

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-21831

In the Matter of

EDWARD F. HACKERT, CPA,

Respondent.

RESPONDENT EDWARD F. HACKERT, CPA'S
ANSWER TO THE AMENDED ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS

Pursuant to Rule 220 of the Securities and Exchange Commission's ("SEC" or the "Commission") Rules of Practice, 17 C.F.R. § 201.220, Respondent Edward F. Hackert, CPA, through his undersigned counsel, respectfully submits this Answer to the Amended Order Instituting Public Administrative and Cease-And-Desist Proceedings and Notice of Hearing (the "AOIP"), dated March 12, 2024. Mr. Hackert reserves the right to withdraw, amend, or modify any responses and affirmative defenses in his Answer, subject to his further investigation of the allegations in the AOIP and review of the Division of Enforcement's (the "Division") document production or other discovery, or as other later circumstances may warrant, including in the event the Commission assigns an administrative law judge to this proceeding or there has been a further development in the controlling law. Mr. Hackert further reserves the right to seek to enjoin and/or declare unconstitutional this proceeding, and by filing this Answer, Mr. Hackert does not intend to waive, does not waive, and expressly reserves the rights, claims, or arguments advanced, or which may be advanced, in the federal district court action he filed on February 27, 2024, or otherwise.

PRELIMINARY STATEMENT

The allegations set forth in the AOIP depend entirely upon the Division's flawed interpretation of the PCAOB standards that govern the documentation of audits, and they misstate the requirements of AS 1215. Specifically, the AOIP is premised on at least the following incorrect assertions:

- AS 1215 requires audit engagement teams to sign off on audit documentation prior to an audit report's release date;
- Electronic sign-offs are required to meet the evidential requirements of AS 1215;
- An "AS 3 memo" is the only way to appropriately document additions to an engagement binder in accordance with AS 1215.16;
- Audit binders must be electronically "locked down" within 45 days after an audit report's release date.

But none of these statements are correct. The Division's novel interpretations of the PCAOB Auditing Standards insert requirements into the standards that do not exist, and they elevate form over substance when assessing the adequacy of the documentation for the audits at issue.

Similarly, the Division's sweeping allegations regarding Mr. Hackert's supposedly deficient supervision of 193 audits appear to be based solely on the date or absence of Mr. Hackert's electronic sign-offs on certain documents in the audit file—sign-offs which the auditing standards simply do not require. The Division's reckless allegations in this regard ignore other forms of audit documentation in the relevant work papers that demonstrate oversight and supervision of the audit teams by Mr. Hackert—and, indeed, Mr. Hackert understands that the Division has not even examined the work papers for hundreds of the supposedly deficient audits identified in the AOIP's appendices. Nothing in PCAOB standards mentions "sign-offs," let alone the electronic sign-offs on which the Division's allegations center. Indeed, in a portion of the PCAOB Auditing Standards the Division seeks to ignore, the standards specifically

acknowledge that “[a]udit documentation may be in the form of paper, electronic files, or other media.” *See* AS 1214.04. The Division’s allegations will, therefore, turn on an audit-by-audit analysis of each of the work papers for each of the audits identified in the AOIP’s appendices—an analysis that is completely missing from the AOIP, likely because the Division has never undertaken such a review. Indeed, notwithstanding this Answer, the Division’s AOIP fails to provide Mr. Hackert with the “factual and legal bas[e]s” for the Division’s allegations “in such detail as will permit a specific response thereto.” SEC Rule of Practice 200(b)(3), 17 C.F.R. § 201.200(b)(3).

The Division’s allegations with respect to substantive issues with audits conducted of AAI also fail. Many allegations attempt to hold Mr. Hackert to standards the Division has conjured out of thin air despite the sufficiency of the audit work done under Mr. Hackert’s supervision, while other allegations are nothing more than the Division’s improper armchair quarterbacking of Mr. Hackert’s real-time accounting judgments.

The action brought against Mr. Hackert is entirely unprecedented—the SEC has never litigated a case against an individual auditor solely for documentation-related issues as minor and unsubstantiated as those alleged in the AOIP. The AOIP fails to identify a single audit failure, and, indeed, Mr. Hackert’s supposed shortcomings had no impact on the audits, the issuers, or the Commission’s processes. Nevertheless, the Division seeks to effectively end the 38-year career of a highly skilled auditor, an extraordinarily punitive remedy for the minor documentation issues alleged in the AOIP, most only in impermissible summary.

Finally, this administrative proceeding violates Mr. Hackert’s constitutional rights, including his Seventh Amendment right to a jury trial and his Fifth Amendment right to due process.

ANSWER

I.

Section I of the AOIP contains legal conclusions that do not require a response. To the extent a response is required, Mr. Hackert denies the allegations in Section I.

The AOIP contains several headings. To the extent the headings contain allegations, Mr. Hackert also denies those allegations.

II.

1. Edward F. Hackert, a certified public accountant (“CPA”), 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, due to his numerous violations of the Public Company Accounting Oversight Board’s (“PCAOB”) auditing standards relating to, among other things, audit supervision and audit documentation.

ANSWER: Mr. Hackert admits that he is a certified public accountant (“CPA”). Mr. Hackert denies the remaining allegations in Paragraph 1.

2. From approximately July 2006 to the present, Hackert worked as an engagement partner at the public accounting firm Marcum LLP (“Marcum”). As an engagement partner, Hackert was responsible for the Marcum audit engagements to which he was assigned, including proper supervision of the engagement team and compliance with PCAOB auditing standards. During his time as an engagement partner, Hackert was responsible for hundreds of audits.

ANSWER: Mr. Hackert admits the allegations in Paragraph 2.

3. Under PCAOB auditing standards, the date on which an audit firm grants permission to use its audit report in connection with the issuance of its client’s financial statements is called the “report release date.” Before releasing the audit report (on the report release date), the auditor must perform necessary audit procedures and conclude that sufficient evidence has been obtained to support the representations in the audit report. Then, once the audit report is released, the auditor’s client includes the audit report in its filing(s) with the Commission and those filings become public and available to investors.

ANSWER: Mr. Hackert states that Paragraph 3 asserts legal conclusions or interpretations of auditing standards that do not require a response.

4. **From 2012 through 2022 (the “relevant period”), Hackert failed to properly supervise numerous audit engagements and to ensure that the engagements were performed in compliance with PCAOB auditing standards. Among other things, Hackert repeatedly failed to review the work of the engagement team members and to document that review prior to the report release date.**

ANSWER: Mr. Hackert denies the allegations in Paragraph 4.

5. **During the relevant period, Hackert served as the engagement partner for at least 239 audits of public companies, and he approved the release of Marcum’s audit reports for those audits. Those audits included 88 audits of operating public companies and 151 audits of special purpose acquisition companies (“SPACs”). For 187 of those audit engagements (or approximately 78%), Hackert failed to supervise the work of the engagement team as shown by, among other things, Hackert’s failure to review the work of the engagement team and to document his review by the report release date.**

ANSWER: Mr. Hackert admits that, from 2012 through 2022, he served as the engagement partner for audits of public companies, including SPACs, and that, as engagement partner, he approved the release of Marcum’s audit reports. Mr. Hackert denies the remaining allegations in Paragraph 5.

