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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Application of	Admin. Proc. File No. 3-17758
CYNTHIA C. REINHART, CPA	PCAOB File No. 105-2012-003
For Review of Action Taken by	February 23, 2017
PCAOB	

OPENING BRIEF OF CYNTHIA C. REINHART

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INTRODUCTION

Cynthia C. Reinhart, CPA ("Reinhart") seeks review by the Commission, pursuant to Section 19(d)(2) of the Exchange Act, 15 U.S.C. § 78s(d)(2), and Rule 440 of the Commission's Rules of Practice, 17 C.F.R. § 201.440, of the Final Decision and Order Imposing Sanctions (the "Final Decision") issued by the Public Company Accounting Oversight Board ("PCAOB" or "Board") on November 18, 2016. The Final Decision found that Reinhart violated PCAOB rules and auditing standards (including AU §§ 341, 332, 150, 230, 326, and 333) and imposed sanctions barring her from associating with a registered public accounting firm, with a right to petition the Board to associate after two years, and limiting her from serving in certain roles and exercising certain authority as to any issuer audit for a further year. FD at 99.[1]

Reinhart is a retired partner of KPMG LLP ("KPMG"), who served as the lead engagement partner on KPMG's audit of the financial statements of Thornburg Mortgage, Inc. ("Thornburg" or the "Company") for the year ending December 31, 2007. KPMG issued an unqualified audit opinion on Thornburg's 2007 financial statements on February 28, 2008, but promptly withdrew that opinion on March 4, 2008, upon learning that Thornburg had received a large number of post-filing margin calls that the Company was unable to satisfy, which called into question the Company's ability to continue as a going concern and ability to hold its available-for-sale ("AFS") securities until recovery or maturity. Rather than commending Reinhart for taking the courageous step of withdrawing KPMG's opinion in light of these subsequent events, the PCAOB instituted enforcement proceedings against her.

[1] Citations to the Final Decision, Tab 133 of the Record, will be in the form of "FD at __." Citations to the Initial Decision of the Hearing Officer, Tab 114 of the Record, will be in the form of "ID at __." Citations to Joint Exhibits, Respondent's Exhibits, and Division's Exhibits that were introduced at the Hearing, Tabs 92, 93, and 94 of the Record, will be in the form of "J-__," "R-__," or "D-__," respectively. Citations to the Hearing Transcripts, Tabs 69a through 75a, 77a, and 78a, will be in the form of "Tr. __."

The Record shows, however, that Reinhart and her team—including three other senior KPMG audit partners—exercised reasonable good faith audit judgment, in the midst of a rapidly changing economic environment, on the eve of what would later become a full-fledged economic crisis, in evaluating and concluding on the complex going-concern and ability-to-hold issues during the audit. The Board chose to ignore the real-time challenges that Reinhart faced in February 2008, and to instead second-guess using hindsight the decisions on audit strategy – positing its own hypothetical "required" audit procedures premised on an economic fallacy – that she and her team had to make. The Board has stated on many occasions that it is "not in the business of second-guessing good faith audit judgments."[2] But that is exactly what it has done here. Its decision to do so is both grossly unfair to Reinhart and dangerous for the profession as a whole. Sanctioning Reinhart for her audit judgments is particularly unfair and implicates her due process rights when the applicable PCAOB standards provided only the vaguest of guidance and where the Board misunderstood or misconstrued some of the key facts in the Record. Moreover, the Board sanctioned Reinhart despite the fact that, after an extensive investigation of the facts, the Commission itself decided not to charge Reinhart but instead to charge senior Company officials with deliberately failing to disclose and lying to Reinhart about information critical to her going-concern and ability-to-hold evaluations. Indeed, Reinhart and other engagement team members were the key witnesses at trial for the Commission. Yet the Board precluded Reinhart from presenting compelling evidence of these lies and misrepresentations at the Hearing.

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2 *See, e.g.*, Daniel L. Goelzer, Perspectives on Internal Control Implementation, Issues and Reporting at the 31st Annual Meonske Professional Development Conference (Apr. 29, 2005), at 5 ("we are not in the business of second-guessing good faith audit judgments"), *available at* http://pcaobus.org/News /Speech/Pages/04292005_GoelzerInternalControlImplementationIssues.aspx.

The PCAOB was established to protect the interests of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports for public companies. 15 U.S.C. § 7211(a). By sanctioning an auditor who, with the investing public in mind, had the integrity and courage to withdraw an audit report on financial statements that she felt should no longer be relied upon, Tr. 798, the Board has departed from both the mission Congress envisioned and the Board's own self-declared commitment not to second-guess good faith audit judgments that auditors make.

Moreover, under Section 105(c)(5)(B) of Sarbanes-Oxley, the PCAOB is not authorized to impose sanctions unless it determines that an auditor was "reckless" or committed "repeated instances of negligent conduct." 15 U.S.C. § 7215(c)(5)(B). There was no basis for finding Reinhart's conduct reckless, and the Board did not do so. But there was also no basis for finding that her conduct involved "repeated instances" of negligence, rather than a single allegedly negligent decision. Tellingly, one of the Board members, Jay Hanson, dissented from the Final Decision on this ground, and found no lawful basis for the imposition of sanctions here.

The Commission, on this *de novo* review, should vacate the Final Decision and dismiss these proceedings with prejudice.

FACTUAL BACKGROUND

I. Thornburg Mortgage

Thornburg was a residential mortgage lender, headquartered in Santa Fe, New Mexico, that originated, acquired, and retained investments in adjustable rate mortgage assets ("ARM Assets"). FD at 5. Thornburg focused on high-quality assets, and the credit quality of its portfolio reflected this strategy. J-1 at 6, 46-47; Tr. 38-39, 968-69. Thornburg's strategy was "to obtain prime jumbo or prime super-jumbo loans which documented excellent credit scores, acceptable debt to income levels, reserves, loan to value ratios and collateral all in order to reduce capital exposure and default rates." J-21 at 10; *see also* J-1 at 7, 12; Tr. 38-39. Thornburg, in both policy and practice, did not originate or acquire sub-prime mortgages. *See, e.g.*, J-1 at 12. Because of the high-quality of its portfolio, the default rate on Thornburg's loans was consistently and significantly below industry averages. J-5 at 10.

Thornburg had two main categories of ARM assets: Purchased ARM Assets, which are most relevant to this case, and ARM Loans. J-1 at 87, 93. Purchased ARM Assets were securities backed by mortgage loans issued by other entities. J-1 at 6. Thornburg classified its Purchased ARM Assets as "available for sale" securities, pursuant to Statement of Financial Accounting Standards No. 115, *Accounting for Certain Investments in Debt and Equity Securities*. J-1 at 93.

Being structured as a REIT, Thornburg was required to pass through the majority of its income to its investors, and therefore needed to continually raise capital to fund its business. J-1 at 21-22. Thornburg used several methods to finance its operations, including entering into reverse repurchase ("Reverse Repo") agreements, issuing commercial paper, issuing Collateralized Mortgage Debt ("CMD") securitizations, and issuing its own equity (both common and preferred stock offerings). J-1 at 14, 117. Thornburg had a successful history in raising capital through these financing mechanisms. Thornburg successfully completed six securitizations throughout 2007 and into 2008, including a $1 billion securitization on March 3, 2008. J-19 at 4-5; Tr. 526-31. Thornburg was able to raise $691 million in equity capital in the third and fourth quarters of 2007, and another $282 million in January 2008, J-1 at 117; J-21 at 8, and had firm plans to raise another $300-$500 million as soon as the 2007 10-K was filed, J-21 at 8.

The issues in this case arise largely from the financing that Thornburg obtained through Reverse Repo agreements. FD at 7. A Reverse Repo agreement involved Thornburg's sale of its Purchased ARM Assets to a repo lender (such as an investment bank) for an agreed-upon price, along with Thornburg's promise to repurchase the same securities at a future date and at a higher price. *Id.* Thornburg's Reverse Repo agreements were subject to "margin calls." *Id.* The fair value of Thornburg's collateralized Purchased ARM Assets had to exceed the level of borrowing by a specified percentage, known as the "margin requirement." *Id.* If the fair value dipped below the margin requirement, Thornburg's lender could initiate a margin call, requiring Thornburg to pledge additional cash or collateral to meet the call. *Id.* Failure to timely meet a margin call would constitute an "event of default," authorizing the lender to declare Thornburg in default and liquidate Thornburg's collateralized Purchased ARM Assets to satisfy the debt. Declaration of an event of default by one lender could also trigger cross-default provisions in the Company's other financing agreements. *Id.* at 7-8.

Although historically successful, Thornburg encountered financial difficulties in August 2007 as the prices of all mortgage-backed securities ("MBS"), including the securities owned by Thornburg backed by prime mortgage loans, suddenly began to decline. FD at 9. As the MBS market declined, Thornburg was required to meet margin calls from its counterparties by providing cash or additional collateral to support its borrowings. *Id.* During the quarter ending September 30, 2007, Thornburg or its counterparties sold $21.9 billion in primarily AAA- and AA-rated ARM Assets to meet those margin calls, at an aggregate estimated loss to Thornburg of $1.1 billion (the "August 2007 event"). *Id.* at 9-10.

