
ORDER MAKING FINDINGS AND IMPOSING SANCTIONS)	
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<i>In the Matter of KPMG Audit Limited and Damion J. Henderson, CA,</i>)	PCAOB Release No. 105-2019-008
)	April 9, 2019
<i>Respondents.</i>)	
)	

By this Order, the Public Company Accounting Oversight Board ("Board" or "PCAOB") is: (1) censuring KPMG Audit Limited ("KPMG Bermuda" or the "Firm"); (2) imposing a civil money penalty in the amount of US \$250,000 upon the Firm; (3) requiring KPMG Bermuda to undertake and certify the completion of certain improvements to the Firm's system of quality control; (4) censuring Damion J. Henderson, CA (collectively, with KPMG Bermuda, the "Respondents"); (5) imposing a civil money penalty in the amount of US \$10,000 upon Henderson; and (6) limiting Henderson's role in the Firm's system of quality control for a period of two (2) years from the date of this Order.

The Board is imposing these sanctions on the basis of its findings that, from 2014 to 2015, KPMG Bermuda's system of quality control failed to provide reasonable assurance that Firm personnel would comply with applicable professional standards and the firm's standards of quality, including with respect to performing all professional responsibilities with integrity. Through his acts and omissions, Henderson directly and substantially contributed to the Firm's violations. Respondents' violations related to current and former Firm personnel re-executing and backdating certain independence affidavits to replace misplaced original documents that they had previously executed, in advance of, and because of, a Board inspection.

I.

On March 21, 2019, the Board instituted disciplinary proceedings pursuant to Section 105(c) of the Sarbanes-Oxley Act of 2002 (the "Act"), as amended, and PCAOB Rule 5200(a)(1) against Respondents. These proceedings were not public pursuant to Section 105(c)(2) of the Act and PCAOB Rule 5203. The Board determined, under Section 105(c)(2) and PCAOB Rule 5203, that good cause was shown to make the hearing in this proceeding public, and the Division of Enforcement and Investigations consented to making the hearing in this proceeding public. Respondents submitted their Offers of Settlement pursuant to PCAOB Rule 5205 on March 22, 2019. Respondents did not file an answer and therefore did not consent to making the hearing public.

ORDER**II.**

In response to these proceedings, and pursuant to PCAOB Rule 5205, Respondents have each submitted an Offer of Settlement (collectively, the "Offers") that the Board has determined to accept. Solely for purposes of these proceedings and any other proceedings brought by or on behalf of the Board, or to which the Board is a party, and without admitting or denying the findings herein, except as to the Board's jurisdiction over Respondents and the subject matter of these proceedings, which are admitted, Respondents each consent to the entry of this Order Making Findings and Imposing Sanctions ("Order") as set forth below.¹

III.

On the basis of Respondents' Offers, the Board finds that:

A. Respondents

1. **KPMG Audit Limited** is a limited liability company headquartered in Hamilton, Bermuda. KPMG Bermuda registered with the Board on June 14, 2004.² The Firm is licensed to practice public accountancy by The Chartered Professional Accountants of Bermuda ("CPA Bermuda"). KPMG Bermuda is a member of the KPMG International Cooperative network of firms.

2. **Damion J. Henderson**, CA, 48, of Hamilton, Bermuda, is a chartered accountant licensed by the Institute of Chartered Accountants of England and Wales (license no. 8440803) and CPA Bermuda. Henderson is a managing director (the equivalent of a partner) of KPMG Bermuda. At all relevant times, Henderson was in charge of the Firm's Ethics and Independence Department ("E&I Department") and supervised the work of E&I Department staff (e.g., the Senior Manager and the Administrative Assistant, as defined below). At all relevant times, Henderson was an associated person of a registered public accounting firm as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i).

¹ The findings herein are made pursuant to Respondents' Offers and are not binding on any other person or entity in this or any other proceeding.

² On June 14, 2004, the Firm's predecessor, Butterfield & Steinhoff Holdings ("Butterfield"), registered with the Board. On February 1, 2010, Butterfield changed its legal name to "KPMG." And on September 24, 2012, KPMG Bermuda succeeded to KPMG's registration with the Board.

ORDER**B. Other Relevant Persons**

3. The "Senior Manager" is a former employee of KPMG Bermuda who, at all relevant times, provided manager support to the E&I Department. At all relevant times, the Senior Manager was an associated person of a registered public accounting firm as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i).

