

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 74350 / February 23, 2015

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3639 / February 23, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16399

In the Matter of

Halpern & Associates LLC
and Barbara Halpern, CPA,

Respondents.

ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 4C AND 21C
OF THE SECURITIES EXCHANGE ACT
OF 1934 AND RULE 102(e) OF THE
COMMISSION'S RULES OF PRACTICE

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Halpern & Associates LLC and Barbara Halpern (collectively, “Respondents”) pursuant to Sections 4C¹ and

¹ Section 4C provides, in relevant part:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

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

II.

The Commission’s public official files disclose that, at all relevant times, Lighthouse Financial Group, LLC (“Lighthouse” or “the firm”) was registered with the Commission as a broker-dealer.

III.

After an investigation, the Division of Enforcement and the Office of the Chief Accountant allege that:

SUMMARY

1. These proceedings arise out of Respondents’ improper professional conduct in their audit of Lighthouse’s financial statements for the year ended December 31, 2009. Those financial statements were materially inaccurate in that they overstated the firm’s assets, because its securities inventory as recorded in its financial statements was based on erroneous, and inflated, figures for the size of its positions in certain securities, and understated the firm’s liabilities by omitting its liabilities to one of the broker-dealers through which it engaged in proprietary trading. Those errors caused the firm’s reported net capital to be overstated by nearly \$5 million, or over 350%. Respondents egregiously failed in several ways to adhere to Generally Accepted Auditing Standards (“GAAS”) and did not detect those errors in their audit of the financial statements.

RESPONDENTS

2. **Halpern & Associates LLC** (“H&A”) is an accounting and auditing firm based in Wilton, Connecticut. H&A was founded in 1982, has been registered with the PCAOB since 2004 and has twelve employees. Barbara Halpern is currently the sole owner and president of H&A. In 2014, H&A was the independent auditor to twenty-eight broker-dealers. In addition to serving as an independent auditor to broker-dealers and other entities, H&A provides tax advice and, on a consulting basis, provides broker-dealers with the services of individuals licensed to act

² Rule 102(e)(1)(ii) provides, in pertinent part:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in unethical or improper professional conduct.

as a broker-dealer's financial and operations principal. H&A acted as the independent auditor for Lighthouse from 2002 until Lighthouse withdrew its registration as a broker-dealer in August 2010.

3. **Barbara Halpern**, age 61, of Weston, Connecticut, was the engagement partner on Lighthouse's 2009 audit. She is currently the sole owner and president of H&A; during the relevant period she was the 95% owner. During the relevant period, Barbara Halpern was a certified public accountant licensed to practice in New York and Connecticut. She is currently licensed in Connecticut. She has held a Series 27 license since 1998 and a Series 54 license since 1980.

OTHER RELEVANT ENTITY

4. Lighthouse was registered with the Commission as a broker-dealer from August 2, 2000 until October 23, 2010. In December 2010, Lighthouse filed a petition for liquidation under the U.S. Bankruptcy Code. At all relevant times, Lighthouse's principal place of business was New York, New York. During the relevant period, Lighthouse acted as an introducing broker for retail and institutional customers, engaged in proprietary trading and market-making, and acted as an underwriter or placement agent for equity and bond issuances. Lighthouse had clearing arrangements with several clearing brokers, including Penson Financial Services, Inc. ("Penson"), which at all relevant times was a registered broker-dealer with its principal place of business in Dallas, Texas.

FACTUAL ALLEGATIONS

Background

5. Section 15(c)(3) of the Exchange Act [15 U.S.C. § 78o(c)(3)] and Rule 15c3-1 thereunder [17 CFR 240.15c3-1] require that broker-dealers generally effecting transactions in securities "at all times have and maintain net capital." The rule is designed to require a broker-dealer to maintain sufficient liquid assets to meet all obligations to customers and counterparties and have adequate additional resources to wind down its business in an orderly manner without the need for a formal proceeding if the firm fails financially. The net capital rule requires different minimum amounts of net capital based on the nature of a firm's business and the method a firm uses in computing its net capital.

6. To compute its net capital for purposes of Rule 15c3-1, a broker-dealer first calculates its net worth, computed in accordance with generally accepted accounting principles ("GAAP"), deducts the value of certain illiquid assets, and then adds back certain qualifying subordinated loans. The final step is to deduct certain specified percentages, or haircuts, from the market value of the securities or other inventory it holds in its proprietary accounts. Rule 15c3-1 prescribes differing haircut amounts for a variety of classes of securities and other allowable assets.

7. Section 17(e) of the Exchange Act and Rule 17a-5 thereunder require registered broker-dealers to file with the Commission annual audited reports containing, among other things, the broker-dealer's financial statements for the fiscal year, a calculation of its net capital at fiscal year-end, and a report of an independent auditor on the financial statements.

8. On February 28, 2010, Lighthouse filed its annual audited report ("Annual Audited Report"), which contained Lighthouse's financial statements for the year ended December 31, 2009 ("2009 financial statements"). The 2009 Annual Audited Report also contained H&A's report on the financial statements.

9. The 2009 financial statements overstated the firm's net capital by approximately \$4.9 million, or over 350%. The overstatement was primarily attributable to the following errors:³

- a. First, the financial statements overstated Lighthouse's assets by incorrectly including approximately \$2,052,257 in long securities positions in the firm's proprietary accounts at Penson;⁴ and
- b. Second, the financial statements understated Lighthouse's liabilities by omitting approximately \$2,314,484 owed to Penson.⁵

Errors That Led to The Overstatement of Lighthouse's Long Securities Positions and Understatement of its Liabilities to Penson

10. The overstatement of the total market value of Lighthouse's long securities positions in its accounts at Penson was the result of the firm's use of erroneous – and overstated – numbers of shares of fifteen securities held in five accounts. Lighthouse calculated the total market value of its inventory in those accounts to be \$3,489,971, whereas based on the actual size of the positions as shown in Penson's records, the total market value of Lighthouse's inventory in its Penson accounts was only \$1,437,714. The 2009 financial statements thus overstated the value of Lighthouse's long securities positions by approximately \$2,052,257.

³ The firm's reported net capital was also overstated as result of the application of erroneous and insufficient haircuts to Lighthouse's assets.

⁴ The \$2,052,257 figure also takes into account a \$251,317 understatement of the value of the firm's long securities position that resulted from Lighthouse's failure to include any of the inventory in one of the firm's proprietary accounts.

⁵ In addition to the amounts due to Penson discussed at paragraph 11 below, this figure includes a \$113,002 understatement of Lighthouse's exposure on short positions in Penson accounts.

11. The 2009 financial statements also understated, by approximately \$2,314,484, Lighthouse's payables to brokers as a result of the firm's failure to include negative balances in a Lighthouse account at Penson. The account, named "Lighthouse Financial Group F/X Account" ("F/X account"), was one of several Lighthouse administrative accounts at Penson that were used to hold deposits, resolve failed settlement transactions, and pay clearing balances. Positive balances in those accounts represented amounts *due from* Penson to Lighthouse while negative balances represented amounts *due to* Penson from Lighthouse.

The Audit of Lighthouse's 2009 Financial Statements

12. In its Independent Auditors' report, which was authorized for issuance by Barbara Halpern, H&A stated that it had audited Lighthouse's 2009 financial statements in accordance with GAAS and expressed its opinion that the financial statements fairly presented, in all material respects, the financial position of Lighthouse as of December 31, 2009. As the engagement partner on the audit, Barbara Halpern was responsible for supervising the audit and she signed off on all the work papers.

13. In fact, the audit was not conducted in accordance with GAAS and the financial statements contained in the 2009 Annual Audited Report did not fairly present, in all material respects, the financial position of Lighthouse as of December 31, 2009 because they reflected the errors described above.

14. The audit was not conducted in accordance with GAAS because, among other things, Respondents failed to adhere to the most fundamental GAAS requirements: the requirement to exercise due professional care in planning and performing the audit, which includes the requirements to properly staff and supervise the audit, to obtain sufficient appropriate audit evidence to support the auditor's opinion, and to exercise professional skepticism in evaluating the audit evidence obtained.

15. Respondents failed to exercise due care in planning the Lighthouse audit and performing the Lighthouse audit, as the auditing standards require. AU § 230.01. The requirement to exercise due professional care includes the requirement to staff the audit appropriately: "Auditors should be assigned to tasks and supervised commensurate with their level of knowledge, skill, and ability so that they can evaluate the audit evidence they are examining." AU § 230.06.⁶ The individual who was responsible for the testing of Lighthouse's securities inventory and its balances with banks and brokers – the "senior auditor" – lacked the knowledge necessary to evaluate the audit evidence obtained concerning Lighthouse's proprietary trading. At the time of the audit, he had only been with H&A for six months, had only six months of experience doing audit work of any kind, had never audited a broker-dealer, had no understanding of Lighthouse's

⁶ Citations to "AU" are citations to Statements on Auditing Standards in effect at the time of the audit. Those statements were issued by the Auditing Standards Board of the American Institute of Certified Public Accountants ("AICPA").

proprietary trading, and was not familiar with the professional literature concerning auditing broker-dealers. By assigning the senior auditor the critical responsibility of testing Lighthouse's securities inventory and its balances with banks and brokers despite his lack of knowledge in these areas, and by failing to properly supervise him, Respondents failed to exercise due care in planning and performing the audit.