Thornburg returned to profitability in the fourth quarter of 2007. FD at 14. Thornburg acknowledged in its 2007 Form 10-K, however, that "during the fourth quarter of 2007 and continuing in 2008, we have experienced declines in the market value of our securities to levels at or below levels experienced in August 2007, and incurred additional margin calls as a result." *Id.* at 14-15. In January and February 2008, through the filing of its financial statements on February 28 (the "Subsequent Period"), Thornburg's Reverse Repo counterparties continued to make margin calls on Thornburg based on decreases in the market value of its Purchased ARM Assets. *Id.* at 15. The fair value of Thornburg's entire securities portfolio fell 5 to 10% in the Subsequent Period, while Thornburg's securities backed by Alt-A collateral[3] dropped 10 to 15% in value, causing nearly $1 billion in additional margin calls and leaving Thornburg with a "historically low level" of liquidity. *Id.*

II. The KPMG Audit Team

Reinhart was the lead audit engagement partner for KPMG's audit of Thornburg's 2007 financial statements, as she had been for the audit of the 2006 financial statements. FD at 4. Reinhart had been a certified public accountant ("CPA") since 1983 and had worked at KPMG since 1986. *Id.* She had been a KPMG audit partner since 1998, and the managing partner for KPMG's Albuquerque, New Mexico office since 2004. *Id.* She retired from KPMG in the fall of 2014. *Id.*

Reinhart was assisted on the 2007 audit by an experienced audit team, which devoted approximately 7,000 hours to the audit, with Reinhart herself logging over 300 hours. FD at 5. The Senior Manager involved had been a CPA since 1997 and joined KPMG in 2000. *Id.* Prior to joining KPMG, the Senior Manager had worked in the accounting department of the New

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[3] Alt-A mortgages are those in which borrowers "generally have higher credit ratings than subprime borrowers, but the loans are viewed as nonprime because of some specific feature of the loan arrangement, such as limited or no documentation about income or assets, high loan-to-value ratios, high payment-to-income ratios, the purchase of a second home, or some combination of these characteristics." Stipulation Regarding the Definition of "Alt-A Mortgage," Record Tab 111.

Mexico Mortgage Finance Authority, where she gained significant experience regarding the accounting for mortgages and mortgage-backed securities. Tr. 964-65. The remainder of the core audit team was comprised of another manager, a senior associate, and two staff accountants, Tr. 63; J-9 at 9, most of whom had also worked on the 2006 Thornburg audit. Tr. 483-88.

Reinhart was further supported by extensive consultations with three senior KPMG audit partners, who had over 95 years of audit experience combined: the SEC Review Partner, the In-Depth Review Partner, and the Business Unit Professional Practice ("BUPP") Partner. FD at 4; Tr. 486-90, 643-45. Reinhart consulted with the SEC Review Partner and the In-Depth Review Partner on the ability-to-hold/other-than-temporary-impairment ("OTTI") issue in this case, and consulted with all three of these senior partners on the going-concern issue. FD at 4. The Board mischaracterized Reinhart's mention of these consultations as an "attempt[ ] to shift blame to other KPMG personnel rather than accept responsibility for her own conduct." FD at 70, 95. Contrary to the Board's conclusion, Reinhart referenced these consultations not "to shift blame," but to demonstrate just how careful and thorough she was evaluating the going concern and OTTI/ability to hold issues.

<u>The SEC Review Partner</u>: At the time of the 2007 audit, the SEC Review Partner had 40 years of audit experience and 32 years as an audit partner at KPMG. Tr. 488-90; R-160 at 18. He had substantial audit experience with clients in the financial services industry, and had worked on the audit of Thornburg's 2006 financial statements. R-160 at 18. He reviewed the audit work of Reinhart's team on the more significant audit areas, including the going-concern analysis, the OTTI analysis, and disclosures in the financial statements and footnotes. Tr. 490, 635-38, 643-45, 731-32, 741-42, 745-46; J-3 at 24-27; J-9 at 9.

The In-Depth Review Partner: At KPMG, an "in-depth review" is intended to be a "deeper dive into the work papers" than the review by the SEC Review Partner. Tr. 64, 491; J-3 at 25. It is intended to supplement—not replace—the SEC Review Partner's review of the audit work. Tr. 64. The In-Depth Review Partner had substantial experience auditing mortgage companies, with 32 years of audit experience and 21 years as an audit partner at KPMG. Tr. 486-88, 1670-72; R-160 at 18. He had experience with REITs and mortgage-backed securities in particular, and was very familiar with the OTTI and going-concern issues that were arising throughout the industry during 2007-2008. Tr. 1670-72. The In-Depth Review Partner was satisfied with the reasonableness of the engagement team's judgments in the areas he reviewed, including the going-concern and OTTI issues. J-6; Tr. 639-40, 724-26, 1729-30.

The Business Unit Professional Practice Partner: A BUPP partner, as the term is used at KPMG, is a seasoned audit partner responsible for the risk management of the audit practice. Tr. 1888-89. Reinhart consulted with the BUPP Partner on the going-concern analysis, as required by KPMG policy. Tr. 643-44, 1898. He had considerable experience regarding going- concern analyses: as of the 2007 audit, the BUPP Partner had been involved in more than 30 going-concern analyses. Tr. 1895-96.

In light of the August 2007 event, Reinhart immediately "identified Thornburg's liquidity and margin calls as fraud risks and the going concern and OTTI/ability to hold evaluations as critical, high-risk areas of the audit prone to management misrepresentation" at the outset of the 2007 audit. FD at 11. Reinhart "understood that the volatile market conditions in the mortgage industry were posing various auditing challenges." *Id.* at 12. In fact, Reinhart "deliberately delayed or 'deferred' her evaluations of the going concern and OTTI/ability to hold issues 'until close to the [audit report] issuance date'—*i.e.*, near the end of the Subsequent Period—'to have the greatest amount of information available regarding the state of the market for MBS securities and Thornburg's liquidity." *Id.* at 14.

Reinhart therefore "asked Thornburg management to prepare a memorandum for Thornburg's 2007 audit addressing the company's ability to continue as a going concern" (the "Thornburg Memo," Ex. J-21). FD at 16. Reinhart also supervised the Senior Manager's preparation of KPMG's own going-concern memorandum (the "KPMG Memo," Ex. J-19). *Id.* Both of these memos "were drafted and finalized in the final two weeks before the issuance of the audit report." *Id.*

Both the Thornburg Memo and KPMG Memo focused on two issues: First, given existing market conditions and related liquidity risks, whether there was substantial doubt about Thornburg's ability to continue as a going concern for a reasonable period of time, in accordance with AU § 341; and second, given those issues, whether Thornburg could reasonably assert at the time of filing its 2007 10-K that it had the intent and ability to hold its Purchased ARM Assets until recovery or maturity, so that those securities were not subject to OTTI under FAS 115. *See* Ex. J-19; Ex. J-21.

III. Reinhart and Her Team Carefully Consider the Going Concern Issue.

AU § 341, *The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern*, provides that an "auditor has a responsibility to evaluate whether there is substantial doubt about the entity's ability to continue as a going concern for a reasonable period of time, not to exceed one year beyond the date of the financial statements being audited." AU § 341.02.

Reinhart first "requested that Thornburg management prepare a document (Ex. J-33) to support its position that the company had the ability to continue" as a going concern after the August 2007 event, FD at 11, and renewed that request with respect to the year-end audit, *id.* at

16. The Thornburg Memo was primarily drafted by a Vice President in Thornburg's accounting group, who was a former PwC auditor and Fellow at the FASB. J-33; Tr. 981. Reinhart and other KPMG personnel, including the In-Depth Review Partner and Senior Manager, provided comments and questions on the draft Thornburg Memo dated January 29, 2008, which was then updated on February 20, 2008, and finalized on February 24, 2008. FD at 16. The Thornburg Memo listed what Thornburg management believed to be "the [twelve] significant activities that should be evaluated regarding the Company's ability to continue as a going concern," addressed each of these "activities," and offered Thornburg's factual assessments to support the conclusion that there was no substantial doubt about Thornburg's ability to continue as a going concern. *See* J-21 at 1-2.

At Reinhart's direction, the Senior Manager thereafter prepared KPMG's own evaluation of Thornburg's ability to continue as a going concern—the KPMG Memo, J-19. FD at 32. The initial draft of the KPMG Memo was circulated to Reinhart on February 20, 2008, and was sent to the In-Depth Review Partner, SEC Review Partner, and BUPP Partner in the next several days. FD at 32. Reinhart reviewed and commented on multiple drafts of the KPMG Memo, as did the In-Depth Review Partner, SEC Review Partner, and BUPP Partner, before it was finalized on February 27, 2008. *Id.*

The KPMG Memo documented the audit team's "consideration of management's key assumptions as well as audit testwork performed to validate financial data used by management in reaching its conclusions." J-19 at 1. The KPMG Memo identified the ability to manage liquidity as the primary risk to Thornburg, and in particular the risk regarding "the Company's ability to repay or rollover . . . existing short-term debt, especially the remaining $400 million of [commercial paper], and whether the Company could survive a situation of high margin calls similar to August 2007." J-19 at 2. The KPMG Memo addressed those risks, including how those risks were affected by events and conditions during the Subsequent Period. KPMG did not attempt to establish on a daily basis the exact inflows and outflows of Thornburg's cash, nor was it necessary or practical to do so. Instead, Reinhart addressed the going-concern issue by analyzing the steps the Company was taking in the wake of the August 2007 event to lessen its exposure to margin calls and diversify its sources of cash.