4. The "Administrative Assistant" is a former employee of KPMG Bermuda who, at all relevant times, was an administrative assistant at the Firm, and who provided administrative support to the E&I Department.

C. Summary

5. This matter concerns KPMG Bermuda's failure to establish and maintain a system of quality control to provide reasonable assurance that Firm personnel would comply with applicable professional standards and the Firm's own standards of quality. These failures related to the implementation and monitoring of the Firm's own written standards of quality concerning: (a) independence, integrity, and objectivity; (b) preparing and maintaining appropriate documentation for a sufficient period of time; and (c) training Firm personnel concerning the preparation and retention of appropriate documentation, including making appropriate documentation available to the Board's inspectors. This matter also concerns Henderson's conduct, which directly and substantially contributed to the failure of the Firm's system of quality control.

6. In October 2014, E&I Department personnel learned that they had misplaced written independence confirmations, which the Firm referred to as "affidavits," for 27 present and former employees. In response to the discovery of the misplaced affidavits, the E&I Department asked these employees to re-execute the affidavits in the same manner as they had executed the original affidavits, and to backdate the re-executed affidavits to approximate the date that they had signed the originals. Most of these employees complied and returned these documents to the E&I Department. Henderson and the Senior Manager then backdated their own initials on the re-executed affidavits to approximate the date that they had reviewed and dated the original affidavits.

7. The Board conducted an inspection of KPMG Bermuda in the spring of 2015. During the inspection, the Firm made a binder of affidavits available to Board inspectors. That binder included certain of the affidavits that had been re-executed and backdated in advance of the inspection. At no time did Henderson or any other Firm personnel disclose to Board inspectors that the original affidavits had been lost, re-executed, and back-dated.

8. Prior to misplacing the affidavits, KPMG Bermuda had adopted its Quality & Risk Manual ("Manual"), which set forth certain policies and procedures of the Firm.

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Among other things, the Manual discussed how Firm personnel should: (a) maintain integrity and objectivity; (b) prepare and maintain appropriate documentation; and (c) conduct themselves in connection with regulatory inspections. However, the Firm failed to implement appropriately these policies and procedures, including by failing adequately to train Firm personnel, such that multiple people at the Firm: (a) failed to maintain appropriate documentation for a sufficient period of time; and (b) failed to understand that it was not permissible to re-execute and backdate missing documents and to present such documents to the Board's inspectors without indicating that these documents were not originals.

9. As a result of this conduct, the Firm failed to comply with PCAOB quality control standards. Through his acts and omissions, Henderson, the head of the E&I Department, directly and substantially contributed to the Firm's violations.

D. Factual Background*The Independence Affidavit Process at KPMG Bermuda*

10. During 2014 and 2015, KPMG Bermuda's system of quality control included policies and procedures intended to provide reasonable assurance that Firm personnel maintained independence.³ Those policies and procedures required, among other things, that Firm personnel execute written independence confirmations ("Independence Affidavits") periodically during their employment at the Firm, including: (a) when an individual joined the Firm ("Starter"); (b) when the individual departed the Firm ("Leaver"); and (c) annually, in October of each year ("Annual").

11. Starters and Leavers were required to fill out Independence Affidavits and present the completed, hard-copy documents to the E&I Department. The Independence Affidavits for the Starters and Leavers were reviewed and signed off by the Senior Manager. The Independence Affidavits were then presented to Henderson for his review and sign off. The sign offs of Henderson and the Senior Manager included their initials and the respective dates that they each had reviewed the executed documents.

12. After review and sign off by Henderson and the Senior Manager, the Administrative Assistant typically placed the completed, hard-copy Independence Affidavits in a binder, and the E&I Department maintained these documents for the

³ Such policies and procedures are mandated by PCAOB quality control standards. See QC § 20.09, *System of Quality Control for a CPA Firm's Accounting and Auditing Practice* (requiring firms to have policies and procedures to provide reasonable assurance that personnel maintain independence).

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Firm. The E&I Department did not have any backup system in place in the event that the original Independence Affidavits were lost or destroyed.

