

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 51946 / June 30, 2005

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2269 / June 30, 2005

ADMINISTRATIVE PROCEEDING
File No. 3-11970

In the Matter of

**KPMG LLP,
Gary Bentham, C.A. and
John Gordon, C.A.,**

Respondents.

**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 KPMG LLP, a limited liability partnership organized under the laws of Ontario, Canada, ("KPMG Canada"), Gary Bentham ("Bentham") and John Gordon ("Gordon") (collectively "the Respondents") pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice.¹

II.

In anticipation of the institution of these proceedings, the Respondents have each submitted an Offer of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of

¹ Rule 102(e)(1)(ii) provides, in pertinent part, that:

The Commission may censure a person or deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in . . . improper professional conduct.

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 them and the subject matter of these proceedings, the Respondents consent 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.

III.

On the basis of this Order and Respondents' Offers, the Commission finds² that:

A. SUMMARY

KPMG Canada, Bentham and Gordon lacked professional independence when they audited Southwestern Water Exploration Co.'s ("Southwestern") fiscal year 1999 through 2002 financial statements. Specifically, in each year, after KPMG Canada prepared certain of Southwestern's basic accounting records and financial statements, it issued a purportedly independent audit report on those financial statements. KPMG Canada's audit reports were included in Southwestern's public filings with the Commission.

Bentham, the audit engagement partner, authorized accountants employed by KPMG Canada to provide the bookkeeping services to Southwestern and supervised the work. Gordon, the concurring and SEC reviewing partner, was informed that KPMG Canada was preparing certain of Southwestern's basic accounting records and financial statements, yet he concurred in the issuance of the audit reports as concurring partner and did not require KPMG Canada to withhold its audit reports as SEC reviewing partner. KPMG Canada issued purportedly independent audit reports in spite of the bookkeeping work it performed. KPMG Canada, Bentham and Gordon thereby violated the auditor independence requirements imposed by the Commission's rules and guidance and by generally accepted auditing standards ("GAAS") in the United States. Moreover, KPMG Canada lacked adequate policies and procedures to prevent and detect the independence problem that occurred with Southwestern. Accordingly, KPMG Canada, Bentham and Gordon engaged in improper professional conduct within the meaning of Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

B. RESPONDENTS

1. KPMG Canada is the Canadian member firm of KPMG International, a Swiss cooperative, and is a limited liability partnership headquartered in Toronto, Canada. KPMG Canada is engaged in the business of providing, among other things, accounting and auditing services. KPMG Canada audited Southwestern Water Exploration Co.'s fiscal year 1999 through 2002 financial statements. (Southwestern's fiscal year ends on March 31.) KPMG Canada's Calgary office audit group also performed bookkeeping services for Southwestern. KPMG Canada received \$60,148 in fees from the audit and bookkeeping services it performed for Southwestern for fiscal years 1999 through 2002.

² 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. Gary Bentham, age 51, a Chartered Accountant (“C.A.”) licensed in Saskatchewan and Alberta, Canada, was the engagement partner on the Southwestern audits. Bentham was a partner in KPMG Canada’s Calgary office from 1984 to December 2004. From 1997 to 1999, Bentham managed the service industries line of business in KPMG Canada’s Calgary office. Bentham managed KPMG Canada’s information, communications, and entertainment practice in KPMG Canada’s Calgary office from 2000 until 2004. Bentham left KPMG Canada in December 2004.

3. John Gordon, age 48, a C.A. licensed in Alberta, Canada, was the concurring partner and SEC reviewing partner on Southwestern’s fiscal year 1999, 2000, 2001 and 2002 audits. He has been a partner with KPMG Canada since 1993.

C. RELEVANT ENTITY

1. Southwestern, d/b/a Aqua4, Inc., is a development stage Colorado corporation that purports to engage in exploring and producing potable water from deep aquifers in the American Southwest. Southwestern filed for Chapter 7 Bankruptcy on November 20, 2003, and is in the process of being liquidated.

D. FACTS

1. KPMG Canada Prepared Southwestern’s Fiscal Year 1998 Books, Records and Financial Statements

Bentham knew that during fiscal year 1998, Southwestern did not have an internal or outside accountant prepare its books and records. Bentham authorized KPMG Canada to prepare Southwestern’s books, records and financial statements, and Bentham supervised this work.