6. **Under PCAOB auditing standards, the auditor should assemble a complete and final set of audit documentation for retention by 45 days after the report release date, which is called the “documentation completion date.”**

ANSWER: Mr. Hackert states that Paragraph 6 of the AOIP asserts legal conclusions or interpretations of auditing standards that do not require a response.

7. **During the relevant period, Hackert repeatedly failed to assemble complete and final audit documentation by the documentation completion date. For 123 of the audit engagements during the relevant period (or approximately 51%), Hackert failed to ensure that a complete and final set of audit documentation was assembled by the documentation completion date.**

ANSWER: Mr. Hackert denies the allegations in Paragraph 7.

8. **Proper audit documentation in accordance with the PCAOB auditing standards is not merely a technical requirement. It is essential to demonstrate that the required audit work was performed and reviewed by the report release date, and to support the conclusions reached by the auditor and the representations contained in the audit report. As Marcum’s internal training slides instructed its auditors in August 2021: “If you didn’t document it, you didn’t do it!”**

ANSWER: Mr. Hackert admits, upon information and belief, that Marcum’s August 2021 internal training slides included the words quoted in Paragraph 8, but the training slides speak for themselves and are the best evidence of their contents and the context of the words quoted. Mr. Hackert states that the remainder of Paragraph 8 asserts legal conclusions or interpretations of auditing standards that do not require a response.

9. Hackert’s failure to properly supervise audit engagements and to review the work of his engagement team members resulted in multiple deficient audits. As explained below, those failures independently violated PCAOB auditing standards.

ANSWER: Mr. Hackert denies the allegations in Paragraph 9.

10. Through his conduct described herein, Hackert engaged in improper professional conduct within the meaning of Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice by engaging in repeated instances of unreasonable conduct, each resulting in violation of applicable professional standards. In connection with each of the audit engagements described herein on which Hackert failed to comply with applicable PCAOB auditing standards, he acted negligently, unreasonably, and without due professional care.

ANSWER: Mr. Hackert denies the allegations in Paragraph 10.

11. In October 2021, in a video presentation for Marcum personnel, Hackert admitted that Marcum’s audit work fell short of the PCAOB auditing standards, stating: “the standard of how we carry out our work, and document it, according to the auditing standards, . . . we’re still coming up short.” (Emphasis added.)

ANSWER: Mr. Hackert admits that an October 2021 video presentation included the words quoted in Paragraph 11, but the video presentation speaks for itself and is the best evidence of its contents and the context of the words quoted. Mr. Hackert denies the remaining allegations in Paragraph 11.

12. Hackert’s conduct also caused Marcum to repeatedly violate Rule 2-02(b)(1) of Regulation S-X. In connection with each of the audits described herein, Marcum issued an audit report stating that the audit was performed in accordance with PCAOB auditing standards. In fact, due to Hackert’s actions, those audits were *not* performed in accordance with PCAOB standards. Marcum therefore violated Rule 2- 02(b)(1) of Regulation S-X. Hackert caused Marcum’s violations of Rule 2-02(b)(1) because his actions as the engagement partner contributed to Marcum’s violations and Hackert knew or should have known that his conduct would contribute to a violation.

ANSWER: Mr. Hackert admits that Marcum’s audit reports stated that the audits were conducted in accordance with PCAOB Auditing Standards. Mr. Hackert denies the remaining allegations in Paragraph 12.

B. RESPONDENT

13. Hackert, age 62, resides in East Meadow, New York. From approximately July 2006 to the present, Hackert has been an engagement partner at Marcum. From June 2004 through July 2006, Hackert was a senior manager at Marcum. Hackert is licensed as a CPA in the State of New York.

ANSWER: Mr. Hackert admits the allegations in Paragraph 13.

C. OTHER RELEVANT ENTITIES

14. Marcum, a New York limited liability partnership headquartered in New York, New York, is a public accounting firm in the United States. Marcum has more than 40 offices in cities across the United States and additional offices in other countries. Marcum has been registered with the PCAOB since October 2003. In June 2023, the Commission charged Marcum with systemic quality control failures and violations of audit standards in connection with audit work for hundreds of SPAC clients. See *In the Matter of Marcum LLP*, Exchange Act Rel. No. 97773 (June 21, 2023).

ANSWER: Mr. Hackert admits that the Commission issued a settled order relating to Marcum on June 21, 2023, but that order speaks for itself and is the best evidence of its contents. Mr. Hackert further states that the June 21, 2023 order is not evidence of a violation by Mr. Hackert, and the order expressly states that “[t]he findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.” Mr. Hackert admits, upon information and belief, the remaining allegations in Paragraph 14.

15. Ault Alliance, Inc. (“AAI”) is a Delaware corporation with its principal place of business in Las Vegas, Nevada. AAI is a holding company that, since 2016, has engaged in operating businesses that include, among others, power products and systems, digital asset mining of Bitcoin, the manufacture and sale of textile technology machinery, and commercial lending. AAI’s stock is registered under Section 12(b) of the Exchange Act, and its common stock trades on NYSE American. Marcum issued audit reports for AAI from 2016 to the present. Hackert served as the engagement partner on audits of AAI from 2016 through 2020. In August 2023, the Commission charged AAI for financial

disclosure failures, improper accounting, and reporting, internal controls, and books and records violations from 2017 through 2023. See *In the Matter of Ault Alliance, Inc., et al.*, Exchange Act Rel. No. 98131 (August 15, 2023).

ANSWER: Mr. Hackert admits that he served as the engagement partner on audits of AAI from 2016 through 2020. Mr. Hackert admits that the Commission issued a settled order relating to AAI on August 15, 2023, but that order speaks for itself and is the best evidence of its contents. Mr. Hackert further states that the June 21, 2023 order is not evidence of a violation by Mr. Hackert, and the order expressly states that “[t]he findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.” Mr. Hackert states that he lacks sufficient knowledge to specifically admit or deny the remaining allegations in Paragraph 15 and denies the allegations on that basis.

16. Avalanche International Corp. (“Avalanche”), a holding company, is a Nevada corporation with its principal place of business in Las Vegas, Nevada. AAI has disclosed Avalanche as a related party since 2017. AAI invested over \$17 million in Avalanche from 2016 to 2021. In June 2022, AAI acquired over 90% of Avalanche’s stock and began consolidating Avalanche’s financial results with AAI’s results. Avalanche’s common stock was publicly traded until September 2021.

ANSWER: Mr. Hackert states that he lacks sufficient knowledge to specifically admit or deny the allegations in Paragraph 16 and denies the allegations on that basis.

17. The PCAOB was created as part of the Sarbanes-Oxley Act of 2002. The PCAOB oversees audits of public companies that are subject to the securities laws in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports. The PCAOB established Auditing Standards (“AS”) for registered public accounting firms to follow in the preparation of audit reports for public companies, other issuers, and broker-dealers. Certain of the standards relevant to this proceeding are summarized below.

