

PCAOB

Public Company Accounting Oversight Board

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ORDER INSTITUTING DISCIPLINARY
PROCEEDINGS, MAKING FINDINGS,
AND IMPOSING SANCTIONS

*In the Matter of KPMG Auditores
Independentes,*

Respondent.

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) PCAOB Release No. 105-2017-013
)

) March 29, 2017
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By this Order, the Public Company Accounting Oversight Board ("Board" or "PCAOB") is censuring KPMG Auditores Independentes ("Firm" or "Respondent"), a registered public accounting firm, and imposing a civil money penalty in the amount of \$15,000 upon the Firm. The Board is imposing these sanctions on the basis of its findings that the Firm failed to timely disclose certain reportable events to the Board on PCAOB Form 3, *Special Report*, in violation of PCAOB rules.

I.

The Board deems it necessary and appropriate, for the protection of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports, that disciplinary proceedings be, and hereby are, instituted pursuant to Section 105(c) of the Sarbanes-Oxley Act of 2002, as amended (the "Act"), and PCAOB Rule 5200(a)(1) against Respondent.

II.

In anticipation of institution of these proceedings, and pursuant to PCAOB Rule 5205, Respondent has submitted an Offer of Settlement ("Offer") 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 Respondent and the subject matter of these proceedings, which are admitted,

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Respondent consents to entry of this Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions ("Order") as set forth below.¹

III.

On the basis of Respondent's Offer, the Board finds that:

A. Respondent

1. KPMG Auditores Independentes is, and at all relevant times was, a partnership organized under Brazilian law, and headquartered in São Paulo, Brazil. The Firm is a member of the KPMG International Cooperative network. At all relevant times, the Firm has been registered with the Board pursuant to Section 102 of the Act and PCAOB rules. As of its 2016 Annual Report on PCAOB Form 2, the Firm had 1,564 accountants and issued audit reports for six issuers during the reporting period. The Firm is licensed in Brazil by the State of São Paulo (license no. 2SP014428/06) and by the *Comissão de Valores Mobiliários* ("CVM"), the foreign auditor oversight authority in Brazil.²

B. Summary

2. This matter concerns the Firm's failures to timely disclose five reportable events to the Board on Form 3 as required by PCAOB rules. PCAOB rules required the Firm to complete and file a PCAOB special report on Form 3 to report any event specified in that form within 30 days of the event's occurrence. Among the events that the Firm needed to report on Form 3 were: (a) the institution of certain criminal or disciplinary proceedings against the Firm or certain of its partners; and (b) the conclusion of those criminal or disciplinary proceedings.

3. During 2014 and 2015, the Firm became aware of the institution of three proceedings against the Firm or certain of its partners. The institution of each of those proceedings was a reportable event under Form 3. The Firm failed, however, to file a

¹ The findings herein are made pursuant to the Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

² A "foreign auditor oversight authority" means any governmental body or other entity empowered by a foreign government to conduct inspections of public accounting firms or otherwise to administer or enforce laws related to the regulation of public accounting firms. See Section 2(a)(17) of the Act, 15 U.S.C. § 7201(a)(17). See also PCAOB Rule 1001(f)(iii).

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Form 3 reporting the initiation of the proceedings until 2016, between one and three years after the proceedings were initiated and well after the 30-day reporting deadline. The Firm also failed to file a Form 3 reporting the conclusion of one of those proceedings, as well as the conclusion of another proceeding whose initiation had previously been reported, until over a year after becoming aware of the conclusion of those proceedings. When the Firm made the required filings, those filings were untimely.

C. Respondent Failed to Timely Disclose Certain Reportable Events to the Board, in Violation of PCAOB Rules

Applicable PCAOB Rules

4. PCAOB Rule 2203 provides that a registered public accounting firm must file a special report on Form 3 to report any event specified in that form within thirty days of the event's occurrence.³ The events required to be reported include:

- A firm's "becom[ing] aware that a partner, shareholder, principal, owner, member, or audit manager of the [f]irm who provided at least ten hours of audit services for any issuer, broker, or dealer during the [f]irm's current fiscal year or its most recently completed fiscal year has become a defendant in a criminal proceeding prosecuted by a governmental criminal law enforcement authority and is charged with fraud, embezzlement, forgery, extortion, bribery, obstruction of justice, perjury, or false statements; or charged with a crime arising out of alleged conduct related to accounting, auditing, securities, banking, commodities, taxation, consumer protection, or insurance" ("Item 2.6 Proceeding");⁴
- A firm's "becom[ing] aware that, in a matter arising out of the [f]irm's conduct in the course of providing professional services for a client, the [f]irm has become a defendant or respondent in a civil or alternative dispute resolution proceeding initiated by a governmental entity or in an

³ See PCAOB Rule 2203, *Special Reports*. As the Board noted when adopting its rules on special reporting, "[R]eportable events will sometimes occur, and the public interest, as well as the ability to consider whether prompt action is warranted by the Board's inspection staff or enforcement staff, will be served by contemporaneous reporting of the event." PCAOB Rel. No. 2008-004, at 17 (June 10, 2008).

⁴ PCAOB Form 3, Item 2.6 (italics in the original omitted).