The Firm Misplaced 27 Independence Affidavits in Fall 2014

13. In October 2014, the Administrative Assistant, the Senior Manager, and Henderson each understood that the E&I Department had misplaced 27 Independence Affidavits: 10 for Starters; and 17 for Leavers. Among the missing documents were Independence Affidavits for personnel who had worked on issuer audits. As a result of losing these Independence Affidavits, on December 5, 2014, before the Firm was formally notified of an upcoming PCAOB inspection, the Administrative Assistant asked each of the 10 Starters to re-execute their missing Independence Affidavits and to backdate the re-executed affidavits to approximate the date that they had signed the originals. Each of the 10 Starters complied with this request from the E&I Department.

14. Henderson and the Senior Manager in the E&I Department backdated their own sign offs on each of these re-executed Starter Independence Affidavits, to approximate the date that they had originally reviewed and initialed the documents. In doing so, Henderson and the Senior Manager did not indicate that the documents were not originals.

15. At the time that Henderson and the Senior Manager backdated their sign offs on these re-executed Starter Independence Affidavits, they understood that the Board would inspect the Firm in 2015, as part of the Board's inspection program.

16. In December 2014, the E&I Department presented a training module to Firm personnel that discussed the upcoming inspection. The E&I Department advised Firm personnel that the Independence Affidavit process would be an area of focus for the Board during the upcoming 2015 inspection. Specifically, the E&I Department PowerPoint presentation included a reference to "Areas of focus by PCAOB during inspection: E&I training and education; Affidavit process/personal compliance audits."

Steps Taken Following Notice of the Inspection

17. On December 15, 2014, the Board formally notified KPMG Bermuda that inspection field work would take place in May 2015. And in early January 2015, the Board requested documents and information from the Firm including documents and information from the E&I Department.

18. In mid-January 2015, the Firm notified personnel that KPMG Bermuda would be inspected in May 2015. Beginning in February 2015, the Administrative Assistant contacted the 17 Leavers whose Independence Affidavits the Firm had misplaced. The Administrative Assistant asked the Leavers to re-execute their missing Independence Affidavits in the same manner as they had executed the original

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affidavits, and to backdate the re-executed affidavits to approximate the date that they had signed the originals. Fifteen of the 17 Leavers complied with these requests. The Administrative Assistant stated "[i]t is imperative that we have [the Independence Affidavits] on file as we are preparing for PCAOB inspection."

19. Significantly, one of the Leavers raised concerns to the Senior Manager about re-executing and backdating his Independence Affidavit. In response to the Leaver's concerns, the Senior Manager emailed the Leaver, on February 9, 2015: "I completely understand where you are coming from, as it is unreasonable of us to expect this. The only reason we are asking is that the Firm, including the E&I function, is being inspected by the PCAOB in May 2015 covering the previous 12 months."

20. As with the missing Starter Independence Affidavits, both Henderson and the Senior Manager backdated their sign offs on the re-executed Leaver Independence Affidavits without indicating that the documents were not originals.

21. In mid-April 2015, the Board requested that the Firm make available to the Board's inspectors Annual Independence Affidavits for Firm partners and managers who worked on the three engagements the inspectors selected for inspection. The Firm instructed Henderson to take responsibility for gathering the requested Independence Affidavits.

22. The Administrative Assistant, acting at the direction of Henderson, assembled a binder to be made available to the Board's inspectors. In addition to the partner and manager Annual Independence Affidavits specifically requested by the inspectors, the Administrative Assistant included Annual Independence Affidavits and Leaver Independence Affidavits for all engagement team members who worked on the audits subject to the inspection. While all of the requested Annual Independence Affidavits included in the binder were originals, at least two of the Leaver Independence Affidavits were re-executed and backdated.

23. On Sunday May 3, 2015, immediately before the Board's inspection commenced on Monday May 4, 2015, the Administrative Assistant emailed Henderson, stating "I have a few affidavits that need to be signed before putting copies in the binder." Henderson replied, one minute later: "On way in now."

24. Henderson and the Administrative Assistant continued their efforts to obtain re-executed and backdated Independence Affidavits after the Board's inspection commenced. On May 5, 2015, Henderson called a Leaver who previously had worked on an issuer audit subject to the inspection who had not yet provided a re-executed and backdated Independence Affidavit. On May 6, 2015, the Leaver emailed her re-executed and backdated Independence Affidavit to the Administrative Assistant and Henderson. That same day, Henderson and the Senior Manager backdated their sign offs on the Leaver's Independence Affidavit to approximate the date that they had

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reviewed the original document. The Leaver Independence Affidavit ultimately was placed into the binder that the E&I Department prepared for the Board's inspectors.

