

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 92513 / July 28, 2021

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 4234 / July 28, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-18346

In the Matter of

Thomas Whittle, CPA,

Respondent.

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

I.

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

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

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

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

II.

Respondent has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, Respondent admits the Commission’s jurisdiction over him and the subject matter of these proceedings, and consents to the entry of this Order Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice (“Order”), as set forth below.

III.

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

SUMMARY

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

2. In 2015, KPMG hired Brian Sweet from the PCAOB to work in its National Office, under Whittle’s direction. On his last day at the PCAOB, Brian Sweet took sensitive inspections-related documents to use as a resource in his new job. After starting at KPMG, Sweet received additional confidential PCAOB materials from Cynthia Holder, then a PCAOB employee. In 2016 and 2017, a third PCAOB employee, Jeffrey Wada, leaked confidential information relating to the PCAOB’s planned inspections of KPMG to Holder after she had left the PCAOB and joined KPMG.

3. Shortly after joining the firm, Sweet told Whittle and Whittle’s supervisor David Middendorf that he had taken confidential materials from the PCAOB and received, from time to time, additional confidential information from PCAOB employees. Whittle and Middendorf

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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.

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

encouraged Sweet to share the PCAOB's confidential information with them, with other KPMG colleagues, and with an outside contractor. This was valuable information to KPMG, which had experienced a high rate of audit deficiency findings and had made a priority of improving its PCAOB inspection results.

4. After Wada sent Holder the list of the PCAOB's planned inspections for 2016, Whittle, Middendorf, and other now-former KPMG personnel oversaw a program to review and revise certain audit workpapers after the audit reports had been issued to reduce the likelihood that the PCAOB would find deficiencies in those audits. This effort resulted in a substantial improvement to KPMG's 2016 inspection results.

5. In 2017, Whittle, Middendorf and the now-former KPMG personnel again obtained the list of audit engagements that the PCAOB planned to inspect after Wada leaked the information to Holder. However, the misconduct was discovered by others within the firm and reported to KPMG leadership before relevant workpapers could be changed.

RESPONDENT

6. Thomas Whittle, 57, of Gladstone, New Jersey, was KPMG's National Partner-In-Charge for Quality Measurement until March 2017, and was separated from the firm the following month. Whittle was previously licensed as a CPA in Connecticut, New Jersey, New York and Pennsylvania.

OTHER RELEVANT PERSONS AND ENTITY

7. Brian Sweet, 43, of Fresno, California, was a Partner in KPMG's Department of Professional Practice-Inspections group until March 2017. He was separated from the firm at the end of March 2017. Prior to joining KPMG, Sweet was an Associate Director in the PCAOB's inspections group from March 2014 until April 2015. Sweet was previously licensed as a CPA in California, Illinois, and New York. The Commission has charged Sweet for his role in the misconduct described in this Order.

8. Cynthia Holder, 55, of Houston, Texas was an Executive Director in KPMG's Department of Professional Practice-Inspections group from August 2015 until April 2017, when she was separated from the firm. Prior to joining KPMG, Holder was an Inspections Specialist and Inspections Leader at the PCAOB from December 2011 until August 2015. Holder was previously licensed as a CPA in New Jersey and Texas. The Commission has charged Holder for her role in the misconduct described in this Order.

9. Jeffrey Wada, 45, of Tustin, California was an Inspections Leader at the PCAOB from February 2012 until February 2017. Wada is no longer at the PCAOB. Wada was previously licensed as a CPA in California. The Commission has filed litigated administrative and cease-and-desist proceedings against Wada alleging misconduct related to the events described in this Order.

10. David Middendorf, 57, of Marietta, Georgia, was KPMG's National Managing Partner for AQPP until March 2017, and was separated from the firm the following month.

Middendorf was previously licensed as a CPA in Georgia, New York, Ohio, and Texas. The Commission has filed litigated administrative and cease-and-desist proceedings against Middendorf alleging misconduct related to the events described in this Order.

11. David Britt, 57, of Salvo, North Carolina, was a Partner in KPMG's Department of Professional Practice within AQPP, in which he was the Banking and Capital Markets Group Co-Leader until March 2017, and was separated from the firm the following month. Britt was previously licensed as a CPA in California, the District of Columbia, and New York. The Commission has charged Britt for his role in the misconduct described in this Order.