The Business Review workpaper³ which Bentham initialed stated:

In previous years it was found that the accounting records of the company were poor. No records have been kept this year. [Southwestern’s founder and president/CEO (“Southwestern’s founder”)] is therefore to reconcile the bank and provide complete listings to KPMG [Canada] of cheques issued, from this KPMG [Canada] will prepare the [financial statements].⁴

³ The purpose of the Business Review workpaper is to provide the audit engagement team with an understanding of the client’s business sufficient to develop strategies for performing the audit, risk management and client service. This specific workpaper provides general background information on Southwestern and explains its business objectives and risks.

⁴ Bentham failed to have a concurring/SEC reviewing partner for the 1998 fiscal year audit, in violation of KPMG Canada’s policies. A concurring/SEC reviewing partner typically reviews the Business Review workpaper. A concurring/SEC reviewing partner generally would have uncovered the independence problems.

Specifically, Southwestern did not maintain accounting journals of original entry or a general ledger for fiscal year 1998. Instead, Southwestern's founder provided KPMG Canada with listings of Southwestern's bank transactions from which the KPMG Canada audit engagement staff prepared Southwestern's books, records and financial statements for the audit.

The audit engagement senior used the listings of bank transactions Southwestern provided to create two summary schedules: one schedule for Southwestern's United States dollar bank transactions and one schedule for Southwestern's Canadian dollar bank transactions. The audit engagement senior also created a trial balance entitled "Cash Synoptic (in US\$)" that classified all of the banking transactions and accrual entries for fiscal year 1998. The auditors also recorded Southwestern's accruals to bring the accounting from a cash to an accrual basis.

2. KPMG Canada Prepared Southwestern's 1999 Fiscal Year Books, Records and Financial Statements

Bentham knew that Southwestern had no accountant to prepare its books and records in fiscal year 1999. Under Bentham's supervision and with his participation, KPMG Canada accounting staff or audit engagement staff prepared Southwestern's books, records and quarterly and year-end financial statements for fiscal year 1999 from bank statements, summaries of bank statements and related party invoices (*i.e.*, source documents) that Southwestern provided. KPMG Canada, in consultation with Southwestern's founder, classified the transactions by category of asset, expense, revenue and liability. For the first three quarters of fiscal year 1999, KPMG Canada accounting staff performed the work which KPMG Canada audit engagement staff then reviewed. For the year-end financial statements, KPMG Canada audit engagement staff performed the work.

Bentham also determined the accounting for, and recorded, certain of Southwestern's stock issuances during the fiscal year 1999 audit.⁵ During the audit, based on discussions with Southwestern, KPMG Canada recorded 360,000 shares of stock (which Southwestern had failed to record) as having been issued for consulting services. Then, after the financial statements had been issued, Southwestern's founder and Southwestern's counsel contacted Bentham and told him that 60,000 of the 360,000 shares had actually been issued to AIFE Ltd., an entity Southwestern's founder controlled, to satisfy an amount Southwestern owed to AIFE Ltd. As a result, KPMG Canada prepared restated 1999 year-end financial statements and issued an audit report for Southwestern's amended Form 10-KSB, which was filed with the Commission on January 10, 2000.⁶

⁵ At least since 1997, Bentham was aware of Southwestern's lack of records regarding stock issuances and that KPMG Canada had to "piece together" the stock issuances.

⁶ Gordon was not involved with the audit of Southwestern's restated financial statements.

3. KPMG Canada, Bentham and Gordon Issued an Audit Report for Fiscal Year 1999 on the Bookkeeping Work KPMG Canada Performed in Fiscal Years 1998 and 1999

a. Gordon becomes the concurring and SEC reviewing partner

From May 1999 until January 2000, Gordon worked in New York in the Department of Professional Practice of KPMG US,⁷ which was part of the National Office of KPMG US, in order to become a KPMG Canada SEC reviewing partner. Gordon became one of the first four SEC reviewing partners at KPMG Canada. Gordon had responsibility to perform SEC reviews on audits from various KPMG Canada offices.