16. Respondents also failed to obtain sufficient appropriate audit evidence concerning Lighthouse's inventory held at Penson and the firm's balances with Penson. The audit team sent Penson an open, *i.e.* blank, confirmation request seeking "[a]n itemized statement for each of [Lighthouse's] accounts with you showing security positions and balances as of December 31, 2009." Penson did not send anything to the audit team concerning the proprietary trading accounts. Penson did send monthly account statements for the F/X account and the other administrative accounts to the audit team. Because the monthly statements reported on a settlement date basis and Lighthouse's financial statements reported on a trade date basis, the audit team did not view them as appropriate audit evidence.

17. Having been unable to confirm the firm's inventory and balances, Respondents should have performed alternative procedures adequate to obtain sufficient appropriate audit evidence to support an unqualified opinion, AU § 330.31 ("When the auditor has not received replies to positive confirmation requests, he or she should apply alternative procedures to the nonresponses to obtain the evidence necessary to reduce audit risk to an acceptably low level."), but they failed to do so.

18. The alternative procedure chosen by Barbara Halpern was to rely on information provided by Lighthouse, which the audit team mistakenly – and unreasonably – viewed as information obtained from Penson. Specifically, Barbara Halpern and the senior auditor obtained from Lighthouse schedules of the firm's December 31, 2009 trade date inventory at Penson and trade date money balances with Penson. They referred to those schedules – incorrectly – as a "screen print" and a "screen shot" of on-line Penson reports.

19. Respondents failed to exercise due care and professional skepticism in considering the reliability of those client-provided records, and they failed to obtain audit evidence about their accuracy and completeness.

The Audit Procedures Regarding Lighthouse's Securities Positions

20. The purported screen shot of a Penson trade date inventory report provided by Lighthouse was not a confirmation because it was not a communication received directly from a third party. AU § 330.04 ("Confirmation is the process of obtaining and evaluating a direct communication from a third party in response to a request for information about a particular item affecting financial statement assertions.")

21. The purported screen shot of a Penson inventory report was also not in fact a report obtained from Penson's website but rather a schedule that Lighthouse personnel had created. As a

client-produced record, in order to provide sufficient appropriate audit evidence for the existence of the securities on the balance sheet, the inventory schedule needed to be – but was not – subjected to audit procedures. AU §326.08 (“Audit evidence is more reliable when it is obtained from knowledgeable independent sources outside the entity.”). Respondents failed to consider the reliability of the information. AU § 326.09 (“The auditor should consider the reliability of the information to be used as audit evidence, for example, photocopies; facsimiles; or filmed, digitized, or other electronic documents, including consideration of controls over their preparation and maintenance where relevant.”). Moreover, Respondents failed to obtain audit evidence about the accuracy and completeness of the client-produced record. AU § 326.10 (“When information produced by the entity is used by the auditor to perform further audit procedures, the auditor should obtain audit evidence about the accuracy and completeness of the information.”).

22. Respondents failed to perform adequate procedures to determine whether Lighthouse’s accounts at Penson actually held the securities listed on the inventory schedule, whether the share quantities shown on the schedule were accurate, or whether Lighthouse had additional securities positions at Penson that were not shown on the schedule. Relatedly, they failed to perform adequate procedures to test their belief that the schedule was in fact a copy of a Penson-created record. In fact, the schedule was not a copy of a Penson-created record and it overstated the size of fifteen of the firm’s long securities positions in its accounts at Penson, and thus overstated Lighthouse’s assets by approximately \$2 million.

23. Barbara Halpern knew that the purported screen shot of a Penson inventory report had been provided by the client. She failed to exercise due care and professional skepticism in evaluating the quality of that audit evidence and thus its sufficiency and appropriateness to support the auditor’s opinion.

The Audit Procedures Regarding Lighthouse’s Balances with Penson

24. The 2009 financial statements included among Lighthouse’s assets monies due from Penson to Lighthouse in connection with transactions in five currencies in the F/X account. The financial statements failed to include, however, amounts *due to* Penson from Lighthouse. Those unreported liabilities totaled \$2,314,484.

