

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 88897 / May 18, 2020**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 4143 / May 18, 2020**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-19805**

**In the Matter of**

**JOHN DONOVAN, CPA,**

**Respondent.**

**ORDER INSTITUTING PUBLIC  
ADMINISTRATIVE AND CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTIONS 4C AND 21C OF THE SECURITIES  
EXCHANGE ACT OF 1934 AND RULE 102(e)  
OF THE COMMISSION’S RULES OF  
PRACTICE, MAKING FINDINGS, AND  
IMPOSING REMEDIAL SANCTIONS AND A  
CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against John Donovan, CPA (“Respondent” or “Donovan”) pursuant to Sections 4C<sup>1</sup> and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rules 102(e)(1)(ii) and 102(e)(1)(iii) of the Commission’s Rules of Practice.<sup>2</sup>

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<sup>1</sup> Section 4C provides, in relevant part, that:

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

<sup>2</sup> Rule 102(e)(1)(ii) provides, in pertinent part, that:

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

## II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) that 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 him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

## III.

On the basis of this Order and Respondent’s Offer, the Commission finds<sup>3</sup> that:

### SUMMARY

1. This matter involves misconduct by a now-former KPMG audit partner in connection with examinations on internally-administered training courses. The purpose of the examinations was to test whether KPMG audit professionals understood certain accounting and auditing principles. In 2018, former lead audit engagement partner John Donovan shared answers to three and received answers to seven KPMG training examinations with junior members of his engagement team. During KPMG’s internal investigation of its audit professionals’ exam-related cheating, Donovan made misrepresentations to KPMG’s investigators.

2. Donovan is required, both by the rules of the Public Company Accounting Oversight Board (“PCAOB”) and by the Code of Professional Conduct of the American Institute of Certified Public Accountants (“AICPA”), to act with integrity in connection with performing professional services.<sup>4</sup> Certified public accountants are required to “be, among other things, honest

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

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found...to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

<sup>3</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>4</sup> PCAOB Rule 3500T requires Donovan to maintain integrity when performing any professional service in connection with the preparation or issuance of any audit report. As an AICPA member, Donovan is required to comply with the AICPA’s Code of Professional Conduct, which requires him to maintain integrity in connection with all professional services.

and candid within the constraints of client confidentiality.”<sup>5</sup> Additionally, Donovan is prohibited from committing acts “discreditable to the profession.”<sup>6</sup> By the misconduct described herein, Donovan failed to meet these standards.

### **RESPONDENT**

3. John Donovan, 57, of Westlake Village, California was a partner in KPMG’s audit practice until March 2019. Donovan is licensed as a CPA in California and Texas.

### **OTHER RELEVANT ENTITY**

4. KPMG LLP is a Delaware limited liability partnership and PCAOB-registered accounting firm. Headquartered in New York, New York, KPMG is the U.S. member firm of KPMG International Cooperative, a Swiss entity.

### **FACTS**

#### **A. Professional Education Requirements for KPMG Auditor Personnel**

5. As an accountant licensed in California and Texas, Donovan was required to complete a minimum number of continuing professional education (“CPE”) courses. KPMG requires its audit professionals, including Donovan, to complete additional training in excess of state requirements and to take examinations generally not mandated by state accountancy boards. These training requirements vary by position, role, and industry, and are designed by the firm to be relevant to the audit work its professionals are performing.

6. To help its audit professionals satisfy these requirements, KPMG administers its own set of online training programs that also qualify for CPE credit. KPMG requires its auditors to pass an examination at the conclusion of each online training program. Audit professionals are given three opportunities to pass each examination. If one of KPMG’s audit professionals is unable to pass after two attempts, their Performance Management Leader is notified. If they are unable to pass after three attempts, the consequences are more significant: they are required to re-take the training; they are prohibited from conducting audit work until they pass the exam; and others at the firm may be notified. Audit professionals also understood that failing to pass an exam could lead to their compensation being reduced.

#### **B. Donovan Shares Exam Materials and Misrepresents Conduct**

7. As a partner of the firm, Donovan was charged by KPMG’s Code of Conduct with helping to ensure that KPMG professionals he supervised understood the importance of ethics and

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<sup>5</sup> See “Principles of Professional Conduct,” ET Section 54 (available at <https://www.aicpa.org/Research/Standards/CodeofConduct/DownloadableDocuments/2011June1CodeOfProfessionalConduct.pdf>). Codified as AICPA Code 0.300.040.

<sup>6</sup> AICPA Code of Professional Conduct 1.400.001 (“Acts Discreditable Rule”).

integrity. Despite his responsibilities, Donovan supported examination sharing within his team. Between April and September 2018, Donovan received answers to training exams from subordinates on his engagement team on seven occasions and shared answers with his team three times.

8. In December 2018, the firm required certain audit professionals to complete a questionnaire that probed whether individuals had shared exam materials. Donovan falsely responded on the questionnaire that he had not sent, received, or shared answers.

### **VIOLATIONS**

9. As a result of the conduct described above, Donovan willfully<sup>7</sup> violated PCAOB Rule 3500T, which requires Donovan to comply with ethics standards, including to maintain integrity, as described in the AICPA's Code of Professional Conduct when performing any professional service in connection with the preparation or issuance of any audit report,<sup>8</sup> within the meaning of Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

10. The AICPA Code of Professional Conduct requires that a member not commit any act discreditable to the profession. AICPA Code of Professional Conduct 1.400.001. As a result of the conduct described above, Donovan failed to comply with AICPA Code of Professional Conduct 1.400.001 within the meaning of Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

### **FINDINGS**

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

12. Based on the foregoing, the Commission finds a basis to impose remedies against Donovan pursuant to Section 4C(a)(2) of the Exchange Act and Rule 102(e)(1)(ii) of the Commission's Rules of Practice, because Donovan engaged in conduct within their purview. Those provisions allow the Commission to impose remedies when a person has been found to have

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<sup>7</sup> "Willfully," for purposes of imposing relief under Exchange Act Section 4C(a)(3) and Rule 102(e)(1)(iii) "means no more than that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

<sup>8</sup> The rule requires auditors to comply with the AICPA's Code of Professional Conduct Rule 102, and interpretations and rulings thereunder, as in existence on April 16, 2003. Although PCAOB Rule 3500T references the AICPA Code as in existence on April 16, 2003, the definition of integrity remains identical to the current definitions in the Code of Professional Conduct promulgated by the AICPA and applicable to current members of the AICPA.

engaged in conduct “lacking in character or integrity or [has] engaged in unethical or improper professional conduct.”

#### IV.

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

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

A. Donovan shall cease and desist from committing or causing any violations and any future violations of PCAOB Rule 3500T.

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

C. After one year from the date of this order, Donovan may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company’s financial statements that are filed with the Commission (other than as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934). Such an application must satisfy the Commission that Donovan’s work in his practice before the Commission as an accountant will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or
2. a preparer or reviewer, or a person responsible for the preparation or review, of any public company’s financial statements that are filed with the Commission as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934. Such an application will be considered on a facts and circumstances basis with respect to such membership, and the applicant’s burden of demonstrating good cause for reinstatement will be particularly high given the role of the audit committee in financial and accounting matters; and/or
3. an independent accountant.

Such an application must satisfy the Commission that:

- (a) Donovan, or the public accounting firm with which he is associated, is registered with the PCAOB in accordance with the

Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

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

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

By the Commission.

Vanessa A. Countryman  
Secretary