ANSWER: Mr. Hackert states that Paragraph 17 asserts legal conclusions or interpretations of auditing standards that do not require a response.

18. Due professional care is to be exercised in the planning and performance of an audit and preparation of the audit report. AS 1015.01. Due professional care requires an auditor to exercise “professional skepticism,” which includes “a questioning mind and a

critical assessment of audit evidence.’’ AS 1015.07. Negligent conduct by an auditor violates the duty of due care. See AS 1015.03.

ANSWER: Mr. Hackert states that Paragraph 18 asserts legal conclusions or interpretations of auditing standards that do not require a response. Mr. Hackert further states that the PCAOB’s Auditing Standards, which must be read holistically, speak for themselves and are the best evidence of their contents.

19. The engagement partner should know, at a minimum, the relevant professional accounting and auditing standards and should be knowledgeable about the client. The engagement partner is responsible for the assignment of tasks to, and supervision of, members of the engagement team. AS 1015.06.

ANSWER: Mr. Hackert states that Paragraph 19 asserts legal conclusions or interpretations of auditing standards that do not require a response. Mr. Hackert further states that the PCAOB’s Auditing Standards, which must be read holistically, speak for themselves and are the best evidence of their contents.

20. The audit engagement partner is responsible for the audit engagement and its performance. The engagement partner is thus responsible for, among other things, proper supervision of the work of the engagement team and compliance with PCAOB standards, including standards regarding using the work of specialists. AS 1201.03.

ANSWER: Mr. Hackert states that Paragraph 20 asserts legal conclusions or interpretations of auditing standards that do not require a response. Mr. Hackert further states that the PCAOB’s Auditing Standards, which must be read holistically, speak for themselves and are the best evidence of their contents.

21. In supervising an audit, the engagement partner should, among other things, (a) inform engagement team members of their responsibilities; (b) direct engagement team members to bring significant accounting and auditing issues to the attention of the engagement partner or other supervisors; and (c) review the work of the engagement team members. AS 1201.05. The engagement partner should review the work of the engagement team to evaluate whether (1) the work was performed and documented; (2) the objectives of the procedures were achieved; and (3) the results of the work support the conclusions reached. AS 1201.05.c.

ANSWER: Mr. Hackert states that Paragraph 21 asserts legal conclusions or interpretations of auditing standards that do not require a response. Mr. Hackert further states that the PCAOB's Auditing Standards, which must be read holistically, speak for themselves and are the best evidence of their contents.

22. While the engagement partner may seek assistance from appropriate engagement team members, the engagement partner's supervision of the audit work cannot be eliminated and "higher risk areas of the audit require more supervisory attention from the engagement partner." *Auditing Standards Related to the Auditor's Assessment of and Response to Risk and Related Amendments to PCAOB Standards*, PCAOB Release No. 2010-004 at A10-17 to A10-18 (Aug. 5, 2010).

ANSWER: Mr. Hackert states that Paragraph 22 asserts legal conclusions or interpretations of auditing standards that do not require a response. Mr. Hackert further states that the PCAOB's Auditing Standards, which must be read holistically, speak for themselves and are the best evidence of their contents.

23. Audit documentation (the "work papers") provides the written record of the basis for the auditor's conclusions. Audit documentation also facilitates the planning, performance, and supervision of the audit engagement. AS 1215.02.

ANSWER: Mr. Hackert states that Paragraph 23 asserts legal conclusions or interpretations of auditing standards that do not require a response. Mr. Hackert further states that the PCAOB's Auditing Standards, which must be read holistically, speak for themselves and are the best evidence of their contents.

24. An auditor must prepare audit documentation in connection with each audit engagement conducted pursuant to PCAOB auditing standards. AS 1215.04. The audit documentation should demonstrate, among other things, that the engagement complied with the standards of the PCAOB. AS 1215.05.a.

ANSWER: Mr. Hackert states that Paragraph 24 asserts legal conclusions or interpretations of auditing standards that do not require a response. Mr. Hackert further states that the PCAOB's Auditing Standards, which must be read holistically, speak for themselves and are the best evidence of their contents.

25. **“Audit documentation must clearly demonstrate that the work was in fact performed.” AS 1215.06. Further, “[a]udit documentation must contain sufficient information to enable an experienced auditor, having no previous connection with the engagement” to determine (1) who performed the work, (2) the date such work was completed, (3) who reviewed the work, and (4) the date of such review. AS 1215.06.b.**

ANSWER: Mr. Hackert states that Paragraph 25 asserts legal conclusions or interpretations of auditing standards that do not require a response. Mr. Hackert further states that the PCAOB’s Auditing Standards, which must be read holistically, speak for themselves and are the best evidence of their contents.

26. **“Oral explanation alone does not constitute persuasive other evidence, but it may be used to clarify other written evidence.” AS 1215.09.**

ANSWER: Mr. Hackert states that Paragraph 26 asserts legal conclusions or interpretations of auditing standards that do not require a response. Mr. Hackert further states that the PCAOB’s Auditing Standards, which must be read holistically, speak for themselves and are the best evidence of their contents.

27. **Before the report release date, the auditor must complete all necessary audit procedures and obtain sufficient evidence to support the representations in the auditor’s report. AS 1215.15. Additionally, a “complete and final set of audit documentation should be assembled for retention as of a date not more than 45 days after the report release date” – i.e., by the documentation completion date. *Id.***

ANSWER: Mr. Hackert states that Paragraph 27 asserts legal conclusions or interpretations of auditing standards that do not require a response. Mr. Hackert further states that the PCAOB’s Auditing Standards, which must be read holistically, speak for themselves and are the best evidence of their contents.

28. **Audit documentation must not be deleted or discarded after the documentation completion date. AS 1215.16. Any documentation added after the documentation completion date must indicate (1) the date the information was added, (2) the name of the person who prepared the additional documentation, and (3) the reason for adding it. *Id.***

ANSWER: Mr. Hackert states that Paragraph 28 asserts legal conclusions or interpretations of auditing standards that do not require a response. Mr. Hackert further states that the PCAOB's Auditing Standards, which must be read holistically, speak for themselves and are the best evidence of their contents.

29. **“Documentation added to the working papers well after completion of the audit or other engagement is likely to be of a lesser quality than that produced contemporaneously when the procedures were performed. It is very difficult to reconstruct and recall specific activities related to gathering audit evidence months, and perhaps years, after the work was actually performed.” PCAOB Release No. 2004-006 at 7.**

ANSWER: Mr. Hackert states that Paragraph 29 asserts legal conclusions or interpretations of auditing standards that do not require a response. Mr. Hackert further states that the PCAOB's Auditing Standards, which must be read holistically, speak for themselves and are the best evidence of their contents.

30. **An auditor must study, understand, and apply new pronouncements on accounting principles and auditing procedures as they are developed by authoritative bodies within the accounting profession. AS 1010.04.**

ANSWER: Mr. Hackert states that Paragraph 30 asserts legal conclusions or interpretations of auditing standards that do not require a response. Mr. Hackert further states that the PCAOB's Auditing Standards, which must be read holistically, speak for themselves and are the best evidence of their contents.

