

**UNITED STATES OF AMERICA**  
before the  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**

**Release No. 79483 / December 6, 2016**

**ACCOUNTING AND AUDITING ENFORCEMENT**

**Release No. 3834 / December 6, 2016**

**ADMINISTRATIVE PROCEEDING**

**File No. 3-17709**

**In the Matter of**

**KPMG LLP,**

**Respondent.**

**ORDER INSTITUTING  
CEASE-AND-DESIST PROCEEDINGS  
PURSUANT TO SECTION 21C OF THE  
SECURITIES EXCHANGE ACT OF 1934,  
MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS AND A  
CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against KPMG LLP (“KPMG” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“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, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### A. SUMMARY

At all relevant times, KPMG LLP has served as the independent auditor for The St. Joe Company ("St. Joe" or "the Company"), an NYSE-listed real estate developer, timberland owner, and resort operator. In the course of a formal investigation concerning possible misstatements in the annual and other periodic reports filed by St. Joe with the Commission,<sup>2</sup> Commission staff issued a subpoena to KPMG for the audit workpapers it created during the relevant period, among other materials. After the staff alerted KPMG that its production appeared to omit certain of its 2008 audit workpapers responsive to the subpoena, KPMG searched for the workpapers in question, was unable to locate them, and informed the staff that they could not be found. As detailed below, by failing to retain its 2008 St. Joe audit workpapers in their entirety, KPMG violated Rule 2-06 of Regulation S-X, which requires auditors to preserve audit workpapers for seven years after concluding an audit or review of an issuer's financial statements.

#### B. RESPONDENT

**KPMG LLP** is a Delaware limited liability partnership that is headquartered in New York, NY. KPMG is an audit, tax and advisory firm and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative, a Swiss entity. Since 2003, KPMG has been registered, pursuant to the Sarbanes Oxley Act of 2002, with the Public Company Accounting Oversight Board ("PCAOB"), to prepare and issue audit reports. KPMG has served as the independent auditor of St. Joe from 1999 to the present.

#### C. FACTS

On June 16, 2011, the staff opened a formal investigation into possible misstatements in the annual and other periodic reports filed by St. Joe with the Commission, among other issues. On June 23, 2011, the staff issued an investigative subpoena to KPMG that called for the production of all KPMG workpapers concerning its audits and interim reviews of St. Joe's financial statements from January 1, 2007 through the date of the subpoena, including KPMG's workpapers associated with the audit of St. Joe's financial statements for the year ended December 31, 2008 (the "2008 Workpapers").

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<sup>1</sup> 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.

<sup>2</sup> The Commission has previously instituted settled public administrative and cease-and-desist proceedings against St. Joe and five of its current and former executives, which imposed remedial sanctions, cease-and-desist orders, and penalties against these respondents, based on these and other misstatements and misconduct occurring in 2009 and 2010. *See In the Matter of The St. Joe Company et al.*, SEC Release No. 9967 (Oct. 27, 2015).

In September 2013, with its investigation ongoing, the staff notified KPMG that it had identified what appeared to be omissions from KPMG's production of the 2008 Workpapers. KPMG undertook to investigate. As reported to the staff, KPMG concluded that the 2008 Workpapers as originally compiled by the KPMG engagement team included (1) a summary memorandum describing KPMG's audit procedures regarding St. Joe's evaluation of the recoverability of its investment in its residential development real estate and (2) client-prepared schedules bearing KPMG audit work testing St. Joe's evaluations of recoverability of certain of these properties. KPMG concluded that these workpapers were not included among the 2008 Workpapers at the time they were collected and produced to the staff and had become lost. While KPMG located and produced an electronic copy of what it believed to be the final summary workpaper which would have been printed and included in the 2008 Workpapers, it did not have or produce an electronic copy of the missing client-prepared schedules.

In 2015, pursuant to further conversations with the staff regarding the missing workpapers, and after a second search and further investigation, KPMG informed the staff that (i) the binder that contained the missing workpapers had been checked out by a junior member of the engagement team on April 20, 2009; (ii) that when the binder was checked back in to KPMG's records center on February 26, 2010, it did not contain the summary memorandum or the client-prepared schedules bearing KPMG audit work referenced above; and (iii) that all of this occurred before the commencement of the staff's investigation. KPMG did not detect for itself that these pages were missing. Their absence was discovered by the staff in connection with its investigation years later.

The subject matter of the missing workpapers was St. Joe's testing of its real estate development properties for recoverability and possible impairment in accordance with Financial Accounting Standard No. 144 ("FAS 144") and KPMG's auditing of the same.

#### **D. LEGAL ANALYSIS**

Rule 2-06 of Regulation S-X requires that for a period of seven years after an accountant concludes an audit or review of an issuer's financial statements to which section 10A(a) of the Exchange Act applies, the accountant must retain records relevant to the audit or review. *See* Rule 2-06(a). Thus, KPMG violated Rule 2-06 by failing to retain the complete set of the subject 2008 Workpapers described above.<sup>3</sup>

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<sup>3</sup> The Commission has stated that the obligation to retain workpapers is foundational to the successful operation of our securities markets and therefore critical:

Working papers prepared or collected by auditors in the course of an audit provide the single most important support for their representation regarding compliance with generally accepted auditing standards. They serve as the repository for the competent evidential matter necessary to afford the auditors with a reasonable basis for opining on an issuer's financial position .... *It is therefore imperative that auditors preserve their working papers in a complete and unaltered form.*

*Matter of S.D. Leidesdorf & Co. et al.*, Accounting Series Release No. 209 (Feb. 1977) (emphasis added); *see also* Rule 2-06's Adopting Release (<http://www.sec.gov/rules/final/33-8180.htm>) at § IV.B. (noting that Rule 2-06 "preserve[s] evidence reflecting significant accounting judgments" and thus may (i) "provide important evidence

## **OTHER CONSIDERATIONS**

In determining to accept KPMG's Offer, the Commission considered efforts undertaken by KPMG beginning in 2010 to enhance its policies and procedures governing the retention of audit workpapers. The resulting improvements include (i) retention of electronic workpapers in a central filing system from which they can subsequently be accessed but neither altered nor removed, and (ii) KPMG's electronic workpapers being further preserved via back-up storage.

## **FINDINGS**

Based on the foregoing, the Commission finds that Respondent KPMG violated Rule 2-06 of Regulation S-X.

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

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

A. Pursuant to Exchange Act Section 21C, Respondent KPMG shall cease and desist from committing or causing any violations and any future violations of Rule 2-06 of Regulation S-X.

B. Respondent KPMG shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$230,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

C. All payments required by this Order must be made in one of the following ways:

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

Enterprise Services Center  
Accounts Receivable Branch

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of financial reporting improprieties or deficiencies in the audit process"; (ii) "facilitate greater oversight of audits and improve audit quality," and thus (iii) "increase investor confidence in the reliability of reported financial information").

HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Respondent as a Respondent in these proceedings, and the file number of these proceedings. A copy of the cover letter and check or money order, or documentation of whatever other form of payment is used, must be simultaneously sent to Stephanie Avakian, Deputy Director, Division of Enforcement, Securities and Exchange Commission, 100 F St., N.E., Washington, DC 20549.

By the Commission.

Brent J. Fields  
Secretary