

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 95071 / June 8, 2022**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 4311 / June 8, 2022**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20894**

**In the Matter of**

**STEVEN C. AVIS, CPA,**

**and**

**STEVEN W. HURD, CPA**

**Respondents.**

**ORDER INSTITUTING  
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 against Steven C. Avis ("Avis") and Steven W. Hurd ("Hurd") (collectively, "Respondents") pursuant to Sections

4C<sup>1</sup> and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii)<sup>2</sup> of the Commission’s Rules of Practice.

## II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the “Offers”) that 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 Administrative and Cease-and-Desist Proceedings, Pursuant to Section 4C and 21C of the Securities and 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<sup>3</sup> that:

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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.

<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.

## SUMMARY

1. This matter involves Respondents' improper professional conduct in connection with their roles in Haynie & Company P.C.'s ("Haynie") 2017 audit and 2018 interim reviews of United Health Products, Inc.'s ("UHP") financial statements.

2. UHP recorded two fraudulent revenue entries for its fiscal year 2017 that resulted in material overstatements of its reported revenues and accounts receivable balances in its financial statements included in each of its 2017 Forms 10-Q and 10-K, and related misstatements in its 2018 Forms 10-Q. UHP later restated these financial statements.

3. Avis served as the engagement partner and Hurd served as the audit manager on the engagement team during the 2017 audit and the 2018 interim reviews of UHP. In those capacities, Respondents failed to adhere to numerous standards of the Public Company Accounting Oversight Board ("PCAOB") by (1) failing to exercise due professional care and skepticism; (2) failing to obtain sufficient appropriate audit evidence for revenue and accounts receivables; (3) failing to adequately identify and examine a significant unusual transaction; (4) failing to assess the risks of material misstatement and consider fraud; and (5) failing to investigate relevant information received after Haynie issued its audit report. In addition, Avis (1) failed to properly supervise the audit team during the 2017 audit; (2) failed to properly evaluate whether UHP's financial statements in its 2017 10-K were fairly presented; and (3) failed to address uncorrected material misstatements of UHP's 2017 revenues presented as comparative period results in UHP's 2018 interim financial statements in its 2018 10-Qs.

4. As a result, Respondents engaged in improper professional conduct within the meaning of Section 4C of the Exchange Act and Rule 102(e) of the Commission's Rules of Practice and were a cause of certain of UHP's violations of the reporting provisions under Section 13(a) of the Exchange Act.

## RESPONDENTS

5. **Avis**, age 50, is a Certified Public Accountant ("CPA") licensed to practice in Utah and is a partner at Haynie & Company. Avis served as the engagement partner on Haynie's 2017 audit and 2018 interim reviews of UHP.

6. **Hurd**, age 36, is a CPA licensed to practice in Utah. Hurd served as the audit manager on Haynie's 2017 audit and 2018 interim reviews of UHP.

## OTHER RELEVANT ENTITIES

7. **UHP** is a Nevada corporation with a principal office address in Henderson, Nevada that develops and manufactures hemostatic gauze for the healthcare and wound care sectors. UHP's common stock is registered with the Commission pursuant to Exchange Act section 12(g) and is quoted on the OTC Pink (ticker: UEEC). UHP files periodic reports, including Forms 10-K

and 10-Q, with the Commission pursuant to Section 13(a) of the Exchange Act and related rules thereunder. At all relevant times, UHP followed a calendar year fiscal year.

8. **Haynie** is a PCAOB-registered accounting and auditing firm based in Salt Lake City, UT. Haynie was appointed as UHP's independent auditor in late March 2018 to audit UHP's fiscal year 2017 financial statements. Haynie continued as UHP's auditor until its resignation in December 2019 for reasons unrelated to the conduct described herein.

## FACTS

### **A. UHP's Fraudulent Revenue Recognition**

9. UHP recorded two fraudulent revenue entries for purported sales transactions that resulted in material overstatements of its reported revenues and accounts receivable balances in its financial statements included in its Q1, Q2, and Q3 2017 Forms 10-Q and 2017 Form 10-K, and related misstatements in the financial statements included in its 2018 Q1, Q2, and Q3 Forms 10-Q.

10. The first fraudulent entry involved UHP recording \$130,725 of revenue as a March 31, 2017 sale of product to Customer-1 (the "March Revenue"), based on a fraudulent, back-dated purchase order that UHP management procured from Customer-1 in May 2017 and which was formally "cancelled" by Customer-1 the following day. UHP never shipped the product to Customer-1 and no payment was sought or received from Customer-1. Nevertheless, when UHP filed its Q1 2017 Form 10-Q on July 31, 2017, UHP fraudulently reported the March Revenue and the full amount in its accounts receivable balance in its Q1 interim financial statements. UHP also reported the revenue and full amount in its accounts receivable balance as reflected in the interim financial statements in its Q2 and Q3 Forms 10-Q. As reflected in those filings, the March Revenue accounted for 58% of reported revenue and 56% of its accounts receivable balance at Q1 2017; over 49% of reported revenue for the first six months of 2017 and 78% of the accounts receivable balance as of the end of Q2 2017; and over 39% of reported revenue for the first nine months of 2017 and 79% of the accounts receivable balance as of the end of Q3 2017.

11. As described further herein, UHP ultimately removed the March Revenue from its reported revenues and reduced the accounts receivable balance by the same amount when it filed its 2017 annual financial statements, audited by Haynie, on Form 10-K. However, UHP neither restated the 2017 interim financial statements nor made any disclosure of its removal of the March Revenue from its revenue and accounts receivable figures in the accompanying notes to the 2017 annual financial statements or otherwise when filing the 2017 Form 10-K. Moreover, UHP continued to report the previously-reported 2017 revenue figures, inclusive of the March Revenue, as comparative results in its 2018 interim financial statements in its Q1, Q2, and Q3 2018 Forms 10-Q, which were reviewed by Haynie.

12. The second fraudulent revenue entry involved UHP recording \$438,596 of revenue as a purported December 20, 2017 sale of product to Customer-2 (the "December Revenue"). This purported purchase amount was exponentially larger than any prior purchases by Customer-2, which was UHP's largest customer and exclusive U.S. distributor. In fact, Customer-2 never

agreed to place such an order at any time, and no purchase order existed. Instead, UHP decided to send the product in late December 2017 to be sterilized at its sterilization facility while UHP attempted to persuade Customer-2 to make a purchase. In late January 2018, after Customer-2 expressly refused UHP's efforts to have Customer-2 purchase or store the product on any terms, UHP unilaterally decided that it would, without Customer-2's authorization or prior notice, ship the product to Customer-2's warehouse, with delivery occurring in early February 2018.

13. Despite the fact that there was no sale to Customer-2, UHP management included the December Revenue in its reported revenue and the full amount in its accounts receivable balance in UHP's 2017 annual financial statements filed on Form 10-K. The December Revenue accounted for 68% of UHP's reported 2017 annual revenues and 98% of its accounts receivable balance as of year-end 2017.

