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ORDER MAKING FINDINGS AND  
IMPOSING SANCTIONS

*In the Matter of Marcum Bernstein &  
Pinchuk LLP,*

*Respondent.*

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) PCAOB Release No. 105-2019-023  
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) September 10, 2019  
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By this Order, the Public Company Accounting Oversight Board ("Board" or "PCAOB") is: (1) censuring Marcum Bernstein & Pinchuk LLP ("MarcumBP" or "Firm"); (2) imposing a civil money penalty of \$50,000 on MarcumBP; and (3) requiring MarcumBP to undertake a review of its policies, procedures, staffing, and training with respect to auditor independence.

The Board is imposing these sanctions on the basis of its findings that MarcumBP failed to satisfy applicable independence criteria, including as set out in U.S. Securities and Exchange Commission ("Commission") rules. MarcumBP's independence violations resulted from the Firm's conduct in connection with its China Best Ideas Investment Conference ("China Conference") in 2013 and 2014. Specifically, MarcumBP was not independent with respect to audits and reviews of seven issuers that participated in the China Conference. In addition, MarcumBP failed to take sufficient steps to ensure that its system of quality control would provide reasonable assurance that the Firm would identify and appropriately address potential independence issues.

## I.

The Board instituted non-public disciplinary proceedings against MarcumBP on April 10, 2019.<sup>1</sup> Pursuant to PCAOB Rule 5205, MarcumBP later submitted an Offer of Settlement ("Offer") that the Board accepted. Solely for purposes of these proceedings and any other proceedings brought by or on behalf of the Board, or to which the Board

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<sup>1</sup> Section 105(c)(2) of the Sarbanes-Oxley Act of 2002, as amended ("Act"), provides that litigated disciplinary proceedings shall not be public, "unless otherwise ordered by the Board for good cause shown, with the consent of the parties...." Although the Board found good cause for making the proceedings public, MarcumBP did not consent, as permitted by Section 105(c)(2) of the Act and PCAOB Rule 5203.

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is a party, and without admitting or denying the findings herein, except as to the Board's jurisdiction over MarcumBP and the subject matter of these proceedings, which is admitted, MarcumBP consents to entry of this Order Making Findings and Imposing Sanctions as set forth below.<sup>2</sup>

**II.**

On the basis of MarcumBP's Offer, the Board finds that:<sup>3</sup>

**A. Respondent**

1. **Marcum Bernstein & Pinchuk LLP** is a limited liability partnership organized under the laws of the State of New York and headquartered in New York, New York. The Firm is licensed by the Texas State Board of Public Accountancy (License No. P05632), the Nevada State Board of Accountancy (License No. PART-0888), and the New York State Education Department (License No. 093038). MarcumBP is, and at all relevant times was, registered with the Board pursuant to Section 102 of the Act and PCAOB rules. At all relevant times, the Firm was the external auditor for the MarcumBP clients referenced in this Order.<sup>4</sup>

**B. Other Relevant Entity**

2. **Marcum LLP** ("Marcum") is a limited liability partnership organized under the laws of the State of New York and headquartered in Melville, New York. It is registered with the New York State Education Department (License No. 067839) and also is licensed in multiple other states. Marcum is, and at all relevant times was, registered with the Board pursuant to Section 102 of the Act and PCAOB rules. Marcum has a 50 percent ownership interest in MarcumBP.

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<sup>2</sup> The findings in this Order are made pursuant to MarcumBP's Offer and are not binding on any other persons or entities in this or any other proceeding.

<sup>3</sup> The Board finds that MarcumBP's conduct described in this Order meets the conditions set out in Section 105(c)(5) of the Act, 15 U.S.C. § 7215(c)(5), which provides that certain sanctions may be imposed in the event of: (1) intentional or knowing conduct, including reckless conduct, that results in a violation of the applicable statutory, regulatory, or professional standard; or (2) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

<sup>4</sup> Each MarcumBP audit client referenced in this Order was an issuer, as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii), at all relevant times.

**ORDER****C. Summary**

3. This matter concerns MarcumBP's failure to comply with PCAOB rules and standards that require a registered public accounting firm to be independent of the firm's audit clients throughout the audit and professional engagement period. Specifically, MarcumBP failed to comply with independence requirements in connection with audits and interim reviews of seven issuer clients that participated in the China Conference. These independence violations resulted from the Firm's conduct in connection with its annual China Conference in 2013 and 2014.

4. The China Conference was an investor conference focused on presenting Chinese public companies to audiences that included potential investors. During the 2013 and 2014 China Conferences, a total of seven MarcumBP issuer audit clients made presentations, were available for one-on-one meetings at the China Conference, or both.