25. The E&I Department made the binder available to the Board's inspectors. At no time did Henderson or any other Firm personnel disclose to the Board's inspectors either that the binder contained re-executed documents or that the Firm had lost certain original Starter and Leaver Independence Affidavits.

26. After the Board opened an informal inquiry in this matter, the Firm conducted an internal investigation and the Firm ultimately located substantially all of the misplaced original Independence Affidavits, which were substantially similar to the re-executed documents. None of these misplaced original Independence Affidavits that were located identified violations of independence policies by the Starters and Leavers.

The Firm's Written Policies and Procedures

27. At the time the Independence Affidavits were re-executed and backdated, the Firm's written policies and procedures, as set forth in its Manual, discussed how Firm personnel should: (a) maintain independence, integrity and objectivity; (b) prepare and maintain appropriate documentation; and (c) conduct themselves in connection with regulatory inspections. For instance, the Firm had written policies and procedures, set forth in the Manual: (i) stating that Firm personnel shall maintain their integrity and objectivity, and exercise a high standard of professional judgment; (ii) describing how the Firm should prepare and maintain sufficient documentation to evidence the operation of each element of its system of quality control, including ethics and independence; and (iii) describing how Firm personnel should respond to requests made by regulators in connection with regulatory inspections and investigations. The Firm, however, failed to take appropriate steps to implement and monitor those policies and procedures.

E. Respondents Violated PCAOB Rules and Standards

28. PCAOB rules require that a registered public accounting firm and its associated persons comply with the Board's quality control standards.⁴ PCAOB quality control standards require that a registered public accounting firm shall effectively design, implement, and maintain a system of quality control for the firm's accounting and auditing practice.⁵ A "system of quality control is broadly defined as a process to

⁴ See PCAOB Rule 3400T, *Interim Quality Control Standards*.

⁵ QC §§ 20.01 and 20.02.

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provide the firm with reasonable assurance that its personnel comply with applicable professional standards and the firm's standards of quality."⁶

29. As part of its system of quality control, a firm should establish policies and procedures "to provide the firm with reasonable assurance that personnel maintain independence (in fact and in appearance) in all required circumstances, perform all professional responsibilities with integrity, and maintain objectivity in discharging professional responsibilities."⁷

30. In addition, PCAOB quality control standards require that a firm "should communicate its quality control policies and procedures to its personnel in a manner that provides reasonable assurance that those policies and procedures are understood and complied with."⁸

31. A firm also "should prepare appropriate documentation to demonstrate *compliance* with its policies and procedures for the quality control system discussed herein. . . . Documentation should be retained for a period of time sufficient to enable those performing monitoring procedures and a peer review to evaluate the extent of the firm's compliance with its quality control policies and procedures."⁹

32. Finally, PCAOB quality control standards require each firm to establish policies and procedures "to provide the firm with reasonable assurance that the policies and procedures established by the firm for each of the other elements of quality control . . . are suitably designed and are being effectively applied."¹⁰ "Monitoring procedures taken as a whole should enable the firm to obtain reasonable assurance that its system of quality control is effective."¹¹

33. During 2014 and 2015, KPMG Bermuda's system of quality control failed to provide reasonable assurance that Firm personnel would comply with professional standards and the Firm's standards of quality, including with respect to: (a)

⁶ QC § 20.03.

⁷ QC § 20.09.

⁸ QC § 20.23.

⁹ QC § 20.25.

¹⁰ QC § 20.20. See also QC § 30.02, *Monitoring a CPA Firm's Accounting and Auditing Practice* (same).

¹¹ QC § 30.03.

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independence, integrity, and objectivity; and (b) preparing and maintaining appropriate documentation for a sufficient period of time.

34. Specifically, the Firm failed to maintain appropriate documentation for a sufficient period of time, and multiple Firm personnel failed to understand that it was not permissible, based on Firm policies and professional standards, to re-execute and backdate missing Independence Affidavits and to present those quality control documents to the Board's inspectors without disclosure that the documents were not originals.

35. PCAOB Rule 3502 states that an associated person of a registered public accounting firm shall not "take an action knowing, or recklessly not knowing, that the act or omission would directly and substantially contribute to a violation by that registered public accounting firm of the Act, the Rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under the Act, or professional standards."¹²

36. As the partner in charge of the E&I Department, Henderson was responsible, in part, for implementing, maintaining, and monitoring portions of the Firm's system of quality control related to the ethics and integrity of Firm personnel. For example, Henderson was responsible for overseeing the documentation of the independence of Firm personnel and the retention of appropriate documentation of such independence for a sufficient period of time. Henderson also was responsible for overseeing the implementation of the Firm's policies and procedures, including through the training of Firm personnel, to provide reasonable assurance that Firm personnel maintained independence. In addition, Henderson was responsible, in part, for overseeing and participating in appropriate interactions with regulators, including the Board's inspectors.

37. Henderson's knowing and/or reckless actions and omissions, described above, directly and substantially contributed to the Firm's violations of Quality Control Sections 20 and 30. As a result, Henderson violated PCAOB Rule 3502.

IV.

In view of the foregoing, and to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit

¹² PCAOB Rule 3502, *Responsibility Not to Knowingly or Recklessly Contribute to Violations*.

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reports, the Board determines it appropriate to impose the sanctions agreed to in Respondents' Offers. Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 105(c)(4)(E) of the Act and PCAOB Rule 5300(a)(5), KPMG Bermuda and Henderson are censured;
- B. Pursuant to Section 105(c)(4)(D) of the Act and PCAOB Rule 5300(a)(4), a civil money penalty in the amount of US \$250,000 is imposed upon KPMG Bermuda and a civil money penalty in the amount of US \$10,000 is imposed upon Henderson. All funds collected by the Board as a result of the assessment of these civil money penalties will be used in accordance with Section 109(c)(2) of the Act. KPMG Bermuda and Henderson shall each pay their respective civil money penalty within 20 days of the issuance of this Order by: (1) wire transfer in accordance with instructions furnished by Board staff; or (2) United States Postal Service money order, bank money order, certified check, or bank cashier's check (a) made payable to the Public Company Accounting Oversight Board, (b) delivered to the Controller, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington D.C. 20006, and (c) submitted under a cover letter that identifies the Firm or Henderson, as applicable, as a respondent in these proceedings, sets forth the title and PCAOB release number of these proceedings, and states that payment is made pursuant to this Order, a copy of which cover letter and money order or check shall be sent to the Office of the Secretary, Attention: Phoebe W. Brown, Secretary, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington D.C. 20006;
- C. Henderson Limitation – Pursuant to Section 105(c)(4)(C) of the Act and PCAOB Rule 5300(a)(3), Henderson shall not play any role in the design, implementation, or monitoring of any aspect of the Firm's system of quality control for a period of two (2) years from the date of this Order; and
- D. Firm Undertakings – Pursuant to Section 105(c)(4)(G) of the Act and PCAOB Rule 5300(a)(9), KPMG Bermuda shall complete the following undertakings:
 - (1) *Initial Undertakings* – Within thirty (30) days from the date of this Order, the Firm shall establish and implement quality control policies and procedures, or revise and/or supplement existing policies and procedures, to provide reasonable assurance that: (a) personnel perform professional responsibilities with integrity; and (b) personnel maintain appropriate quality control documentation for a sufficient period of time.

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(2) *Certification* – Within sixty (60) days of the entry of this Order, the Firm shall provide a certification, signed by the Chairman of KPMG Bermuda and an additional appropriate signatory of the Firm, to the Director of the PCAOB's Division of Enforcement and Investigations, stating that the Initial Undertakings, described in Section IV(D)(1) above, have been completed.

(3) *Additional Firm Undertakings*

- (a) For two (2) years from the date of this Order, the Firm will promptly report to the Board any allegation of improper document alterations in connection with (i) the Firm's system of quality control, (ii) any audit subject to the PCAOB's jurisdiction, or (iii) any PCAOB inspection or investigation.
- (b) For two (2) years from the date of this Order, within one week after being notified that the Firm will be inspected, the Firm shall notify personnel of the inspection and shall specifically instruct personnel of their obligation to cooperate with Board inspections, including by not preparing or making available to the Board's inspectors documents containing misleading information.
- (c) No later than 30 days after the date of this Order, the Firm shall provide an electronic or paper copy of this Order to all of its associated persons.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

April 9, 2019