

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84281 / September 25, 2018

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3987 / September 25, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18838

In the Matter of

**Lichter, Yu and Associates, Inc.,
Lawrence P. Lichter, CPA, and
Peter L. Yu, 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,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Lichter, Yu and Associates, Inc. (“LYA” or the “Firm”), Lawrence P. Lichter, CPA (“Lichter”), and Peter L. Yu, CPA (“Yu”) (collectively, “Respondents”) pursuant Sections 4C¹ and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.²

¹ Section 4C provides, in relevant part, that:

The Commission may . . . deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct.

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

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

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (“Offers”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order, as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds³ that:

A. SUMMARY

1. These proceedings involve Respondents’ improper professional conduct and violations of the federal securities laws in their audit of the FY 2015 financial statements of Code Rebel Corporation (“Code Rebel” or “the Company”) in which Code Rebel materially overstated the Company’s assets by recording as “Cash and Cash Equivalents” approximately \$2.2 million that had been misappropriated. The misappropriated cash constituted 77% of Code Rebel’s reported current assets and approximately 80% of its reported cash and cash equivalents.

2. During the audit of Code Rebel’s FY 2015 financial statements, Lichter and Yu were confronted with a series of significant red flags regarding the Company’s cash and cash equivalents supposedly held by an entity called Thorsdale Fiduciary and Guarantee Company Ltd. (“Thorsdale”). By the time the audit was completed, they had learned, among other things, that, contrary to Code Rebel’s representations in the financial statements: Thorsdale was not an FDIC-insured bank but was instead a family trust nominally managed by a related party who was the father-in-law of Jason Galanis, who they also learned had twice been charged by the Commission with violations of the federal securities laws and had recently been indicted in a parallel criminal fraud case. They had also learned that Thorsdale had refused to promptly return to Code Rebel funds that the Company had requested, claiming that it was entitled to 90 days’ notice of Code Rebel’s intent to withdraw funds. In addition, they knew or should have known that Thorsdale had named Galanis as its agent in the agreement that purportedly governed the Thorsdale-Code Rebel relationship.

3. Despite all the indications that \$2.2 million of the Company’s funds should not have been reported as cash or a cash equivalent, LYA issued an audit report that included an

³ The findings herein are made pursuant to Respondents’ Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

unqualified opinion on Code Rebel's FY 2015 financial statements. In that audit report, which was included in Code Rebel's Form 10-K along with the financial statements, LYA incorrectly stated that the Firm had conducted its audit in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB") and opined that Code Rebel's consolidated financial statements presented fairly, in all material respects, Code Rebel's financial position as of December 31, 2015 and the Company's results of operations and cash flows for the year then ended, in conformity with U.S. generally accepted accounting principles ("GAAP").

4. As a result, Respondents engaged in improper professional conduct, violated Section 10A(a)(1) of the Exchange Act, and caused Code Rebel's violations of Section 13(a) of the Exchange Act and Rule 13a-1 thereunder. In addition, LYA violated Rule 2-02 (b) of Regulation S-X and Lichter and Yu caused that violation.

B. RESPONDENTS

5. **Lichter, Yu and Associates, Inc. ("LYA" or "the Firm")** is located in Woodland Hills, California and was registered with the PCAOB from September 2009 until July 2018 and from November 2003 until October 2006. At all relevant times, LYA consisted of owners Lichter and Yu, one other individual who was also a Certified Public Accountant ("CPA"), and another individual who was not a CPA.

6. **Lawrence P. Lichter**, age 56, resides in Woodland Hills, California. He has been a CPA licensed by the state of California since 1988. Throughout the relevant period, Lichter was a 50% owner of LYA. Lichter was the engagement partner on the Code Rebel FY 2015 audit.

7. **Peter L. Yu**, age 46, resides in Canoga Park, California. He has been a CPA licensed by the state of California since 2004. He began to work for Lichter's firm in December 1998 and became the co-owner in 2006. As discussed below, Yu purportedly acted as the engagement quality reviewer on the Code Rebel FY 2015 audit but he also performed some of the work on the audit, including the audit of cash and cash equivalents.

C. OTHER RELEVANT PERSONS AND ENTITIES

8. **Code Rebel Corporation** ("Code Rebel" or "the Company") was, at all relevant times, an information technology company with its principal executive offices in Kahului, Hawaii. The Company was formed as a Hawaii limited liability company in 2007, and subsequently incorporated in Delaware in May 2014. On May 19, 2015, the Company conducted an initial public offering and its stock began trading on the Nasdaq Capital Market under the symbol "CDRB." On May 6, 2016, the Commission suspended trading of Code Rebel stock. At all relevant times, Code Rebel was subject to the reporting requirements of Section 12(b) of the Exchange Act. Code Rebel's fiscal year ended on December 31. In addition to information technology contractors who worked in the Ukraine, for most of the relevant period, the Company's personnel consisted of its CEO, CFO, Chief Technology Officer, and a bookkeeper, who was the Company's primary contact with LYA. The CEO was also the president of Code Rebel at all

relevant times until the Company's September 2015 acquisition of a privately-held information technology consulting company, when the consulting company's owner became president of Code Rebel.