25. The balances in the F/X account appeared on a variety of Penson reports including the December monthly account statements, copies of which Penson had sent directly to Respondents in response to a confirmation request. Having concluded that the account statements were not sufficient appropriate audit evidence because they reported on a settlement date, rather than trade date, basis, and having been unable to obtain a reconciliation of the statements and Lighthouse’s trade date records, the senior auditor and Barbara Halpern disregarded the account statements in testing Lighthouse’s balances with Penson.

26. To test Lighthouse’s money balances with Penson, Barbara Halpern and the senior auditor relied on a document bearing the title “Penson Money Line,” which they knew had been

provided by Lighthouse personnel. The senior auditor labelled the document “screen print” and Respondents treated the document as a screen shot of a report obtained from Penson’s website.

27. The purported screen print of a Penson money line report provided by Lighthouse was not a confirmation because it was not a communication directly from a third party. AU § 330.04 (“Confirmation is the process of obtaining and evaluating a direct communication from a third party in response to a request for information about a particular item affecting financial statement assertions.”)

28. The purported screen print of a Penson money line report was also not obtained from Penson’s website, but instead was a schedule prepared by Lighthouse personnel. As a client-produced record, in order to provide sufficient appropriate audit evidence for the accuracy and completeness of Lighthouse’s balances with Penson on the balance sheet, the purported screen print needed to be – but was not – subjected to audit procedures. AU §326.08 (“Audit evidence is more reliable when it is obtained from knowledgeable independent sources outside the entity.”); AU § 326.09 (“The auditor should consider the reliability of the information to be used as audit evidence, for example, photocopies; facsimiles; or filmed, digitized, or other electronic documents, including consideration of controls over their preparation and maintenance where relevant.”); AU § 326.10 (“When information produced by the entity is used by the auditor to perform further audit procedures, the auditor should obtain audit evidence about the accuracy and completeness of the information.”).

29. Barbara Halpern was aware that there were differences between the balances shown on Lighthouse’s records and the balances shown on the December monthly account statements that the audit team had received from Penson. Lighthouse’s records showed only positive balances, *i.e.* amounts *due to* Lighthouse *from* Penson. For the F/X account, they showed a total positive trade date balance for the account of \$2,284,644, whereas the account statements for the F/X account reported a total value for the account of *negative* \$22,305. The December monthly account statements also showed that, in addition to positive balances, there were negative balances in the F/X account totaling approximately \$2.3 million.⁷

30. Barbara Halpern assumed that the differences she could not account for were the result of pending trades, *i.e.* trades that had been executed but had not yet settled. She did not request a pending trade report from Penson or otherwise attempt to verify this assumption, however.

31. Nevertheless, the December account statements for the F/X account – which Respondents had obtained from Penson – reported pending trades. Specifically, the account statements showed that there was only one trade pending settlement on December 31, 2009 for the

⁷ For the F/X account, there were multiple positive and multiple negative balances because balances were calculated separately for each different currency. The Penson account statements, like the schedule prepared by Lighthouse, reported the balances in both local currency and U.S. Dollars.

F/X account: a transaction in Euros at a total cost in U.S. dollars of only \$42,838, which would not account for the discrepancies known to Barbara Halpern.

32. After receiving from Lighthouse the purported screen print of a Penson money line report that reflected only positive balances, Barbara Halpern failed to perform, or to have the audit team perform, adequate procedures to test her belief that the client-produced document was in fact a copy of a Penson-created record. She also failed to perform, or have the audit team perform, adequate procedures to test whether Lighthouse in fact had no negative balances with Penson or that it had positive balances in the amounts shown on the purported screen print. In fact, the purported screen print she relied upon was not a copy of a Penson-created record and on December 31, 2009, Lighthouse had *negative* balances in the F/X account totaling approximately \$2,314,484 in addition to the positive balances that appeared on the purported screen shot that had been supplied by the client.

33. Barbara Halpern knew that the purported screen print of a Penson money line report had been provided by the client. She nevertheless relied upon the document without testing the completeness and accuracy of the information and without understanding what criteria had been used to generate the document. By relying upon a client-produced record without obtaining audit evidence about its accuracy and completeness, Barbara Halpern failed to exercise due care and professional skepticism in considering the reliability of that information and its sufficiency and appropriateness to support the auditor's opinion.

