

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 87642 / November 29, 2019

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4103 / November 29, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-18346

In the Matter of

Cynthia Holder, CPA,

Respondent.

**ORDER MAKING FINDINGS AND
IMPOSING REMEDIAL SANCTIONS
AND A CEASE-AND-DESIST ORDER
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.

On January 22, 2018, the Securities and Exchange Commission (“Commission”) deeming it appropriate instituted public administrative and cease-and-desist proceedings against Cynthia Holder (“Holder” or “Respondent”) pursuant to Sections 4C¹ and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) and 102(e)(1)(iii) of the Commission’s Rules of Practice.²

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

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 issued thereunder.

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

II.

Respondent has submitted an Offer of Settlement (the “Offer”), 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, Respondent admits the Commission’s jurisdiction over her and the subject matter of these proceedings, and consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds³ that:

SUMMARY

1. This case involves the unauthorized disclosures of confidential information from the Public Company Accounting Oversight Board (“PCAOB” or “Board”) and a concerted effort by now-former members of KPMG’s Audit Quality and Professional Practice group (“AQPP” or “National Office”) – including Cynthia Holder – to use that information to improve the results of the PCAOB’s annual inspections of KPMG audits.

2. In 2015, KPMG hired Brian Sweet from the PCAOB. Shortly after he joined the firm, Sweet asked Holder, then a PCAOB employee, to send him confidential PCAOB materials. Holder made the unauthorized disclosure to Sweet at the same time she was seeking employment from KPMG. In 2016 and 2017, a third PCAOB employee, Jeffrey Wada, leaked specific audit engagements the PCAOB planned to inspect to Holder, after she had left the PCAOB and joined KPMG.

3. After obtaining the confidential list of the PCAOB’s planned inspections in 2016, Holder participated in a program overseen by other now-former KPMG personnel to review and revise certain audit workpapers after the audit reports had been issued to reduce the likelihood that

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

Rule 102(e)(1)(iii) 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 willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

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

the PCAOB would find deficiencies in those audits. This effort resulted in a substantial improvement to KPMG's 2016 inspection results.

4. In 2017, Holder again obtained from Wada the list of audit engagements that the PCAOB planned to inspect, but the misconduct was discovered by others within the firm and reported to KPMG leadership before relevant workpapers could be changed.

RESPONDENT

5. Cynthia Holder, 53, of Houston, Texas was an Executive Director in KPMG's Department of Professional Practice-Inspections group from August 2015 until April 2017, when she was separated from the firm. Prior to joining KPMG, Holder was an Inspections Specialist and Inspections Leader at the PCAOB from December 2011 until August 2015. Holder was previously licensed as a CPA in Texas and New Jersey.

OTHER RELEVANT PERSONS AND ENTITY

6. Brian Sweet, 42, of Fresno, California, was a Partner in KPMG's Department of Professional Practice-Inspections group until March 2017. He was separated from the firm at the end of March 2017. Prior to joining KPMG, Sweet was an Associate Director in the PCAOB's inspections group from March 2014 until April 2015. Sweet was previously licensed as a CPA in New York, Illinois, and California. The Commission has charged Sweet for his role in the misconduct described in this Order.

7. Jeffrey Wada, 44, of Tustin, California was an Inspections Leader at the PCAOB from February 2012 until February 2017. Wada is no longer at the PCAOB. Wada is licensed as a CPA in California. The Commission has filed litigated administrative and cease-and-desist proceedings against Wada alleging misconduct related to the events described in this Order.

8. David Middendorf, 55, of Marietta, Georgia, was KPMG's National Managing Partner for AQPP until March 2017, and was separated from the firm the following month. Middendorf is licensed as a CPA in Georgia, New York, and Ohio and was previously licensed in Texas. The Commission has filed litigated administrative and cease-and-desist proceedings against Middendorf alleging misconduct related to the events described in this Order.