31. **An auditor must plan and perform audit procedures to obtain sufficient appropriate audit evidence to provide a reasonable basis for the auditor's opinion. AS 1105.04. And 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.**

ANSWER: Mr. Hackert states that Paragraph 31 asserts legal conclusions or interpretations of auditing standards that do not require a response. Mr. Hackert further states that the PCAOB's Auditing Standards, which must be read holistically, speak for themselves and are the best evidence of their contents.

32. **When using information produced by an audited company as audit evidence, an auditor should evaluate whether the information is sufficient and appropriate for purposes of the audit by performing procedures to: “[t]est the accuracy and completeness of the information, or test the controls over the accuracy and completeness of that information; and [e]valuate whether the information is sufficiently precise and detailed for purposes of the audit.” AS 1105.10.**

ANSWER: Mr. Hackert states that Paragraph 32 asserts legal conclusions or interpretations of auditing standards that do not require a response. Mr. Hackert further states that the PCAOB’s Auditing Standards, which must be read holistically, speak for themselves and are the best evidence of their contents.

33. **When evaluating the results of the audit, the auditor should evaluate whether the accumulated results of auditing procedures and other observations affect the assessment of the fraud risks made throughout the audit and whether the audit procedures need to be modified to respond to those risks. AS 2810.28.**

ANSWER: Mr. Hackert states that Paragraph 33 asserts legal conclusions or interpretations of auditing standards that do not require a response. Mr. Hackert further states that the PCAOB’s Auditing Standards, which must be read holistically, speak for themselves and are the best evidence of their contents.

34. **When an auditor is unable to examine samples that have been chosen for testing, the auditor “should evaluate whether the reasons for his or her inability to examine the items have (a) implications in relation to his or her risk assessments (including the assessment of fraud risk), (b) implications regarding the integrity of management or employees, and (c) possible effects on other aspects of the audit.” AS 2315.25.**

ANSWER: Mr. Hackert states that Paragraph 34 asserts legal conclusions or interpretations of auditing standards that do not require a response. Mr. Hackert further states that the PCAOB’s Auditing Standards, which must be read holistically, speak for themselves and are the best evidence of their contents.

35. **An auditor must exercise professional skepticism when considering fraud risks and “conduct the engagement with a mindset that recognizes the possibility that a material misstatement due to fraud could be present, regardless of any past experience with the entity and regardless of the auditor’s belief about management’s honesty and integrity.... In exercising professional skepticism in gathering and evaluating evidence, the**

auditor should not be satisfied with less-than-persuasive evidence because of a belief that management is honest.” AS 2401.13.

ANSWER: Mr. Hackert states that Paragraph 35 asserts legal conclusions or interpretations of auditing standards that do not require a response. Mr. Hackert further states that the PCAOB’s Auditing Standards, which must be read holistically, speak for themselves and are the best evidence of their contents.

36. Further, “[w]henver the auditor has determined that there is evidence that fraud may exist, that matter should be brought to the attention of an appropriate level of management. This is appropriate even if the matter might be considered inconsequential.” AS 2401.79. Fraud involving senior management should be reported directly to the audit committee in a timely manner and prior to issuance of the auditor’s report. *Id.*

ANSWER: Mr. Hackert states that Paragraph 36 asserts legal conclusions or interpretations of auditing standards that do not require a response. Mr. Hackert further states that the PCAOB’s Auditing Standards, which must be read holistically, speak for themselves and are the best evidence of their contents.

37. If using a specialist engaged by the auditor’s firm, the auditor should (a) obtain an understanding of the methods and assumptions used by the specialist, (b) make appropriate tests of data provided to the specialist, taking into account the auditor’s assessment of control risk, and (c) evaluate whether the specialist’s findings support the related assertions in the financial statements. AS 1210.12.

ANSWER: Mr. Hackert states that Paragraph 37 asserts legal conclusions or interpretations of auditing standards that do not require a response. Mr. Hackert further states that the PCAOB’s Auditing Standards, which must be read holistically, speak for themselves and are the best evidence of their contents.

38. In evaluating reasonableness, the auditor should obtain an understanding of how management developed an estimate. Based on that understanding, the auditor should use one or a combination of the following approaches: (a) review and test the process used by management to develop the estimate; (b) develop an independent expectation of the estimate to corroborate the reasonableness of management’s estimate; and/or (c) review subsequent events or transactions occurring prior to the date of the auditor’s report. AS 2501.10.

ANSWER: Mr. Hackert states that Paragraph 38 asserts legal conclusions or interpretations of auditing standards that do not require a response. Mr. Hackert further states that the PCAOB's Auditing Standards, which must be read holistically, speak for themselves and are the best evidence of their contents.

39. In the accounting industry, the generally accepted method for engagement partners to document their supervision of an audit in compliance with the PCAOB auditing standards, and their review of the work performed by engagement team members, is by signing and dating (or "signing off") on work papers when they perform or review work. Historically, sign offs occurred on hard copies of work papers but, in recent years, many audit firms, including Marcum, moved to electronic sign offs. Whether a sign off occurs in hard copy or electronic form, it provides evidence of who performed or reviewed audit work and the date on which such work or review occurred. By signing off on work papers, an engagement partner documents his or her supervision of the audit.

ANSWER: Mr. Hackert admits that, from 2012 through the present, Marcum has used electronic sign offs as one of several acceptable methods used by engagement partners to document their supervision of an audit. Mr. Hackert states that he lacks sufficient knowledge to specifically admit or deny whether the generally accepted method for engagement partners to document their supervision of an audit in compliance with the PCAOB Auditing Standards, and their review of the work performed by engagement team members, is by signing and dating work papers when they perform or review work. Mr. Hackert also states that he lacks sufficient knowledge to specifically admit or deny whether historically, sign offs occurred on hard copies of work papers but, in recent years, many audit firms moved to electronic sign offs and denies those allegations on that basis. Mr. Hackert also states that all remaining allegations in Paragraph 39 assert legal conclusions or interpretations of auditing standards that do not require a response. And Mr. Hackert further states that the PCAOB's Auditing Standards, which must be read holistically, speak for themselves and are the best evidence of their contents.

40. During the relevant period, Hackert failed to appropriately supervise audits for which he was the engagement partner by (a) failing to review the work of the engagement team members and to document that review prior to the report release date,

and/or (b) failing to ensure that audit documentation was assembled for retention by the documentation completion date. Hackert's conduct demonstrated a lack of due professional care and resulted in deficiencies in some of the audit work performed.

ANSWER: Mr. Hackert denies the allegations in Paragraph 40.

41. As noted above, during the relevant period, Hackert served as the engagement partner for at least 239 audits, which included 88 audits of operating public companies and 151 audits of SPACs.

ANSWER: Mr. Hackert admits, upon information and belief, the allegations in Paragraph 41.