9. **Jason Galanis ("Galanis")**, age 48, is currently incarcerated at the Terminal Island Federal Correctional Institution near Los Angeles. Galanis's regulatory and criminal history dates from at least 2005 and includes two recent Commission securities fraud cases and parallel criminal cases.

10. In 2005, the Commission brought an accounting fraud case against Galanis based on his conduct while serving as a major shareholder of Penthouse International, Inc., *SEC v. Penthouse International, Inc., et al.*, 05-cv-0780 (S.D.N.Y.). On September 24, 2015, the Commission and the Office of the United States Attorney for the Southern District of New York brought parallel civil and criminal actions against Galanis and five others (including his father and two brothers) for their manipulation of the market for the stock of Gerova Financial Group, Ltd., *SEC v. Jason W. Galanis, et al.*, 15-cv-07547-VSB (S.D.N.Y.); *United States v. Jason Galanis, et al.*, 15-cr-0643 (PKC) (S.D.N.Y.) (collectively, the "*Gerova cases*"). The second set of parallel Commission and criminal cases (*SEC v. Devon D. Archer, et al.*, 16-cv-3505 (WHP) (S.D.N.Y.); *United States v. Jason Galanis, et al.*, 16-cr-371 (RA) (S.D.N.Y.) (collectively the "*Archer cases*") was announced on May 11, 2016. Galanis pleaded guilty in both criminal cases and was sentenced to a total of 173 months incarceration, with 113 months to be served concurrently, and ordered to forfeit a total of over \$80 million.

11. **Thorsdale Fiduciary and Guaranty Company Ltd. ("Thorsdale")** was incorporated in Nevada on June 23, 2011 as a "Family Trust Company" for "members of the Berger family and its Family Affiliates." Ralph Berger, Galanis's father-in-law (now deceased) was one of Thorsdale's two members.

12. **Burnham Securities, Inc. ("Burnham")** was, at all relevant times, a registered broker-dealer. Burnham was the sole book-running manager and underwriter of Code Rebel's initial public offering.

13. **Devon Archer**, age 44, resides in Brooklyn, N.Y. At all relevant times, Archer was an officer, director, direct or indirect owner, and/or investor in various entities controlled by Galanis or another Galanis associate. During the relevant period, he was part of the group that was in contract to buy the holding company for Burnham and had loaned the broker-dealer working capital. On June 28, 2018, after a 5½ week-long jury trial, Archer was convicted on all counts of the superseding indictment against him.

D. FACTS

1. Background

14. In December 2011, Galanis's father-in-law, Ralph Berger, and the other member of Thorsdale opened an account with Bank A, a national, FDIC-insured bank in the name of Thorsdale (the "Thorsdale Bank A account"). Initially Berger and the other member were the only signatories on the Thorsdale Bank A account but in June 2014, Galanis was added as a signatory and was issued the sole ATM/debit card for the account.

15. That same month, Archer invested \$485,000 in a Code Rebel convertible note. Shortly thereafter, at the direction of Code Rebel's CEO, \$484,000 was transferred from a Code Rebel bank account to the Thorsdale Bank A account. No one from Code Rebel received copies of account statements or had online access to the account. Code Rebel's board of directors had not authorized the transfer of Code Rebel's funds to the Thorsdale Bank A account. Indeed, until the audit of Code Rebel's FY 2015 financial statements, none of Code Rebel's officers and directors other than the CEO were aware that Code Rebel's funds had been entrusted to Thorsdale or were aware that anyone other than the three individuals authorized by the board of directors (the CEO, CFO, and bookkeeper) had control over any of Code Rebel's funds.

16. In April 2014, in anticipation of an initial public offering and upon the recommendation of a friend of Galanis, Code Rebel engaged LYA to audit Code Rebel's financial statements for FY 2013 and FY 2014.

17. The IPO occurred on May 19, 2015. The offering raised net proceeds (after underwriting discounts, commissions and estimated expenses) of approximately \$4.3 million. On May 21, 2015, again at the CEO's direction, \$1,766,000 of the offering proceeds was transferred from one of Code Rebel's bank accounts to the Thorsdale Bank A account (for a total of \$2.25 million of Code Rebel funds transferred to the account).