9. Thomas Whittle, 56, of Gladstone, New Jersey, was KPMG's National Partner-In-Charge for Quality Measurement until March 2017, and was separated from the firm the following month. Whittle is licensed as a CPA in New York and New Jersey and was previously licensed in Pennsylvania and Connecticut. The Commission has filed litigated administrative and cease-and-desist proceedings against Whittle alleging misconduct related to the events described in this Order.

10. David Britt, 55, of New Canaan, Connecticut, was a Partner in KPMG's Department of Professional Practice within AQPP, in which he was the Banking and Capital Markets Group Co-Leader until March 2017, and was separated from the firm the following

month. Britt is licensed as a CPA in New York and California and was previously licensed in the District of Columbia. The Commission has filed litigated administrative and cease-and-desist proceedings against Britt alleging misconduct related to the events described in this Order.

11. KPMG LLP is a Delaware limited liability partnership and PCAOB-registered accounting firm. Headquartered in New York, New York, KPMG is the U.S. member firm of KPMG International Cooperative, a Swiss entity. The Commission has charged KPMG for its role in the misconduct described in this Order.⁴

FACTS

The PCAOB's Inspections Process and KPMG's Efforts to Improve Its Results

12. The PCAOB was created as part of the Sarbanes-Oxley Act of 2002 to oversee the audits of public companies that are subject to the federal securities laws in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports.

13. One of the essential ways in which the PCAOB fulfills this mission is by inspecting audits of public companies conducted by registered public accounting firms. Through these inspections, the PCAOB assesses the audit firms' compliance with the statutes, regulations, and professional standards governing the accounting profession. The PCAOB typically selects the audit engagements it will inspect based on confidential internal analyses and thereafter notifies firms of which audits it will inspect. The PCAOB typically issues inspection reports, only parts of which are made public, after all the inspections for a firm in a given cycle are complete.

14. To ensure the integrity of the inspection process, the PCAOB closely guards the confidentiality of both its inspection targets prior to firm notification and its methodology for selecting those targets. All PCAOB employees must certify that they are complying with PCAOB Ethics Rules that prohibit employees from using confidential PCAOB information for private gain (or even merely creating the appearance that they are) and that bar them from making unauthorized disclosures of confidential information obtained during their employment. The PCAOB's Ethics Rules and the employees' ethics certifications state these prohibitions continue to apply even after their employment with the Board ends.

15. In September 2014, the PCAOB issued a report regarding its 2013 inspections of KPMG audits. The report found that out of 50 audits the PCAOB inspected, 23 had deficiencies. This 46 percent deficiency rate reflected a significant decline from KPMG's 34 percent deficiency rate the previous year.

⁴ *KPMG LLP*, Exchange Act Release No. 86118 (June 17, 2019).

16. As part of its efforts to improve its PCAOB inspection results, KPMG hired Brian Sweet, an Associate Director at the PCAOB who had worked on the team inspecting KPMG audits. Sweet joined KPMG as a partner in the group within the firm's National Office responsible for PCAOB inspections.

Holder Divulges Confidential PCAOB Information to KPMG

17. Before he left the PCAOB, Sweet discussed with Cynthia Holder, a friend who was then a PCAOB Inspections Leader, the prospect of her joining him at KPMG. On Sweet's first day at KPMG (May 4, 2015), he informed Holder that he would be meeting with his direct supervisor, Thomas Whittle, to push the firm to hire her. Whittle was then the KPMG partner responsible for overseeing the PCAOB's inspections of the firm. On May 11, 2015, Sweet told Holder he was going to hand-deliver her resume to Whittle and "make a sell again" in person.

18. On May 12, 2015, Sweet asked Holder to send him a confidential PCAOB document reflecting comments he had written about KPMG's audits while he was at the Board. Sweet told Holder that he needed the document to prepare for an internal KPMG meeting. That day, Holder sent Sweet the document he requested using their personal email accounts.