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administrative or disciplinary proceeding other than a Board disciplinary proceeding" ("Item 2.7 Proceeding");⁵

- A firm's "becom[ing] aware that, in a matter arising out of his or her conduct in the course of providing professional services for a client, a partner, shareholder, principal, owner, member, or audit manager of the [f]irm who provided at least ten hours of audit services for any issuer, broker, or dealer during the [f]irm's current fiscal year or its most recently completed fiscal year has become a defendant or respondent in a civil or alternative dispute resolution proceeding initiated by a governmental entity or in an administrative or disciplinary proceeding other than a Board disciplinary proceeding" ("Item 2.9 Proceeding");⁶ and
- A firm's "becom[ing] aware that [an Item 2.6 Proceeding, Item 2.7 Proceeding, or Item 2.9 Proceeding, among others] has been concluded as to the Firm or a partner, shareholder, principal, owner, member, or audit manager of the Firm."⁷

Reportable Proceedings Disclosed on September 19, 2016

5. First, on or about June 30, 2014, the Firm became aware that the Public Prosecutor's Office of the State of São Paulo had initiated a proceeding against the Firm in the First Bankruptcy Court of São Paulo in connection with the Firm's audit of a Brazilian client that was not an issuer.⁸ That proceeding qualified as an Item 2.7 Proceeding.

6. Second, on March 12, 2015, the Firm became aware that a criminal proceeding had been instituted in the Federal Criminal Court of São Paulo against two

⁵ Id., Item 2.7 (italics in the original omitted).

⁶ Id., Item 2.9 (italics in the original omitted).

⁷ Id., Item 2.10 (italics in the original omitted).

⁸ The term "issuer" means an issuer (as defined in Section 3 of the Securities and Exchange Act of 1934 (the "Exchange Act")), the securities of which are registered under Section 12 of the Exchange Act, or that is required to file reports under Section 15(d) of the Exchange Act, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933, and that it has not withdrawn. See PCAOB Rule 1001(i)(iii).

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Firm partners in connection with the Firm's audit of a Brazilian client that was not an issuer. That proceeding qualified as an Item 2.6 Proceeding.⁹

7. In violation of Rule 2203, the Firm did not report the initiation of these proceedings until September 19, 2016, over two years and one year, respectively, after it became aware of the initiation of the proceedings.

Reportable Proceedings Disclosed on November 14, 2016

8. First, on April 14, 2014, the Firm became aware that the CVM had instituted an administrative proceeding against a Firm partner in connection with his provision of professional services to a client that was not an issuer. That proceeding qualified as an Item 2.9 Proceeding. On or about May 7, 2015, the Firm became aware that the proceeding concluded.

9. Second, or about May 26, 2015, the Firm became aware that a CVM administrative proceeding against the Firm and two of its partners in connection with the Firm's audit of a non-issuer client (which qualified as both an Item 2.7 Proceeding and an Item 2.9 Proceeding and whose initiation had previously been reported) had concluded.

10. In violation of Rule 2203, the Firm failed to file a Form 3 with respect to the initiation and conclusion of the first proceeding and the conclusion of the second proceeding until November 14, 2016, between one and three years after learning of the reportable events.

Failures in the Firm's Internal System of Compliance

11. The Firm's internal compliance and reporting systems failed to identify the initiation and/or conclusion of the proceedings described above as being reportable to the PCAOB and to provide reasonable assurance of timely reporting pursuant to PCAOB rules.

⁹ In its September 19, 2016 Form 3, the Firm identified the criminal proceeding against its partners as reportable pursuant to Form 3, Item 2.5. The Firm subsequently filed an amendment on Form 3/A identifying the proceeding as an Item 2.6 Proceeding.

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IV.

12. The Firm has represented to the Board that, since the events described in this Order, it has established and implemented the following changes to its policies and procedures for the purpose of providing the Firm with reasonable assurance of compliance with PCAOB reporting requirements:

- a. The Firm has revised and supplemented its policies and procedures for the purpose of providing the Firm with reasonable assurance of compliance with PCAOB reporting requirements, including policies and procedures providing reasonable assurance that reportable events are identified by Firm personnel who participate in the Firm's PCAOB reporting process and that those events are reported on the applicable PCAOB form in a timely and complete manner;
- b. The Firm has established policies to ensure training concerning PCAOB reporting requirements, at least annually, of any Firm personnel who participate in the Firm's PCAOB reporting process; and
- c. The Firm has assigned the role of compliance with PCAOB reporting matters to an individual within the Firm who possesses adequate knowledge and experience with PCAOB reporting requirements and sufficient authority within the Firm to fulfill those requirements on behalf of the Firm.

V.

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

- A. Pursuant to Section 105(c)(4)(E) of the Act and PCAOB Rule 5300(a)(5), the Firm is hereby censured; and
- 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 \$15,000 is imposed upon the Firm. All funds collected by the Board as a result of the assessment of this civil money penalty will be used in accordance with Section 109(c)(2) of the Act. The Firm shall pay this civil money penalty within ten (10) days of the issuance of this Order by (1) wire transfer pursuant to instructions provided by Board staff; or (2) United States Postal Service money order,

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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, which identifies the Firm 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 Office of the Secretary, Attention: Phoebe W. Brown, Secretary, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington D.C. 20006.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

March 29, 2017