The KPMG Memo acknowledged that the Company's cash balance was "relatively tight," that the Company had received around $250 million in margin calls in the last week of the audit, and that the short-term money markets were still dislocated. J-19 at 2, 5. But the KPMG Memo noted that Thornburg had access to cash from other sources, including monthly principal and interest payments due on February 25, 2008, an expected securitization on February 28, 2008, and an anticipated common stock offering that would take place shortly after the filing of the 2007 10-K. J-19 at 4, 5. Another source of cash was documented in the KPMG Completion Document: the ability to move assets serving as collateral in Reverse Repo agreements into transactions without margin requirements, thus freeing up additional funds. J-5 at 23; Tr. 884-87.

The KPMG Memo also noted that it was management's belief that the likelihood of a further decrease in collateral values by more than another 2-to-3% was "remote"; that prices for securities backed by Alt-A collateral were bottoming out; that Thornburg's assets were high-quality and low-risk, which continued to perform well; and that the Company had reduced its exposure to Reverse Repo financing (and thus its exposure to margin calls) since August 2007. J-19 at 3, 6-7. The KPMG Memo found that these facts supported management's conclusion that securities values would not decline to a level that would force the Company to sell its securities.

J-19 at 4, 6. While these types of predictions of future market conditions are not susceptible to testing or "verification" by an auditor, these predictions were not inconsistent with the ability of management to manage its margin calls.

To buttress its analysis, the audit team also performed stress tests on Thornburg's ability to continue as a going concern under two extreme (albeit considered, at the time, unlikely) scenarios. Tr. 613, 1074-75; R-78; J-19 at 6-7. In other words, could the Company survive if its funding sources dried up and it couldn't meet its margin calls? In Scenario 1, the engagement team considered what would happen if Reverse Repo counterparties were unwilling or unable to provide financing to Thornburg, and it was therefore required to sell assets. ID at 21; J-19 at 6. The engagement team concluded that the sales would provide a net inflow of cash to Thornburg equal to the amount of the "haircut"—that is, the value of the pledged Purchased ARM Assets over and above the amount financed—which would be sufficient to sustain Thornburg's operations for several years. ID at 21; J-19 at 6. In Scenario 2, the engagement team considered what would happen in "a severely extreme scenario" in which Thornburg was required to sell off assets without receiving any net inflow of cash, and also lost its warehouse financing for the origination of new loans. ID at 22; J-19 at 6. Even in that situation, the engagement team concluded that, while Thornburg would have to make severe cuts in its operations, "[t]he yields on the remaining CMD securities would be more than sufficient to maintain a core group of individuals until the market recovered and operations could resume, which could be over a year." ID at 22; J-19 at 6. In other words, even if Thornburg sold *all* assets financed by Reverse Repo agreements, Thornburg would still have over $20 billion of assets that would generate sufficient cash flow to sustain operations for more than a year. *See* J-1 at 87.

After considering both the Thornburg Memo and the KPMG Memo, as well as other facts documented elsewhere in the work papers, and after consulting with the SEC Review Partner, In-Depth Review Partner, and BUPP Partner, Reinhart and the engagement team concluded that "a material uncertainty does not exist related to events or conditions that alone or in aggregate, may cast significant doubt on the Company's ability to continue as a going concern for a reasonable period of time and beyond." J-19 at 7.

IV. Reinhart and Her Team Carefully Consider the OTTI Issue.

Thornburg accounted for its Purchased ARM Assets as AFS securities under FAS 115. FD at 6. Under FAS 115, unrealized losses are excluded from earnings and are reported in "other comprehensive income" until realized. *Id.* There is an exception to that general rule, however, if the decline in the value of the securities is "other than temporary," in which case the securities must be written down to fair market value and the amount of the write-down must be realized as a loss. *Id.* FAS 115 refers to guidance in SEC Staff Accounting Bulletin No. 59 ("SAB 59") to help determine when a loss has become "other than temporary." See FAS 115 ¶ 16 n.4. SAB 59 states that the factors to be considered include the "intent and ability of the holder to retain its investment in the issuer for a period of time sufficient to allow for any anticipated recovery in market value." SAB 59, 50 Fed. Reg. 37,346, 37,347 (Sept. 13, 1985). In addition, AU § 332, *Auditing Derivative Instruments, Hedging Activities, and Investment Securities*, provides that "judgment is required in determining whether factors exist that indicate that an impairment loss has been incurred at the end of the reporting period." AU § 332 goes on to provide examples of potentially relevant factors to be considered in determining whether a company has the intent and ability to hold its AFS securities.

As of the date of KPMG's audit report, Thornburg concluded that it had the "intent and ability" to hold its Purchased ARM Assets until recovery, and that the unrealized losses associated with those assets were therefore not "other than temporary." FD at 40; J-1 at 44, 104. Thus, Thornburg reported the associated unrealized loss of $428 million in "other comprehensive income," in accordance with FAS 115. FD at 40.

Reinhart carefully evaluated Thornburg's conclusion, as required by PCAOB standards. The audit team's OTTI assessment was reflected primarily in the work papers addressing Thornburg's ability to continue as a going concern, including the Thornburg Memo and the KPMG Memo, FD at 40, but Reinhart and the audit team also documented their evaluation of the OTTI issue in other work papers, *see, e.g.*, J-5 at 9 (noting that "consistent with the going concern analysis performed by the Company, the Company appears to have the intent and ability to hold the securities to maturity or recovery").

With respect to the OTTI issue, the Thornburg Memo noted that Thornburg had reduced the number of its counterparties; that "[m]argin calls made or received are being met and the change in collateral value is being verified on a normal daily basis"; that a "decrease in the Federal Funds rate has decreased repo costs and is expected to slightly increase collateral values"; that Thornburg had been successful in raising capital in January 2008, and anticipated that it would be able to continue to do so; and that the credit quality of Thornburg's assets remained high. ID at 25; J-21 at 4-5, 8-9. Thus, Thornburg concluded that its losses were not other than temporary. ID at 26; J-21 at 10.

Reinhart and her team thoroughly evaluated Thornburg's conclusion. Considering all relevant events and conditions through February 27, 2008, Reinhart and her team determined that Thornburg's conclusion was reasonable in light of Thornburg's continuing ability to raise capital and manage its liquidity position, to meet margin calls, and to avoid the need to sell assets, and noted that Thornburg had a positive cash position of approximately $150 million, with access to more funds. ID at 26-27; J-5 at 9; J-19.

I. KPMG's Audit Opinion, and Its Withdrawal.

KPMG therefore issued an unqualified audit opinion on Thornburg's 2007 financial statements in the early hours on February 28, 2008, and Thornburg filed its 2007 10-K, which included KPMG's unqualified opinion, with the SEC shortly afterwards. FD at 48. Later that day, however, Thornburg received unexpected margin calls from Reverse Repo counterparties totaling more than $150 million. *Id.* at 49. It received margin calls exceeding $125 million on February 29. *Id.* at 49-50. These margin calls were caused, in part, by the unanticipated collapse of a large European hedge fund named Peloton, whose investments focused on MBS and whose collapse affected the market prices of even high-quality MBS like Thornburg's. Tr. 797, 2074-75. Thornburg was unable to satisfy all of those margin calls in a timely manner. As a result, one of Thornburg's counterparties sent Thornburg a letter dated February 28, 2008, asserting that an event of default had occurred under the terms of Thornburg's master Reverse Repo agreement, which triggered cross-defaults under its other Reverse Repurchase agreements and secured loan agreements. FD at 49.

On the evening of March 2, 2008, Reinhart learned of these post-filing margin calls and Thornburg's default. FD at 49. Immediately, Reinhart and other audit team members, in consultation with KPMG's national office, examined the events that had transpired. *Id.* On March 4, 2008, less than two days after being notified of these events, and only five days after authorizing the audit report, Reinhart notified Thornburg's audit committee that KPMG was withdrawing its 2007 audit report. *Id.* at 50. Reinhart's letter informed Thornburg that the originally-filed financial statements "should no longer be relied upon," because in light of recent events, the financial statements "contain[ed] material misstatements associated with [Thornburg's available-for-sale] securities." *Id.* Reinhart's letter also stated that KPMG's original audit report "should have contained an explanatory paragraph indicating that substantial doubt exist[ed] relative to the Company's ability to continue as a going concern for a reasonable period of time." *Id.*

On March 11, 2008, Thornburg filed an amended Form 10-K with the SEC. in which the Company restated portions of its 2007 financial statements. FD at 51.

PROCEEDINGS BELOW

The hearing in this matter included nine days of testimony, from November 11 to 21, 2013 (the "Hearing"). The Hearing included the testimony of eight witnesses: the four key members of the 2007 audit team—Reinhart, the Senior Manager, the In-Depth Review Partner, and the BUPP Partner—as well as four experts, three called by Reinhart and one called by the PCAOB's Division of Enforcement and Investigations (the "Division").

Reinhart's principal audit expert, John Lawton, was a partner in the Banking and Capital Markets audit practice of PricewaterhouseCoopers. ID at 37. At the time of the 2007 Audit, Lawton was the leader of the Financial Services and Financial Instruments Team in PwC's National Office. *Id.* at 37-38. In that role, he worked with PwC audit teams regarding going-concern and OTTI issues and to help them analyze PwC's clients' valuation of MBS during the economic crisis. *Id.* at 38. Lawton had been the lead partner on many public company audits and issued numerous going-concern opinions during his career. *Id.* After reviewing KPMG's work on the going-concern and OTTI issues, Lawton expressed the opinion that Reinhart had complied with the relevant PCAOB standards. *Id.*; R-160 at 8; Tr. 2146-47.