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

FACTS

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

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

14. One of the essential ways in which the PCAOB fulfills this mission is by inspecting audits of public companies conducted by registered public accounting firms. Through these inspections, the PCAOB assesses the audit firms' compliance with the statutes, regulations, and professional standards governing the accounting profession. The PCAOB typically selects the audit engagements it will inspect based on confidential internal analyses and thereafter notifies firms of which audits it will inspect. The PCAOB typically issues inspection reports, only parts of which are made public, after all the inspections for a firm in a given cycle are complete. To ensure the integrity of the inspection process, the PCAOB closely guards the confidentiality of both its inspection targets prior to firm notification and its methodology for selecting those targets.

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

The Use of Confidential PCAOB Information Sweet Misappropriated in 2015

16. As part of its efforts to improve its PCAOB inspection results, KPMG hired Brian Sweet, an Associate Director at the PCAOB who had worked on the team inspecting KPMG

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

audits. Sweet joined KPMG as a partner in the group within the firm's National Office responsible for PCAOB inspections. Sweet reported to Whittle, who was then the KPMG partner responsible for overseeing the PCAOB's inspections of the firm. Whittle, in turn, reported to David Middendorf, who then oversaw the National Office's audit quality and professional practice work.

17. In April 2015, shortly before leaving the PCAOB, Sweet copied from an internal database to his office computer various confidential inspection-related materials he believed might be of use to him when he joined KPMG. On his final day at the PCAOB, Sweet transferred these materials, along with the other files on his PCAOB computer, to a personal hard drive that he took with him. Sweet also took from the PCAOB hard copy documents and retained other confidential PCAOB documents he had previously brought home.

18. The documents Sweet improperly took included PCAOB inspection planning information, inspection guides and manuals, and drafts of confidential inspection comment forms. The planning materials included the confidential list of KPMG audit engagements the PCAOB intended to inspect in 2015, the focus areas for each inspection, and a list of all the quantitative and qualitative criteria the Board used in deciding which KPMG audit engagements to inspect.

19. Upon joining KPMG in May 2015, Sweet transferred the PCAOB documents from his personal hard drive to his computer at the firm.

20. On his first day at the firm in May 2015, Sweet had lunch with Middendorf and other partners in KPMG's National Office. Over lunch, Sweet's new colleagues asked him various questions about the PCAOB's inspections of KPMG. Sweet testified that one of the questions Middendorf asked Sweet was whether the PCAOB intended to inspect a specific KPMG banking client that year. Without answering directly, Sweet indicated the PCAOB planned to do so. Sweet testified that Middendorf told him the next day that Sweet needed "to share insight and add value and be fully open when it came to that type of information," and to "remember where [your] paycheck came from" and that Sweet had to be "completely loyal to KPMG and KPMG only."

21. Several days later, at Middendorf's direction, Whittle asked Sweet to provide him the list of the PCAOB's planned inspections for 2015.⁵ Sweet testified that he showed Whittle a hard copy of a PCAOB inspection planning document listing the KPMG banking and financial service audits the PCAOB intended to inspect that year.

22. The next day, Whittle emailed Sweet, asking him to have an assistant "scan and send me the banking selection list," i.e. KPMG's bank holding company clients the PCAOB had selected for inspection. Sweet complied by sending Whittle the complete list of planned inspections and asked Whittle to exercise discretion given the nature of the information. Whittle forwarded this information to Middendorf the same day, writing, "The complete list. Obviously, very sensitive. We will not be broadcasting this."

⁵ By that time, the PCAOB had informed KPMG of less than half of the audit engagements it intended to inspect in 2015.

23. Though Whittle immediately assigned Sweet to review the workpapers of one of the inspection targets, it does not appear that any workpapers were changed in response to Sweet providing the 2015 inspection list. At the time Sweet provided this information to Middendorf and Whittle, KPMG had, pursuant to its policy, already locked the audit workpapers for all but two of the engagements from editing absent special circumstances.

