

THE UNITED STATES ATTORNEY'S OFFICE
SOUTHERN DISTRICT *of* NEW YORK

[U.S. Attorneys](#) » [Southern District of New York](#) » [News](#) » [Press Releases](#)

Department of Justice

U.S. Attorney's Office

Southern District of New York

FOR IMMEDIATE RELEASE

Tuesday, October 16, 2018

Former PCAOB Inspections Leader And KPMG Executive Director Pleads Guilty To Scheme To Steal Confidential PCAOB Information In Order To Fraudulently Improve KPMG's PCAOB Inspection Results

Geoffrey S. Berman, the United States Attorney for the Southern District of New York, announced that CYNTHIA HOLDER, a former Public Company Accounting Oversight Board ("PCAOB") Inspections Leader and KPMG Executive Director, pled guilty today to participating in a 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, the results of which were shared with, and utilized by, the SEC in carrying out its governmental functions. HOLDER pled guilty before the U.S. District Court Judge J. Paul Oetken.

Manhattan U.S. Attorney Geoffrey S. Berman said: "In the wake of the accounting fraud scandals of the early 2000s, Congress passed important laws to ensure the quality and accuracy of auditing work performed on publicly traded companies so that investors could have confidence in the reported financial results of those companies. The SEC was vested with the responsibility and authority of executing these laws and the PCAOB was created to play a key role: To audit the auditors. HOLDER undermined the work of the SEC and the PCAOB by stealing confidential inspection information from her former employer, the PCAOB, and helping insiders at her new employer, KPMG, to cheat the regulatory system put in place to protect the investing public. This was a revolving door tainted by fraud and today we hold the defendant accountable for her conduct."

According to the allegations contained in the Indictment filed against HOLDER, along with her co-conspirators, David Middendorf, David Britt, Thomas Whittle, and Jeffrey Wada, and statements made in related court filings and proceedings:[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 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 HOLDER and HOLDER's co-conspirator, Brian Sweet.

KPMG's efforts to improve inspection results, however, were not limited to legitimate means. Instead, between 2015 and 2017, HOLDER, Middendorf, Whittle, Britt, 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, after Sweet began employment at KPMG, but while HOLDER was still employed by the PCAOB, HOLDER fed Sweet confidential PCAOB information about certain pending inspections. HOLDER did so while simultaneously seeking employment at KPMG. 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 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.

* * *

HOLDER, 52, pled guilty to one count of conspiracy to defraud the United States, which carries a maximum sentence of five years in prison and a maximum fine of \$250,000 or twice the gross gain or loss from the offense; one count of conspiracy to commit wire fraud, which carries a maximum sentence of 20 years in prison and a maximum fine of \$250,000 or twice the gross gain or loss from the offense; and two counts of wire fraud, which each carry a maximum sentence of 20 years in prison and a maximum fine of \$250,000 or twice the gross gain or loss from the offense. Sentencing is scheduled for April 5, 2019 at 10:30 a.m.

The maximum potential sentences in this case are prescribed by Congress and are provided here for informational purposes only, as any sentence for the defendant will be determined by the judge.

Trial against the remaining defendants is scheduled to begin on February 11, 2019, before the Honorable J. Paul Oetken.

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.

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.

[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.

Topic(s):

Securities, Commodities, & Investment Fraud

Component(s):

USAO - New York, Southern

Press Release Number:

18-352