2. Respondents Ignored Red Flags and Failed to Adhere to PCAOB Standards in Their Audit of Code Rebel's 2015 Year-End Cash Balance

18. PCAOB standards require the auditor to exercise due professional care in planning and performing the audit and preparing the audit report. (AU § 230, *Due Professional Care in the Performance of Work*)⁴ Auditors are required to maintain an attitude of professional skepticism that includes a "questioning mind and a critical assessment of audit evidence." (AU § 230.07) In addition, the auditor should "consider the competency and sufficiency of the evidence. Since evidence is gathered and evaluated throughout the audit, professional skepticism should be

⁴ Citations in this Order to PCAOB standards are to the standards that were in effect at the time of the audit.

exercised throughout the audit process.” (AU § 230.08)

19. At December 31, 2015, Code Rebel reported total assets of \$12,069,365, the majority of which (roughly \$9 million) consisted of goodwill resulting from the September 2015 acquisition. The Company also reported total current assets of \$2,849,217, nearly all of which (\$2,717,414) was reportedly cash and cash equivalents. The \$2.2 million on deposit with Thorsdale represented approximately 80% of the Company’s cash and cash equivalents, 77% of its total current assets and roughly 18% of its total assets. Accordingly, the audit of the Company’s year-end cash balance was a critical part of the audit.

20. Lichter and Yu were unaware of the Thorsdale Bank A account.⁵ Based on the account statements and confirmations they obtained during the audit, they apparently believed that \$2.2 million of Code Rebel’s funds were on deposit with Thorsdale at December 31, 2015 and assumed that Thorsdale was an FDIC-insured bank. Until the events described below, they operated under this belief even though Code Rebel’s accounting records – and thus LYA’s work papers – identified the custodian of the \$2.2 million as “Escrow – Bank A”

a. *Respondents Encountered a Series of Red Flags During the FY 2015 Audit*

21. During the audit, Lichter and Yu were confronted with a number of significant red flags suggesting that the \$2.2 million supposedly held by Thorsdale should not be reported as a cash or cash equivalent.

22. First, the Thorsdale account statements Lichter and Yu received from Code Rebel during the audit contained red flags. For example, these purported account statements, for the periods “30 Sep 2015 through 31 Dec 2015” and “31 Dec 2015 through 31 Jan 2016” contained a client number but no account number and contained a website address but no phone number, street address or email address. The statements included a field for “Investment Category,” for which the entry was “Cash,” and showed no interest accrued or fees charged. Moreover, the statements did not indicate that Thorsdale was a bank or that its accounts were covered by FDIC insurance.

23. In addition, the January 2016 statement reflected two “debits,” which had purportedly reduced the account balance from \$2.2 million on December 31, 2015 to \$1.4 million by the middle of January 2016. The statement described the two transactions as “debits” and stated the amounts of the debits in the “Balance” column but left the column for “Funds Paid” blank. The statement identified the payee for one debit but for the other debit it reported only that the payment was for “legal expenses.” The statement did not indicate whether the payments from the account were effected by check or wire transfer.

⁵ The Thorsdale Bank A account had been fully depleted and closed by the end of November 2015. Galanis used almost all of the funds in the account to support his lavish lifestyle, fund his criminal defense, and for other purposes unrelated to Code Rebel.

24. Second, on or around March 19, 2016, Lichter and Yu learned from Code Rebel's CFO that the CEO had been unable to withdraw funds from Thorsdale on demand, because – according to the CEO – there was a 90-day hold on the money, *i.e.* Code Rebel was required to provide Thorsdale with 90-days' notice of its intent to withdraw the funds.

25. Third, on or around March 22, Lichter and Yu learned from Code Rebel's CFO that Code Rebel had received an administrative subpoena issued earlier that month in a Commission investigation. The subpoena sought documents concerning nineteen listed individuals and entities, including Thorsdale, Galanis, Burnham and Archer.

26. Fourth, from their internet research during the audit, Lichter and Yu learned that Thorsdale was not an FDIC-member bank but instead a limited liability company registered with the Nevada Secretary of State for the benefit of eleven related families; they also learned from the CFO that one of Thorsdale's managers was Galanis's father-in-law, who was also a 12.5% shareholder.

27. Fifth, they learned that the address to which they had been directed by Code Rebel's bookkeeper to send the requests for Thorsdale confirmations was the address of a mailbox store.

28. Sixth, Respondents learned from Code Rebel's CEO that he had entrusted the Code Rebel funds to Thorsdale at the direction of Archer, who reportedly wanted an independent fiduciary overseeing the disbursement of Code Rebel's funds, to prevent them from being squandered.

