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PRESS RELEASE

5 Former KPMG Executives And PCAOB Employees Charged In Manhattan Federal Court For Fraudulent Scheme To Steal Valuable And Confidential PCAOB Information And Use That Information To Fraudulently Improve KPMG Inspection Results

Tuesday, January 23, 2018

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For Immediate Release

U.S. Attorney's Office, Southern District of New York

A Sixth Defendant -- Former KPMG Partner and Former PCAOB Associate Director Brian Sweet -- Has Pled Guilty to His Role In the Scheme and is Cooperating With the Government

Geoffrey S. Berman, the United States Attorney for the Southern District of New York, and Philip R. Bartlett, the Inspector-in-Charge of the New York Office of the U.S. Postal Inspection Service, announced the unsealing yesterday of an Indictment in Manhattan federal court charging DAVID MIDDENDORF, THOMAS WHITTLE, and DAVID BRITT, former executives of accounting firm KPMG LLP ("KPMG"), CYNTHIA HOLDER, a former employee of KPMG and the Public Company Accounting Oversight Board (the "PCAOB"), and JEFFREY WADA, a former employee of the PCAOB, with conspiracy and wire fraud charges in connection with their scheme to defraud the Securities and Exchange Commission (the "SEC") and the PCAOB by obtaining, disseminating, and using confidential lists of which KPMG audits the PCAOB would be reviewing so that KPMG could improve its performance in PCAOB inspections. MIDDENDORF was arrested yesterday morning in Marietta, Georgia, and was presented before a Magistrate Judge in Atlanta. HOLDER was taken into custody yesterday morning in Houston, Texas, and presented before a Magistrate Judge in Houston. WADA was arrested yesterday morning in Tustin, California, and presented before a Magistrate Judge in Santa Ana. WHITTLE was arrested yesterday morning in Gladstone, New Jersey. BRITT surrendered yesterday morning in New York, New York. WHITTLE and BRITT were presented and arraigned before Magistrate Judge Andrew J. Peck in Manhattan federal court. The case is assigned to U.S. District Judge John Paul Oetken.

BRIAN SWEET pled guilty to conspiracy and wire fraud charges in connection with this scheme before Magistrate Judge Robert W. Lehrburger on January 5, 2018. The Information to which Sweet pled guilty was also unsealed yesterday. His case is assigned to U.S. District Judge Katherine B. Forrest.

Manhattan U.S. Attorney Geoffrey S. Berman said: "These defendants were each meant to be the watchmen of our financial system. The defendants who formerly worked for KPMG were vested with the responsibility to audit publicly filed financial statements and issue audit opinions relied upon by the investing public. The defendants who formerly worked for the PCAOB were supposed to help ensure the quality of the work behind those audits. But, as alleged, these defendants chose to cheat the system and to undermine the safeguards put in place to protect investors. We will work tirelessly with our law enforcement partners to root out corruption like this wherever it is found."

Inspector-in-Charge Philip R. Bartlett said: "As alleged, the defendants took advantage of confidential information stolen from the PCAOB and used it to tip off KPMG partners of impending audit inspections. This undermined the overall integrity of the program. The PCAOB was created by Congress as part of the Sarbanes Oxley Act to reduce accounting scandals but, in this case, certain former employees and KPMG insiders created their own corruption scandal. The Postal Inspection Service stands committed to helping to ensure the integrity of information that affects the marketplace."

As alleged in the Indictment unsealed today in Manhattan federal court:^[1]

The PCAOB is a nonprofit corporation overseen by the SEC that inspects the audit work performed by registered accounting firms ("Auditors") with respect to the financial statements of publicly traded companies ("Issuers"). The PCAOB inspects the largest U.S. accounting firms on an annual basis. As part of the inspection process, the PCAOB chooses a selection of audits performed by the accounting firm for a closer review. Until shortly before an inspection occurs, the PCAOB does not disclose which audits are being inspected, or the focus areas for those inspections, because it wants to ensure that an Auditor does not perform additional work or modify its work papers in anticipation of an inspection. Following the completion of an inspection, the PCAOB issues an Inspection Report containing any negative findings or "comments" with respect to both the specific audits reviewed and the accounting firm more generally. The PCAOB transmits these Inspection Reports to the SEC, which utilizes them in carrying out its agency functions.

KPMG is one of the largest accounting firms in the world. In recent years, KPMG fared poorly in PCAOB inspections and in 2014 received approximately twice as many comments as its competitor firms. By at least in or about 2015, KPMG was engaged in efforts to improve its performance in PCAOB inspections, including but not limited to recruiting and hiring former PCAOB personnel such as SWEET. At the time, MIDDENDORF was head of KPMG's Department of Professional Practice (the "DPP"), which was broadly responsible for the quality of KPMG's audits and KPMG's performance in PCAOB inspections. BRITT was a partner in the audit group within the DPP and WHITTLE was head of the inspections group within the DPP.

KPMG's efforts to improve inspection results, however, were not limited to legitimate means. Instead, between 2015 and 2017, MIDDENDORF, WHITTLE, BRITT, HOLDER, WADA, and SWEET worked to illicitly acquire valuable confidential PCAOB information concerning which KPMG audits would be inspected, in an effort to game the system and improve inspection results. For example, beginning in SWEET's first week of employment at KPMG in 2015, MIDDENDORF, WHITTLE, and BRITT began asking SWEET for confidential PCAOB information about which KPMG audits would be inspected by the PCAOB that year.

MIDDENDORF told SWEET to remember where his paycheck came from and to be loyal to KPMG, while WHITTLE told SWEET that he was most valuable to KPMG at that moment and would soon be less valuable. As requested, SWEET shared the PCAOB's confidential 2015 list of inspection selections. Shortly thereafter, SWEET helped his former PCAOB colleague, HOLDER, get a job at KPMG, where she reported to SWEET. During the pendency of her efforts to obtain employment at KPMG, HOLDER – in violation of PCAOB Rules – continued to work on KPMG inspections at the PCAOB. Once she secured a job at KPMG, HOLDER, like SWEET before her, stole valuable confidential information on her way out of the PCAOB and then passed it on to SWEET, her new boss at KPMG.

In March 2016, HOLDER obtained the PCAOB's confidential 2016 inspection selections for KPMG from WADA, who was still working at the PCAOB but who had recently been passed over for a promotion. WADA – who was not responsible for KPMG inspections at the PCAOB – accessed and stole valuable confidential information from the PCAOB and passed it on to HOLDER. HOLDER, in turn, provided the 2016 inspection selections to SWEET, who passed them to MIDDENDORF, WHITTLE, and BRITT. MIDDENDORF, WHITTLE, BRITT, and SWEET then agreed to launch a stealth program to "re-review" the audits that had been selected. In order to cover up their illicit conduct, BRITT gave other KPMG engagement partners a false explanation for the re-reviews. The stealth re-review

program allowed KPMG to double-check its audit work, strengthen its work papers, and, in some cases, identify deficiencies or perform new audit work that had not been done during the live audit.

In January 2017, WADA, who had again been passed over for promotion at the PCAOB, again stole valuable confidential PCAOB information, misappropriating a preliminary list of confidential 2017 inspection selections for KPMG audits and passing it on to HOLDER. At the same time, WADA provided HOLDER with his resume and sought her assistance in helping him to acquire employment at KPMG. SWEET shared the preliminary inspection selections provided by WADA with WHITTLE and BRITT, while noting that the information was only preliminary. WHITTLE’s response was to ask SWEET to confirm that they would get the final list as well.

In February 2017, WADA texted HOLDER saying “I have the grocery list. . . . All the things you’ll need for this year.” WADA then spoke to HOLDER and provided her with the full confidential 2017 final inspection selections. HOLDER again shared the stolen information with SWEET, who shared it with MIDDENDORF, WHITTLE, and BRITT. MIDDENDORF, WHITTLE, BRITT, and SWEET agreed to inform engagement partners on the list so that extra attention could be paid to these audits in light of the forthcoming PCAOB inspections.

In 2017, a KPMG partner who received early notice that his/her engagement was on the confidential 2017 inspection list reported the matter, as a result of which KPMG’s Office of General Counsel launched an internal investigation. Thereafter, HOLDER and SWEET took a number of steps to destroy or fabricate evidence relevant to the investigation. For example, HOLDER deleted a number of relevant text messages, emails, and documents, and said she was going to purchase a “burner phone” so her conversations could not be monitored. Similarly, SWEET burned evidence of the 2017 inspection list and provided a falsified version of the list to KPMG counsel.

Count One of the Indictment charges MIDDENDORF, WHITTLE, BRITT, HOLDER, and WADA with participating in a conspiracy to defraud the United States. Count Two charges MIDDENDORF, WHITTLE, BRITT, HOLDER, and WADA with participating in a conspiracy to commit wire fraud. Count Three charges MIDDENDORF, WHITTLE, and BRITT with wire fraud. Counts Four and Five charge MIDDENDORF, WHITTLE, BRITT, HOLDER, and WADA with wire fraud.

* * *

Set forth below is a chart containing the names, ages, residences, charges, and maximum penalties for the defendants. The maximum potential sentences are prescribed by Congress and are provided here for informational purposes only, as any sentencing of the defendants will be determined by the judge.

Mr. Berman praised the investigative work of the United States Postal Inspection Service and also thanked the Securities and Exchange Commission, which has brought an administrative proceeding against the defendants. Mr. Berman also thanked Trial Attorney Heidi Boutros Gesch of the Department of Justice’s Public Integrity Section for her assistance in the investigation.

This case is being handled by the Office’s Securities and Commodities Fraud Task Force. Assistant U.S. Attorneys Rebecca Mermelstein, Amanda Kramer, and Jessica Greenwood are in charge of the prosecution.

The charges contained in the Indictment are merely accusations, and the defendants are presumed innocent unless and until proven guilty.

DEFENDANT	AGE	RESIDENCE	CHARGES	MAXIMUM PENALTY
DAVID MIDDENDORF	53	Marietta, Georgia	Conspiracy to	85 years in prison
			defraud the United States;	
			Conspiracy to	
			commit wire fraud;	
THOMAS WHITTLE	54	Gladstone, New Jersey	Wire fraud (three counts)	85 years in prison
			Conspiracy to	
			defraud the United States;	
			Conspiracy to	
			commit wire fraud;	
			Wire fraud (three counts)	
			Conspiracy to	

DAVID BRITT	54	New Canaan, Connecticut	defraud the United States; Conspiracy to commit wire fraud; Wire fraud (three counts)	85 years in prison
CYNTHIA HOLDER	51	Jersey Village, Texas	defraud the United States; Conspiracy to commit wire fraud; Wire fraud (two counts)	65 years in prison
JEFFREY WADA	42	Tustin, California	defraud the United States; Conspiracy to commit wire fraud; Wire fraud (two counts)	65 years in prison

[1] As the introductory phrase signifies, the entirety of the text of the Indictment, and the description of the Indictment set forth herein, constitute only allegations, and every fact described should be treated as an allegation.

Updated January 23, 2018

Attachments

[U.S. v. Brian Sweet Information](#) [PDF, 449 KB]

[U.S. v. David Middendorf et al Indictment](#) [PDF, 479 KB]

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