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Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions

In the Matter of MaloneBailey, LLP,

Respondent.

PCAOB Release No. 105-2022-044

December 22, 2022

By this Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions (“Order”), the Public Company Accounting Oversight Board (“Board” or “PCAOB”) is:

- (1) censuring MaloneBailey, LLP (“MaloneBailey” or “Respondent”);
- (2) imposing a \$25,000 civil money penalty on MaloneBailey; and
- (3) requiring MaloneBailey to comply with its policies and procedures directed toward ensuring compliance with PCAOB reporting requirements.

The Board is imposing these sanctions on the basis of its findings that MaloneBailey failed to disclose certain reportable events to the Board on PCAOB Form 3, *Special Report*, on a timely basis.

I.

The Board deems it necessary and appropriate, for the protection of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports, that disciplinary proceedings be, and hereby are, instituted pursuant to Section 105(c) of the Sarbanes-Oxley Act of 2002, as amended (the “Act”), and PCAOB Rule 5200(a)(1) against Respondent.

II.

In anticipation of institution of these proceedings, and pursuant to PCAOB Rule 5205, Respondent has submitted an Offer of Settlement (“Offer”) that the Board has determined to accept. Solely for purposes of these proceedings and any other proceedings brought by or on

behalf of the Board, or to which the Board is a party, and without admitting or denying the findings herein, except as to the Board’s jurisdiction over Respondent and the subject matter of these proceedings, which is admitted, Respondent consents to entry of this Order as set forth below.¹

III.

On the basis of Respondent’s Offer, the Board finds that:

A. Respondent

1. **MaloneBailey** is a limited liability partnership organized under the laws of Texas and headquartered in Houston, Texas. MaloneBailey is licensed to practice public accounting by the Texas State Board of Accountancy (License No. P05522), among other states, and is a member of the Nexia International network of firms. MaloneBailey is, and at all relevant times was, registered with the Board pursuant to Section 102 of the Act and PCAOB rules.

B. Summary

2. This matter concerns MaloneBailey’s repeated failures since 2018 to timely disclose to the Board on Form 3 that multiple former clients had not filed required Forms 8-K with the U.S. Securities and Exchange Commission (“Commission”) following the termination of MaloneBailey’s relationship with those clients. This matter also involves MaloneBailey’s failure to timely disclose to the Board on Form 3 a number of changes to its licensing status since 2020. By failing to make these disclosures as required, MaloneBailey violated PCAOB rules.

C. Respondent Failed to Timely Disclose Certain Reportable Events to the Board, in Violation of PCAOB Rules

3. PCAOB Rule 2203 provides that a registered public accounting firm must file a special report on Form 3 to report any event specified in that form within thirty days of the event’s occurrence.² One such specified event occurs when a firm “has resigned, declined to stand for re-appointment, or been dismissed from an audit engagement as principal auditor . . .

¹ The findings herein are made pursuant to Respondent’s Offer and are not binding on any other person or entity in this or any other proceeding.

² See PCAOB Rule 2203, *Special Reports*. As the Board noted when adopting its rules on special reporting, “reportable events will sometimes occur, and the public interest, as well as the ability to consider whether prompt action is warranted by the Board’s inspection staff or enforcement staff, will be served by contemporaneous reporting of the event.” PCAOB Rel. No. 2008-004, at 17 (June 10, 2008).

and the issuer has failed to comply with a Commission requirement to make a report concerning the matter pursuant to Item 4.01 of Commission Form 8-K.”³

4. Another such specified event occurs when a firm “has obtained a license or certification authorizing the Firm to engage in the business of auditing or accounting and which has not been identified on any Form 1 or Form 3 previously filed by the Firm, or there has been a change in a license or certification number identified on a Form 1 or Form 3 previously filed by the Firm.”⁴

5. Beginning in the latter part of 2017, MaloneBailey began a “resignation project” designed to identify issuer clients of the firm that had not met the Commission’s filing requirements over several reporting periods, and to formally terminate MaloneBailey’s relationship with those clients. MaloneBailey identified a number of such clients and sent them resignation letters. However, some of MaloneBailey’s former clients did not file required Forms 8-K with the Commission reporting the termination of the issuers’ auditor-client relationship with MaloneBailey.⁵ In violation of PCAOB Rule 2203, MaloneBailey failed to timely report to the Board that multiple former clients had not filed required Forms 8-K disclosing MaloneBailey’s resignation. MaloneBailey did not make the necessary Form 3 filing with the Board until August 14, 2022, after it had received notice of possible deficiencies from the Division of Enforcement and Investigations.