29. Finally, Lichter and Yu learned that Galanis had been charged by the Commission and indicted for securities fraud in September 2015 and had been charged by the Commission with violations of the federal securities laws once before.

b. *Code Rebel's Efforts to Recover the \$1.3 Million⁶ Respondents Believed Was Still Held by Thorsdale*

30. On or about March 21, 2016, Lichter notified the chairman of Code Rebel's audit committee, of the issues concerning Thorsdale and the January \$300,000 debit for legal fees for which the receiving law firm had not provided LYA an adequate explanation. On March 23, Lichter, the CFO, and the chairman of the audit committee spoke with the CEO, who provided them with the "Cash Management Custodial Account Agreement" (the "Custody Agreement") that

⁶ On March 10, 2016, Code Rebel had received \$100,000 of the funds supposedly then held for it by Thorsdale, reducing the purported Thorsdale account balance from \$1.4 million in January 2016, as described above.

supposedly governed the arrangement between Code Rebel and Thorsdale. On the call, all agreed that the funds then still supposedly held by Thorsdale should be returned to Code Rebel's control and the law firm should be asked to provide a more detailed invoice.

31. On April 7, Lichter and Yu learned that Code Rebel's CFO and Thorsdale's attorney had reached an agreement in principle concerning the return of the Code Rebel funds purportedly still held by Thorsdale, with the terms of the agreement – including Code Rebel's release of potential claims against Thorsdale – to later be memorialized in writing. Thorsdale's attorney had agreed that the \$1.3 million would be returned to Code Rebel in two installments: \$200,000 that day or the following day and the remaining \$1.1 million on April 11.

32. Lichter and Yu then learned that \$200,000 was returned to Code Rebel on April 8, but that the promised \$1.1 million payment was not made on April 11.

33. On April 11, Lichter and Code Rebel's CFO spoke to Thorsdale's attorney who told them that Thorsdale would enter into a settlement agreement with Code Rebel in which it would agree to pay Code Rebel \$200,000 on April 12 and the remaining \$900,000 on April 26. In an email he sent to the chairman of Code Rebel's audit committee later that day, Lichter stated: "Based on [the earlier conversation with Thorsdale's attorney], and the settlement agreement with Thorsdale we will move forward in filing the audit and the 10K will be filed on time. We are just going to add some descriptions to the footnotes on the [Custody Agreement]."⁷

34. Lichter and Yu learned that \$200,000 was returned to Code Rebel on April 13, but they knew that Thorsdale purportedly still had possession of \$900,000 of Code Rebel's funds when Code Rebel filed its Form 10-K.

c. *The Filing of the 2015 Form 10-K and the End of Code Rebel*

35. On April 14, 2016, Code Rebel filed its 2015 Form 10-K. In the 2015 audited financial statements contained therein, the Company reported total assets of \$12,069,365, roughly \$9 million of which consisted of goodwill, and total current assets of \$2,849,217. The audited financial statements included as roughly 80% of the Company's "Cash and Cash Equivalents" at December 31, 2015 the \$2.2 million that was supposedly held by Thorsdale on that date, constituting 77% of Code Rebel's total current assets and roughly 18% of its total assets.

36. The only changes to the financial statements made in light of the developments described in Paragraphs 21-34 above were: (1) the addition to the Related Party Transactions note of the following disclosure: "The Company has a cash deposit of \$2,200,000 with another

⁷ On March 30, 2016, Code Rebel filed a Notification of Late Filing on Form 12b-25 disclosing that the Company was unable to timely file its 2015 Form 10-K but would do so by April 15, 2016.

Company whose member owns approximately 12.5% shares of Code Rebel,” and (2) the following indication in the Company’s standard note on cash and cash equivalents that the entire \$2.2 million entrusted to Thorsdale was uninsured, instead of just the amount over \$250,000 (the standard insurance limit for deposits with FDIC-member banks):

Cash and equivalents include cash in hand and cash in demand deposits, certificates of deposit and all highly liquid debt instruments with original maturities of three months or less. We maintain cash deposits at banks located in Hawaii and New York. Deposits at the banks are insured up to \$250,000 by the Federal Deposit Insurance Corporation. The Company’s uninsured portion of the balances held at the banks aggregated to approximately \$2,365,069 and \$184,000 [on December 31, 2015 and December 31, 2014], respectively. No reserve has been made in the financial statements for any possible loss due to any financial institution failure. The Company has not experienced any losses in such accounts and believes we are not exposed to any significant risk on cash and cash equivalents.

37. The Form 10-K also contained LYA’s audit report which included an unqualified opinion on the financial statements. LYA’s audit report stated that the Firm’s audit of the consolidated financial statements had been conducted in accordance with PCAOB standards and, based on that audit, LYA was of the opinion that the consolidated financial statements presented fairly, in all material respects, Code Rebel’s financial position as of December 31, 2015 and the Company’s results of operations and cash flows for the year then ended, in conformity with U.S. GAAP.