5. The success of the China Conference depended on companies perceiving it as a good forum to connect with potential investors, and on potential investors perceiving it as a good opportunity to find high-quality investment opportunities. Accordingly, MarcumBP endeavored to create a perception that the China Conference was an event featuring companies—some of which were MarcumBP issuer audit clients—that were high-quality investment opportunities.

6. MarcumBP issued audit reports on the financial statements of the issuer audit clients that participated in the China Conference. The Firm's independence was impaired with respect to these issuer audit clients because MarcumBP's hosting and promotion of the conference: (1) involved publicly advocating for these issuer audit clients as high-quality investment opportunities; and (2) created a mutual interest between MarcumBP and these issuer audit clients with respect to whether those clients' subsequent performance lived up to MarcumBP's billing. As a result, MarcumBP failed to satisfy the independence criteria set out in Rule 2-01(b) of Commission Regulation S-X, in violation of PCAOB Rule 3520, *Auditor Independence*, and AU § 220, *Independence*.<sup>5</sup>

7. MarcumBP also failed to comply with PCAOB quality control standards because it failed to establish policies and procedures sufficient to provide the Firm with reasonable assurance that: (1) it would maintain independence in all required circumstances;<sup>6</sup> and (2) the policies and procedures the Firm had established with

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<sup>5</sup> All references to PCAOB rules and standards are to the versions of those rules and standards in effect at the time of the relevant conduct.

<sup>6</sup> QC § 20.09-.10, *System of Quality Control for a CPA Firm's Accounting and Auditing Practice*; see also QC § 30.02-.03, *Monitoring a CPA Firm's Accounting and Auditing Practice*.

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respect to independence were suitably designed and were being effectively applied and monitored.<sup>7</sup>

**D. Background**

8. MarcumBP hosted and promoted its China Conference in Beijing in September 2013 and September 2014. The China Conference was designed to improve MarcumBP's visibility and brand by providing an opportunity to introduce potential investors to Chinese companies. MarcumBP modeled the China Conference on a similar investor conference held by its affiliate Marcum, the Marcum MicroCap Conference.

9. MarcumBP's senior management believed that the China Conference would not have any implications for the Firm's independence. For this belief, the Firm relied solely on Marcum's approval of the separate Marcum MicroCap Conference—even though Marcum had not conducted any substantial independence deliberations in connection with its MicroCap Conference.<sup>8</sup>

10. Thus, MarcumBP failed to undertake any review or consultation to ensure that its conduct in connection with the China Conference complied with all independence requirements. The Firm failed to recognize the independence implications of touting the companies that participated in its China Conference, some of which were MarcumBP issuer audit clients.

11. The format for both the 2013 and 2014 China Conferences included expert panel presentations, as well as business presentations by certain "Featured Companies," which MarcumBP described as small- to large-cap companies listed in both United States and Chinese stock markets. The Featured Companies were also available at the conferences to meet one-on-one with potential investors.<sup>9</sup>

12. The China Conference format also included opportunities for investors to meet one-on-one with a group of conference participants that MarcumBP identified as "Attending Companies." Although the Attending Companies were available for one-on-one meetings with potential investors, they did not make business presentations at the conferences.

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<sup>7</sup> QC §§ 20.09-.10, 30.02-.03.

<sup>8</sup> See *In the Matter of Marcum LLP and Alfonse Gregory Giugliano, CPA*, PCAOB Release No. 105-2019-022 (September 10, 2019).

<sup>9</sup> MarcumBP personnel did not attend any one-on-one meetings.

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13. The first MarcumBP China Conference took place in September 2013 in Beijing ("2013 Conference"). The twenty Featured Companies at the 2013 Conference included two MarcumBP issuer audit clients. The seven Attending Companies at the conference included one MarcumBP issuer audit client.

14. MarcumBP's second China Conference took place in September 2014 in Beijing ("2014 Conference"). The eighteen Featured Companies at the 2014 Conference included two MarcumBP issuer audit clients. The fifteen Attending Companies at the conference included two MarcumBP issuer audit clients.

15. In connection with the 2013 and 2014 Conferences, MarcumBP sent numerous conference invitations to potential attendees, including fund managers, venture capitalists, and private equity investors. The Firm also sent invitations to banks, law firms, and other service providers. The conference grew in size between 2013 and 2014, with approximately 330 attendees at the 2013 Conference and more than 500 the following year.

16. MarcumBP promoted the conferences by, among other things, issuing press releases and posting promotional materials on the Firm's website. MarcumBP also prepared promotional books for the China Conferences that were distributed to conference attendees. These promotional books included company profiles of the Featured Companies and written introductory statements from one of MarcumBP's co-managing partners.

17. Through its public statements, MarcumBP sought to communicate to investors and other potential conference attendees that the China Conference was an exclusive showcase for Featured Companies and Attending Companies that MarcumBP viewed as high-quality investment opportunities. For example, MarcumBP vouched for the transparency and corporate governance of the companies participating in its China Conference—thereby speaking directly to investor concerns about Chinese companies.