24. Whittle also instructed Sweet to speak to certain engagement partners responsible for audits on the 2015 list to explain the reasons for their selection. By learning why they were selected, engagement partners could better tailor their responses to questions from PCAOB inspectors to mitigate concerns. Middendorf and Whittle also assigned Sweet to one of the firm's large audit engagements on the 2015 list to help prepare for the inspection. Internal training materials KPMG created for audit staff undergoing PCAOB inspection stressed the importance of replying to inspectors' questions – especially during the critical first meeting with PCAOB staff – with the “best first answer.” KPMG's National Office believed the audit staff's ability to respond effectively to inspectors' questions had a significant impact on whether the PCAOB would find deficiencies in the audit.

25. In April 2015, KPMG engaged an outside consultant to help it predict which audit engagements the PCAOB would inspect in 2016. Sweet recalls that in June 2015 Middendorf and Whittle directed Sweet to share with the outside consultant everything he knew about how the PCAOB selected audits to inspect, including the confidential information Sweet had taken. Sweet understood this to be an instruction to give the consultant all of the information he took from the PCAOB.

26. Sweet complied with Middendorf and Whittle's directive by providing information about the Board's selection criteria to a Director in KPMG's National Office, who then gave that information to the consultant. In September 2015, Sweet spoke directly with the consultant and gave the consultant additional confidential information regarding the inspections selection process, including how the PCAOB's Inspections group used confidential information received from others at the Board and the Commission. At the end of September, Sweet reported to Middendorf and Whittle that he had “spent quite a bit of time with [the outside consultant] trying to guide their modeling efforts.”

The Use of Confidential PCAOB Information Obtained from Wada in 2016

27. On March 28, 2016, Jeffrey Wada, an Inspections Leader at the PCAOB who had previously performed work on KPMG inspections but was then assigned to inspect another audit firm, called Cynthia Holder – a friend and former PCAOB Inspections Leader whom Sweet had recruited to join KPMG's National Office – and read to her the names of thirteen KPMG clients the Board planned to inspect.⁶ Holder provided this information to Sweet, who then immediately

⁶ Of the 13 clients, 11 were bank holding or other financial services companies and 2 were other issuers that Wada appears to have thought were also bank holding or other financial services companies. It appears that Wada identified these engagements for Holder because her responsibilities at KPMG included advising banking engagement teams.

relayed the list to Middendorf, Whittle, and National Office Partner David Britt, informing them that it had come from a former colleague at the PCAOB.

28. Wada sent the list of the PCAOB's planned inspections at a critical time. In early February 2016, Middendorf and other members of KPMG's leadership team had met with staff from the Commission's Office of the Chief Accountant. During that meeting, Commission personnel expressed significant concerns about the firm's audit quality and questioned whether KPMG was adequately addressing these issues. Middendorf told Whittle, Sweet, and Britt they should use the list of inspection targets Wada had sent to protect KPMG from further criticism by its regulators.

29. Middendorf, Whittle, Britt, and Sweet believed they could use Wada's list in this way because they had learned of the audits that would be inspected at a time when firm personnel were still able to access and revise audit workpapers. Though KPMG had already issued audit reports for each of these engagements, it was within the 45-day period in which professional audit standards and firm policy allowed audit teams to complete the administrative process of assembling final audit files.⁷ At the end of this 45-day period, KPMG locked audit workpapers from editing absent special circumstances.⁸

30. Recognizing that the workpapers had not yet been locked per KPMG's policy, Middendorf, Whittle, and Britt agreed to have Sweet and others conduct an additional review of the audit workpapers for the seven banks on the list Wada had provided that were part of a key monitoring program run by the National Office to determine whether anything could be done to minimize the risk of receiving inspection comments from the PCAOB.⁹ Middendorf and Whittle instructed that no one in the briefing should disclose that they had obtained confidential PCAOB information.

31. To conceal the true purpose of their efforts, Britt falsely told others at KPMG that they were performing work in the ordinary course of business on all 35 banking engagements in

⁷ See Auditing Standard No. 3, *Audit Documentation*, paragraph 15. "Prior to the report release date, the auditor must have completed all necessary auditing procedures and obtained sufficient evidence to support the representations in the auditor's report. A complete and final set of audit documentation should be assembled for retention as of a date not more than 45 days after the report release date (documentation completion date)." References to PCAOB standards are to those that were in effect at the time of the relevant conduct.

⁸ KPMG has since revised its audit documentation policies, requiring electronic workpapers to be assembled and locked within two business days of issuance of the report.