38. The \$900,000 payment to Code Rebel was not made on April 26 as promised. On May 5 and 6, the Company received two payments totaling \$300,000. On May 6, 2016, the Commission suspended trading of Code Rebel stock. And, on May 18, Code Rebel filed for liquidation.

d. *Respondents’ Failures to Adhere to PCAOB Standards in the Audit of the Balance in the Thorsdale Bank A Account*

39. Under AU § 230, *Due Professional Care in the Performance of Work*, the auditor is required to exercise due professional care and professional skepticism in conducting the audit. “Professional skepticism is an attitude that includes a questioning mind and a critical assessment of audit evidence[.]” (AU § 230.07) Moreover, the auditor has a responsibility to plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by fraud or error. (AU § 316.01, *Consideration of Fraud in a Financial Statement Audit*) AU § 316 identifies two types of misstatements that are relevant to the auditor’s consideration of fraud: (1) misstatements arising from fraudulent financial reporting and (2) misstatements arising from misappropriation of assets. (AU §316.06)

40. AU § 316 also notes that management and employees engaged in fraud will typically take steps to conceal the fraud from auditors (AU § 316.09) and points out that fraud may

be concealed through collusion among management and third parties, who may, for example, provide the auditor with false confirmations. (AU § 316.10)

41. Accordingly, AU § 316.13 emphasizes the importance of the auditor's exercise of professional skepticism when considering fraud risks and requires an ongoing questioning of whether the information and evidence obtained during the audit suggests that a material misstatement due to fraud has occurred. In exercising professional skepticism in gathering and evaluating evidence, the standard warns that the auditor should not be satisfied with less-than-persuasive evidence because of a belief that management is honest.

42. AU § 316 also advises that significant unusual transactions may be used to engage in fraudulent financial reporting or conceal misappropriation of assets (AU §316.66) and requires auditors to design and perform procedures to obtain an understanding of the business purpose (or the lack thereof) of any significant unusual transaction that the auditor has identified. (AU §316.66A) Among the procedures the auditor should follow to gain an understanding of the business purpose (or the lack thereof) of significant unusual transactions are:

- a. Reading the underlying documentation and evaluating whether the terms and other information about the transaction are consistent with explanations from inquiries and other audit evidence about the business purpose (or the lack thereof) of the transaction;
- b. Determining whether the transaction has been authorized and approved in accordance with the company's established policies and procedures; and
- c. Evaluating the financial capability of the other parties with respect to significant uncollected balances, loan commitments, supply arrangements, guarantees, and other obligations, if any. (AU §316.66A)

43. To evaluate whether the business purpose (or the lack thereof) of a significant unusual transaction indicates that the transaction may have been entered into to conceal misappropriation of assets, AU §316.67 also requires the auditor to evaluate whether, among other things:

- a. The transaction involves related parties or relationships or transactions with related parties previously undisclosed to the auditor; and
- b. Management has discussed the nature of and accounting for the transaction with the audit committee or another committee of the board of directors or the entire board.

44. AU §316.56 advises that the scope of the auditor's work in response to a fraud risk related to misappropriation of assets should be linked to the specific information about the misappropriation risk that has been identified. For example, if a particular asset is highly susceptible to misappropriation and a potential misstatement would be material to the financial

statements – the situation Respondents faced – obtaining an understanding of the controls related to the prevention and detection of such misappropriation and testing the design and operating effectiveness of such controls may be warranted. In addition, in response to an assessed fraud risk, it may be appropriate to, among other things, “interview[] personnel involved in activities in areas in which a fraud risk has been identified to obtain their insights about the risk and how controls address the risk.” (AU §316.53)

45. During the 2015 audit, Lichter and Yu became aware of a significant unusual transaction — the deposit of 80% of the Company’s cash and cash equivalents with Thorsdale, a family trust not covered by FDIC insurance and controlled by a related party. But Lichter and Yu either failed to follow the procedures required or suggested by AU § 316 or disregarded the results of those procedures.

46. Lichter and Yu received a copy of the Custody Agreement that supposedly governed the relationship between Code Rebel and Thorsdale and they knew or should have known that the terms of the transaction were inconsistent with explanations they had received from the CEO and Thorsdale’s attorney about the business purpose (or lack thereof) of the transaction. For example, the terms of the transaction were inconsistent with its purported rationale – to serve as a check on Code Rebel’s management, to prevent the funds from being squandered. That purpose could have been achieved through more appropriate means, such as requiring a second signature or approval for the expenditure of funds or creating a segregation of duties between those authorized to disburse the Company’s funds and those responsible for financial reporting. (There was no such segregation of duties at Code Rebel.) Moreover, as Respondents knew or should have known, the CEO had not taken advantage of the opportunity provided by the Custody Agreement to designate someone to monitor activity in the account. They also knew or should have known that Thorsdale had supposedly delegated its responsibilities under the agreement to Galanis, who they knew had recently been indicted for securities fraud and had twice been charged by the Commission with violations of the securities laws. In addition, they knew or should have known that the 90-day hold made no sense for a cash account, and the Custody Agreement did not provide for such a hold.