18. In connection with the 2013 Conference:

- MarcumBP's co-managing partner touted the "outstanding roster of presenting companies" and said that these companies would "discuss their successful track records, prospects for growth and best practices transparency by which they conduct both their business operations and investor communications."
- MarcumBP described the conference as "provid[ing] investors with the opportunity to meet with the senior management of Chinese companies that have weathered the storm of economic uncertainty and shown a strong commitment to shareholder value."

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- MarcumBP stated that the conference would "showcase some of the very best managed companies that are listed overseas," and that the participating companies were "A Selection Of The Best Companies China Has To Offer."

19. Likewise, in connection with the 2014 Conference:

- MarcumBP stated that the conference would "feature the 'best-of-the-best'" Chinese companies that "have been selected based on input from institutional investors as being well positioned for growth, having solid and transparent business models, and adhering to corporate governance standards."
- MarcumBP asserted that its China Conference was "designed to be different," in that its Featured Companies "have been selected based on having strong business models that are aligned with China's economic trend and having shown a commitment to meeting international norms of corporate governance."
- MarcumBP described the conference as "dedicated to introducing investors to superior, undiscovered SEC-registrant Chinese companies."

**E. MarcumBP Violated PCAOB Rules and Standards**

20. In connection with the preparation or issuance of an audit report, PCAOB rules require that a registered public accounting firm and its associated persons comply with the Board's auditing and related professional practice standards.<sup>10</sup>

*MarcumBP Violated Auditor Independence Requirements*

21. PCAOB rules require that a registered public accounting firm and its associated persons be independent of the firm's audit clients throughout the audit and professional engagement period.<sup>11</sup>

22. A registered public accounting firm's or associated person's independence obligation with respect to an issuer audit client encompasses not only an obligation to satisfy the independence criteria set out in the rules and standards of the PCAOB, but also an obligation to satisfy all other independence criteria applicable to the

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<sup>10</sup> PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*; PCAOB Rule 3200T, *Interim Auditing Standards*.

<sup>11</sup> PCAOB Rule 3520; see also AU § 220.

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engagement, including the independence criteria set out in Commission rules and regulations.<sup>12</sup>

23. Rule 2-01(b) of Regulation S-X provides that an accountant is not independent of an audit client if, at any point during the audit and professional engagement period, "the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement."<sup>13</sup> In applying this standard, it is appropriate to "look[] in the first instance to whether a relationship or the provision of a service: creates a mutual or conflicting interest between the accountant and the audit client . . . or places the accountant in a position of being an advocate for the audit client."<sup>14</sup>

24. With respect to the seven issuer audit clients that were Featured Companies or Attending Companies at the 2013 and 2014 Conferences, MarcumBP's conduct described above: (1) involved publicly advocating for its issuer audit clients as high-quality investment opportunities; and (2) created a mutual interest between MarcumBP and its issuer audit clients with respect to whether those clients' subsequent performance lived up to MarcumBP's touting. This conduct was inconsistent with the independence criteria set forth in Rule 2-01(b) of Regulation S-X and impaired the Firm's independence with respect to these issuer audit clients. As a result, MarcumBP violated PCAOB Rule 3520 and AU § 220.

*MarcumBP Violated PCAOB Quality Control Standards*

25. PCAOB rules require that a registered public accounting firm comply with the Board's quality control standards,<sup>15</sup> which provide that a registered public accounting firm "shall have a system of quality control for its accounting and auditing practice."<sup>16</sup> PCAOB quality control standards further state that policies and procedures should be established to provide the firm with reasonable assurance that "personnel

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<sup>12</sup> PCAOB Rule 3520, Note 1.

<sup>13</sup> 17 C.F.R. § 210.2-01(b). Rule 2-01(b) further provides that "[i]n determining whether an accountant is independent, the Commission will consider all relevant circumstances, including all relationships between the accountant and the audit client, and not just those relating to reports filed with the Commission."

<sup>14</sup> 17 C.F.R. § 210.2-01, Preliminary Note 2.

<sup>15</sup> PCAOB Rule 3100; PCAOB Rule 3400T, *Interim Quality Control Standards*.

<sup>16</sup> QC § 20.01.

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maintain independence (in fact and in appearance) in all required circumstances" and "that the work performed by engagement personnel meets applicable professional standards, regulatory requirements, and the firm's standards of quality."<sup>17</sup> Additionally, PCAOB quality control standards provide that policies and procedures for monitoring "should be established to provide the firm with reasonable assurance that the policies and procedures established by the firm for each of the other elements of quality control . . . are suitably designed and are being effectively applied," and that "its system of quality control is effective."<sup>18</sup>

26. In light of MarcumBP's conduct in connection with the China Conference—which involved advocating for and creating a mutual interest with seven issuer audit clients, and which constituted conduct of which senior partners in the Firm were aware—MarcumBP failed to implement, effectively apply, and appropriately monitor quality control policies and procedures sufficient to provide reasonable assurance concerning the Firm's independence. Those failures resulted in, or contributed to, MarcumBP violating PCAOB rules and standards related to independence, including by failing to satisfy applicable Commission independence criteria as described above.