19. About two weeks later, Holder notified the PCAOB's ethics group that she had recused herself from any work related to KPMG in order to pursue employment at the firm. KPMG sent Holder an employment offer in July 2015. She joined the firm the following month as an Executive Director in KPMG's National Office, performing internal inspections and advising banking engagement teams on their audits.

Holder Receives Confidential PCAOB Information from Wada in 2016

20. After joining KPMG, Holder remained friends with Jeffery Wada, an Inspections Leader at the PCAOB. In early March 2016, Wada, who had previously performed work on KPMG inspections but was then assigned to inspect another audit firm, learned that he had not been selected for a promotion. Wada reacted angrily, telling a colleague the PCAOB had "screwed" him by passing him over.

21. On March 28, 2016, Wada called Holder and read to her the names of thirteen KPMG clients the Board planned to inspect.⁵ Holder provided this information to Sweet, who then immediately relayed the list to Whittle, David Middendorf, who then oversaw the National Office's audit quality and professional practice work, and David Britt, who was then a Partner in the National Office's Department of Professional Practice and co-leader of KPMG's Banking and Capital Markets Group, informing them that it had come from a former colleague at the PCAOB.

⁵ Of the 13 clients, 11 were bank holding or other financial services companies and 2 were other issuers that Wada appears to have thought were also bank holding or other financial services companies. It appears that Wada identified these engagements for Holder because her responsibilities at KPMG included advising banking engagement teams.

22. Wada sent Holder the list of the PCAOB's planned inspections at a critical time. Though KPMG had already issued audit reports for each of these engagements, it was within the 45-day period in which professional audit standards and firm policy allowed audit teams to complete the administrative process of assembling final audit files.⁶ At the end of this 45-day period, KPMG locked audit workpapers from editing absent special circumstances.⁷ Thus, Wada sent the inspections list to Holder, who then provided it to Sweet, when firm personnel were still able to access and revise audit workpapers.

23. Recognizing that the workpapers had not yet been locked per KPMG's policy, the now-former senior members of KPMG's National Office agreed to have Sweet and others, including Holder, conduct an additional review of the audit workpapers for the seven banks on the list Wada had provided that were part of a key monitoring program run by the National Office to determine whether anything could be done to minimize the risk of receiving inspection comments from the PCAOB.⁸

24. Over the next few weeks, Sweet, Holder, and various partners and managing directors in the National Office engaged in a review of the audit workpapers of the seven banks in the monitoring program that were on the list Wada provided. The National Office professionals suggested edits and proposed revisions to the engagement teams, which then decided what revisions to incorporate into the final audit workpapers.

25. In contrast to prior years, KPMG's 2016 inspection results did not include any inspection comments related to the general Allowance for Loan and Lease Losses ("ALLL") – an area where KPMG had historically received criticism related to financial services audits. The PCAOB did not publish the results because KPMG reported the misconduct to the PCAOB before the PCAOB issued the 2016 report. However, the PCAOB had designated two of the bank audits in the ALLL monitoring program whose workpapers Sweet and Holder had reviewed as "positive quality events," which meant they were so successful the PCAOB wanted to understand the factors driving the audit's quality. Indeed, the level of improvement in the inspection results led Whittle

⁶ See Auditing Standard No. 3, *Audit Documentation*, paragraph 15. "Prior to the report release date, the auditor must have completed all necessary auditing procedures and obtained sufficient evidence to support the representations in the auditor's report. A complete and final set of audit documentation should be assembled for retention as of a date not more than 45 days after the report release date (documentation completion date)." References to PCAOB standards are to those that were in effect at the time of the relevant conduct.

⁷ KPMG has since revised its audit documentation policies, requiring electronic workpapers to be assembled and locked within two business days of issuance of the report.

⁸ As the PCAOB found an increasing number of audit deficiencies by KPMG beginning in 2013, KPMG's National Office implemented "monitoring programs" that worked with audit engagement teams and reviewed workpapers to improve compliance with professional standards. One of these programs focused on the audits of certain banking clients' Allowance for Loan and Lease Losses. KPMG further developed this monitoring program in 2015 in response to numerous deficiencies the PCAOB had identified in this area. The success of this program was especially important to KPMG because the firm had promoted it as proof of the seriousness with which the firm was working to improve its audit quality.

to be concerned that if KPMG could not obtain confidential PCAOB information for the next inspection cycle, there could be a return of audit deficiencies that would be difficult to explain.

26. After the misconduct was discovered, the PCAOB conducted inspections of ten additional banks for the 2016 inspection cycle to replace the ones for which improper advance notice had been obtained. The PCAOB found that six of these audits had deficiencies with respect to auditing the ALLL.

Holder Receives Confidential PCAOB Information from Wada in 2017

27. Sweet has testified that in early January 2017 Wada provided Holder a “preliminary” list of PCAOB inspection targets for 2017 and that on January 9, Holder relayed the names of the clients on the list to Sweet. On January 10, Wada sent Holder his resume and a narrative of his work experience, writing, “I am now trying to sell myself to KPMG.”

28. In early February 2017, Wada conveyed to Holder a list of 47 ticker symbols that Holder understood to be the final list of KPMG audits the PCAOB would inspect that year. Sweet has testified that Wada also provided Holder the inspection focus areas for the banks on the list (as well as for another KPMG engagement), and the PCAOB’s list of KPMG engagement partners with “poor performance evaluations.”

29. Holder relayed the information to Sweet, who then shared it with Middendorf, Whittle, and Britt. Unlike the prior lists of PCAOB inspection targets, the audits on the February 2017 list were ongoing, thus providing substantially greater ability to improve the audit workpapers.

30. Whittle instructed Sweet to warn certain engagement partners about the impending inspections. Though Whittle had warned Sweet to be circumspect in how he communicated this to KPMG colleagues, Sweet’s notice to one KPMG engagement partner caused her to suspect that the firm may have received confidential PCAOB information. These concerns were subsequently reported to the firm’s management, which then reported the matter to the PCAOB, and KPMG began an internal investigation.

31. During the initial stage of KPMG’s investigation, Sweet and Holder agreed to conceal how they learned of the PCAOB’s 2017 inspection targets.⁹ They agreed to tell KPMG’s Office of General Counsel that Holder had received a list of ticker symbols by mail with no return address or other identifying information.

32. Holder destroyed evidence during KPMG’s investigation. KPMG attorneys asked Holder to provide them her phone so they could analyze whether it contained relevant documents. Before providing her phone to the firm, Holder deleted certain of her texts with Wada.

⁹ Holder told Sweet that she had sworn to Wada she would never identify him as the source.

VIOLATIONS

33. As a result of the conduct described above, Respondent willfully violated PCAOB Ethics Code Section EC3, which prohibits PCAOB staff from acting in a manner which might reasonably result in or reasonably create the appearance that the employee is using confidential information obtained through service for the Board for the private gain of any person, within the meaning of Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

34. As a result of the conduct described above, Respondent willfully violated PCAOB Ethics Code Section EC9, which prohibits PCAOB staff from disseminating or otherwise disclosing any information obtained in the course and scope of his or her employment, and which has not been released, announced, or otherwise made available publicly, within the meaning of Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

35. As a result of the conduct described above, Respondent willfully violated PCAOB Rule 3500T, which requires members to maintain integrity when performing any professional service in connection with the preparation or issuance of any audit report, within the meaning of Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

FINDINGS

36. Based on the foregoing, the Commission finds that Holder willfully violated PCAOB Ethics Code Sections EC3 and EC9 and PCAOB Rule 3500T within the meaning of Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

37. Based on the foregoing, the Commission finds that Holder lacks integrity pursuant to Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

38. Based on the foregoing, the Commission finds that Holder engaged in improper professional conduct pursuant to Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Holder's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Holder shall cease and desist from committing or causing any violations and any future violations of PCAOB Ethics Code Sections EC3 and EC9 and PCAOB Rule 3500T.

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

By the Commission.

Vanessa A. Countryman
Secretary