LEGAL ANALYSIS

Respondents Engaged in Improper Professional Conduct and Caused Lighthouse's Violations of Section 17 of the Exchange Act and Rule 17a-5(a) thereunder

34. As a result of the conduct described above, Respondents engaged in improper professional conduct. Regarding accountants, Rule 102(e)(1)(iv)(B) and Section 4C(b) provide that the following two types of negligent conduct may constitute "improper professional conduct":

- (1) A single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which an accountant knows, or should know, that heightened scrutiny is warranted, or
- (2) Repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.

"Applicable professional standards" for auditors primarily refers to GAAP, GAAS, the AICPA Code of Professional Conduct, and Commission regulations. *See Amendment to Rule 102(e) of the Commission's Rules of Practice*, Securities Act Release No. 7593 (Oct. 19, 1998) ("*Rule 102(e) Release*"). With respect to audits of broker-dealer financial statements, the GAAS in effect during the relevant period is embodied in various Statements on Auditing Standards ("SAS"), as well as

the Codification of Statements on Auditing Standards, both issued by the Auditing Standards Board of the AICPA.

35. Barbara Halpern failed to adhere to the most fundamental auditing standards: the standards that require an auditor to exercise due professional care in planning and performing an audit, AU § 230.01, by properly staffing and supervising the audit, AU § 230.06, by obtaining sufficient appropriate audit evidence, AU § 326.01, and by maintaining an attitude of professional skepticism, which includes “a questioning mind and a critical assessment of audit evidence[.]” AU §§ 230.07-08. An auditor must “obtain sufficient appropriate audit evidence by performing audit procedures to afford a reasonable basis for an opinion regarding the financial statements under audit.” AU § 326.01. “The auditor should use professional judgment and should exercise professional skepticism in evaluating the quantity and quality of audit evidence, and thus its sufficiency and appropriateness, to support the audit opinion.” AU § 326.13.

36. Barbara Halpern also failed to adhere to auditing standards concerning confirmation, AU § 330, the reliability of audit evidence, including audit evidence in the form of electronic documents, AU § 326.09, and audit evidence provided by the client, AU §326.08, and the need to obtain audit evidence about the completeness and accuracy of client-produced information used to perform audit procedures. AU § 326.10.

37. As a result of the conduct alleged above, Barbara Halpern failed to adhere to GAAS in planning and performing the audit of Lighthouse’s 2009 financial statements and preparing the audit report on those statements. Moreover, those failures occurred in the most critical areas of the audit – the testing of Lighthouse’s holdings in its proprietary accounts and its liabilities to one of the broker-dealers through which it engaged in proprietary trading.

38. Accordingly, Barbara Halpern engaged in at least a single instance of highly unreasonable or, at a minimum, repeated instances of unreasonable conduct within the meaning of Rule 102(e)(1)(iv)(B).

39. Barbara Halpern’s improper professional conduct may be attributed to H&A.

40. Section 17 of the Exchange Act requires registered broker-dealers to make and disseminate certain financial and operational reports. Rule 17a-5(a) requires that certain broker-dealers file an annual audited report that contains the broker-dealer’s year-end financial statements and a report on those statements by an independent auditor. Implicit in the requirement that a registered broker-dealer file financial reports is the requirement that the information contained in those reports be accurate. *See Nikko Securities Co. International, Inc.*, Exchange Act Release No. 32331 (May 19, 1993).

41. As described above, Lighthouse failed to file an accurate annual audited report for the year ended December 31, 2009. The firm therefore violated Section 17 and Rule 17a-5(a) thereunder.

42. As a result of the conduct alleged above, Respondents were each a cause of Lighthouse's violations of Section 17 of the Exchange Act and Rule 17a-5(a) thereunder.

IV.

In view of the allegations made by the Division of Enforcement and the Office of the Chief Accountant, the Commission deems it necessary and appropriate that public administrative and cease-and-desist proceedings be instituted to determine:

Whether the allegations set forth in Section III hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

What, if any, remedial action is necessary and appropriate against Respondents pursuant to Rule 102(e) of the Commission's Rules of Practice; and

Whether, pursuant to Section 21C of the Exchange Act, Respondents should be ordered to cease and desist from committing or causing violations and any future violations of Section 17 of the Exchange Act and Rule 17a-5 thereunder and whether Respondents should be ordered to pay disgorgement pursuant to Section 21C(e) of the Exchange Act.

V.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section IV hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, they may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

This Order shall be served forthwith upon Respondents as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not “rule making” within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary