

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 53344 / February 22, 2006

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2380 / February 22, 2006

ADMINISTRATIVE PROCEEDING
File No. 3-12215

In the Matter of

THOMAS J. YOHO, CPA

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO RULE 102(e) OF THE
COMMISSION'S RULES OF PRACTICE,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative proceedings be, and hereby are, instituted against Thomas J. Yoho, CPA (“Yoho” or “Respondent”) pursuant to Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.¹

II.

In anticipation of the institution of these proceedings, 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, 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 Proceedings Pursuant to Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

¹ 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 have engaged in unethical or improper professional conduct.

III.

On the basis of this Order and Respondent's Offer, the Commission finds² that:

A. RESPONDENT

1. Thomas J. Yoho, age 58, is a certified public accountant licensed in Connecticut and New York and is a partner at KPMG LLP ("KPMG"). Yoho was the SEC concurring review partner on KPMG's audits of Xerox Corporation ("Xerox" or the "Company") for the years 1994-2000.

B. FACTS

2. KPMG is a national public accounting firm and, during the relevant period covered by this Order, served as the independent public accountant for Xerox.

3. Xerox is a New York corporation with its principal place of business in Stamford, Connecticut. At all times pertinent to the period covered by this Order, the common stock of Xerox was registered with the Commission pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") and traded on the New York Stock Exchange. On April 18, 2002, Xerox was enjoined by the United States District Court for the Southern District of New York from future violations of antifraud and other provisions of the securities laws and rules alleged to have been violated in a complaint filed by the Commission [*SEC v. Xerox Corporation*, 02 CV 2780 (DLC)]. Pursuant to a consent to settlement by Xerox, the company also was assessed a civil penalty of \$10 million. In consenting to settlement, Xerox neither admitted nor denied the allegations of the Commission's Complaint.

4. Xerox for several years, including in 2000, employed "topside adjustments" through which it, among other things, adjusted allocations of revenues it received from leasing photocopiers and other types of office equipment. Two of these adjustments were called "return on equity" or "ROE" and "margin normalization." These adjustments had the effect of increasing the amount of revenue Xerox could recognize from its leases in the quarter in which the equipment was installed at a customer location, but at the cost of reducing the revenue the company could recognize in future quarters from service and finance charges. These adjustments enabled Xerox to meet quarterly and annual earnings projections which management had discussed in meetings with Wall Street brokerage firms.

5. KPMG was Xerox's auditor for 40 years until late 2001, when it was terminated by Xerox. For each of the years 1997 through 2000, KPMG signed audit reports to accompany Xerox's annual financial statements filed with the Commission. Each year, the audit report stated that KPMG conducted an audit of Xerox's financial statement in accordance with Generally Accepted Auditing Standards ("GAAS"), that KPMG planned and performed the audit to obtain

² 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.

reasonable assurance that the financial statements were free of material misstatement, that KPMG assessed the accounting principles used and significant estimates made by Xerox management and that it evaluated the overall consolidated financial statement presentation. The audit report further represented that, as a result of KPMG's audit, it was KPMG's opinion that Xerox's financial statements presented fairly, in all material respects, Xerox's financial position and that its results of operations were fairly presented in the financial statements in conformity with Generally Accepted Accounting Principles ("GAAP").

6. In June 2002, after Xerox had replaced KPMG with a new independent auditor, Xerox restated over \$6 billion in equipment revenues and \$1.9 billion in pre-tax earnings for the years 1997-2000. On January 29, 2003, the Commission filed a complaint in the United States District Court for the Southern District of New York alleging that KPMG and four of its partners violated the federal securities laws in connection with KPMG's audits of Xerox's 1997-2000 financial statements. The Commission's complaint alleged that ROE and margin normalization, as well as other adjustments, were inconsistent with GAAP and materially misstated Xerox's earnings and revenues in quarterly and annual financial statements filed with the Commission from at least 1997 through 2000. The complaint further alleged that KPMG and its partners knew or should have known about the improper topside adjustments that resulted in \$3 billion of the restated revenues and \$1.2 billion of the restated earnings. On October 3, 2003, the complaint was amended to add respondent Yoho as a defendant.³ In conjunction with this Order, the Court has dismissed the complaint against Yoho at the request of the Commission.

7. As the concurring review partner on the Xerox engagement, Yoho reviewed the work of the KPMG audit team. In that capacity, Yoho concluded that no matters had come to his attention that caused him to believe that the Xerox financial statements covered by KPMG's audits were not in conformity with GAAP in all material respects or that the audits were not performed in accordance with GAAS. Yoho also signed certain audit workpapers.

8. One of the duties of the concurring review partner on a KPMG audit engagement is to make an "objective review of significant auditing, accounting or reporting considerations." The concurring review partner may deem it appropriate to perform an "in-depth review" in situations which come to his attention.

9. In February 2001, Yoho and the engagement team decided to perform an "in-depth review" of the 2000 Xerox audit work papers. The review was to focus on, among other things, revenue recognition, valuation of receivables and restructurings. A small team made up of KPMG partners not part of the audit team assisted Yoho. The review was to focus on audit work by KPMG offices in Stamford, Connecticut, Rochester, New York, London and Rio de Janeiro, where Xerox had major offices. Yoho personally conducted the review in Stamford, where Xerox was headquartered.

³ KPMG and one of its partners, Joseph T. Boyle, subsequently settled this litigation with the Commission. See Litigation Release No. 19191 / April 19, 2005/Accounting and Auditing Enforcement Release No. 2235 / April 19, 2005 (KPMG settlement); Litigation Release No. 19418 / October 6, 2005/Accounting and Auditing Enforcement Release No. 2333 / October 6, 2005 (Boyle settlement).

10. The KPMG partner responsible for reviewing the audit work at Xerox's principal manufacturing and marketing office in Rochester reported to Yoho that she had several questions regarding the local KPMG partner's review of ROE, which accounted for the bulk of topside adjustments by Xerox in the United States and abroad. She informed Yoho that the ROE policy that had been put in place several years earlier had not been subjected to annual testing to determine if the topside adjustment was applied appropriately. She also reported that the local auditor "expressed concern as to whether all the pieces are in fact covered" with respect to ROE because some of the audit work was performed by auditors in other offices.

11. The partner who conducted the Rochester review also reported to Yoho that one analysis showed that due to the topside adjustments to revenue, Xerox's finance rates were below the prime rate and that the spread below prime had increased as Xerox's credit worsened. She also told Yoho that certain work papers related to this subject were missing.

12. The KPMG partner responsible for the review of audit work in Brazil reported to Yoho that there were outstanding issues between Brazil and the principal engagement partners in Stamford about the appropriateness of the margin normalization and ROE accounting in Brazil. These issues included whether use of interest rates of 6, 7.1 and 10 percent after topside adjustments for financial reporting purposes were appropriate. Interest rates in Brazil in 2000 were 16 to 20 percent.

13. Despite the issues raised by the KPMG partners charged with review of Rochester and Brazil, Yoho completed his review without further investigation, other than a telephone discussion with the partner who reviewed the Rochester location.

14. Yoho subsequently prepared a one-page report titled "In-Depth Workpaper Review." He did not mention any of the reservations expressed by his colleagues. He concluded that "the audit procedures as documented in the workpapers adequately support the issuance of our opinion in the Xerox Corporation consolidated financial statements for the year ended December 31, 2000."

C. VIOLATIONS AND FINDINGS

15. The third general standard of GAAS (AU Section 230 of the Codification of Auditing Standards) requires that an auditor exercise due professional care in the performance of the audit. This standard requires the independent auditor to perform his work with due care. Due care imposes a responsibility upon each person within an independent auditor's organization to observe the standards of field work and reporting prescribed by GAAS. Exercise of due care also requires critical review at every level of supervision of the work done and the judgment exercised by those assisting in the audit.

16. GAAS also requires professional skepticism in the performance of an audit. (AU Section 316A.21). The performance of auditing procedures during the audit may result in the detection of conditions or circumstances that should cause the auditor to consider whether material misstatements exist. Examples of such conditions include when analytical procedures disclose significant differences from expectations, transactions selected for testing are not supported by

proper documentation and supporting records or files that should be readily available are not promptly produced when requested.

17. Yoho failed in his obligations as concurring review partner to exercise due professional care and professional skepticism when he was informed of missing work papers, audit results that differed from reasonable expectations, lack of testing of ROE and unresolved differences between KPMG auditors in Brazil and those leading the engagement in Stamford. Rather than pursue these issues, he prepared a brief report that did not disclose any of the issues found in the “in-depth review,” despite the importance of margin normalization and ROE to Xerox’s reported earnings over the years.

18. Based on the foregoing, the Commission finds that Yoho engaged in improper professional conduct pursuant to Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.

IV.

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

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

Respondent Yoho is censured pursuant to Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.

By the Commission.

Nancy M. Morris
Secretary