14. As discussed further herein, approximately one week after UHP had filed its 2017 Form 10-K, Customer-2 returned an accounts receivable confirmation response to Haynie in which it denied that it owed any amount to UHP as of year-end 2017 and that it had nothing to substantiate the claimed balance "whether before or after December 31, 2017."

15. Approximately two weeks later, by letter dated May 8, 2018, Customer-2 gave formal notice to UHP management that it was terminating the distribution agreement based on what it had discovered of UHP's conduct and would not be paying for the unordered product. UHP did not advise Haynie of Customer 2's May 8, 2018 letter.

16. UHP continued to include the full amount of the December Revenue in its accounts receivable balances in its Q1 and Q2 2018 Forms 10-Q, and in its Q3 2018 Form 10-Q, UHP included the amount minus a write-off of \$100,000 as a bad debt expense. UHP wrote off the remaining balance in its 2018 Form 10-K filed on April 1, 2019.

## **B. Respondents' Audit and Review Failures**

### **i. Background**

17. Haynie was appointed as UHP's independent auditor as of March 29, 2018 to audit UHP's 2017 annual financial statements. When Haynie began its work on the audit, Avis and Hurd understood that UHP sought to be able to file its 2017 Form 10-K by April 17, 2018, UHP's extended deadline for relief under Commission rules.

18. Avis, Hurd, and other members of the Haynie audit team identified improper revenue recognition as a significant risk during their 2017 audit planning for UHP. Through Haynie's 2017 audit procedures, Avis and Hurd were aware that, among other things, UHP had written distribution agreements with its customers, that it was necessary for UHP's product to be shipped to a third-party sterilization facility for sterilization before it could be shipped to a customer, and that UHP generally used third-party commercial shipping companies for shipments. They also determined that UHP could not properly recognize revenue until delivery to the

customer's facilities occurred. Hurd directly participated in Haynie's revenue and accounts receivable testing procedures.

19. Ultimately, UHP filed its 2017 Form 10-K on April 17, 2018 with Haynie's unqualified opinion, after sign-off by Hurd and final approval by Avis. As detailed below, the 2017 audit and 2018 interim reviews were flawed in their planning, supervision, and execution, and Avis and Hurd failed to meet professional standards in a number of respects.

**ii. Avis's Audit and Review Failures with Respect to the March Revenue**

20. UHP included the March Revenue in the files it provided to Haynie at the outset of the audit, but in those files reflected it as revenue and a receivable owed by a commercial shipping company. Haynie selected the March Revenue as part of its revenue testing procedures because it exceeded Haynie's dollar threshold for items deemed individually significant. Based on Haynie's inquiries of UHP management regarding the March Revenue, Avis was informed of management's explanation that no product was delivered to Customer-1 because it was lost in transit by a commercial shipping company during shipment from UHP's third-party sterilization facility to the customer, and that UHP had booked the revenue and receivable as due from the shipping company on the basis that UHP had filed a claim against the shipping company. Avis was also aware that UHP management argued that the March Revenue should be recognized because the product had been received by a third-party sterilization facility and because the shipping company was responsible for the lost sale amount and UHP had filed a claim against the shipping company for that amount.

21. Avis reviewed the situation with certain members of the audit team, including Hurd, and determined that the transaction did not meet the revenue recognition criteria for a sale. Avis then reviewed and approved a draft email Hurd prepared to UHP to explain Haynie's position, which Hurd sent to UHP on April 6, 2018. The email explained Haynie's position that UHP could not recognize revenue until delivery to the customer's facilities occurred based on its agreements with customers and other practices, and that because the shipping company was not the intended customer and had no agreement to purchase the product it also could not be considered a sale to the shipping company either. The email proposed that UHP reverse the revenue and related accounts receivable balance. The email also advised that there were revenue cut off issues at year end, including several entries for smaller sales recorded with late December 2017 dates in which the product was not delivered until January 2018, which did not yet meet the revenue recognition criteria, and would need to be recognized in the correct period.

22. After UHP's CEO responded that he disagreed, Avis sent a follow up email on April 7, 2018, which provided a further detailed explanation and analysis of the conditions necessary for revenue recognition and reiterated that UHP needed to remove the March Revenue and related accounts receivable amount from its 2017 year-end financial statements. Among other things, Avis noted that they had reviewed UHP's "sales agreements, [and] they are clearly marked FOB Destination," which "indicates that the risk of loss does not transfer from the seller to the

buyer until the product was received by the buyer.”<sup>4</sup> Avis further explained that “FOB destination coupled with the fact that the product must be sterilized prior to the sale taking place” meant that for UHP the revenue recognition criteria “have not been met until after the product has been sterilized and received by the customer.” Avis also reiterated that the entries for several smaller year-end sales that were not delivered until January 2018, would also need to be removed from the 2017 revenues.

23. UHP removed the \$130,725 March Revenue amounts from its revenue and accounts receivable balances presented in its year-end 2017 annual financial statements filed on Form 10-K. Avis accepted UHP’s removal without properly evaluating whether UHP’s 2017 annual financial statements together with disclosures in the accompanying notes were fairly presented in accordance with generally accepted accounting principles (“GAAP”). UHP did not restate its 2017 interim financial statements at or prior to the time that it filed its 2017 Form 10-K and UHP did not make any other type of disclosure in the accompanying notes to the annual financial statements or otherwise.

24. Although Haynie was not the auditor that performed the reviews of UHP’s Q1, Q2, and Q3 2017 Forms 10-Q, Avis was aware that the March Revenue of \$130,725 had accounted for significant percentages of the revenue and accounts receivable balances reported in those reports. He was also aware that UHP’s original recording of revenue was erroneous.

25. ASC 250-10-45-23 requires that errors “in the financial statements of a prior period discovered after [those] financial statements [were] issued, . . . , be reported as an error correction, by restating the prior-period financial statements.” Avis did not consider or raise with UHP whether UHP needed to restate its 2017 interim financial statements, and UHP made no such restatement, either as amended Forms 10-Q or as part of the 2017 Form 10-K filing. As a result, UHP’s filing of the 2017 Form 10-K annual financial statements with the subsumed reversal of revenue and accounts receivable balances without disclosing the reversal in the notes to the financial statements and without restating the previously issued interim financial statements was not in accordance with GAAP.

26. In addition, when Avis proposed and accepted UHP’s removal of the March Revenue from its 2017 annual financial statements as a year-end adjustment—which itself was not in accordance with GAAP’s requirement for correction of a material error—Avis also failed to consider requirements under GAAP for disclosure in the notes to the annual financial statements of such a material year-end adjustment. ASC 270-10-50-2 notes that financial statement users often make inferences about the fourth quarter when interim financial data and disclosures are not separately reported for the fourth quarter, as in UHP’s case, by subtracting data based on the third-quarter interim report from the annual results. That provision goes on to require disclosure in a

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<sup>4</sup> “FOB” stands for “free on board” or “freight on board” and is a shipment term used to designate the point at which the risk of loss for a shipment shifts from the seller to the buyer. “FOB Origin” means that the risk of loss shifts from the seller to the buyer at the shipping point. “FOB Destination” means that the seller has the risk of loss during shipment and it shifts to the buyer when the goods are delivered to the customer’s destination.

note to the annual financial statements of, among other things, “the aggregate effect of year-end adjustments that are material to the results of [the fourth] quarter” when, as here, the issuer has not issued a separate fourth quarter report or disclosed the results of the fourth quarter in its annual report.

27. The reversal of \$130,725 of revenue attributable to the March Revenue that was previously reported in the 2017 interim financial statements was material to Q4, as well as to a user’s reasonable understanding of those previously-issued interim financial reports. UHP’s 2017 10-K reported \$645,652 in revenue for 2017. For the nine months ended September 30, 2017, UHP had reported \$336,543 (inclusive of the \$130,725 improperly recognized as Q1 revenue), so a user of the financial statements would reasonably infer \$309,109 in revenue rather than the \$439,834 UHP’s records attributed to Q4 2017.

28. Avis also departed from PCAOB standards in the reviews of UHP’s 2018 interim financial statements in relation to the March Revenue. Even though Avis had determined that the March Revenue should never have been recognized, UHP’s 2018 interim financial statements continued to report the materially misstated 2017 quarterly revenue results that included the March Revenue amount when presenting the 2017 periods as comparative results in UHP’s Q1, Q2, and Q3 2018 financial statements filed on Forms 10-Q. Avis never considered or took any steps to address UHP’s continued reporting of those materially misstated 2017 comparative period results in the financial statements presented in each of UHP’s 2018 Forms 10-Q.

### **iii. Avis’s and Hurd’s Audit Failures with Respect to the December Revenue**

29. The initial trial balance and general ledger that UHP provided to Haynie at the outset of the 2017 audit did not include the December Revenue, and as a result it was not part of Haynie’s initial selections of sales for testing. With the exception of the March Revenue, all of the other revenue entries were each for less than \$20,000. Haynie’s initial selections included, among others, the March Revenue entry (as discussed above), entries for sales to Customer-2 and another customer that were dated December 28, 2017, and a number of entries for other sales to Customer-2 on various dates throughout 2017. Hurd directly participated in Haynie’s revenue and accounts receivable testing procedures and was involved in the discussions and determinations regarding the March Revenue and other matters as described above in paragraphs 17-22, all of which occurred prior to Haynie selecting the December Revenue for testing.

30. After Haynie had made its initial revenue testing selections, UHP provided updated records that included the purported December Revenue of \$438,596. Once UHP had removed the March Revenue and moved smaller late December 2017 sales that were not delivered until 2018 to the Q1 2018 period, the December Revenue accounted for 68% of UHP’s 2017 annual revenue and constituted virtually all of the revenue UHP recorded for Q4 2017.

31. As discussed in more detail below, the engagement team failed to plan and execute appropriate steps to obtain sufficient appropriate audit evidence to substantiate the December Revenue. In an email dated April 12, 2018, Hurd added the December Revenue to Haynie’s



revenue testing selections, which asked that UHP provide copies of the invoice, shipping document, and the date payment, if any, was received for the selections.

32. Although Avis and Hurd had reviewed the prior auditor's 2016 audit work papers which showed that purchase orders had been obtained with respect to UHP sales to Customer-2 and other customers during 2016, UHP's invoices each listed an associated PO number on them, and UHP's distribution agreement with Customer-2 provided that Customer-2 "has no obligation to purchase any Products except as stated in a written purchase order," Haynie's revenue testing request did not ask for purchase orders, and no purchase order for the December Revenue was later requested or obtained by Haynie. As such, the engagement team either failed to obtain a sufficient understanding of UHP's sales process or failed to use that understanding to inform its audit procedures. The engagement team also did not request or document an understanding of the business purpose, including any explanation of why Customer-2 would make such a large purchase in one order, contrary to its prior purchase patterns.

33. In response to Hurd's testing request for the December Revenue, on April 13, 2018, UHP provided Avis, Hurd, and others at Haynie with a purported invoice for the December Revenue, and on April 16, 2018, UHP initially provided a tracking number that did not work and after Hurd followed up UHP provided a new tracking number later that day.

34. The invoice UHP provided listed a purchase date and shipment date of December 20, 2017, a delivery address in Devens, MA, a PO number, freight terms of "FOB Origin," and payment terms of 120 days. Avis and Hurd knew or should have known that both the 120-day payment term and "FOB Origin" term were inconsistent with the other invoices Haynie obtained involving Customer-2 and with express terms in UHP's distribution agreement with Customer-2. Notwithstanding the "FOB Origin" freight term in the invoice, the engagement team did not inquire about that listed term and instead analyzed the sale as if an "FOB Destination" term applied. Avis, Hurd, and the engagement team failed to engage in any adequate analysis of these inconsistencies with other invoices and the distribution agreement's terms and failed to document any management explanations that may have been provided.

35. With respect to the shipping tracking number, after receiving the newly-provided number, Hurd forwarded it to the audit senior on the engagement team and asked whether the number worked. The available information that could be obtained by entering the tracking number on the shipping company's website was limited to the dates of shipment and delivery, the city and state of the shipping and delivery locations, the number of pieces in the shipment, and the total weight of the shipment. It did not identify the shipper's name or full address from where it shipped or the recipient name or the full address to which it was delivered. In fact, the tracking number provided was for a shipment from UHP's storage facility that was delivered to its third-party sterilization facility—and not Customer-2.

36. The audit senior entered the tracking number into the shipper's website, which led to the following email exchange between the audit senior and Hurd:

- “Hey Steve, I do see it shipped from Indianapolis and arrived in Newark NJ on 12/26. Did they ship this one from a different location than all the others then?”
- Hurd replied, “Maybe” and then noted that UHP had multiple locations for inventory and that sales orders “pass through a sterilization process at a 3<sup>rd</sup> party facility before they get shipped out, so it’s likely they shipped from their warehouse to a sterilization facility in Indianapolis before they sent out the final shipment to the customer in Newark, NJ, which is what we are seeing. It probably doesn’t give you a lot of details on that shipping info, does it?”
- The audit senior replied, “Ok, no I don’t have a lot of info on it. I can see it’s shipping from IN, and that it’s 3 pieces, a total of 625 lbs, which I would expect to be quite heavy because of the amount being shipped per the invoice. Are you ok with me documenting that then wrapping up the sales testing?”
- Hurd answered, “Yeah, sounds like that information lines up (and is probably all we’re really going to be able to see), so let’s document that delivery has occurred and wrap up sales testing based on that.”

37. Not only was the Indianapolis location a different city than all other shipments as specifically noted by the audit senior, but the Newark, NJ location was also not a city that UHP had ever shipped to for Customer-2 before and the location did not match the shipping address of Devens, MA listed on the invoice. Nor did Hurd make, or instruct others to make, any inquiries to request additional information or to take steps to determine whether Customer-2 had any locations in Newark, NJ.

38. Hurd also did not raise any of the uncertainties and discrepancies from the invoice or available shipping information from the tracking number with Avis. Instead, despite his awareness that product delivery involved two shipments and his acknowledgement of the uncertainty based on the limited information provided by the tracking number, Hurd concluded that the tracking information was sufficient evidence of delivery to Customer-2. Not only was the available information insufficient to conclude that delivery was to Customer-2—as opposed to the sterilization facility or some other location—but the fact that the shipping point and delivery point cities were different from all of other shipments constituted additional unresolved red flags.

39. Moreover, the revenue testing work papers that Hurd signed off on did not note or suggest these uncertainties or discrepancies in the invoice or shipping documentation, so a reviewer of the work paper would not have been alerted to them. To the contrary, the work paper asserted: “[Haynie] received the [shipment] tracking number from the client and noted the shipment was shipped on 12/20/17 from Indianapolis and arrived in Newark NJ on 12/26/17” and that “[a]s the shipment details show the final delivery from the sterilization facility [sic] to the customer, we consider the product as delivered in 2017.”

40. The December Revenue also comprised over 98 percent of UHP’s total accounts receivable balance at year end. Yet Avis and Hurd determined to conclude the audit without

receipt of the confirmation that it had sent to Customer-2 and without sufficient alternative procedures for testing of revenue and accounts receivable.

41. Avis and Hurd also failed to appropriately respond to additional unusual circumstances surrounding the confirmation response. Specifically, on April 16, 2018, a member of UHP management told Hurd that he spoke with an individual at Customer-2 who had told him that the confirmation was sent back to the Haynie audit team member indicated on the confirmation. Hurd responded to UHP, in an email copying Avis, that both he and that audit team member had checked to confirm it wasn't missed on their end and had not found anything, and further explained that "[w]e are hoping [Customer-2 will] get us a response back ASAP since payment isn't due on those AR balances until 4/30, making alternative procedures for that sale difficult." Neither Avis nor Hurd took measures to have the audit team follow up directly with anyone at Customer-2 and took no further steps to determine what had occurred with respect to the confirmation. Instead, Hurd signed off on the accounts receivable work paper that stated that a confirmation from Customer-2 was not received and cited alternative procedures that were limited to the deficient revenue testing procedures discussed above along with noting from a review of the general ledger that UHP regularly received payment from Customer-2. However, Customer-2's prior payment history was of limited relevance given that, among other things, the December Revenue was exponentially larger than any prior sale and its unusual purported extended payment terms.

42. It was not until the morning of April 17, 2018, the date that UHP's Form 10-K was filed, that Haynie requested that UHP provide a copy of its distribution agreement with Customer-2. That request was prompted by the audit senior who noted in an email to Hurd and Avis the distribution agreement "could help support the large sale [to Customer-2] right at year-end" and "also could indicate if there's any issues with revenue recognition (like ... if [Customer-2 has] a right of return, or if [Customer-2] does not need to pay until they've sold the product)." A few minutes later, Avis replied, "We should get to the bottom of this."

43. UHP emailed the requested distribution agreement to Hurd and others a few hours later. The distribution agreement was made part of Haynie's work papers with a note on it, signed off on by Hurd, stating that it was "reviewed to ensure there were no provisions that would affect the Company's revenue recognition policies." However, the note and other work papers failed to identify or address the inconsistencies and gaps between the audit evidence and the distribution agreement, such as discrepancies in payment and freight terms and their failure to obtain Customer-2's purchase order.

44. In fact, the only specific term of the distribution agreement addressed in the note on the work paper related to the fact that "the customer does have the right to return product that has not been sold within the preceding 9 months," but dismissed this as affecting revenue recognition on the basis that "per review of the GL detail, ... the Company has had no returns ... through the date of fieldwork from any customers and management does not anticipate that any returns in 2018 would be material to the financial statements." However, even that justification was lacking given that the December Revenue was exponentially larger than any prior sales.

45. Notwithstanding numerous unresolved red flags regarding the December Revenue, Hurd signed off on, and Avis provided final approval for, the issuance of an unqualified audit opinion later that day, which UHP included when it filed its 2017 Form 10-K on April 17, 2018.

**iv. Avis and Hurd Failed to Investigate or Address Customer-2's Accounts Receivable Confirmation Response**

46. On the morning of April 25, 2018, approximately one week after Haynie issued its unqualified opinion on UHP's 2017 financial statements, Customer-2 emailed its accounts receivable confirmation response to the designated Haynie engagement team member. Customer-2's response stated that its records indicated that a balance of zero dollars was due to UHP as of December 31, 2017, and provided the following statement under the section for additional information to assist the auditors in reconciling any differences: "All invoices received by [Customer-2] on or before December 31, 2017 were paid in full as of that date. We have nothing to substantiate the [\$447,574.08] amount stated ... above, whether before or after December 31, 2017." The confirmation response was signed and dated April 18, 2018.

47. Neither Hurd nor Avis took any steps to investigate Customer-2's response. Instead, following a discussion between Avis and Hurd, Hurd sent an email to UHP management, copying Avis, that forwarded the confirmation response but affirmed that he and Avis "still feel comfortable with the AR balance being correct." Without having asked for any explanation from management as to why Customer-2, as of April 18, 2018 when it was signed—which was within days of the purported extended payment due date—would still be unaware of any liabilities due "whether before or after December 31, 2017" as was stated in the response—the email instead indicated that the issue was "whether the Company is experiencing delays in delivering their invoices" and recommended "that those invoices are sent out timely after shipment of goods."

48. Neither the Customer-2 confirmation response nor the email to UHP management were made part of the 2017 audit work papers, and no procedures or notes addressing it were documented in any work papers. Avis and Hurd also failed to address the Customer-2 confirmation response even after learning during their Q1, Q2, and Q3 2018 interim review procedures that no payment had been made by Customer-2, nor after UHP had written off the full balance of the receivable for the December Revenue as of year-end 2018.

## **VIOLATIONS**

### **A. Rule 102(e) of the Commission's Rules of Practice and Exchange Act Section 4C**

49. Section 4C of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice 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. Section 4C(b) of the Exchange Act and Rule 102(e)(1)(iv) of the Commission's Rules of Practice define improper professional conduct with respect to persons licensed to practice as accountants as including either of two types of negligent conduct, (1) a single instance of highly unreasonable conduct

that results in a violation of professional standards in circumstances in which heightened scrutiny is warranted; or (2) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards that indicate a lack of competence to practice before the Commission.

**i. Avis Failed to Adhere to PCAOB Auditing Standards in Connection with the March Revenue**

***Failure to Exercise Due Professional Care and Evaluate Audit Results***

50. PCAOB Auditing Standard (“AS”) 1015, *Due Professional Care in the Performance of Work*, requires the auditor to exercise “due professional care” in the planning and performance of the audit,” and that the auditor “plan and perform his or her work with due professional care.” (AS 1015.01, 02). AS 2810, *Evaluating Audit Results*, requires an auditor to “evaluate whether the financial statements are presented fairly, in all material respects, in conformity with the applicable financial reporting framework.” (AS 2810.30). The auditor “should evaluate whether the financial statements contain the information essential for a fair presentation of the financial statements,” including by considering “the form, arrangement, and content of the financial statements (including the accompanying notes). . .”. (AS 2810.31).

51. As set forth above, after Avis determined that the March Revenue should never have been recognized by UHP at any time, Avis should have known that UHP’s 2017 annual financial statements and accompanying notes that were filed on Form 10-K failed to comply with GAAP because there was no prior or accompanying restatement of the 2017 quarterly financial statements at the time of the filing and the removal of the March Revenue amount from the revenue and accounts receivable balances presented was not disclosed in the accompanying notes to the financial statements.

52. As a result of his conduct described above, Avis departed from AS 1015 by failing to exercise due care in not considering the applicability of ASC 250 and ASC 270. Similarly, Avis departed from AS 2810 by failing to evaluate whether UHP’s financial statements and the accompanying notes thereto in the 2017 10-K were fairly presented.

***Failure to Address Material Misstatements in Interim Reviews***

53. AS 4105, *Reviews of Interim Financial Information*, provides that “[m]isstatements identified by the accountant or brought to the accountant’s attention, including inadequate disclosure, should be evaluated individually and in the aggregate to determine whether material modification should be made to the interim financial information for it to conform with [GAAP].” (AS 4105.26). In doing so, “[t]he accountant should use his or her professional judgment in evaluating the materiality of any likely misstatements that the entity has not corrected” and “consider matters such as . . . whether the misstatements originated in the preceding year or interim periods of the current year . . . [and] materiality judgments made in conjunction with the current or

prior year's annual audit . . .” (AS 4105.26). The requirements of AS 1015 to exercise due professional care are also applicable to reviews of interim financial information. (AS 4105.01).

54. As described above, Avis determined during the 2017 audit that the March Revenue that had been recognized in Q1 2017 should never have been recognized as revenue. Nevertheless, Avis failed to take any action to address the fact that the originally-reported revenue figures from the 2017 interim financial statements were presented in the 2018 interim financial statements as comparative period results filed in UHP’s Q1, Q2, and Q3 2018 Forms 10-Q.

55. As a result of his conduct described above, Avis departed from AS 4105 and AS 1015 in the Q1, Q2, and Q3 2018 interim reviews.

**ii. Avis and Hurd Failed to Adhere to PCAOB Standards in Connection with the December Revenue**

***Failures to Exercise Due Professional Care and to Obtain Sufficient Appropriate Audit Evidence***

56. AS 1015 requires the auditor to use “reasonable care and diligence” in conducting an audit, including exercising professional skepticism, in order to obtain reasonable assurance about whether financial statements are free of material misstatement. (AS 1015.05, .07, .10). “Professional skepticism is an attitude that includes a questioning mind and a critical assessment of audit evidence” and the auditor should “consider the competency and sufficiency of the evidence.” (AS 1015.07, 08). “The independent auditor’s objective is to obtain sufficient appropriate evidential matter to provide him or her with a reasonable basis for forming an opinion.” In addition, “judgment is required in interpreting the results of audit testing and evaluating audit evidence.” (AS 1015.11). The engagement partner is responsible for supervising the engagement team. (AS 1015.06).

57. AS 1105, *Audit Evidence*, provides that “[t]he auditor must plan and perform audit procedures to obtain sufficient appropriate audit evidence to provide a reasonable basis for his or her opinion.” (AS 1105.04). “Appropriateness is the measure of the quality of audit evidence, i.e., its relevance and reliability. To be appropriate, audit evidence must be both relevant and reliable in providing support for the conclusions on which the auditor's opinion is based.” (AS 1105.06). Moreover, “[i]f audit evidence obtained from one source is inconsistent with that obtained from another, or if the auditor has doubts about the reliability of information to be used as audit evidence, the auditor should perform the audit procedures necessary to resolve the matter and should determine the effect, if any, on other aspects of the audit.” (AS 1105.29).

58. As set forth above, the engagement team had identified revenue recognition as a significant risk during audit planning. Moreover, prior to the engagement team performing any audit procedures relating to the December Revenue, both Avis and Hurd were knowledgeable about the material revenue and accounts receivable misstatements that UHP had recorded for the March Revenue, as well as the revenue recognition cut-off issues that required correction, which should have increased the perceived risk. Avis and Hurd were also aware of multiple additional

red flags concerning the December Revenue, including their awareness that: (i) it was not included in the initial files that UHP provided to Haynie in late March 2018; (ii) it was a purported sale occurring right at year-end, which constituted more than 68% of revenues for the entire year and 98% of the year-end accounts receivable balance; (iii) it was exponentially larger than any prior sale to Customer-2 or any other customer; (iv) no payment had been made due to the purported extended payment terms and none was expected to be made prior to UHP's extended deadline for filing its 2017 Form 10-K; and (v) there was no confirmation response received from Customer-2.

59. Accordingly, Avis and Hurd were on notice that the December Revenue required heightened scrutiny, yet they failed to take steps to ensure that the engagement team obtained sufficient appropriate audit evidence as required and failed to exercise due professional care and professional skepticism. Among other things, as described above, Avis and Hurd failed to take steps to ensure that the engagement team obtained a purchase order or other evidence that there was an arrangement for the December Revenue in circumstances in which they knew or should have known of the requirement for a purchase order under the distribution agreement and that it was UHP's standard practice to obtain a purchase order prior to shipping goods to a customer.

60. The audit evidence the engagement team did obtain with respect to the December Revenue was both insufficient and unreliable for revenue and accounts receivable testing. As detailed above, the information in the UHP-generated invoice had multiple unresolved inconsistencies with both other invoices to Customer-2 and the distribution agreement. The limited information obtained from the shipping tracking number revealed additional inconsistencies and was insufficient to substantiate that delivery to Customer-2 had occurred by December 31, 2017. Similarly, Customer-2's prior payment history was of limited relevance given that the December Revenue was exponentially larger than any prior sale and the purported extended payment terms.

61. As a result of their conduct, Avis and Hurd departed from AS 1015 by failing to exercise due professional care and professional skepticism in connection with Haynie's testing of the December Revenue. Avis and Hurd also departed from AS 1105 by failing to obtain sufficient appropriate audit evidence to substantiate UHP's recognition of the revenue and the receivable.

### ***Failures to Identify and Assess the Risks of Material Misstatement and Consideration of Fraud***

62. AS 2110, *Identifying and Assessing Risks of Material Misstatement*, provides that "the objective of the auditor is to identify and appropriately assess the risks of material misstatement, thereby providing a basis for designing and implementing responses to the risks of material misstatement." (AS 2110.03). To that end, among other things, the auditor must obtain "an understanding of the nature of the company" and "an understanding of internal control includ[ing] evaluating the design of controls that are relevant to the audit and determining whether the controls have been implemented". (AS 2110.10, .20). Further, the auditor's inquiries regarding fraud risks should include inquiries of management regarding "[w]hether the company has entered into any significant unusual transactions and, if so, the nature, terms, and business purpose (or the lack thereof) of those transactions . . ." (AS 2110.56).

63. AS 2401, *Consideration of Fraud in a Financial Statement Audit*, states that the term significant unusual transactions refers to “[s]ignificant transactions that are outside of the normal course of business for the company or that otherwise appear to be unusual due to their timing, size or nature” and “may be used to engage in fraudulent financial reporting. . . .” (AS 2401.66). Further, AS 2401.66A provides:

The auditor should design and perform procedures to obtain an understanding of the business purpose (or the lack thereof) of each significant unusual transaction that the auditor has identified. The procedures should include:

- a. Reading the underlying documentation and evaluating whether the terms and other information about the transaction are consistent with explanations from inquiries and other audit evidence about the business purpose (or the lack thereof) of the transaction;
- b. Determining whether the transaction has been authorized and approved in accordance with the company's established policies and procedures;
- c. Evaluating the financial capability of the other parties with respect to significant uncollected balances, loan commitments, supply arrangements, guarantees, and other obligations, if any; and
- d. Performing other procedures as necessary depending on the identified and assessed risks of material misstatement. (AS 2401.66A).

64. Finally, under AS 2110.74, “[t]he auditor's assessment of the risks of material misstatement, including fraud risks, should continue throughout the audit. When the auditor obtains audit evidence during the course of the audit that contradicts the audit evidence on which the auditor originally based his or her risk assessment, the auditor should revise the risk assessment and modify planned audit procedures or perform additional procedures in response to the revised risk assessments.”

65. Avis and Hurd departed from these PCAOB standards, both in their initial inquiries and assessments and throughout the audit. Avis and Hurd knew or should have known that the December Revenue was a significant unusual transaction due to its timing, size, and nature, yet failed to identify and assess it as such. It presented as a sale occurring near year-end, comprised over 68% of UHP’s revenue for all of 2017, and was exponentially larger than any other sale to Customer-2. Among other things, they either failed to obtain a sufficient understanding of UHP’s distribution agreement key terms with customers and its sterilization and shipping process or failed to use such understanding as a basis for designing and implementing responses to the risks of material misstatements. Accordingly, they did not take steps to ensure that customer purchase orders were obtained and reviewed by the engagement team in their testing and failed to address the insufficiency of the tracking number as sufficient appropriate evidence. In addition, neither Avis nor Hurd took any steps to obtain, or have others obtain, a documented understanding as to why Customer-2 would place an order of that size, which was contrary to prior purchase patterns.



66. Similarly, Avis and Hurd failed to properly evaluate the underlying documentation's inconsistencies with the explanations from inquiries and the other audit evidence, including failing to identify that the transaction was not in accordance with UHP's established policies and procedures, which required a purchase order from Customer-2. Avis and Hurd likewise failed to revise Haynie's risk assessments or design additional audit procedures as required for this significant unusual transaction. Reflective of the fact that no procedures were designed or performed addressing this significant unusual transaction, Hurd prepared and Avis reviewed an audit completion work paper that indicated there were no significant unusual transactions encountered during the audit and that additional procedures were not applicable.

67. As a result of their conduct described above, Avis and Hurd departed from the standards of AS 2110 and AS 2401.

#### ***Failures to Address Subsequent Discovery of Facts***

68. AS 2905, *Subsequent Discovery of Facts Existing at the Date of the Auditor's Report*, provides: "When the auditor becomes aware of information which relates to financial statements previously reported on by him, but which was not known to him at the date of his report, and which is of such a nature and from such a source that he would have investigated it had it come to his attention during the course of his audit, he should, as soon as practicable, undertake to determine whether the information is reliable and whether the facts existed at the date of his report. In this connection, the auditor should discuss the matter with his client at whatever management levels he deems appropriate, including the board of directors, and request cooperation in whatever investigation may be necessary." (AS 2905.04).

69. As set forth above, approximately one week after Haynie signed off on the 2017 audit, Customer-2 emailed back its confirmation response asserting that it did not owe any amount to UHP as of December 31, 2017, in contrast to the \$447,574.08 figure claimed by UHP on the confirmation request. The confirmation response further provided the explanation that Customer-2 had nothing to substantiate the \$447,574.08 balance, "whether before *or after* December 31, 2017" (emphasis added).

70. Despite receiving this significant new information which called into question the recognition of the revenue and accounts receivable balance for the December Revenue, neither Avis nor Hurd took any additional steps or instructed others to take steps upon receiving the confirmation response. In addition, the assumption by Avis and Hurd that the response was likely due to the UHP having sent the invoice late would not have been a reasonable explanation given the fact that the response was returned on April 25, 2018 stating that the Customer-2 had nothing to substantiate the purported amount due "whether before or after December 31, 2017."

71. As a result of their conduct described above, Respondents departed from the standards of AS 2905.

### *Avis's Failure To Supervise*

72. AS 1201, *Supervision of the Audit Engagement*, provides that “[t]he engagement partner is responsible for the engagement and its performance. Accordingly, the engagement partner is responsible for proper supervision of the work of engagement team members and for compliance with PCAOB standards...” (AS 1201.03). Avis’s supervision of the 2017 engagement team constituted a departure from AS 1201 given the various deficiencies in the audit evidence and procedures followed in testing the December Revenue.

73. As set forth above, Avis was aware of the magnitude of the December Revenue as well as numerous red flags, yet failed to ensure that the engagement team plan and execute appropriate audit procedures. Avis provided his final sign off for Haynie to issue its 2017 audit opinion while either being aware of the deficiencies in the audit evidence or having failed to take appropriate steps to sufficiently inquire about the evidence relied on to substantiate the December Revenue. Avis also failed to ensure that the engagement team took steps to address the subsequent receipt of Customer-2’s confirmation response.

74. As a result of his conduct described above, Avis departed from the standards of AS 1201.

#### **B. Causing Violations of Exchange Act Section 13(a) and Rules 13a-1 and 13a-13**

75. Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require that every issuer of a security registered pursuant to Section 12 of the Exchange Act file with the Commission annual reports and quarterly reports as the Commission may require. The obligation to file such reports embodies the requirement that they be true and correct.

76. UHP’s annual report on Form 10-K for fiscal year 2017 included Haynie’s audit opinion that stated that the audit was conducted “in accordance with the standards of the PCAOB” and that UHP’s financial statements presented fairly, in all material respects, the company’s financial position and results. These statements were materially misleading. As a result of Respondents’ above-described conduct, Haynie’s 2017 audit was not conducted in accordance with PCAOB standards and the financial statements included in UHP’s 2017 Form 10-K were materially misstated. In addition, each of UHP’s 2018 Forms 10-Q included the materially misstated 2017 revenues as comparative results in the financial statements. Avis and Hurd knew or should have known that their acts or omissions would contribute to UHP’s filing of the false 2017 Form 10-K for 2017 and Avis should have known that his acts or omissions would contribute to UHP’s filing of the false Forms 10-Q for 2018.

### **FINDINGS**

77. Based on the foregoing, the Commission finds that Respondents engaged in improper professional conduct within the meaning of Sections 4C(a)(2) and 4C(b)(2)(A) of the Exchange Act and Rules 102(e)(1)(ii) and 102(e)(1)(iv)(B)(1) and (2) of the Commission’s Rules of Practice. The conduct by Respondents involved repeated instances of unreasonable conduct,

each resulting in violations of PCAOB standards and indicating a lack of competence. The conduct by Respondents also satisfies the standard of at least a single instance of highly unreasonable conduct resulting in violations of PCAOB standards in circumstances in which heightened scrutiny was warranted.

78. Based on the foregoing, the Commission finds that Avis and Hurd were a cause of UHP's violation of Section 13(a) of the Exchange Act and Rule 13a-1 thereunder and that Avis was also a cause of UHP's violations of Section 13(a) of the Exchange Act and Rule 13a-13 thereunder.

#### IV.

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

Accordingly, it is hereby ORDERED, effective immediately that:

- A. Pursuant to Section 21C of the Exchange Act, Avis shall cease and desist from committing or causing any violations and any future violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 13-13 thereunder.
- B. Pursuant to Section 21C of the Exchange Act, Hurd shall cease and desist from committing or causing any violations and any future violations of Section 13(a) of the Exchange Act and Rule 13a-1 thereunder.
- C. Avis is denied the privilege of appearing or practicing before the Commission as an accountant.
- D. After three years from the date of the Order, Avis may request that the Commission consider his reinstatement by submitting an application to the attention of the Office of the Chief Accountant.
- E. In support of any application for reinstatement to appear and practice before the Commission as a preparer or reviewer, or a person responsible for the preparation or review, of financial statements of a public company to be filed with the Commission, other than as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Exchange Act, Avis shall submit a written statement attesting to an undertaking to have his work reviewed by the independent audit committee of any public company for which he works or in some other manner acceptable to the Commission, as long as Avis practices before the Commission in this capacity and will comply with any Commission or other requirements related to the appearance and practice before the Commission as an accountant.
- F. In support of any application for reinstatement to appear and practice before the Commission as a member of an audit committee, as that term is defined in Section 3(a)(58)

of the Exchange Act, as a preparer or reviewer, or as a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission, Avis shall submit a statement prepared by the audit committee(s) with which he will be associated, including the following information:

1. A summary of the responsibilities and duties of the specific audit committee(s) with which Avis will be associated;
2. A description of Avis's role on the specific audit committee(s) with which he will be associated;
3. A description of any policies, procedures, or controls designed to mitigate any potential risk to the Commission by such service;
4. A description relating to the necessity of Avis's service on the specific audit committee; and
5. A statement noting whether Avis will be able to act unilaterally on behalf of the Audit Committee as a whole.

G. In support of any application for reinstatement to appear and practice before the Commission as an independent accountant (auditor) before the Commission, Avis must be associated with a public accounting firm registered with the Public Company Accounting Oversight Board (the "PCAOB") and Avis shall submit the following additional information:

1. A statement from the public accounting firm (the "Firm") with which Avis is associated, stating that the firm is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002;
2. A statement from the Firm with which Avis is associated that the Firm has been inspected by the PCAOB and that the PCAOB did not identify any criticisms of or potential defects in the Firm's quality control system that would indicate that Avis will not receive appropriate supervision; and
3. A statement from Avis indicating that the PCAOB has taken no disciplinary actions against Avis since seven (7) years prior to the date of the Order other than for the conduct that was the basis for the Order.

H. In support of any application for reinstatement, Avis shall provide documentation showing that he is currently licensed as a certified public accountant ("CPA") and that he has resolved all other disciplinary issues with any applicable state boards of accountancy. If Avis is not currently licensed as a CPA, he shall provide documentation showing that his licensure is dependent upon reinstatement by the Commission.

- I. In support of any application for reinstatement, Avis shall also submit a signed affidavit truthfully stating, under penalty of perjury:
1. That Avis has complied with the Commission suspension Order, and with any related orders and undertakings, or any related Commission proceedings, including any orders requiring payment of disgorgement or penalties;
  2. That Avis undertakes to notify the Commission immediately in writing if any information submitted in support of the application for reinstatement becomes materially false or misleading or otherwise changes in any material way while the application is pending;
  3. That Avis, since the entry of the Order, has not been convicted of a felony or a misdemeanor involving moral turpitude that would constitute a basis for a forthwith suspension from appearing or practicing before the Commission pursuant to Rule 102(e)(2);
  4. That Avis, since the entry of the Order:
    - i. has not been charged with a felony or a misdemeanor involving moral turpitude as set forth in Rule 102(e)(2) of the Commission's Rules of Practice, except for any charge concerning the conduct that was the basis for the Order;
    - ii. has not been found by the Commission or a court of the United States to have committed a violation of the federal securities laws, and has not been enjoined from violating the federal securities laws, except for any finding or injunction concerning the conduct that was the basis for the Order;
    - iii. has not been charged by the Commission or the United States with a violation of the federal securities laws, except for any charge concerning the conduct that was the basis for the Order;
    - iv. has not been found by a court of the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, or any bar thereof to have committed an offense (civil or criminal) involving moral turpitude, except for any finding concerning the conduct that was the basis for the Order; and
    - v. has not been charged by the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, civilly or criminally, with having committed an act of moral turpitude, except for any charge concerning the conduct that was the basis for the Order.
  5. That Avis's conduct is not at issue in any pending investigation of the Commission's Division of Enforcement, the PCAOB's Division of Enforcement

and Investigations, any criminal law enforcement investigation, or any pending proceeding of a State Board of Accountancy, except to the extent that such conduct concerns that which was the basis for the Order.

6. That Avis has complied with any and all orders, undertakings, or other remedial, disciplinary, or punitive sanctions resulting from any action taken by any State Board of Accountancy, or other regulatory body.

J. Avis shall also provide a detailed description of:

1. Avis's professional history since the imposition of the Order, including
  - i. all job titles, responsibilities and role at any employer;
  - ii. the identification and description of any work performed for entities regulated by the Commission, and the persons to whom Avis reported for such work; and
2. Avis's plans for any future appearance or practice before the Commission.

K. The Commission may conduct its own investigation to determine if the foregoing attestations are accurate.

L. If Avis provides the documentation and attestations required in this Order and the Commission (1) discovers no contrary information therein, and (2) determines that Avis truthfully and accurately attested to each of the items required in Avis's affidavit, and the Commission discovers no information, including under Paragraph K, indicating that Avis has violated a federal securities law, rule or regulation or rule of professional conduct applicable to Avis since entry of the Order (other than by conduct underlying Avis's original Rule 102(e) suspension), then, unless the Commission determines that reinstatement would not be in the public interest, the Commission shall reinstate the respondent for cause shown.

M. If Avis is not able to provide the documentation and truthful and accurate attestations required in this Order or if the Commission has discovered contrary information, including under Paragraph K, the burden shall be on Avis to provide an explanation as to the facts and circumstances pertaining to the matter setting forth why he believes cause for reinstatement nonetheless exists and reinstatement would not be contrary to the public interest. The Commission may then, in its discretion, reinstate Avis for cause shown.

N. If the Commission declines to reinstate Avis pursuant to Paragraphs L and M, it may, at Avis's request, hold a hearing to determine whether cause has been shown to permit Avis to resume appearing and practicing before the Commission as an accountant.

O. Hurd is denied the privilege of appearing or practicing before the Commission as an accountant.

- P. After one year from the date of the Order, Hurd may request that the Commission consider his reinstatement by submitting an application to the attention of the Office of the Chief Accountant.
- Q. In support of any application for reinstatement to appear and practice before the Commission as a preparer or reviewer, or a person responsible for the preparation or review, of financial statements of a public company to be filed with the Commission, other than as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Exchange Act, Hurd shall submit a written statement attesting to an undertaking to have his work reviewed by the independent audit committee of any public company for which he works or in some other manner acceptable to the Commission, as long as Hurd practices before the Commission in this capacity and will comply with any Commission or other requirements related to the appearance and practice before the Commission as an accountant.
- R. In support of any application for reinstatement to appear and practice before the Commission as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Exchange Act, as a preparer or reviewer, or as a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission, Hurd shall submit a statement prepared by the audit committee(s) with which he will be associated, including the following information:
1. A summary of the responsibilities and duties of the specific audit committee(s) with which Hurd will be associated;
  2. A description of Hurd's role on the specific audit committee(s) with which he will be associated;
  3. A description of any policies, procedures, or controls designed to mitigate any potential risk to the Commission by such service;
  4. A description relating to the necessity of Hurd's service on the specific audit committee; and
  5. A statement noting whether Hurd will be able to act unilaterally on behalf of the Audit Committee as a whole.
- S. In support of any application for reinstatement to appear and practice before the Commission as an independent accountant (auditor) before the Commission, Hurd must be associated with a public accounting firm registered with the Public Company Accounting Oversight Board (the "PCAOB") and Hurd shall submit the following additional information:
1. A statement from the public accounting firm (the "Firm") with which Hurd is associated, stating that the firm is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002;

2. A statement from the Firm with which Hurd is associated that the Firm has been inspected by the PCAOB and that the PCAOB did not identify any criticisms of or potential defects in the Firm's quality control system that would indicate that Hurd will not receive appropriate supervision; and
  3. A statement from Hurd indicating that the PCAOB has taken no disciplinary actions against Hurd since seven (7) years prior to the date of the Order other than for the conduct that was the basis for the Order.
- T. In support of any application for reinstatement, Hurd shall provide documentation showing that he is currently licensed as a certified public accountant ("CPA") and that he has resolved all other disciplinary issues with any applicable state boards of accountancy. If Hurd is not currently licensed as a CPA, he shall provide documentation showing that his licensure is dependent upon reinstatement by the Commission.
- U. In support of any application for reinstatement, Hurd shall also submit a signed affidavit truthfully stating, under penalty of perjury:
1. That Hurd has complied with the Commission suspension Order, and with any related orders and undertakings, including any related Commission proceedings, including any orders requiring payment of disgorgement or penalties;
  2. That Hurd undertakes to notify the Commission immediately in writing if any information submitted in support of the application for reinstatement becomes materially false or misleading or otherwise changes in any material way while the application is pending;
  3. That Hurd, since the entry of the Order, has not been convicted of a felony or a misdemeanor involving moral turpitude that would constitute a basis for a forthwith suspension from appearing or practicing before the Commission pursuant to Rule 102(e)(2);
  4. That Hurd, since the entry of the Order:
    - i. has not been charged with a felony or a misdemeanor involving moral turpitude as set forth in Rule 102(e)(2) of the Commission's Rules of Practice, except for any charge concerning the conduct that was the basis for the Order;
    - ii. has not been found by the Commission or a court of the United States to have committed a violation of the federal securities laws, and has not been enjoined from violating the federal securities laws, except for any finding or injunction concerning the conduct that was the basis for the Order;



- iii. has not been charged by the Commission or the United States with a violation of the federal securities laws, except for any charge concerning the conduct that was the basis for the Order;
    - iv. has not been found by a court of the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, or any bar thereof to have committed an offense (civil or criminal) involving moral turpitude, except for any finding concerning the conduct that was the basis for the Order; and
    - v. has not been charged by the United States (or any agency of the United States) or any state, territory, district, commonwealth, or possession, civilly or criminally, with having committed an act of moral turpitude, except for any charge concerning the conduct that was the basis for the Order.
  - 5. That Hurd's conduct is not at issue in any pending investigation of the Commission's Division of Enforcement, the PCAOB's Division of Enforcement and Investigations, any criminal law enforcement investigation, or any pending proceeding of a State Board of Accountancy, except to the extent that such conduct concerns that which was the basis for the Order.
  - 6. That Hurd has complied with any and all orders, undertakings, or other remedial, disciplinary, or punitive sanctions resulting from any action taken by any State Board of Accountancy, or other regulatory body.
- V. Hurd shall also provide a detailed description of:
  - 1. Hurd's professional history since the imposition of the Order, including
    - i. all job titles, responsibilities and role at any employer;
    - ii. the identification and description of any work performed for entities regulated by the Commission, and the persons to whom Hurd reported for such work; and
  - 2. Hurd's plans for any future appearance or practice before the Commission.
- W. The Commission may conduct its own investigation to determine if the foregoing attestations are accurate.
- X. If Hurd provides the documentation and attestations required in this Order and the Commission (1) discovers no contrary information therein, and (2) determines that Hurd truthfully and accurately attested to each of the items required in Hurd's affidavit, and the Commission discovers no information, including under Paragraph W, indicating that Hurd has violated a federal securities law, rule or regulation or rule of professional conduct applicable to Hurd since entry of the Order (other than by conduct underlying Hurd's

original Rule 102(e) suspension), then, unless the Commission determines that reinstatement would not be in the public interest, the Commission shall reinstate the respondent for cause shown.

- Y. If Hurd is not able to provide the documentation and truthful and accurate attestations required in this Order or if the Commission has discovered contrary information, including under Paragraph W, the burden shall be on Hurd to provide an explanation as to the facts and circumstances pertaining to the matter setting forth why he believes cause for reinstatement nonetheless exists and reinstatement would not be contrary to the public interest. The Commission may then, in its discretion, reinstate Hurd for cause shown.
- Z. If the Commission declines to reinstate Hurd pursuant to Paragraphs X and Y, it may, at Hurd's request, hold a hearing to determine whether cause has been shown to permit Hurd to resume appearing and practicing before the Commission as an accountant.
- AA. Avis shall, within 21 days of the entry of this Order, pay a civil money penalty in the amount of \$20,000 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.

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 Avis 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 Lara Mehraban, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, Suite 400, New York, NY 10281.

- BB. 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, Respondent agrees that in any Related Investor Action, he shall not argue that he is entitled to, nor shall he benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that he 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 Respondent 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 Avis, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Avis 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 Avis 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.

Vanessa A. Countryman  
Secretary