42. As the engagement partner, Hackert was responsible for sending (or authorizing a member of the engagement team to send) an email authorizing Marcum's audit report to be filed with the Commission by the relevant issuer. The email authorizations contained a representation that the audits were conducted in accordance with PCAOB standards. But because of his actions on the audits, Hackert knew or should have known that those representations were not accurate.

ANSWER: Mr. Hackert admits that, as an engagement partner, he was responsible for sending (or authorizing a member of the engagement team to send) an email authorizing the filing of Marcum's audit report with the Commission by the relevant issuer. Mr. Hackert states that each audit report and each authorization speaks for itself and is the best evidence of its contents. Mr. Hackert denies the remaining allegations in Paragraph 42.

43. Marcum issued audit reports in connection with each of the audits referenced herein, and each of the audit reports stated that the audits were performed in accordance with PCAOB auditing standards. In fact, because of Hackert's actions, the audits were not performed in accordance with PCAOB standards. Nevertheless, Marcum's clients included Marcum's audit reports in their filings with the Commission, including, among others, Forms 10-K and S-1.

ANSWER: Mr. Hackert admits, upon information and belief, that each audit report contained a representation that the audit had been conducted in accordance with PCAOB Auditing Standards. Mr. Hackert admits, upon information and belief, that Marcum's clients likely included Marcum's audit reports in their filings with the Commission, though each audit report and each Commission filing speaks for itself and is the best evidence of its contents. Mr. Hackert denies the remaining allegations in Paragraph 43.

44. Hackert repeatedly failed to review the work of the engagement team members and to document that review prior to the report release date. In 187 of the 239 audits on which Hackert was the engagement partner during the relevant period (or about 78%), Hackert did not review significant portions of the audit work performed or conclusions reached prior to the report release date.

ANSWER: Mr. Hackert states that the work papers for the unidentified audits cited in Paragraph 44 speak for themselves and are the best evidence of their contents. Mr. Hackert denies the remaining allegations in Paragraph 44.

45. For two audit engagements, the audit of Operating Company 14 for 2015 and the audit of Operating Company 18 for 2016, Hackert did not review and sign off on any work papers containing substantive audit work by the engagement team.

ANSWER: Due to the anonymization of the allegation, Mr. Hackert states that he lacks sufficient knowledge to specifically admit or deny the allegations in Paragraph 45 and denies the remaining allegations on that basis.

46. In 2017, in response to findings made by the PCAOB after an inspection, Marcum changed its policy to require engagement partners and engagement quality review (“EQR”) partners to sign off on certain specific work papers in every audit binder, as well as work papers related to other significant risk areas. This policy became effective for audits with fiscal years ended December 31, 2016, or later.

ANSWER: Mr. Hackert admits, upon information and belief, that, in response to a PCAOB inspection comment, Marcum implemented an internal firm policy that was effective for audits of December 31, 2016 year-end financial statements and later that required engagement partners to sign off on significant workpapers in specified audit areas. Mr. Hackert states that the internal firm policy speaks for itself and is the best evidence of its contents. Mr. Hackert denies the remaining allegations in Paragraph 46.

47. But even after Marcum’s policy changed, Hackert’s review and sign off practices did not improve. In at least 14 audit engagements to which this policy applied, Hackert failed to review the work of the engagement team on significant audit areas and key work papers and to evidence his review before the report release date.

ANSWER: Mr. Hackert denies the allegations in Paragraph 47.

48. **For example, in the audit of Operating Company 12 for 2017, the engagement team identified related party transactions as an area of the audit that had significant and fraud risks. Nevertheless, for the related party section of the audit, Hackert did not review the work of the engagement team and evidence his review prior to the report release date.**

ANSWER: Mr. Hackert states that he lacks sufficient knowledge to specifically admit or deny that in the audit of Operating Company 12 for 2017, the engagement team identified related party transactions as an area of the audit that had significant and fraud risks and denies the allegation on that basis. Mr. Hackert denies the remaining allegations in Paragraph 48.

49. **Likewise, in the audit of Operating Company 22 for 2017, Hackert did not review the work of the engagement team and evidence his review prior to the report release date on the Risk Assessment Summary Form, a key document requiring an engagement partner signature under Marcum policy. Hackert also failed to review the work of the engagement team and evidence his review prior to the report release date on significant risk areas in the audit identified by the engagement team, including accounts receivable and sales and inventory and cost of sales. In the same engagement, Hackert did not review the work of the engagement team and evidence his review on the Summary of Unadjusted Misstatements (“SUAM”), a key audit document that requires an engagement partner sign off under Marcum policy and that should be included as part of the auditor’s evaluation of audit results in accordance with PCAOB auditing standards.**

ANSWER: Mr. Hackert denies the allegations in Paragraph 49.

50. **In the AAI 2018 audit engagement, Hackert failed to review the work of the engagement team and evidence his review of work papers in significant areas of the audit, as identified by the engagement team, including areas involving crypto asset miners and goodwill or intangibles valuation. He also failed to review the work of the engagement team and evidence his review of certain key documents before the report release date, including the summary memorandum, work papers related to communications with the audit committee, and the SUAM.**

ANSWER: Mr. Hackert denies the allegations in Paragraph 50.

51. **In the AAI 2019 audit engagement, Hackert never reviewed the work of the engagement team and evidenced his review on certain key documents that required an engagement partner to sign off under Marcum policy, including the work papers related to planning the audit, engagement team discussion and risk identification, and the auditor’s report. Hackert also did not review the work of the engagement team and evidence his review before the report release date on work papers related to communications to the audit committee and the summary memorandum, which were key documents for the audit under Marcum policy and PCAOB auditing standards.**

ANSWER: Mr. Hackert denies the allegations in Paragraph 51.

52. In 2020, Hackert’s practice shifted mostly to auditing SPACs. Between 2020 and 2022, Hackert served as the engagement partner for at least 151 audits of SPACs. In 122 of those audits, Hackert did not review the work of the engagement team and document his review of at least some of the audit documentation prior to the report release date. In one of the SPAC audits, Hackert did not review the substantive work of the engagement team and document his review of any work papers before or after the report release date.

ANSWER: Mr. Hackert admits that, between 2020 and 2022, he served as the engagement partner on audits of numerous SPACs. Mr. Hackert denies the remaining allegations in Paragraph 52.

53. Beginning with audits for the fiscal year that ended on December 31, 2016, and continuing to the present, Marcum policy required Hackert to sign a “routing slip” work paper before the report release date for every audit on which he was the engagement partner. At Marcum, a routing slip is the work paper that engagement partners, engagement managers, and EQR partners sign to attest and document that their procedures and review are complete, and that they authorize release of the audit report.

ANSWER: Mr. Hackert admits, upon information and belief, that Marcum implemented an internal firm policy that was effective for audits of December 31, 2016 year-end financial statements and later that required engagement partners, engagement managers, and EQR partners to sign a routing slip to document that their procedures and review are complete, and that they authorize release of the audit report. Mr. Hackert states that the internal firm policy speaks for itself and is the best evidence of its contents.