6. Additionally, between January 2020 and May 2022, MaloneBailey obtained new licenses to practice public accounting in a number of states. In violation of PCAOB Rule 2203,

³ PCAOB Form 3, at Item 2.1-C (italics in the original removed).

⁴ *Id.*, at Item 2.16.

⁵ Item 4.01 of Form 8-K requires issuers to disclose certain information if “an independent accountant who was previously engaged as the principal accountant to audit the registrant’s financial statements, or an independent accountant upon whom the principal accountant expressed reliance in its report regarding a significant subsidiary, resigns (or indicates that it declines to stand for re-appointment after completion of the current audit) or is dismissed.” In such situations, issuers are required to disclose, among other things, (i) whether the former accountant resigned, declined to stand for re-election, or was dismissed; (ii) whether the principal accountant’s report on the issuer’s financial statements for either of the prior two years contained an adverse opinion or disclaimer of opinion, or was qualified or modified as to uncertainty, audit scope, or accounting principles; and (iii) whether the decision to change accountants was recommended or approved by an audit (or similar) committee or the issuer’s board of directors. See 17 C.F.R. § 229.304.

MaloneBailey failed to timely report 8 of those changes in its licensing status to the Board on Form 3.⁶

7. MaloneBailey's internal compliance and reporting systems failed to identify its former clients' not filing required Forms 8-K and the changes to the firm's licensing status as being reportable to the PCAOB on Form 3. As a result, MaloneBailey inappropriately failed to notify the PCAOB of those events on a timely basis.

IV.

8. MaloneBailey has represented to the Board that, since the events described in this order, it has established and implemented the following changes to its policies and procedures for the purpose of providing MaloneBailey with reasonable assurance of compliance with PCAOB reporting requirements:

- a. MaloneBailey has revised and supplemented its policies and procedures for the purpose of providing MaloneBailey with reasonable assurance of compliance with PCAOB reporting requirements, including policies and procedures providing reasonable assurance that reportable events are identified by MaloneBailey personnel who participate in MaloneBailey's PCAOB reporting process and that those events are reported on the applicable PCAOB form in a timely and complete manner;
- b. MaloneBailey has established policies to ensure training concerning PCAOB reporting requirements, at least annually, of any MaloneBailey personnel who participate in MaloneBailey's PCAOB reporting process; and
- c. MaloneBailey has assigned the role of compliance with PCAOB reporting matters to an individual within MaloneBailey who possesses adequate knowledge and experience with PCAOB reporting requirements and sufficient authority within MaloneBailey to fulfill those requirements on behalf of MaloneBailey.

⁶ MaloneBailey reported the new state licenses it had obtained on a Form 3 filed with the Board on June 17, 2022, well after the 30-day deadline for reporting the majority of the new licenses referenced therein.

V.

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 Respondent'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), MaloneBailey 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 \$25,000 is imposed upon MaloneBailey.
 1. 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.
 2. MaloneBailey shall pay this civil money penalty within ten days of the issuance of this Order by (1) wire transfer in accordance with instructions furnished 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 Office of Finance, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington D.C. 20006, and (c) submitted under a cover letter, which identifies the firm 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.
 3. Respondent shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source including, but not limited to, any current or former affiliated firm or professional(s) or any payment made pursuant to any insurance policy, with regard to any amounts that Respondent shall pay pursuant to this Order.
 4. Respondent understands that failure to pay the civil money penalty described above may result in summary suspension of Respondent's

registration, pursuant to PCAOB Rule 5304(a), following written notice to Respondent at the address on file with the PCAOB at the time of the issuance of this Order.

- C. Pursuant to Section 105(c)(4)(G) of the Act and PCAOB Rule 5300(a)(9), MaloneBailey is required to comply with its PCAOB reporting policies and procedures, including:
1. those intended to provide reasonable assurance that reportable events are identified by MaloneBailey personnel who participate in MaloneBailey's PCAOB reporting process and that those events are reported on the applicable PCAOB form in a timely and complete manner;
 2. those ensuring training concerning PCAOB reporting requirements, at least annually, of any MaloneBailey personnel who participate in MaloneBailey's PCAOB reporting process; and
 3. those requiring the assignment of the role of compliance with PCAOB reporting matters to an individual within MaloneBailey who possesses adequate knowledge and experience with PCAOB reporting requirements and sufficient authority within MaloneBailey to fulfill those requirements on behalf of MaloneBailey.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

December 22, 2022