47. Respondents also knew or should have known that the transaction had not been authorized and approved in accordance with the Company’s established policies and procedures. The CFO and the chairman of the audit committee made clear to Lichter and Yu that neither the deposit of Company funds with Thorsdale nor control of Company funds by Thorsdale, Berger, Galanis or anyone other than Code Rebel’s CEO, CFO, and bookkeeper had been authorized by Code Rebel’s board of directors, as required under the Company’s established policies and procedures. Indeed, the CFO and head of the audit committee made clear to Respondents that they had been unaware of the transaction before they learned of it during the audit.

48. Respondents also failed to evaluate Thorsdale’s ability to repay the \$900,000 they understood Thorsdale owed Code Rebel at the time the Form 10-K was filed, much less the entire \$2.2 million that had been entrusted to it. Respondents failed to make this evaluation even though

they knew that Thorsdale was not a bank and not even \$250,000 of Code Rebel's funds entrusted to it were covered by FDIC insurance.

49. Moreover, Respondents failed to interview the bookkeeper, from whom they might have learned that the \$2.2 million had been transferred to a bank account over which no one from Code Rebel had control and for which Galanis was Code Rebel's only source of information. Respondents might also have learned from the bookkeeper that she received the name and address of the person to whom the Thorsdale confirmation requests should be sent from the CEO, and that the CEO had likely received the information from Galanis.

50. Finally, Respondents knew that the deposit with Thorsdale involved a related party previously undisclosed to them: Berger, one of Thorsdale's two principals, who was a 12.5% shareholder of Code Rebel.

51. The objective of the auditor is to evaluate the results of the audit to determine whether the audit evidence obtained is sufficient and appropriate to support the opinion to be expressed in the auditor's report. (AS No. 14, *Evaluating Audit Results* ¶ 2; AS No. 15, *Audit Evidence* ¶ 3) Sufficiency is the measure of the quantity of audit evidence. (AS No. 15 ¶ 5) Appropriateness is the measure of the quality of audit evidence, *i.e.*, its relevance and reliability. (AS No. 15 ¶ 6). The quantity of audit evidence needed depends on the risk of material misstatement and the quality of the audit evidence obtained. As the quality of the evidence increases, the need for additional corroborating evidence decreases. (AS No. 15 ¶ 5) If the auditor is unable to obtain sufficient appropriate audit evidence to have a reasonable basis to conclude about whether the financial statements as a whole are free of material misstatement, the auditor should express a qualified opinion or a disclaimer of opinion. (AS No. 14 ¶ 35)

52. When LYA issued its audit report on Code Rebel's FY 2015 financial statements, Lichter and Yu knew or should have known that:

- Code Rebel's board of directors had not authorized the deposit of Company funds with Thorsdale;
- Code Rebel's board of directors had not authorized anyone other than the Code Rebel's CEO, CFO, and bookkeeper to disburse Company funds;
- Thorsdale was not an FDIC-insured bank but rather a trust company established for the benefit of Galanis's extended family.
- At least \$900,000 of the Company's cash – 32% of Code Rebel's total current assets as of December 31, 2015 and roughly 40% of the total Code Rebel funds that had been transferred to Thorsdale – was still not accounted for at the time of the FY 2015 Form 10-K filing.

- Code Rebel’s CEO had recently been unable to withdraw funds from Thorsdale on demand because of a purported 90-day notice requirement, a requirement that was not reflected in the operative agreement and made no sense for a cash account.
- One of the two principals of Thorsdale was Galanis’s father-in-law, whose only connection to Code Rebel was that he was a 12.5% shareholder (the other principal was unknown to Lichter or Yu).
- The Commission had recently subpoenaed Code Rebel for documents concerning Thorsdale and Galanis, as well as Burnham, the underwriter of Code Rebel’s IPO, and Archer;
- Galanis had been charged by the Commission and indicted for securities fraud in September 2015 and had been charged by the Commission in an earlier case;
- The Thorsdale account statements differed from typical bank statements in a number of respects and the most recent statements contained no contact information for Thorsdale other than a website address; and
- The address Respondents had been given to use for the Thorsdale confirmations was the address of a mailbox store in a strip mall.

53. Moreover, Lichter and Yu knew that Thorsdale was not a bank, knew that during the first quarter of 2016 a portion of the funds Code Rebel had entrusted to Thorsdale was not available to the Company on demand, and knew or should have known that at December 31, 2015 there was a significant risk that \$2.2 million (over 80%) of Code Rebel’s reported cash had been misappropriated. Thus they knew or should have known that the amount of the Company’s cash and cash equivalents reported in the Company FY 2015 financial statements was materially overstated.