The Division, in contrast, relied on the expert testimony of John Barron, who had not audited a public company since 2002. ID at 35. Barron had no personal experience with, or insight into, the application of the relevant GAAP and PCAOB standards in the financial services industry during the market disruptions that began in 2007. *Id.* He also admitted that he had never issued an audit report with a going-concern paragraph. Tr. 1351. Remarkably, Barron expressed no opinion as to the reasonableness of Reinhart's conclusions on the going-concern or OTTI issues and never claimed that her ultimate conclusions were unreasonable. ID at 36. Rather, Barron limited his opinion to criticizing the manner in which Reinhart evaluated those issues. Tr. 1494-98.

In the Initial Decision, the Hearing Officer found that Reinhart had properly planned the 2007 Thornburg audit; properly identified the going-concern and OTTI issues; evaluated those issues pursuant to the correct PCAOB standards; "and made a diligent effort to evaluate those issues." ID at 14, 17-18, 24-27, 77. The Hearing Officer also found that Reinhart performed appropriate audit procedures and obtained sufficient competent evidential matter as required by AU §§ 150 and 326 to reach a conclusion on both issues, and that the Division had "failed to explain . . . why this information was insufficient to provide a reasonable basis for Reinhart to form an opinion." *Id.* at 62, 64. In addition, the Hearing Officer expressly found that a reasonable, competent auditor with the same information could have reached the same conclusions that Reinhart reached on both issues. *Id.* at 42, 77.

However, notwithstanding these findings, the Hearing Officer ruled that Reinhart should be sanctioned for violations of AU §§ 341.02 and 332.48. With respect to the going-concern issue, the Hearing Officer found that Reinhart violated AU § 341.02 because the KPMG Memo "gloss[ed] over events they knew had occurred during, and conditions they knew existed as of the end of, the Subsequent Period." ID at 48. The Hearing Officer acknowledged that Reinhart had in fact learned of these events and conditions, and that the KPMG Memo evaluated most of them. *Id.* at 47-53. But the Hearing Officer concluded that Reinhart had violated AU § 341.02 because the engagement team did not "adequately factor" that information into the going-concern evaluation. *Id.* at 49. The Hearing Officer found that Reinhart had violated AU § 332.48 with respect to the OTTI evaluation for the same reason: that KPMG did not "adequately factor" into its ability-to-hold assessment the events that occurred during the Subsequent Period. *Id.* at 57-59.

Reinhart appealed to the Board. The Board, after performing a *de novo* review, upheld the conclusions of the Hearing Officer. The Board found that "Reinhart violated PCAOB rule and auditing standards by failing to evaluate adequately whether there was substantial doubt about the issuer's ability to continue as a going concern and whether it had the ability to hold its impaired securities and needed to recognize the unrealized losses against income." FD at 2. The Board found that "[i]n doing so, she failed to exercise due professional care, including professional skepticism, failed to obtain and evaluate sufficient audit evidence, and improperly relied on management representations." *Id.*

However, one Board member –Jay Hanson – filed a dissenting opinion. Mr. Hanson noted that under Section 105(c)(5)(B) of the Sarbanes-Oxley Act, the Board had no authority to impose sanctions unless the accountant's conduct was "reckless" or constituted "repeated instances of negligent conduct." FD at 101. Mr. Hanson expressly rejected both conclusions. While he found that Reinhart had violated several auditing standards, he found that there was no basis for concluding that her conduct was "reckless." *Id.* Mr. Hanson also rejected the majority's conclusion that Reinhart's conduct constituted "repeated instances" of misconduct.

Id. at 101-02. He explained that although Reinhart may have violated multiple accounting standards, there was really just one instance of negligence: "she was negligent in failing to adequately consider, in light of contrary evidence, whether the company had sufficient readily available liquidity to meet its financial obligations," and it was this one instance of negligence that impacted both the going-concern and OTTI analyses. *Id.*

STANDARD OF REVIEW

Pursuant to Section 107(c)(2) of Sarbanes-Oxley, the Commission can sustain the Board's Final Decision only if the Record shows that Reinhart engaged in the alleged violative conduct; that such conduct violated PCAOB rules; and that the PCAOB applied those rules in a manner consistent with the purposes of the Securities Exchange Act and Sarbanes-Oxley. 15 U.S.C. § 7217(c)(2). In performing this analysis, the Commission conducts a *de novo* review, applying a preponderance-of-the-evidence standard, to determine whether the Record supports the PCAOB's findings. *See, e.g., In the Matter of the Application of S.W. Hatfield, CPA*, S.E.C. Release No. 69930, 2013 WL 3339647, at *1 (July 3, 2013).

SUMMARY OF ARGUMENT

The PCAOB's liability determination and sanctions against Reinhart should be vacated, on multiple grounds. First, the Board's conclusion that Reinhart failed to "adequately" evaluate the going-concern and ability-to-hold issues amounted to improper "second-guessing" of Reinhart's "good faith audit judgment," based on hindsight about later developments that Reinhart could not possibly have known at the time of the audit. In effect, the Board, with full knowledge of what transpired after the original audit opinion was issued, has hypothesized its own audit approach and procedures to evaluate the facts and events of the Subsequent Period that would have led to the "correct" conclusion. The Board's procedures include measuring the

Company's cash level daily in the Subsequent Period and predicting future margin calls based on the past history of margin calls, to measure if the Company would be able to meet its obligations in the future. To the extent Reinhart's approach differed from the Board's, the Board has deemed it "inadequate" under professional standards.

Second, the auditing standards that applied to the going-concern and ability-to-hold evaluations—AU §§ 341 and 332—relied on the auditor's exercise of judgment and did not provide clear guidance to Reinhart. Based on the applicable standards and the information available to Reinhart and her team at the time of the audit, Reinhart acted reasonably in analyzing the going-concern and OTTI issues. KPMG's evaluation of these issues complied with all the specific guidance provided by these auditing standards. But the Board has unfairly sanctioned Reinhart by reading into the applicable PCAOB standards additional requirements, without providing Reinhart fair notice of what was required of her during the 2007 audit. As the Hearing Officer and Reinhart's experts recognized, the standards governing going-concern and OTTI are notoriously vague and ambiguous, requiring complex judgments to be made by individual auditors. It is a fundamental principle of due process that a statute or regulation must provide a person of ordinary intelligence with fair notice of what conduct is required or prohibited, and the standards at issue here did not do so.

Third, the Board's decision was based on a number of serious factual errors, including the Board's failure to fully comprehend or accurately represent facts in the Record, and the Board's unrealistic assumptions about the conduct that can reasonably be expected during an audit.

Fourth, the Hearing Officer improperly refused to admit into evidence internal Thornburg documents that demonstrated that senior Thornburg management had intentionally misrepresented information to Reinhart that was of critical importance to the going-concern and

OTTI issues. The Commission in fact brought a securities fraud action against Thornburg's senior executives on the basis of this information. Yet the Hearing Officer refused to admit this evidence, and the Board sustained that ruling, on the irrational ground that this information was somehow "not relevant" to the Board's determination.

Finally, Reinhart's conduct did not constitute "repeated instances" of negligent conduct, as required before the Board may impose sanctions. As former Board member Jay Hanson correctly found in his dissenting opinion, Reinhart's conduct involved, at most, a single instance of alleged negligence, which is not sufficient for the Board's imposition of sanctions.

ARGUMENT

I. The Board Improperly Relied on Hindsight.

The Final Decision should be vacated because the Board impermissibly based its decision on hindsight. The reasonableness of an auditor's actions must be based on the information the auditor has *at the time of the audit*. As the Commission has explained, the law "d[oes] not permit the Commission to evaluate actions or judgments in the stark light of hindsight, but focu[ses] on what an accountant knew, or should have known, at the time an action was taken or a decision was made." SEC, Amendment to Rule 102(e) of the Commission's Rules of Practice, 63 Fed. Reg. 57,164, 57,168 (Oct. 26, 1998); *see also In the Matter of Kevin Hall, CPA and Rosemary Meyer, CPA*, S.E.C. Release No. 3080, 2009 WL 4809215, at *6 (Dec. 14, 2009) (same).

In his Initial Decision, the Hearing Officer recognized that the Division and its expert were improperly attempting to use hindsight in criticizing Reinhart's audit work, and therefore disregarded those attempts. ID at 37. For instance, the Hearing Officer found that the Division's expert "implicitly assumed that the margin calls Thornburg had received during the Subsequent

Period could have been projected to the future in evaluating both the going concern and OTTI issues." *Id.* The Hearing Officer rejected that assumption, ruling that the expert's "notion that changes in market value during the Subsequent Period could serve as the basis for predicting the magnitude or timing of future margin calls was inconsistent with market principles and appears to have been heavily influenced by his knowledge of the margin calls that actually occurred." *Id.* Reinhart presented an expert economist at the Hearing who explained that premising expectations of levels of future margin calls based on prior levels of margin calls is improper, and tantamount to assuming that past declines in security values necessarily mean that similar declines will take place in the future. Tr. 2057-64.

But in the Final Decision, the Board ultimately fell prey to this economic fallacy. The Final Decision second-guesses Reinhart's analysis of events with the benefit of hindsight, and bases its conclusions about the foreseeability of future margin calls on knowledge of the events that occurred after Reinhart authorized KPMG's audit opinion.