⁹ As the PCAOB found an increasing number of audit deficiencies by KPMG beginning in 2013, KPMG's National Office implemented "monitoring programs" that worked with audit engagement teams and reviewed workpapers to improve compliance with professional standards. One of these programs focused on the audits of certain banking clients' Allowance for Loan and Lease Losses. KPMG further developed this monitoring program in 2015 in response to numerous deficiencies the PCAOB had identified in this area. The success of this program was especially important to KPMG because the firm had promoted it as proof of the seriousness with which the firm was working to improve its audit quality.

the Allowance for Loan and Lease Losses (“ALLL”) monitoring program. On March 28, 2016, Britt sent the engagement partners for these audits an email stating that, “[a]s part of our wrap up and reporting of the results of the ALLL monitoring program we need to gather some additional information” from the audit workpapers.¹⁰

32. Over the next few weeks, Sweet, Holder, and various partners and managing directors in the National Office engaged in a review of the audit workpapers of the seven banks in the monitoring program that were on the list Wada provided. The National Office professionals suggested edits and proposed revisions to the engagement teams, which then decided what revisions to incorporate into the final audit workpapers.¹¹

33. In contrast to prior years, KPMG’s 2016 inspection results did not include any comments related to the general Allowance for Loan and Lease Losses – an area where KPMG had historically received criticism related to financial services audits. The PCAOB did not publish the results because KPMG reported the misconduct to the PCAOB before the PCAOB issued the 2016 report. However, the PCAOB had designated two of the bank audits in the ALLL monitoring program whose workpapers Sweet had reviewed as “positive quality events,” which meant they were so successful the PCAOB wanted to understand the factors driving the audit’s quality. Indeed, the level of improvement in the inspection results led Whittle to be concerned that if KPMG could not obtain confidential PCAOB information for the next inspection cycle, there could be a return of audit deficiencies that would be difficult to explain.

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

The Use of Confidential PCAOB Information Obtained from Wada in 2017

35. In early January 2017, Wada provided Holder a “preliminary” list of PCAOB inspection targets for 2017. On January 9, Holder relayed the names of the clients on the list to Sweet. That night, Sweet, Whittle, and Britt discussed this information. Whittle instructed Sweet to warn certain engagement partners about the potential inspections, but to be circumspect in how he communicated these matters with KPMG colleagues. After that meeting, Sweet contacted the engagement partners for two of the audits on the January 2017 list to warn them about the potential inspections. Whittle also discussed the January 2017 list with Middendorf. As a result of that

¹⁰ Britt also asked a subordinate who previously had been in the Department of Professional Practice and was then assigned to an audit engagement on the list to conduct his own “stealth” review of workpapers for one KPMG audit client.

¹¹ Middendorf, Whittle, Sweet, and Britt had agreed that Sweet would lead a team of National Office professionals to review the workpapers of the banks in the monitoring program, and that Middendorf, Whittle, and Britt would handle the other issuers on the list they received from Wada.

discussion, Middendorf and Whittle assigned additional National Office resources to assist with two of the active audits on that list.¹²

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

37. Holder relayed the information to Sweet, who then shared it with Middendorf, Whittle, and Britt. Though Sweet questioned what to do with that information, Middendorf replied, "this is information that's too good not to use." Unlike the prior lists of PCAOB inspection targets, the audits on the February 2017 list were ongoing, thus providing substantially greater ability to improve the audit workpapers.

38. Sweet's notice to one KPMG engagement partner that her engagement was on the final list caused her to suspect that the firm may have received confidential PCAOB information. These concerns were subsequently reported to the firm's management, which then reported the matter to the PCAOB, and KPMG began an investigation.

VIOLATIONS

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

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

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

¹² Middendorf was the Engagement Quality Review partner on one of those audits. In this role, he was responsible for evaluating the significant judgments and related conclusions the audit team made in reaching the overall conclusion reflected in the audit report.

FINDINGS

42. Based on the foregoing, the Commission finds that Whittle willfully violated PCAOB Rule 3500T, and willfully aided and abetted and caused Sweet's violations of PCAOB Ethics Code Sections EC3 and EC9 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.

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

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

COOPERATION

In determining to accept Respondent's Offer, the Commission considered the cooperation Respondent afforded the Commission staff.

IV.

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

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

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

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

By the Commission.

Vanessa A. Countryman
Secretary