54. Hackert sometimes failed to sign the required routing slips prior to the report release date and then backdated his signature to make it appear that the routing slip had been timely signed. For example, on the audit of Operating Company 14 for 2015, the 2016 and 2017 audits of AAI, and the audit of Operating Company 22 for 2017, Hackert dated his signature as of the report release date, but the electronic metadata in the routing slip indicates that the document was not created until weeks after the purported date of Hackert’s signature. Hackert knew or should have known that backdating documentation violates, at a minimum, his duties under AS 1015, 1201, and 1215.

ANSWER: Mr. Hackert denies the allegations in Paragraph 54. Mr. Hackert further states that the work papers for the 2017 audit of Operating Company 22 speak for themselves and are the best evidence of their contents.

55. On at least 37 of the SPAC audits, Hackert failed to sign the routing slips, which were important audit documentation, prior to the report release date.

ANSWER: Mr. Hackert states that, due to the absence of specificity in the allegations, he lacks sufficient knowledge to specifically admit or deny that he failed to sign the routing slips for at least 37 SPAC audits and denies the allegation on that basis. Mr. Hackert further states that the work papers for the unspecified audits cited in Paragraph 55 speak for themselves and are the best evidence of their contents.

56. Hackert’s supervision failures extended to the PCAOB requirement to assemble a “complete and final set of audit documentation” within 45 days after the report release date (i.e., by the documentation completion date), as required by AS 1215.15. Marcum’s policies referred to this requirement as “Finalizing and Locking Engagement Binders.” During the relevant period, on 123 of the audit engagements for which Hackert was the engagement partner, he failed to ensure that a complete and final set of audit documentation was assembled for retention by the documentation completion date.

ANSWER: Mr. Hackert states that, due to the absence of specificity in the allegations, he lacks sufficient knowledge to specifically admit or deny that he failed to ensure that a complete and final set of audit documentation was assembled for retention by the documentation completion date for the unidentified 123 audits and denies the allegation on that basis. Mr. Hackert further states that the description of the requirements of AS 1215.15 is a legal conclusion or interpretation of auditing standards that does not require a response. Mr. Hackert also states that the work papers for the unspecified audits cited in Paragraph 56 and the PCAOB auditing standards also cited therein speak for themselves and are the best evidence of their contents. Mr. Hackert denies the remaining allegations in Paragraph 56.

57. Marcum required engagement teams to prepare a so-called “AS 3 memo” for any engagement where documentation was added to the work papers after the

documentation completion date. The AS 3 memo was a quality control document ostensibly intended to meet the requirements of AS 1215.16 that any audit documentation added after the report release date “must indicate the date the information was added, the name of the person who prepared the additional documentation, and the reason for adding it.” But for 21 audits on which Hackert was the engagement partner, he added sign offs to the work papers after the documentation completion date and the required documentation under AS 1215.16 was not added, whether through an AS 3 memo or otherwise.

ANSWER: Mr. Hackert admits, on information and belief, that Marcum had an internal policy that required teams to prepare an AS 3 memo to memorialize when documentation was added to work papers after the documentation completion date. Mr. Hackert states that, due to the absence of specificity in the allegations, he lacks sufficient knowledge to specifically admit or deny that for the unidentified 21 audits he added sign offs to the work papers after the documentation completion date and the required documentation was not added, whether through an AS 3 memo or otherwise and denies the allegation on that basis. Mr. Hackert further states that the work papers for the unspecified audits cited in Paragraph 57 and the PCAOB Auditing Standards also cited therein, which must be read holistically, speak for themselves and are the best evidence of their contents. Mr. Hackert denies the remaining allegations in Paragraph 57.

58. Accordingly, Hackert violated AS 1015, 1201, and 1215 in connection with at least 193 audits. Attached hereto and incorporated herein are Appendix A, which summarizes Hackert’s failures to evidence his supervision by the report release date, and Appendix B, which summarizes Hackert’s failures to assemble a complete and final set of audit documentation by the documentation completion date. Additionally, in connection with the audits listed on Appendices A and B, Hackert caused Marcum to violate Rule 2-02(b)(1) of Regulation S-X

ANSWER: Mr. Hackert denies the allegations in Paragraph 58. Mr. Hackert further states that the work papers for the unspecified audits cited in Paragraph 58, Appendix A, and Appendix B speak for themselves and are the best evidence of their contents.

59. Hackert’s conduct also demonstrated a lack of due professional care and violated PCAOB auditing standards in connection with multiple audits of AAI, from 2018 through 2020, on which Hackert was the engagement partner.

ANSWER: Mr. Hackert denies the allegations in Paragraph 59.

60. **In 2018, AAI purchased approximately \$9 million worth of computer equipment known as crypto asset miners. During Marcum’s audit of AAI for 2018, Hackert’s engagement team identified the existence and valuation of the crypto asset mining equipment as a significant risk area. Because the value of the miners was material to AAI’s balance sheet (approximately 15% of total assets), the engagement team identified this as a significant audit area along with risks that the equipment (a) did not exist due to accounting error or misappropriation, (b) did not belong to the company, (c) was recorded at “incorrect values,” and/or (d) was impaired and not adjusted to net realizable value.**

ANSWER: Mr. Hackert admits, on information and belief, the allegations in the first sentence of Paragraph 60. Mr. Hackert denies the remaining allegations in Paragraph 60.

61. **Despite identifying the foregoing risks related to the existence and valuation of the miners, the only work paper that contained evidence of Hackert’s review in this section of the audit binder was the “Audit Program for Property,” which listed audit procedures performed and referenced the work papers documenting those procedures. The audit program indicated that all the procedures were performed by, and the underlying work papers were prepared by, a junior member of Hackert’s team. Hackert, however, did not review and document his review of any underlying work papers to determine whether the audit work in this significant area was appropriate and complete.**

ANSWER: Mr. Hackert states that the work papers for the AAI audit speak for themselves and are the best evidence of their contents. Mr. Hackert denies the allegations in Paragraph 61.

62. **The only supporting documents reviewed by the engagement team to evidence the existence of the miners were several invoices purporting to show purchased miners. Those invoices, however, did not provide sufficient and appropriate audit evidence to demonstrate that the miners existed, that the miners were delivered to AAI, and that title to the miners passed to AAI.**

ANSWER: Mr. Hackert states that the work papers for the AAI audit speak for themselves and are the best evidence of their contents. Mr. Hackert denies the allegations in Paragraph 62.

63. **Further, the engagement team did not perform and document any audit procedures to assess the valuation and impairment of the miners.**

ANSWER: Mr. Hackert denies allegations in Paragraph 63.

64. **Accordingly, Hackert’s conduct with respect to the crypto asset miners violated AS 1015, 1105, 1201, and 2501.**

ANSWER: Mr. Hackert denies the allegations in Paragraph 64.

65. **AAI's balance sheet for 2018 included Goodwill of \$8.5 million related to four acquisitions. Goodwill arises when the purchase price of an acquired entity exceeds the combined fair value of the identifiable assets and liabilities. Goodwill represents intangible assets such as the value of brand reputation, among other things.**

ANSWER: Mr. Hackert admits, on information and belief, the allegations in the first sentence of Paragraph 65. Mr. Hackert states that the remaining allegations of Paragraph 65 assert legal conclusions or interpretations of accounting principles that do not require a response.