54. LYA nonetheless did not express a qualified opinion or disclaim an opinion as required under AS No. 14 ¶ 35.

55. Accordingly, in their audit of Code Rebel’s year-end 2015 cash balance, Respondents failed to act in accordance with applicable professional standards, specifically the standards on *Due Professional Care in the Performance of Work* (AU § 230), *Audit Evidence* (AS No. 15), *Evaluating Audit Results* (AS No. 14) and *Consideration of Fraud in a Financial Statement Audit* (AU § 316).

3. Additional Audit Deficiencies

56. LYA failed to obtain an engagement quality review for the 2015 Code Rebel audit, as required under AS No. 7, *Engagement Quality Review* ¶ 1. The objective of the engagement quality reviewer is to perform an evaluation of the significant judgments made by the engagement

team and the related conclusions in forming the overall conclusion on the engagement . . . in order to determine whether to provide concurring approval [of an engagement report]. (AS No. 7 ¶ 2) The engagement quality reviewer (“EQR”) must maintain objectivity in performing the review. To maintain objectivity, the EQR reviewer should not make decisions on behalf of the engagement team or assume any of the responsibilities of the engagement team. (AS No. 7 ¶ 6 and ¶ 7)

57. Although Yu was identified in the work papers as the EQR for the audit, he and Lichter both worked on the cash audit and other aspects of the audit. Accordingly, Yu could not provide an objective evaluation of the significant judgments made by the engagement team and the related conclusions in forming the overall conclusion on the engagement, as required by AS No. 7 ¶ 1, and LYA failed to adhere to AS No. 7.

58. LYA also failed to adhere to PCAOB Standard QC § 20, *System of Quality Control for a CPA Firm's Accounting and Auditing Practice*. PCAOB Standard QC § 20.1 requires an auditor to have a system of quality control for its auditing practice and describes elements of quality control essential to the effective design, implementation, and maintenance of that system. A system of quality control includes adopting policies and establishing procedures to provide the firm with reasonable assurance of complying with professional standards. (QC § 20.04).

59. LYA failed to adhere to QC § 20 because the Firm’s quality control policies and procedures manual failed to adequately address all phases of the design and execution of these engagements. LYA’s policies and procedures covering audits were deficient because they did not discuss, for example: (1) exercising due professional care throughout the performance of the audit; (2) the purpose of audit work papers and what should be included in the work papers; (3) evaluating the results of the audit to determine whether the evidence is sufficient and appropriate to support the conclusions reached and opinions expressed; and (4) evaluating significant unusual transactions identified by the accountant or brought to the accountant’s attention.

E. VIOLATIONS

60. As a result of the conduct described above, Respondents were each a cause of Code Rebel’s violation of Section 13(a) of the Exchange Act and Rule 13a-1 thereunder, which require an issuer to file with the Commission accurate annual reports.

61. As a result of the conduct described above, LYA violated Rule 2-02(b) of Regulation S-X, which requires an accountant’s report to accurately state whether the audit was made in accordance with generally accepted auditing standards,⁸ and Lichter and Yu were each a cause of LYA’s violations of Rule 2-02(b) of Regulation S-X.

⁸ Pursuant to Commission interpretive guidance, generally accepted auditing standards, as used in Regulation S-X, means the standards of the PCAOB and any applicable Commission rules. Securities Act Release No. 8422 (May 14, 2004).

62. As a result of the conduct described above, Respondents violated Section 10A(a)(1) of the Exchange Act, which requires, among other things, each audit conducted of an issuer by a registered public accounting firm to include “procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts.”

F. FINDINGS

63. Based on the foregoing, the Commission finds that Respondents engaged in improper professional conduct as defined in Section 4C(b)(2)(A) of the Exchange Act and Rule 102(e)(1)(iv)(B)(1) of the Commission’s Rules of Practice.

64. Based on the foregoing, the Commission finds that Respondent LYA violated Section 10A(a)(1) of the Exchange Act and Rule 2-02(b) of Regulation S-X, and caused Code Rebel’s violations of Sections 13(a) and Rule 13a-1 thereunder.

65. Based on the foregoing, the Commission finds that Respondent Lichter violated Section 10A(a)(1) of the Exchange Act and caused Code Rebel’s violations of Sections 13(a) and Rule 13a-1 thereunder and LYA’s violations of Rule 2-02(b) of Regulation S-X .

66. Based on the foregoing, the Commission finds that Respondent Yu violated Section 10A(a)(1) of the Exchange Act and caused Code Rebel’s violations of Sections 13(a) and Rule 13a-1 thereunder and LYA’s violations of Rule 2-02(b) of Regulation S-X.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents’ Offers.

Accordingly, it is hereby ORDERED that:

A. Respondents LYA, Lichter, and Yu shall cease and desist from committing or causing any violations and any future violations of Sections 10A(a)(1) and 13(a) of the Exchange Act and Rule 13a-1 thereunder and Rule 2-02(b) of Regulation S-X.