For example, the Board found that Reinhart's contention that the high level of margin calls received on February 28, 2008 was unforeseeable was "undermined by her determination to withdraw KPMG's audit report soon after becoming aware of Thornburg's post-filing failure to meet margin calls and receipt of default notices," FD at 68—in other words, blaming Reinhart for not knowing in the early hours of February 28 facts that developed in the following days. Equally problematic, the Board mischaracterized the evidence on which it relied. Citing work papers and conclusions made "[i]n connection with the restatement," *id.* – *i.e.*, that KPMG learned after issuing its original audit letter – the Board found that "Reinhart stated that the withdrawal was based on 'conditions and events that <u>were known or should have been known</u> to [Thornburg] as of the date of the auditors' report.'" *Id.* (emphasis in original). But that work paper explicitly mentions facts that the *Company* knew or should have known—not facts that *KPMG* knew or should have known. *Cf. Hall*, 2009 WL 4809215, at *6 (the Board must focus "on what the *accountant* knew or should have known at the time" (emphasis added)).

The Board's attempt to sanction Reinhart based on hindsight is further exemplified by its lengthy discussion of a claimed trend in margin calls that Reinhart allegedly ignored—the very same argument that the Hearing Officer rejected because of its reliance on hindsight and inconsistency with settled economic principles. ID at 37. Again, using information obtained from the Company during the post-filing period, the Final Decision notes that Thornburg had received margin calls almost daily throughout the Subsequent Period, and includes a graph depicting that margin call activity, in order to demonstrate an apparent trend. FD at 30-31. But the Record establishes that past margin calls are not indicative of future margin calls, as the Hearing Officer recognized, ID at 63-64, and it was thus improper for the Board to base its findings by positing the existence of a foreseeable trend of "rising margin call activity since year end," FD at 33.

Hindsight was the clear focus of the Board's decision here—and likely influenced its decision to pursue Reinhart in the first place. With the benefit of the information that Reinhart and her audit team brought to light in *withdrawing* KPMG's 2007 audit opinion, the Board was able to split hairs and find flaws with the extensive audit work that Reinhart and her audit team performed on the going-concern and OTTI issues. Moreover, as discussed below, the unfairness of the Board's hindsight findings is amplified by the fact that the Final Decision rests on (i) new standards that the Board invented in this case and applied retroactively to an audit performed eight years earlier, and (ii) serious factual errors that the Board made in attempting to find facts in the Record to support its ruling.

Based on the information then available to the audit team, Reinhart acted reasonably in analyzing Thornburg's ability to continue as a going concern and its ability to hold its AFS securities until recovery or maturity. Accordingly, the Board's decision imposing sanctions on Reinhart should be vacated.

II. Reinhart Complied with the Relevant Auditing Standards, and the Board's Decision to Sanction Her for Allegedly "Inadequate" Judgments, in the Absence of Clear Audit Guidance, Is Unfair, Results in Retroactive Application of Standards of Which She Had No Notice, and Violates Her Due Process Rights.

The auditing standards that Reinhart allegedly violated here, AU §§ 341 and 332, provide little clear guidance, and rely heavily on auditor judgment. AU § 341 provides simply that an "auditor has a responsibility to evaluate whether there is substantial doubt about the entity's ability to continue as a going concern for a reasonable period of time, not to exceed one year beyond the date of the financial statements being audited." AU § 341.02. AU § 341 explains that "[i]t is not necessary to design audit procedures solely to identify conditions and events that . . . indicate there could be substantial doubt about the entity's ability to continue as a going concern for a reasonable period of time." AU § 341.05. Instead, AU § 341 provides that "[t]he auditor's evaluation is based on his or her knowledge of relevant conditions and events that exist at or have occurred prior to the date of the auditor's report," and that "the significance of such conditions and events will depend on the circumstances," AU § 341.02, 06.

This auditing standard provides little guidance as to how to address the going-concern issue, and defers almost entirely to the auditor's judgment. Indeed, as the Hearing Officer noted, AU § 341 does not define either "substantial doubt" or "going concern." ID at 45. In fact, those terms are not defined anywhere in GAAP. R-162 at 21-22. Moreover, as Dr. Dan Guy, one of Reinhart's experts, explained, the use and application of the terms "substantial doubt" and "going concern" vary in practice among auditors, and their meanings differ among financial statement users. R-162 at 21-24.

PCAOB standards also recognize the highly subjective nature of an OTTI evaluation. The governing standard, AU § 332.47, states that: "Determinations of whether losses are other than temporary often involve estimating the outcome of future events. Accordingly, judgment is required in determining whether factors exist that indicate that an impairment loss has been incurred at the end of the reporting period." The PCAOB's guidance regarding evaluation of an entity's intent and ability to hold securities is therefore limited, and does not detail any specific procedures to be performed. Rather, AU § 332.47 acknowledges that "[t]hese judgments are based on subjective as well as objective factors, including knowledge and experience about past and current events and assumptions about future events," and goes on to provide five examples of potentially relevant factors. AU § 332.47. Later, in AU § 332.57, the guidance contains a general discussion of what an auditor should do "[i]n evaluating management's intent and ability" to hold, including consideration of "whether management's activities, contractual agreements, or the entity's financial condition provide evidence of its ability." AU § 332.57(f). The Hearing Officer also found that the guidance provided by AU § 332 was lacking. As he pointed out: "None of the parties, or any of their experts, have cited any clear guidance in GAAP, PCAOB auditing standards, or accounting literature for Thornburg or Reinhart to apply in evaluating Thornburg's ability to hold the Purchased ARM Assets." ID at 37.

A. Reinhart Complied with the Plain Language of AU § 341 in Evaluating Thornburg's Ability to Continue as a Going Concern.

The Board's conclusion that Reinhart violated AU §§ 341 and 332 reflects an improper application of the auditing standards to KPMG's audit. AU §§ 341 and 332 do not contain precise instructions. Rather, they provide general guidance and basic principles on how to evaluate a company's ability to continue as a going concern and ability to hold its AFS securities, while leaving considerable room for an auditor's professional judgment.

Reinhart and the audit team complied with the plain language and guidance of AU § 341. Reinhart promptly identified that there could be an issue regarding Thornburg's ability to continue as a going concern following the August 2007 event. FD at 11, 16. Reinhart and the audit team therefore obtained additional information about that issue, through Thornburg's memos, KPMG's inquiries of management, and other audit evidence, up until the date of the audit report, in accordance with AU § 341.03(a). See FD at 16; J-33; J-31; J-21. Reinhart and the audit team, in consultation with senior KPMG partners, evaluated whether there was substantial doubt in light of that information, and documented their analysis in the KPMG Memo, in accordance with AU § 341.02. J-19; *see also* J-5 at 19-20. Both the Thornburg Memo and the KPMG Memo reflected the analysis by management and KPMG of a long list of relevant conditions and events, both positive and negative, relating to whether substantial doubt existed about Thornburg's ability to continue as a going concern, *see* J-21; J-19, as the Division's expert acknowledged, Tr. 1323, 1497-98. And both the Thornburg Memo and the KPMG Memo concluded that substantial doubt did not exist. J-21 at 15; J-19 at 7.

In finding that Reinhart did not comply with AU § 341, the Board was not able to point to any objective deviation she made from the governing PCAOB standards. Instead, the Final Decision is based on the Board's subjective judgments and second-guessing about the evidence that KPMG obtained and the memo that it drafted summarizing its conclusions, which the Final Decision described as not "adequate" for various reasons. *See, e.g.*, FD at 2 (Reinhart "fail[ed] to evaluate *adequately* whether there was substantial doubt about the issuer's ability to continue as a going concern"). But reasonable minds can differ regarding what is "adequate," and that is precisely what AU § 341 contemplates when it expressly defers to an auditor's subjective judgment and states that it is "not necessary" to design specific audit procedures to address the going concern issue. AU § 341.02, .05.

The Final Decision also criticizes Reinhart for the content of the KPMG Memo, finding that "KPMG's going concern memo failed to meaningfully address evidence contradicting the going concern conclusion." FD at 65. But to the extent that this criticism appears to fault Reinhart for not sufficiently documenting her conclusions, AU § 341 does not impose any specific documentation requirement for a going-concern evaluation, and the Board has held Reinhart to a standard far beyond what the only other applicable PCAOB documentation standard—AS 3—requires. AS 3 requires only that documentation be "prepared in sufficient detail to provide a clear understanding of its purpose, source, and the conclusions reached," AS 3.4, and to "contain sufficient information to enable an experienced auditor, having no previous connection with the engagement," to understand "the procedures performed, evidence obtained, and conclusions reached," AS 3.6. The KPMG Memo and other work papers easily satisfied both of those requirements, as Reinhart's audit expert opined. R-160 at 8-9.

The Final Decision also points to a few alleged errors in the KPMG Memo. Foremost among them, the Board faults Reinhart for "[t]he repeated inclusion of a 7% liquidity cushion against future margin calls in Reinhart's going concern evaluation," when the liquidity cushion was actually closer to 4.5% based on year-end readily available liquidity—a mistake made by another KPMG team member, that the Board labels a "[g]ross error[ ]" constituting "a clear failure to exercise due professional care" by Reinhart. FD at 60. In criticizing the KPMG Memo, however, the Board has paid unwarranted attention to a few words in an otherwise comprehensive memo, and words that were not critical to Reinhart's decision. Notwithstanding the Senior Manager's mathematical error, Reinhart testified that she understood how haircuts worked and the Company's liquidity situation. Tr. 604-05, 267-70. Moreover, the Board ignored other, more compelling factors recited in the KPMG Memo—for instance, the stress testing section, which concluded that Thornburg would continue as a going concern under a variety of circumstances far more extreme than those that the Company faced. J-19 at 6. By placing such great reliance on these few words, the Board has ignored the comprehensive body of work that went into preparing the KPMG Memo and other work papers prepared in conjunction with the audit, which spanned tens of thousands of pages. Imposing liability and sanctions based on a single miscalculation in a work paper is unfair, arbitrary and capricious. Liability under Section 105(c)(5)(B) requires a violation of a *professional standard*, and no professional standard requires every work paper in an audit to be perfect. The KPMG Memo and other work papers satisfied both AU § 341 and AS 3.

B. Reinhart Complied with the Plain Language of AU § 332 in Evaluating Thornburg's Ability to Hold Its AFS Securities.

Similarly, the audit work of Reinhart and her team relating to Thornburg's intent and ability to hold its AFS securities addressed *every* relevant factor identified in the applicable PCAOB standard, AU § 332. Reinhart's testimony and the relevant documents confirm that she considered and evaluated information available up through the date of KPMG's audit report. Tr. 136-38. Lawton, Reinhart's audit expert, testified that Reinhart's audit work on this issue was reasonable and appropriate. Tr. 2348-50.

Reinhart and the audit team obtained extensive support to corroborate Thornburg's "intent and ability to hold" assertion:

- Thornburg's past history of carrying out its stated intentions with respect to assets and liabilities. Tr. 704-05, 1401.

- Thornburg's written plans and other documentation did not reflect an intention to sell securities. Tr. 705-08, 1401-02. On the contrary, Thornburg's SEC filings and Board materials consistently described Thornburg's business model of acquiring and holding high-quality assets. Tr. 705-08; J-1 at 6.

- Management's stated reason for deciding to hold the AFS securities was consistent with Thornburg's business model. Tr. 708-09, 1429-30.

- Thornburg's past ability to raise equity and consummate securitization transactions, and its plans for another offering in early March 2008, supported the view that it would be able to meet margin calls and continue to hold its AFS assets. Tr. 720-21.

- The securities held by Thornburg had *not* been downgraded. Tr. 711-12, 1433-34. In fact, KPMG's audit work showed that the credit ratings on nine of Thornburg's ARM securities *improved* during the fourth quarter of 2007, while only one was downgraded. J-21 at 9; J-23 at 46-47; Tr. 587-89.

- The decline in value of securities held by Thornburg was not due to deteriorating credit quality. D-47, D-56. The securities were considered "money good", *i.e.*, eventual recovery did not appear to be in question. Tr. 381, 683, 2175-76, 2071.

- Thornburg's plans to mitigate liquidity risk did not depend on the sale of assets, and were thus consistent with its intent and ability to hold. J-4 at 3, 6; J-1 at 104; Tr. 682-84, 1430.

- The length and severity of the impairment was considered. As the audit workpapers reflected, most of the decline in the value of Thornburg's portfolio was of less than six months' duration. D-47 at 7-8; Tr. 592-95, 1030-34.

- Management's plan to manage liquidity appeared reasonable and was already being implemented. J-21; Tr. 537-38.

- Management had not recognized losses on any sales of securities during the Subsequent Period. Tr. 713-14.

Therefore, Reinhart reasonably concluded that, as the Completion Document noted, "consistent with the going concern analysis performed by the Company, the Company appears to have the intent and ability to hold the securities to maturity or recovery." J-5 at 9.

C. The Board's Standards Did Not Provide Reinhart with Fair Notice.

In light of the subjective nature of the governing standards, their deference to auditor judgment, and Reinhart's compliance with every requirement of the written standards, it is grossly unfair to sanction Reinhart because the Board believes, with the benefit of 20/20 hindsight, that her judgments were "inadequate." It is a "fundamental principle" of due process that a statute or regulation must provide a person of ordinary intelligence with "fair notice" of what conduct is forbidden or required. *FCC v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317 (2012). *See, e.g., Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926) ("[A] statute which [is] . . . so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process."). In the absence of fair notice, a statute or regulation is void for vagueness, and any "conviction or punishment" imposed must be set aside. *Fox*, 132 S. Ct. at 2317. While developed principally in the criminal context, this doctrine also applies where a statute or regulation imposes civil penalties. *See, e.g., Village of Hoffman Estates v. Flipside Estates, Inc.*, 455 U.S. 489, 499 (1982); *Boutilier v. INS*, 387 U.S. 118, 123 (1967). This is particularly true when the consequences of the Board's decision are so severe as to deprive an auditor of her ability to work in her chosen profession. *See, e.g., Marrie v. SEC*, 374 F.3d 1196, 1206 (D.C. Cir. 2004) ("[t]here is no justification for the government depriving citizens of the opportunity to practice their profession without revealing the standard they have been found to violate").

The "void for vagueness" doctrine is based upon "two connected but discrete due process concerns," *Fox*, 132 S. Ct. at 2317, both of which are strongly implicated here. First, "regulated parties should know what is required of them so that they may act accordingly." *Id.* at 2317. "Vague laws may trap the innocent by not providing fair warning." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). Second, vague laws invite arbitrary and discriminatory enforcement by "impermissibly delegating basic policy matters" to executive or judicial officials "for resolution on an ad hoc or subjective basis." *Id.* at 108-09.

In this case, the applicable PCAOB standards did not provide Reinhart with fair notice of what conduct was required, and the vagueness of those standards leaves auditors subject to the kind of arbitrary and discriminatory enforcement that occurred here. The Hearing Officer acknowledged that there was no definition of "substantial doubt" or "going concern" in AU § 341 at the time of the 2007 audit. ID at 45 ("Reinhart's task in applying AU § 341 was complicated by the absence of any definition of 'substantial doubt' or 'going concern' in AU § 341"). In addition, AU § 341 provided no guidance on (i) precisely what conditions and events are relevant to the question of substantial doubt, (ii) how an auditor should consider those conditions and events, or (iii) how an auditor must document her consideration of those conditions and events. Rather, AU § 341 leaves all of those decisions to auditor judgment. The Hearing Officer similarly found that the PCAOB did not provide any clear guidance to auditors on the OTTI issue. ID at 37.

The absence of any clear standards forces auditors to make complex judgments without any real guidance from the PCAOB, and leaves them open unfairly to the kind of improper second-guessing that took place here. The Board did not, and could not, find that Reinhart violated any specific requirement of AU § 341 or AU § 332. Rather, the Board found that Reinhart violated these standards by failing to "adequately" comply with them. *See* FD at 2 (Reinhart "fail[ed] to evaluate *adequately* whether there was substantial doubt about the issuer's ability to continue as a going concern and whether it had the ability to hold its impaired securities"); *id.* at 56 ("Reinhart failed to *adequately* evaluate Thornburg's ability to continue as a going concern"); *id.* at 57 ("Reinhart failed to *meaningfully* address" the subsequent events); *id.* at 57 ("Reinhart failed to *adequately* consider events and conditions in the subsequent period"); *id.* at 59 ("Reinhart failed to *adequately* consider both the representation about the $150 million and the Cash Liquidity Reports"); *id.* at 60 (Reinhart "fail[ed] to *adequately* evaluate the possibility of further declines in the company's securities values") (emphases added).

The Final Decision provides no guidance as to what an "adequate" evaluation would have looked like; instead, it is based only on nitpicky criticisms of comprehensive memoranda prepared by experienced auditors, and reviewed by senior KPMG audit partners. The Board's finding of liability and imposition of sanctions is thus fundamentally unfair to Reinhart, is based on standards that did not exist at the time and that she could not have known about, and ultimately is a violation of her due process rights.

III. The Board's Final Decision Is Based on Critical Factual Errors.

The Board's conclusion that Reinhart violated AU §§ 341 and 332 is based on a number of serious factual errors that undermine its analysis.

A. The Board's Erroneous Reliance on the Estimated 2-to-3% Future Decline in Thornburg's Securities Values.

The Final Decision repeatedly emphasizes that Reinhart's analysis was flawed because Thornburg management had supposedly represented that a further 2-to-3% decline in the Company's securities values was "reasonably possible." *See* FD at 37, 44, 62, 67, 68, 90, 93. As the Board explained, this "should have alerted Reinhart to the risk that, based on available liquidity, Thornburg would have difficulty holding its impaired assets until recovery." *Id.* at 44. *See also id.* at 67 ("The fact that management stated that a further drop in the company's securities values was reasonably possible, potentially triggering additional margin calls after the Form 10-K filing, further underscored the gravity of information about the company's remaining liquidity.").

But this claim is based on a fundamental error: in fact, the Company never said that a further 2-3% decline in the Company's securities values was "reasonably possible." All the

Company said is that "the likelihood that collateral values decrease *by more than another 2 to 3%* is remote." Ex. J-19 at 6 (emphasis added). The Company never addressed the probability of a potential 2 to 3% decline.

The terms "reasonably possible" and "remote" are defined terms in the accounting literature, and the Board's failure to observe these critical distinctions significantly undermines its conclusions. The introduction to FAS 5, *Accounting for Contingencies*, defines "reasonably possible" as "[t]he chance of the future event or events occurring is more than remote but less than likely," and defines "remote," in turn, as "[t]he chance of the future event or events occurring is slight." There is no evidence in the Record that a further 2-to-3% decline was "reasonably possible."

Moreover, the Board's focus on the impact of a potential 2-to-3% decrease on the going-concern analysis demonstrates the Board's failure to understand the significance of KPMG's stress testing. The stress testing section of the KPMG Memo—to which the Final Decision pays scant attention—analyzed the potential impact of a decline in securities values *far beyond* a mere 2 to 3%, and concluded that the Company would still survive. Reinhart's expert testified that "the stress testing was particularly compelling evidence with respect to the going-concern issue." Tr. 2153-59. In essence, the KPMG team had considered the worst-case scenario for Thornburg, and concluded that it would survive as a going concern for a reasonable period of time. Yet the Board ignored this critical evidence supporting Reinhart's going-concern conclusion.

The Board also criticizes Reinhart for failing to test the 2-to-3% representation in the audit, and failing to "consult with any market or valuation experts, within or outside KPMG, about the reasonableness of that forecast." FD at 38. Again, the Board's criticisms are misplaced. Under AU § 560, an auditor is not required to audit Subsequent Period information in the same way that an auditor tests account balances as of the balance sheet date. Instead, AU § 560.04 provides that the evaluation of subsequent events merely "calls for the exercise of judgment and knowledge of the facts and circumstances" related to the audit. And AU § 560.12 advises that the auditor should, among other things, inquire of the company's officers and executives and its legal counsel, and obtain a letter of representations about subsequent events.

Reinhart clearly complied with AU § 560 in reviewing management's assessment of the likelihood of further declines, and there is no basis for the Board's criticism of her failure to do more. First, the Board overstates the importance of the 2-to-3% figure, which was, as the Hearing Officer recognized, simply management's "prediction of future events." Tr. 940-41. Reinhart and her team were not relying on management's view of future events in their analysis, because they were not trying to forecast the level of margin calls that would be received in the future. Tr. 616-18. Rather, this prediction was just another data point to consider at the end of the audit process, and did not contradict the auditors' judgment that the Company could manage its liquidity. *Id.*

Second, although Reinhart and her team did not hire an outside expert to test management's opinion – a practical impossibility, they did obtain other audit evidence that was consistent with management's opinion. For instance, the audit team tested and confirmed the quality of Thornburg's collateral, and that work reaffirmed the reasonableness of Thornburg's view, especially in light of "the high quality nature of the underlying assets." Tr. 242-44, 793-95. Likewise, KPMG obtained opinions on Thornburg's securities portfolio from a variety of individuals at Thornburg, all of which were consistent with management's view. Tr. 615-16. Management's opinion was also consistent with what the In-Depth Review Partner had learned during the course of his engagement for another company. Tr. 1715-16. Representatives from that client also believed that markets had leveled off because buyers were viewing the discounted prices as an incentive to return to the market. Tr. 1716.

Third, nothing about management's market opinion was suspicious on its face, such that it would require additional inquiry or testing. Management's opinion was confirmed in separate conversations with Simmons and others. Tr. 238, 614-15, 928-29, 941-42; J-19 at 6. This view was also consistent with management's broader liquidity analysis. Tr. 614-16.

Finally, given the timing and prospective nature of management's prediction, the engagement team could not, as a practical matter, test its accuracy. *See, e.g.*, Tr. 942, 1718. As KPMG's In-Depth Review Partner explained, management's prediction was not "susceptible to audit work." Tr. 1718. It was "an opinion or a view," "not susceptible to validation," and had to be evaluated in light of all the audit evidence the team had acquired. Tr. 1718. That is consistent with AU § 560, which recognizes that an auditor cannot fully audit every occurrence after the financial statement date, or the audit could never be completed. Indeed, AU § 560.12 specifically provides that greater reliance on management representations may be necessary concerning information about events in the Subsequent Period.

B. The Board's Improper Reliance on the Margin Call Schedules that KPMG Received on February 27, 2008.

The Final Decision also relies heavily on certain "margin call schedules" that the audit team received from the Company on February 27, 2008, the day before KPMG issued its audit report. *See* FD at 27-29, 38-39, 43, 55, 62-63, 67, 70, 75, 86-87, 89, 93. The Board found that the margin call schedules "were not only inconsistent with management's earlier assertion that it could not provide margin call information in that form, but they also contained multiple red flags about Thornburg's deteriorating financial condition." *Id.* at 28. But the Board's reliance on these margin call schedules in sanctioning Reinhart is misplaced.

First, the margin call schedules were delivered to a junior member of the audit team—not Reinhart—for the limited purpose of tying out the information that had been recently added to the footnotes of Thornburg's financial statement relating to the amount of margin calls that Thornburg had received during the last two weeks of February. Tr. 849-50. Despite the Board's veiled suggestion to the contrary (FD at 89), they were not provided in response to a request made earlier in the audit by the Senior Manager for a list of all margin calls received in the Subsequent Period. Reinhart's failure to see the tie-out schedule was thus not indicative of some failure to follow up.

Second, there is no basis for the Board's claims that the schedules demonstrated that Thornburg "was untimely paying margin calls in the final days before issuance of the audit report, subjecting it to possible default and suggesting insufficient available liquidity," and that Thornburg "had possibly sold assets to meet margin calls, which would indicate distressed sales of assets and disposition of assets outside the normal course." FD at 28. The Board's conclusions about what these margin call schedules reveal are based on speculation, informed by the fact that the Board now knows, due in part to Reinhart's restatement work, that the Company was not timely in paying margin calls and sold assets to meet margin calls. Absent this hindsight, it is impossible to assert that the tie-out schedules demonstrate these facts. There is not a single word of testimony about how these schedules were prepared or what they were intended to show. The schedules only show the total amount of margin calls received over the last two weeks of February in support of the relevant footnote, which is the limited purpose for which they were requested.

Third, and most problematic, the Board faults Reinhart for not following up on these supposed "red flags," despite the fact that she never saw these schedules before issuance of

KPMG's audit report. Tr. 328. As discussed below, the SEC's complaint in *Goldstone* alleged, and the documents demonstrate, that the Company's senior officers had been intentionally withholding this information from Reinhart and her team despite their express inquiries. Reinhart and her team had asked Thornburg management whether the Company had been meeting all its margin calls and obtained signed representations to that effect. AU § 560 expressly provides that this is an acceptable form of audit evidence for subsequent events. Thus, Reinhart's actions were reasonable and in accordance with PCAOB standards.

C. The Board's Flawed Discussion of KPMG's Analysis of the Company's Liquidity Position.

The Final Decision also makes a number of mischaracterizations regarding KPMG's testing and documentation of the Company's liquidity position. For example, the Final Decision finds that "Reinhart took no meaningful steps to corroborate the representation that Thornburg still had $150 million in readily available liquidity" as of February 27, 2008, and notes that "[a]t a minimum, she could have requested that management provide documentary support." FD at 58. The Board also criticizes Reinhart for "[giving] only limited attention to Thornburg's daily Cash Liquidity Reports through the date of the audit report." *Id.* at 59. On these grounds, the Board concluded that Reinhart "lacked a sufficient basis for making an informed conclusion" on the going-concern and ability-to-hold issues. *Id.*

These criticisms are misguided and unfair. With respect to Thornburg's cash position, Reinhart made express inquiries on this issue to management and obtained representations from them, and these were acceptable audit procedures under AU § 560. Reinhart knew that the cash balance was low, Tr. 163-64, 173-74—the final KPMG Memo documented Thornburg's cash balance as of February 22, 2008, and described it as "relatively tight, at ~$45.5 million"—but the precise number was not essential to KPMG's audit conclusion. Rather than focusing on the precise cash balance as of the filing date or the amount of margin calls that the Company had already satisfied, the audit team focused on Thornburg's ability to manage its liquidity position going forward—including, for example, the actions that the Company had taken to reduce its exposure to short-term debt, J-19 at 3, and its ability to generate cash through operations, securitizations, and equity offerings, J-19 at 4-5. While the Board may disagree with the audit team's approach, that is hardly a basis to sanction Reinhart given the vague standards in place. Moreover, the Board's assertion that Reinhart should have requested "documentary support" for the final cash balance, FD at 58, is completely impractical, considering the complexities of Thornburg's business and the fluctuating nature of a company's cash balance, as demonstrated by the daily Cash Liquidity Reports that Reinhart and her team did review.

As for the Board's criticism of Reinhart for not paying more attention to the Cash Liquidity Reports, Reinhart did personally review some of the daily reports. Tr. 197, 909-10. More important, the Senior Manager, acting under Reinhart's direction, regularly reviewed them and discussed them with management, and Reinhart was in regular communication with her regarding Thornburg's liquidity position. Tr. 834-37, 839-40, 909-11. To the extent Reinhart relied on the Senior Manager to review the Company's daily Cash Liquidity Reports, Tr. 909-10, Reinhart was entitled to do so under PCAOB standards, *see, e.g.*, AS 10.04. Finally, Exhibit D-59, which is a compilation of daily Cash Liquidity Reports dated between January 29, 2008 and February 27, 2008, that the Board repeatedly relies upon in criticizing Reinhart, FD at 23-25, is actually a compilation put together by the Division of daily Cash Liquidity Reports from the *Restatement* period—yet another example of the Board basing its conclusions on hindsight rather than on the information that the audit team had at the time of the audit. Tr. 909.

IV. The Board Erred in Excluding Evidence that Thornburg Intentionally Withheld and Misrepresented Information Critical to the Audit.

There is substantial evidence that Thornburg's senior management deliberately misrepresented and failed to disclose information to KPMG that was critical to both the going-concern and OTTI evaluations. The Commission therefore brought suit against Thornburg's Chief Executive Officer (Larry Goldstone), Chief Financial Officer (Clay Simmons), and Chief Accounting Officer (Jane Starrett), alleging that they had "engaged in a scheme to deceive [KPMG] and the investing public to believe, that Thornburg had successfully met all margin calls and that the company was not required to sell any assets to meet its margin calls." Complaint, *SEC v. Goldstone*, No. 12-0257 (D.N.M. filed Mar. 3, 2012), ¶ 5.

Reinhart sought to introduce in evidence internal Thornburg emails that would have proved that these senior executives deliberately misled Reinhart and KPMG on the very issues that are at the heart of this enforcement proceeding. Reinhart attempted to introduce a February 25, 2008 email from Starrett to Goldstone and Simmons, in which Starrett admitted that "*[w]e have purposely not told* [KPMG] about the margin calls so that we don't escalate an issue which we believe will be put to rest by the time they have to issue their opinion." FD at 53 (emphasis added). Starrett went on to explain why it was so important to withhold information from KPMG about sales of assets to meet margin calls:

> [T]he only reason we don't have to recognize the impairments on all assets with negative marks in income now is that we represent we have the intent and ability to hold the assets to maturity. Selling some assets calls into question our intent and having to sell them to meet margin calls . . . calls into question our ability to hold them.

Id. at 54.

Reinhart also sought to introduce a February 22, 2008 email from Citigroup Global, one of the Company's lenders, which attached "a copy of the default notice," in which Citigroup informed the Company on February 21, 2008 that Citigroup was "reserv[ing] its rights to declare an Event of Default" after Thornburg had failed to meet a recent margin call. FD at 86; Ex. R-138. This email demonstrates that the Company's express representation to KPMG that it had met all margin calls was simply a lie, and further that the Company lacked the ability to hold its securities to recovery, since Citigroup now had the right to sell them.

This evidence was obviously highly probative as to whether Reinhart had properly discharged her duties as auditor, or whether she had been the victim of a deliberate scheme to defraud her by Company officials. Yet, the Hearing Officer refused to admit this evidence, and the Board upheld his ruling. FD at 85-88. The Hearing Officer "viewed the internal Thornburg emails as irrelevant to the charged violations and, without more, 'ambiguous' given that the individuals involved in the excluded communications were not called to testify at the hearing." *Id.* at 86-87. The Board upheld this ruling, holding that "[e]xclusion of the two exhibits falls within the reasonable flexibility afforded by [PCAOB] Rule 5441 for resolving evidentiary issues." *Id.* at 86; Tr. 685-99.

The rulings by the Hearing Officer and the Board on this issue are dead wrong. It is unfair for the Board to sanction Reinhart in the face of clear evidence that the Company lied to her about information that was critical to both the going-concern and ability-to-hold evaluations, that she and her team had requested in order to complete the audit, and which, if they had been provided, may well have led her to a different result. The governing auditing standards acknowledge that ultimately, the facts underlying a company's financial statements "are within the direct knowledge and control of management," AU § 110.03, and an auditor's opinion therefore necessarily relies most heavily on information that the audit client provides. The auditing standards further recognize that, "[b]ecause of the nature of audit evidence and the characteristics of fraud," it is impossible for auditors to obtain "absolute" assurance that management has not deceived them. *Id.* § 110.02. Reinhart became a victim to this inherent limitation to auditing.

As the Commission knows, the proffered documents are not ambiguous at all, and the notion that these documents are "irrelevant" to the charges against Reinhart is unfounded. Among other things, the Board faulted Reinhart for "not trying hard enough to obtain information [and] not adequately evaluating the audit evidence she did have." FD at 87. As an example, the Board found that "[i]f Reinhart had devoted the appropriate care and attention to the margin call schedules, she would have become aware of important negative information calling into question Thornburg's ability to continue as a going concern, including its late struggles to meet two significant margin calls." *Id.* at 62. But Reinhart *had* specifically requested this information from Thornburg, and did not get it only because Thornburg officers deliberately set out to mislead her. PCAOB standards recognize that an audit opinion is only as good as the information supplied by management, AU § 110.03, and the internal emails from Thornburg unambiguously demonstrate that management was intentionally thwarting Reinhart's attempts to obtain relevant audit evidence. The Commission alleged as much in *SEC v. Goldstone*, charging Goldstone, Simmons, and Starrett with making false or misleading statements to KPMG on these very topics. *See* Complaint, SEC v. Goldstone, No. 12-0257 (D.N.M. filed Mar. 3, 2012).[4]

[4] Starrett settled with the Commission on June 1, 2016, agreeing to a $25,000 penalty and a three-year suspension of her ability to practice before the SEC. *See In the Matter of Jane Starrett*, Securities Act Release No. 10085. After a three-week trial against Goldstone and Simmons, the jury, on June 29, 2016, found in the defendants' favor on five counts, but deadlocked on the remaining five counts. The case was scheduled for retrial on the deadlocked claims, including lying to the auditors, but the SEC ultimately decided to dismiss them on February 3, 2017.

Moreover, the Company's misrepresentation of this information had wide-ranging effects on the KPMG audit. Among them:

- The Thornburg Memo "repeatedly represented that Thornburg successfully continued to meet all margin calls and returned to profitability in the fourth quarter." Complaint, *SEC v. Goldstone*, ¶ 72. "Given Thornburg's failure to meet a margin call issued by CSFB . . . , as well as its failure to meet the margin calls issued by Citigroup and Greenwich the following day, . . . Goldstone, Simmons, and Starrett knew, or were reckless in not knowing, that the going concern analysis provided to Thornburg's outside auditor was materially false and misleading." *Id.*

- Goldstone, Simmons, and Starrett each signed Thornburg's February 27, 2008 management representation letter to KPMG, in which they falsely represented that: (1) Thornburg had complied with all aspects of its contractual agreements that would have a material effect on its consolidated financial statements; (2) Thornburg had the intent and ability to hold its impaired securities for a sufficient period of time to allow for their recovery in market value; (3) there had been no subsequent events requiring adjustment to or disclosure in the Company's financial statements; and (4) Thornburg's financial statements disclosed all of the matters . . . that were relevant to Thornburg's ability to continue as a going concern. *Id.* at ¶ 57.

- When Goldstone, Simmons, and Starrett were each asked by the audit team on or about February 27, 2008 whether there were any contractual breaches or noncompliance issues, each misrepresented and failed to disclose Thornburg's violation of its lending agreements. *Id.* at ¶ 58.

It is patently unfair for the Board to pursue charges against Reinhart for failing to learn of the Company's true financial situation while simultaneously "turn[ing] a deaf ear" to evidence developed in the Commission's own investigation that the Company failed to disclose and misrepresented critical information to KPMG. *See Blinder, Robinson & Co., Inc. v. SEC*, 837 F.2d 1099, 1109-11 (D.D.C. 1988) (vacating Commission order imposing sanctions where Commission excluded evidence adduced in related trial in federal court: "[T]he SEC cannot turn a deaf ear to evidence that should, in reason, bear upon the judgment that the Commission is called upon to render.").

V. Reinhart's Conduct Did Not Involve "Repeated Instances" of Negligent Conduct.

Under Section 105(c)(5)(B) of Sarbanes-Oxley, the PCAOB is not authorized to impose sanctions unless it determines that an auditor was reckless or committed "repeated instances of negligent conduct." Under the statute, sanctions are only proper for more extreme conduct, either conduct that rises to the level of recklessness, which is not present here, or conduct that reveals a pattern of negligence that is repeated on multiple occasions.

There is no basis for finding that Reinhart's conduct here involved "repeated instances" of negligence. The Board's findings arise out of Reinhart's handling of a single situation, involving a single audit, involving two closely-related audit judgments that she was making simultaneously. As Board member Jay Hanson correctly found in his dissent, FD at 101, even if the Board properly found that Reinhart's conduct resulted in violations of several auditing standards, the conduct at issue involves a single set of facts: whether the Company had sufficient readily-available liquidity to meet its financial obligations, which formed the basis of Reinhart's evaluation of both the Company's ability to continue as a going concern and the Company's ability to hold its impaired securities until recovery. The Hearing Officer admitted that these two issues involved essentially a single set of facts. As he explained, "the going concern and OTTI issues were closely related, and the essence of Reinhart's violation was the same for each." ID at 78.

The Board nevertheless rejected Reinhart's argument that her conduct amounted to "a single failure to appropriately analyze Thornburg's 'ability to manage liquidity'." FD at 92. The Board asserted that Reinhart's argument wrongly "attempts to collapse [two auditing] areas into one," *id.* at 93, but the fact that Reinhart was faced with two closely-related audit judgments based on the same set of facts does not turn a single alleged instance of negligence into "repeat instances." The Board's analysis fails to articulate how Reinhart's assessment of Thornburg's available liquidity to meet its financial obligations involved different conduct in the context of each auditing area, and the Record does not support such a finding.

CONCLUSION

Accordingly, the Commission should reverse the Board's Decision and dismiss this proceeding with prejudice.

Dated: February 23, 2017

HOGAN LOVELLS US LLP

By: George A. Salter

George A. Salter
Ira M. Feinberg
Hogan Lovells US LLP
875 Third Avenue
New York, New York 10022
Tel: (212) 918-3000
Email: george.salter@hoganlovells.com

Counsel for Reinhart

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Application of	Admin. Proc. File No. 3-17758
CYNTHIA C. REINHART, CPA	PCAOB File No. 105-2012-003
For Review of Action Taken by	February 23, 2017
PCAOB	

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of February 2017, I caused to be served via hand delivery the following documents to the recipients listed below.

Documents Served:

1) Opening Brief of Cynthia C. Reinhart, Dated February 23, 2017

2) Certificate of Compliance of Opening Brief, Dated February 23, 2017

3) Motion of Cynthia C. Reinhart Requesting Oral Argument Regarding Application for Review of PCAOB Final Decision, Dated February 23, 2017

Recipients:

Phoebe W. Brown
Secretary
Public Company Accounting Oversight Board
1666 K Street, N.W.
Washington, D.C. 20006
Phone: (202) 207-9100
secretary@pcaobus.org

By: George A Salter
George A. Salter