66. **In its audit of AAI's 2018 financial results, Hackert's engagement team identified AAI's goodwill valuation as a significant risk area. The engagement team wrote in a work paper that in response to this risk, it "obtained third party valuation reports and utilized [a] Marcum Valuation team to perform analysis on the company's conclusions." But the work papers related to goodwill valuation show that Hackert's team did not conduct sufficient audit work in this significant area.**

ANSWER: Mr. Hackert denies the allegations in Paragraph 66. Mr. Hackert states that the work papers for the AAI audit speak for themselves and are the best evidence of their contents.

67. **The only goodwill analysis in the work papers was for one (of the four) AAI acquisitions, and its goodwill was valued at \$265,000 (or 3% of total goodwill). There was no goodwill analysis in the work papers for the other three acquisitions, which accounted for about 97% of the goodwill value.**

ANSWER: Mr. Hackert denies the allegations in Paragraph 67. Mr. Hackert states that the work papers for the AAI audit speak for themselves and are the best evidence of their contents.

68. **Additionally, while conducting the 2018 audit, Hackert received a third-party valuation report via email related to another AAI acquisition (not the acquisition with goodwill valued at \$265,000). The report indicated that AAI should record a \$2.5 million impairment of goodwill, meaning that the value of goodwill related to the acquisition had fallen by \$2.5 million. However, the analysis in the third-party valuation report was not included in the AAI work papers for 2018, and no goodwill impairment was recorded in AAI's financial statements for 2018. Hackert claimed that he reviewed with Marcum's valuation expert the report indicating that a \$2.5 million impairment should be recorded, but the work papers do not reflect Hackert's analysis of the report or why he believed the \$2.5 million impairment was not warranted.**

ANSWER: Mr. Hackert states that the allegations in Paragraph 68 purport to characterize the work papers, Mr. Hackert's and others' testimony, and the third party valuation report, and he denies the allegations in Paragraph 68 on this basis. Mr. Hackert states that the work papers, his

and others' testimony, and the third party valuation report speak for themselves and are the best evidence of their contents.

69. The next year, when auditing AAI's 2019 results, Hackert's engagement team did not identify goodwill valuation as a significant risk area, as it had in 2018. Although goodwill still comprised a material amount of AAI's total assets (about 26%), the engagement team provided no explanation in the work papers for why the assessed risk level was downgraded.

ANSWER: Mr. Hackert denies the allegations in Paragraph 69. Mr. Hackert states that the work papers for the AAI audit speak for themselves and are the best evidence of their contents.

70. In the 2019 AAI audit, Hackert signed off on multiple work papers citing as audit evidence certain valuation reports prepared by third parties about AAI's goodwill valuations. Despite these citations, however, the work papers did not include the referenced valuation reports.

ANSWER: Mr. Hackert admits the allegations in Paragraph 70. Mr. Hackert states that the work papers for the AAI audit speak for themselves and are the best evidence of their contents.

71. Although the valuation reports were not included in the work papers, they purportedly were reviewed by Marcum's valuation expert, who identified multiple issues with these reports and their valuations of goodwill. But there is no documentation in the work papers of whether or how these issues were addressed or resolved. For example, the expert advised the team that they should perform a market cap reconciliation by comparing the sum of the fair values in the reports with certain other data, and that his "back of the envelope" calculations did "not line up." However, there is no evidence in the work papers that any market cap reconciliation was performed. In addition, the expert wrote in an email on which Hackert was copied that he would rely on the audit team "to test all projected financial information" included in the goodwill third party valuation reports. Yet there is no evidence in the work papers that the team tested any of the projected financial information.

ANSWER: Mr. Hackert admits that Marcum's valuation expert reviewed the valuation reports and identified issues related to the reports and the valuation of goodwill and the allegations in the third and fifth sentences of Paragraph 71. Mr. Hackert denies the remaining allegations in Paragraph 71. Mr. Hackert states that the work papers for the AAI audit speak for themselves and are the best evidence of their contents.

72. **Accordingly, Hackert's conduct with respect to goodwill valuation violated AS 1015, 1105, 1201, 1210, and 2501.**

ANSWER: Mr. Hackert denies the allegations in Paragraph 72.

73. **In 2018, the Marcum audit team identified AAI's transactions with related parties as a significant and fraud risk area. AAI's relevant related party transactions included its investment in the warrants of Avalanche, which AAI identified in its filings with the Commission as a related party to AAI. As background, Avalanche had issued AAI warrants to purchase 35.6 million shares of Avalanche common stock between 2017 and 2020. From 2018 through 2020, AAI's investments in Avalanche (including the warrants, common stock, and loans) ranged from 18-22% of AAI's total assets, representing a material amount of AAI's assets.**

ANSWER: Mr. Hackert admits, upon information and belief, the allegations in Paragraph 73.

74. **GAAP that became effective for fiscal years beginning after December 15, 2017 – specifically, Accounting Standards Codification Topic 321, *Investments – Equity Securities* (“ASC 321”) – eliminated an issuer's ability to record changes in the fair value of certain investments in equity securities (including warrants) in other comprehensive income on the issuer's financial statements. Instead, under the new ASC 321, such changes had to be recorded in net income/loss on the financial statements.**

ANSWER: Mr. Hackert states that Paragraph 74 asserts legal conclusions or interpretations of accounting principles that do not require a response.

75. **Although ASC 321 was effective for AAI's fiscal year 2018, and AAI applied that provision to certain equity investments in a private company on its Form 10-K for 2018, AAI did not apply ASC 321 to its Avalanche warrants. The failure to apply ASC 321 to the Avalanche warrants was a material accounting error.**

ANSWER: Mr. Hackert admits the allegations in the first sentence of Paragraph 75. Mr.

Hackert denies the remaining allegations in Paragraph 75.

76. **During his audits of AAI for the fiscal years 2018 through 2020, however, Hackert concurred with AAI's incorrect accounting treatment of the Avalanche warrants. Hackert knew or should have known that AAI's accounting treatment was incorrect because it did not apply ASC 321.**

ANSWER: Mr. Hackert denies the allegations in Paragraph 76.

77. **Hackert's failure to recognize or correct AAI's improper accounting resulted in AAI materially understating its net loss by 24.34% in 2018 and 6% in 2019, and overstating its net loss by 10% in 2020. Because of that materially improper accounting, AAI restated its financial results in 2023.**

ANSWER: Mr. Hackert admits, upon information and belief, that AAI filed restated financial statements on April 14, 2023, which indicated that AAI overstated its net loss by approximately 10% in 2020. Mr. Hackert states that he lacks sufficient knowledge to specifically admit or deny the remaining allegations in Paragraph 77 and denies the remaining allegations on that basis.

78. Accordingly, Hackert's conduct with respect to related party investments violated AS 1010, 1015, and 1201.

ANSWER: Mr. Hackert denies the allegations in Paragraph 78.

79. During the audit of AAI for 2019, as in other audits, Hackert's engagement team was required to sample and test expenses (to confirm that the expenses were substantiated and accounted for correctly). The engagement team used an electronic sampling program to select certain AAI expenses for testing. One of the expenses selected was for \$65,000, which purportedly was a payment to a third-party for consulting services.

ANSWER: Mr. Hackert admits the allegations in the second sentence of Paragraph 79.

Mr. Hackert denies the remaining allegations in Paragraph 79.

80. Email communications between a junior member of Hackert's audit team and AAI's then-CFO, in or around May 2020, indicated that AAI could not locate supporting documents for the expense, such as an executed consulting agreement, an invoice from the consultant, or other documentation. But instead of insisting that AAI provide supporting documentation for the \$65,000 expense, the engagement team simply stopped seeking support for this sample item and chose another item to test.

ANSWER: Mr. Hackert states that he lacks sufficient knowledge to specifically admit or deny the allegations in Paragraph 80 and denies the allegations on that basis.

81. In fact, the third party provided little or no consulting services to AAI, and certainly not services worth \$65,000. Additionally, contemporaneous correspondence between AAI's then-CEO and the third-party indicated that AAI's payment of \$65,000 was to satisfy a personal debt from the then-CEO to the third party. But so far as the work papers show, neither Hackert nor anyone on the engagement team reviewed or analyzed any documentation related to the \$65,000 payment to ensure that it was evaluated properly.

ANSWER: Mr. Hackert states that he lacks sufficient knowledge to specifically admit or deny the allegations in the first and second sentences of Paragraph 81 and denies the allegations on that basis. Mr. Hackert denies the remaining allegations in Paragraph 81.

82. As a result, during the 2019 audit of AAI, Hackert failed to exercise due professional care. Because of Hackert's insufficient supervision, the engagement team failed to perform appropriate procedures when they were unable to examine a sample chosen for testing; they failed to consider the impact of the client being unable to provide sufficient evidentiary support; and they failed to appropriately evaluate potential fraud on the part of senior management. Additionally, so far as the work papers show, the team did not consider whether the inability to obtain sufficient appropriate evidential matter for the potentially fraudulent expense item constituted a scope limitation or whether the auditor's opinion should have been qualified or disclaimed.

ANSWER: Mr. Hackert denies the allegations in Paragraph 82.

83. Accordingly, Hackert's conduct with respect to expense testing violated AS 1015, 1201, 2315, 2401, and 2810.

ANSWER: Mr. Hackert denies the allegations in Paragraph 83.

84. As a result of the conduct described above, Hackert engaged in improper professional conduct within the meaning of Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice. Section 4C(a)(2) and Rule 102(e)(1)(ii) provide, in pertinent 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 "[r]epeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission." Exchange Act Section 4C(b)(2)(B) and Rule 102(e)(1)(iv)(B)(2). As discussed above, Hackert engaged in repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards.

ANSWER: Mr. Hackert denies the allegations in the first and last sentences of Paragraph 84.

Mr. Hackert states that the remaining sentences in Paragraph 84 state legal conclusions to which no response is required.

85. Rule 2-02(b)(1) of Regulation S-X requires an accountant's report to state "the applicable professional standards under which the audit was conducted." 17 C.F.R. § 210.2-02(b)(1). For audits of fiscal years 2016 and 2017, Rule 2-02(b)(1) similarly mandated that an accountant's report "state whether the audit was made in accordance with accepted auditing standards...." An auditor violates Rule 2-02(b)(1) if it issues a report stating it has conducted its audit in accordance with the PCAOB standards when it has not. As a result of the conduct described above, Marcum violated Rule 2-02(b)(1) of Regulation S-X and Hackert caused those violations.

ANSWER: Mr. Hackert states that first three sentences of Paragraph 85 state legal conclusions to which no response is required. Mr. Hackert denies the remaining allegations in Paragraph 85.

* * *

Mr. Hackert denies any allegation in Section II that has not been explicitly addressed above. Mr. Hackert also denies any allegation contained in Appendix A or Appendix B to the AOIP that has not been explicitly addressed above.

* * *

Mr. Hackert states that no response is necessary to Sections III and IV of the AOIP. To the extent a response is required, Mr. Hackert denies violating any applicable standards, rules, or laws in connection with his conduct alleged in the AOIP or otherwise.

AFFIRMATIVE DEFENSES

Mr. Hackert asserts the following affirmative defenses to the AOIP. In doing so, he does not assume the burden of proof with respect to any fact or issue that would otherwise rest on the Division. Mr. Hackert reserves the right to assert additional affirmative defenses when and if, in the course of his investigation, discovery, or in preparation for hearing, it becomes appropriate to assert such affirmative defenses.

1. The AOIP fails to state a claim upon which relief may be granted.
2. The AOIP fails to state facts sufficient to allege a violation by Mr. Hackert of the Exchange Act or any Rule promulgated thereunder.
3. The AOIP and its summary appendices fail to contain a short and plain statement of the matters of fact and law to be considered and determined, as required by SEC Rule of Practice 200(b) and otherwise.

4. Some or all of the Commission's claims and relief sought are precluded by the applicable statutes of limitations.

5. This administrative proceeding violates the Due Process Clause of the United States Constitution.

6. This administrative proceeding violates Articles I and II of the United States Constitution.

7. This administrative proceeding violates the Seventh Amendment to the United States Constitution.

8. Mr. Hackert was denied his right to fair notice of the claims and allegations set forth in the AOIP.

9. The initiation of this administrative proceeding is arbitrary, capricious, and the result of selective prosecution.

10. The manner in which this administrative proceeding has proceeded and will proceed violates the Administrative Procedures Act.

11. The claims advanced in the AOIP are barred, in whole or in part, because Mr. Hackert at all times exercised his professional skepticism, experienced judgment, and acted in good faith on an informed basis and in reasonable reliance upon the work, opinions, information, representations, and advice of others upon which Mr. Hackert was entitled to rely.

12. The alleged audit deficiencies asserted in the AOIP are matters of professional judgment and not appropriately the subject of an administrative proceeding.

13. There is no basis for sanctioning Mr. Hackert because the facts alleged do not amount to a "single instance of highly unreasonable conduct," or "repeated instances of unreasonable conduct," as required under Rule 102(e)(1)(iv)(B)(1)-(2).

14. At all times relevant hereto, Mr. Hackert acted in good faith and at no time acted either willfully, intentionally, knowingly, negligently, or recklessly with respect to any matter alleged in the AOIP.

* * *

WHEREFORE, having fully answered the AOIP, Mr. Hackert denies that the Division is entitled to any of the relief it seeks against him in the AOIP, and respectfully requests that the Commission enter an order dismissing the AOIP with prejudice and grant such other and further relief as it may deem just and proper.

Dated: April 1, 2024

Respectfully submitted,

/s/ Stephan J. Schlegelmilch

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CERTIFICATE OF SERVICE

Pursuant to Rule 150 of the SEC Rules of Practice, I hereby certify that, on April 1, 2024, I filed the foregoing document using the eFAP system and also served a copy of it via email on the following persons:

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