LYA

B. LYA is denied the privilege of appearing or practicing before the Commission as an accountant.

C. After five (5) years from the date of this order, LYA may request that the Commission consider its reinstatement by submitting an application to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that LYA's work in its practice before the Commission will be reviewed either by the independent audit committee of the public company for which it works or in some other acceptable manner, as long as it practices before the Commission in this capacity; and/or
2. an independent accountant.

Such an application must satisfy the Commission that:

- (a) LYA is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective. However, if registration with the Board is dependent upon reinstatement by the Commission, the Commission will consider the application on its other merits;
- (b) LYA has hired an independent CPA consultant ("consultant"), who is not unacceptable to the staff of the Commission and is affiliated with a public accounting firm registered with the Board, that has conducted a review of LYA's quality control system and submitted to the staff of the Commission a report that describes the review conducted and procedures performed, and represents that the review did not identify any criticisms of or potential defects in the firm's quality control system that would indicate that any of LYA's employees will not receive appropriate supervision. LYA agrees to require the consultant, if and when retained, to enter into an agreement that provides that for the period of review and for a period of two years from completion of the review, the consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with LYA, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the consultant in performance of his/her duties under this Order shall not, without prior written consent of the staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with LYA, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the review and for a period of two years after the review;

- (c) LYA has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and
- (d) LYA acknowledges its responsibility, as long as it appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, engagement quality reviews and quality control standards.

D. The Commission will consider an application by LYA to resume appearing or practicing before the Commission provided that its CPA license is current and it has resolved all other disciplinary issues with the applicable boards of accountancy. However, if CPA licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its own merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to LYA's character, integrity, professional conduct, or qualifications to appear or practice before the Commission. Whether an application demonstrates good cause will be considered on a facts and circumstances basis with due regard for protecting the integrity of the Commission's processes.

Lichter

E. Lichter is denied the privilege of appearing or practicing before the Commission as an accountant.

F. After five years from the date of this order, Lichter may request that the Commission consider his reinstatement by submitting an application to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission (other than as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Exchange Act). Such an application must satisfy the Commission that Lichter's work in his practice before the Commission as an accountant will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Exchange Act. Such an application will be considered on a facts and circumstances basis with respect to such membership, and the applicant's burden of demonstrating good cause for reinstatement will be particularly high given the role of the audit committee in financial and accounting matters; and/or

3. an independent accountant.

Such an application must satisfy the Commission that:

- (a) Lichter, or the public accounting firm with which he is associated, is registered with the Board in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;
- (b) Lichter, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that Lichter will not receive appropriate supervision;
- (c) Lichter has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and
- (d) Lichter acknowledges his responsibility, as long as he appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, engagement quality reviews and quality control standards.

G. The Commission will consider an application by Lichter to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Lichter's character, integrity, professional conduct, or qualifications to appear or practice before the Commission as an accountant. Whether an application demonstrates good cause will be considered on a facts and circumstances basis with due regard for protecting the integrity of the Commission's processes.

Yu

H. Yu is denied the privilege of appearing or practicing before the Commission as an accountant.

I. After five years from the date of this order, Yu may request that the Commission consider his reinstatement by submitting an application to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission (other than as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Exchange Act). Such an application must satisfy the Commission that Yu's work in his practice before the Commission as an accountant will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or
2. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Exchange Act. Such an application will be considered on a facts and circumstances basis with respect to such membership, and the applicant's burden of demonstrating good cause for reinstatement will be particularly high given the role of the audit committee in financial and accounting matters; and/or
3. an independent accountant.

Such an application must satisfy the Commission that:

- (a) Yu, or the public accounting firm with which he is associated, is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;
- (b) Yu, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that Yu will not receive appropriate supervision;

- (c) Yu has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and
- (d) Yu acknowledges his responsibility, as long as he appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, engagement quality reviews and quality control standards.

J. The Commission will consider an application by Yu to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Yu's character, integrity, professional conduct, or qualifications to appear or practice before the Commission as an accountant. Whether an application demonstrates good cause will be considered on a facts and circumstances basis with due regard for protecting the integrity of the Commission's processes.

Monetary Remedies

K. Respondent LYA shall, within ten days of the entry of this Order, pay disgorgement of \$39,900, plus prejudgment interest thereon of \$3,788.49 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600.

L. Respondent LYA, shall, within ten days of the entry of this Order, pay a civil money penalty of \$25,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying LYA as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Lara Mehraban, Associate Regional Director, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, New York 10281.

M. Respondent Lichter shall, within ten days of the entry of this Order, pay a civil money penalty of \$7,500 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Lichter as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Lara Mehraban, Associate Regional Director, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, New York 10281.

N. Respondent Yu shall, within ten days of the entry of this Order, pay a civil money penalty of \$7,500 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Yu as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Lara Mehraban, Associate Regional Director, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, New York 10281.

O. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondents, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary