubin and Bernstein, are denied the privilege of appearing or practicing before the Commission as an accountant.

C. Respondent Rubin shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$25,000 to the Securities and Exchange Commission for transfer

to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

D. Respondent Bernstein shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$25,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

E. Payment must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondents 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) Respondents 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 as Respondents, Mitchell J. Rubin and Michael Bernstein, in these proceedings, and the file number of these proceedings. A copy of the cover letter and check or money order must be simultaneously sent to Anita B. Bandy, Associate Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, DC 20549.

F. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agrees that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields  
Secretary