27. As a result, MarcumBP violated QC § 20 and QC § 30 in 2013 and 2014.

**III.**

In view of the foregoing, and to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports, the Board determines it appropriate to impose the sanctions agreed to in MarcumBP's Offer. Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 105(c)(4)(E) of the Act and PCAOB Rule 5300(a)(5), MarcumBP is hereby censured.
- B. Pursuant to Section 105(c)(4)(D) of the Act and PCAOB Rule 5300(a)(4), a civil money penalty in the amount of \$50,000 is imposed upon MarcumBP. All funds collected by the Board as a result of the assessment of this civil money penalty will be used in accordance with Section 109(c)(2) of the Act. MarcumBP shall pay the civil money penalty within ten (10) days of the issuance of this Order by (1) wire transfer pursuant to instructions provided by Board staff; or (2) United States Postal Service money order, bank money order, certified check, or bank cashier's check (a) made payable to the Public Company Accounting Oversight Board, (b) delivered to the Controller, Public Company Accounting Oversight Board,

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<sup>17</sup> QC § 20.09-.10, .17.

<sup>18</sup> QC §§ 20.20, 30.03.

**ORDER**

1666 K Street, N.W., Washington D.C. 20006, and (c) submitted under a cover letter, which identifies MarcumBP as a respondent in these proceedings, sets forth the title and PCAOB release number of these proceedings, and states that payment is made pursuant to this Order, a copy of which cover letter and money order or check shall be sent to Office of the Secretary, Attention: Phoebe W. Brown, Secretary, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington D.C. 20006.

C. Pursuant to Sections 105(c)(4)(C), (F), and (G) of the Act and PCAOB Rules 5300(a)(3), (6), and (9), the Board orders that:

1. Review by MarcumBP. Within the period specified in Paragraph III.C.2 below, MarcumBP shall review and evaluate the following:
  - a. MarcumBP's quality control policies and procedures as they relate to auditor independence requirements applicable to audits and reviews conducted pursuant to PCAOB standards;
  - b. The resources MarcumBP is devoting to provide reasonable assurance of compliance with auditor independence requirements applicable to audits and reviews conducted pursuant to PCAOB standards, including (i) the expertise, experience, and staffing of MarcumBP's quality control personnel relating to auditor independence requirements applicable to audits and reviews conducted pursuant to PCAOB standards, and (ii) whether MarcumBP should hire a partner-level professional with experience and expertise in auditor independence to assume primary responsibility for overseeing the adequate functioning of its independence policies and independence consultation process; and
  - c. MarcumBP's professional education and training policies and materials relating to auditor independence requirements applicable to audits and reviews conducted pursuant to PCAOB standards.
2. Reporting. Within six months of the date of this Order, MarcumBP shall submit a written report to the Director of the Division of Enforcement and Investigations summarizing the review and evaluation of the areas identified in Paragraph III.C.1 above ("Report"). The Report shall describe any modified or additional independence policies, procedures, staffing, professional education, or training adopted or to be adopted by MarcumBP or, if

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no such modifications or additions are adopted or to be adopted, a detailed explanation of all the reasons why MarcumBP believes no such modifications or additions should be adopted. In addition, MarcumBP shall submit any additional information and evidence concerning the Report, the information in the Report, and MarcumBP's compliance with this Order as the staff of the Division of Enforcement and Investigations may reasonably request.

3. Certificate of Compliance. Within twelve months of the date of this Order, MarcumBP's co-managing partners shall certify in writing ("Certificate of Compliance") to the Director of the Division of Enforcement and Investigations that MarcumBP has implemented all of the modifications and additions to its independence policies, procedures, staffing, professional education, and training that were described in the Report. The Certificate of Compliance shall provide written evidence of MarcumBP's adoption of such modifications and additions in narrative form, identify the actions taken to implement such modifications or additions, and be supported by exhibits sufficient to demonstrate compliance.
4. Extension of Deadlines. For good cause shown, the Director of the Division of Enforcement and Investigations may extend any of the procedural dates relating to these undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.
5. Compliance with Undertakings. MarcumBP agrees that the Division of Enforcement and Investigations may petition the Board to reopen this matter to determine whether additional sanctions or findings are appropriate if it believes that MarcumBP has not satisfied these undertakings.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

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Phoebe W. Brown  
Secretary

September 10, 2019