In the summer of 1999, Bentham asked Gordon to perform a concurring partner review and an SEC review of KPMG Canada's 1999 year-end audit of Southwestern. Because Gordon had not yet been designated an SEC reviewing partner, he told Bentham that he would assist the audit in that role, but he may need to involve someone else prior to the completion of the work. However, Gordon did not involve anyone else and no one else at KPMG Canada acted as the SEC reviewing partner for Southwestern's 1999 year-end audit.

Gordon was informed that KPMG Canada was preparing Southwestern's financial statements from Southwestern's bank records and invoices. Bentham told Gordon that Southwestern's accounting records were not in good shape, and that members of the audit engagement team were working extensively with bank documents and source invoices in order to complete the audit procedures. Gordon also was aware that KPMG Canada was recording numerous journal entries or adjusting entries for Southwestern. In addition, in July of 1999, Bentham e-mailed Gordon two documents. The first document, the "Partner's Audit Strategy" workpaper, stated, "KPMG [Canada] is to prepare the F/S using the first three quarter[ly] financial statements previously prepared from the bank statements and related party invoice supplied by the client." The second document, the "Business Review" workpaper, stated, "In previous years it was found that the accounting records of the company were poor. KPMG [Canada] has prepared the quarterly financial statements (Notice to Reader) for the Company using information provided by [Southwestern's founder]" Gordon reviewed the Partner's Audit Strategy and the Business Review workpapers.

b. KPMG Canada, Bentham and Gordon failed to follow the Commission's independence guidance in conducting the 1999 fiscal year-end audit

KPMG Canada's written policies in 1999 provided that:

Members of the management group who are responsible for engagements when the client or its parent is an SEC registrant have an ongoing responsibility to be knowledgeable about current independence rules and interpretations of the SEC and to ensure that we are in compliance with such rules.

⁷ KPMG US refers to KPMG LLP, the U.S. member firm of KPMG International, a Swiss cooperative. KPMG US is a limited liability partnership headquartered in New York. KPMG US is engaged in the business of providing audit, risk advisory and tax services.

Contrary to this policy, KPMG Canada, Bentham and Gordon failed to follow the Commission's independence guidance in conducting the 1999 fiscal year audit. Section 602.02.c.i of the Commission's Codification of Financial Reporting Policies states that an auditor is not independent if it has participated closely in maintenance of a company's basic accounting records and preparation of the financial statements.

Bentham did not review the Codification of Financial Reporting Policies or any other SEC guidance relating to independence until after he completed his work on all of the Southwestern engagements in 2002. In addition, no one on the engagement team consulted SEC guidance relating to independence for the 1999 fiscal year audit even though SEC rules and regulations were available in KPMG Canada's Calgary office.

As part of Gordon's SEC review for the fiscal year-end 1999 audit, Gordon gave the following written comment on Southwestern's financial statements to the audit engagement team: "Are we independent pursuant to SEC requirements". Gordon was familiar with SEC independence guidance because he had served as an engagement partner for SEC clients and had been trained at the National Office of KPMG US in New York. Bentham discussed Gordon's comment with the audit engagement manager. The audit engagement manager responded to Gordon's comment by writing "no consulting" and telling Gordon in a conversation regarding these written comments that KPMG Canada was not providing any prohibited services to Southwestern. Despite the fact that Gordon had been informed that KPMG Canada was providing bookkeeping services, and notwithstanding Gordon's responsibilities as an SEC reviewing partner to ensure the audit team's familiarity with SEC independence standards, Gordon never specifically discussed this issue with the engagement team or asked Bentham if he had read the SEC independence rules.

Contrary to the Commission's guidance, KPMG Canada, Bentham and Gordon audited KPMG Canada's own work in preparing Southwestern's fiscal year 1999 books, records and financial statements. KPMG Canada's audit report (dated July 15, 1999), which stated that KPMG Canada was independent, was filed with the Commission on November 12, 1999 with Southwestern's Form 10-KSB for March 31, 1999. In addition, the audit report stated that KPMG Canada audited Southwestern's statements of loss and deficit and cash flows for the period from commencement of operations on April 1, 1992 to March 31, 1999. This period included fiscal year 1998, a fiscal year for which KPMG Canada prepared Southwestern's books, records and financial statements, as described above. Bentham and Gordon both understood that KPMG Canada's audits of Southwestern, a development stage company, would look back to Southwestern's commencement of operations for the statements of loss and deficit and cash flows. As a result, KPMG Canada, Bentham and Gordon issued an audit report for March 31, 1999 in spite of the bookkeeping work that KPMG Canada performed for fiscal years 1998 and 1999.

4. KPMG Canada Prepared Certain of Southwestern's Fiscal Year 2000 Books, Records and Financial Statements, and KPMG Canada, Bentham and Gordon Audited KPMG Canada's Work

Southwestern hired an outside accounting firm, which compiled Southwestern's quarterly financial statements until December 31, 1999 (the first three quarters of fiscal year 2000), and prepared a trial balance as of December 31, 1999 for the preceding nine-month period. However, Bentham knew that Southwestern did not have any internal or outside accountant for the fourth quarter and during that period KPMG Canada prepared certain of Southwestern's books, records and financial statements.

Bentham also knew that KPMG Canada audit engagement staff prepared a trial balance ("Working Trial Balance") for the 2000 fiscal year-end from, among other things, information provided by the client regarding Southwestern's cash transactions. The audit engagement senior created bank transaction summaries for Southwestern's United States and Canadian bank accounts. KPMG Canada then entered the information from the bank transaction summaries onto the Working Trial Balance in order "[t]o record the Canadian Cash Transactions for the year" and "[t]o record the US Cash Transactions for the year." The Working Trial Balance created by KPMG Canada is the only record to summarize all of the journal entries by account classification. The Working Trial Balance functioned as the company's general ledger, which is a basic accounting record.

Gordon was informed that KPMG Canada continued to prepare Southwestern's financial statements from Southwestern's bank records and invoices. The Partner's Audit Strategy, a workpaper used to help plan the audit, stated, "KPMG [Canada] is to prepare the F/S from the bank statements and related party invoices supplied by the client." Bentham initialed and Gordon reviewed this workpaper.

KPMG Canada's written policies require SEC reviewing partners to discuss with the audit engagement partner the engagement team's familiarity with U.S. independence standards. Notwithstanding this requirement, Gordon failed to ask Bentham to demonstrate his general knowledge of independence requirements and failed to ask whether Bentham had read the SEC independence rules. If Gordon had asked Bentham this, he would have learned that Bentham had not read the rules. KPMG Canada's written policies also require SEC reviewing partners to discuss with the audit engagement partner any significant independence matters that come to the attention of the filing reviewer in the course of his review. Nevertheless, Gordon failed to discuss with Bentham KPMG Canada's lack of independence as a result of its providing bookkeeping services to Southwestern.

When KPMG Canada, Bentham and Gordon audited Southwestern's fiscal year 2000 financial statements, they audited KPMG Canada's work in preparing Southwestern's 2000 fiscal year books, records and financial statements. In addition, because Southwestern was a development stage company, KPMG Canada, Bentham and Gordon audited Southwestern's statements of loss and deficit and cash flows for the period April 1, 1992 to March 31, 2000. Accordingly, KPMG Canada, Bentham and Gordon issued an audit report for fiscal year 2000 in spite of the bookkeeping work KPMG Canada had performed in the current and prior fiscal

years. KPMG Canada's audit report (dated June 23, 2000), which stated that KPMG Canada was independent, was filed with the Commission on July 17, 2002 with Southwestern's March 31, 2000 Form 10-KSB.

5. KPMG Canada Prepared Certain of Southwestern's Fiscal Year 2001 Books, Records and Financial Statements, and KPMG Canada, Bentham and Gordon Audited KPMG Canada's Work

Bentham knew that for the first quarter of fiscal year 2001, Southwestern did not have any accounting staff and KPMG Canada prepared Southwestern's financial statements from information Southwestern provided.

In addition, KPMG Canada prepared certain first quarter books and records that enabled KPMG Canada to prepare the financial statements. In particular, KPMG Canada prepared an adjusted trial balance with supporting schedules for the three months ended June 30, 2000. Two of the supporting schedules classify Southwestern's Canadian and United States bank account transactions. Southwestern provided KPMG Canada with the bank transactions from which KPMG Canada prepared these schedules.

In late 2000 or early 2001, Bentham began to have concerns that KPMG Canada could not audit Southwestern and be independent unless Southwestern hired an in-house or outside accountant to prepare its books and records and financial statements. KPMG Canada employees began receiving more information regarding permitted and prohibited services for SEC clients, and Bentham attended a training course on U.S. generally accepted accounting principles ("GAAP") and GAAS. Bentham recommended to Southwestern's founder that Southwestern hire in-house accounting staff and introduced a contract accountant as a potential hire. He also discussed with the audit manager that KPMG Canada could not be doing accounting work or preparing financial statements for Southwestern.⁸ Although Bentham informed Southwestern that KPMG Canada could not continue providing certain bookkeeping services, Bentham failed to document this issue in the workpapers or prepare a Significant Issues and Decisions Document, even though KPMG Canada policies required such a document.⁹

Effective February 2001, the Commission adopted Rule 2-01(c)(4)(i)(A) of Regulation S-X, which incorporated previous requirements and provides that "[a]n accountant is not independent, if, at any point during the audit and professional engagement period, the accountant provides . . . [b]ookkeeping . . . services" to an audit client related to that client's accounting records or financial statements. KPMG Canada and Bentham, nevertheless, continued to provide prohibited services. Specifically, during the audit, Bentham participated in deciding how to record stock issuances which Southwestern had not recorded in the third and fourth quarters of

⁸ The contract accountant (the first of two) began preparing accounting records for Southwestern as of the second quarter of fiscal year 2001 (beginning July 1, 2000).

⁹ The following year, bookkeeping services that KPMG Canada provided Southwestern were detailed in a Significant Issues and Decisions Document.

fiscal year 2001. Southwestern's founder had originally informed KPMG Canada that certain shares had been issued for cash. KPMG Canada, however, was having difficulty reconciling the amount of shares Southwestern had issued with the cash it received. KPMG Canada also was unable to reconcile Southwestern's records with the transfer agent's confirmation regarding the amount of shares issued. Bentham told Southwestern's founder that KPMG Canada could not determine where the cash had been deposited. Southwestern's founder did not provide any explanation for the lack of funds for the issued shares. In early-February 2002, Bentham asked Southwestern's founder whether certain explanations could account for the lack of funds, such as if these shares had been issued for services provided rather than having been issued for cash. Southwestern's founder then confirmed that the shares had been issued for services provided. KPMG Canada's audit fees for fiscal year 2001 tripled primarily because of the amount of work KPMG Canada did to record and reconcile the stock transactions.

When Gordon reviewed the workpapers for fiscal year 2001, they did not include a Significant Issues and Decisions Document.¹⁰ According to KPMG Canada policy, a Significant Issues and Decisions Document must be prepared for each audit. Gordon failed to ask anyone on the audit engagement team for the missing workpaper. Additionally, Gordon did not discuss with Bentham SEC independence requirements related to bookkeeping services, even though Gordon had previously been advised that Southwestern's records were poor and KPMG Canada was preparing Southwestern's financial statements. Gordon understood there was no change in these circumstances in fiscal year 2001.

When KPMG Canada, Bentham and Gordon audited Southwestern's fiscal year 2001 financial statements, they audited KPMG Canada's work in preparing the fiscal year 2001 first quarter financial statements and recording stock issuances for the third and fourth quarters of fiscal year 2001. Moreover, KPMG Canada, Bentham and Gordon audited Southwestern's statements of loss and deficit and cash flows for the period April 1, 1992 to March 31, 2001. As a result, KPMG Canada, Bentham and Gordon issued an audit report for fiscal year 2001 in spite of the bookkeeping work KPMG Canada had performed in the current and prior fiscal years. KPMG Canada's audit report (dated February 19, 2002), which stated that KPMG Canada was independent, was filed with the Commission on August 8, 2002 with Southwestern's Form 10-KSB for March 31, 2001.

6. For Fiscal Year 2002, KPMG Canada, Bentham and Gordon Audited KPMG Canada's Work in Recording 2002 Stock Transactions, Drilling Costs and Other Liabilities and Expenses

KPMG Canada again provided bookkeeping services to Southwestern in fiscal year 2002. Southwestern's first outside accountant transferred the company's accounting records to a second outside accountant in early to mid-2002. The second outside accountant was involved in preparing Southwestern's books and records for fiscal year 2002. The outside accountant's work, however, centered on recording cash transactions. Bentham knew that, during the audit, a

¹⁰ Because the March 31, 2001 year-end filing was delayed, Gordon reviewed the fiscal year 2001 workpapers at about the same time he reviewed the fiscal year 2002 workpapers.

member of KPMG Canada's audit engagement team made nineteen journal entries, many of which were to record non-cash stock transactions and to accrue various liabilities and to record various expenses, including the drilling costs on Southwestern's first and only well, which activity Southwestern had failed to record as of fiscal year-end 2002.

Gordon knew that KPMG Canada was recording Southwestern's stock transactions for fiscal year 2002. The Significant Issues and Decisions Document for fiscal year 2002, which Bentham initialed and Gordon reviewed, stated that "KPMG [Canada] booked [adjusting journal entries] to account for the expense [o]f issuing shares and warrants for services." This Significant Issues and Decisions Document also described several other instances where KPMG Canada recorded accounting transactions for Southwestern for fiscal year 2002. For example, the Significant Issues and Decisions Document stated that "no amount has been accrued [by Southwestern] for the drilled well," KPMG Canada's planned audit procedure was to "review the invoices from [the drilling company] to determine the amount to be accrued in the financial statements" and that an accrual for the well was then "booked as an [adjusting journal entry]." The Significant Issues and Decisions Document also noted that "KPMG [Canada] posted an [adjusting journal entry] to accrue for the costs of [a] contract" that Southwestern had not recorded. The same document explained that KPMG Canada "booked" an adjusting journal entry to record depreciation on assets Southwestern purchased during the year when Southwestern had taken no depreciation on those assets. Because Southwestern had not booked these items, KPMG Canada's adjusting journal entries functioned as Southwestern's journal entries. Thus, KPMG Canada determined the accounting for, and recorded, the stock and warrant issuances and certain liabilities and expenses for the year.

When KPMG Canada, Bentham and Gordon audited Southwestern's fiscal year-end 2002 financial statements, they audited KPMG Canada's work in recording fiscal year 2002 stock transactions, drilling costs and certain liabilities and expenses. Furthermore, KPMG Canada, Bentham and Gordon audited Southwestern's statements of loss and deficit and cash flows for the period April 1, 1992 to March 31, 2002. As a result, KPMG Canada, Bentham and Gordon issued an audit report for fiscal year 2002 in spite of the bookkeeping work KPMG Canada also had performed in prior fiscal years. KPMG Canada's audit report (dated July 19, 2002), which stated that KPMG Canada was independent, was filed with the Commission on August 28, 2002 with Southwestern's Form 10-KSB for March 31, 2002.

7. KPMG Canada Lacked Adequate Policies and Procedures to Prevent and Detect the Independence Problem that Occurred with Southwestern

While KPMG Canada was providing bookkeeping services to Southwestern, it had no policy or procedure requiring audit engagement partners to consult with anyone at KPMG Canada in deciding whether to provide bookkeeping services to audit clients. Indeed, Bentham did not seek approval from anyone before authorizing the bookkeeping services for Southwestern.

In December 2000, KPMG Canada designated an Ethics and Independence Partner ("Independence Partner") in its National Office with responsibility for ensuring the firm's compliance with the rules of Professional Conduct of the Provincial Institutes/Ordre of Chartered Accountants and the Commission. Although KPMG Canada began to set new policies, it still

lacked effective monitoring procedures to detect and prevent the continuing independence problems with the Southwestern audits in fiscal years 2001 and 2002.

Additionally, KPMG Canada had no formal independence training for its staff until after the last of the Southwestern audits were completed in 2002. KPMG Canada also did not have any requirements to document threats to independence and related safeguards until 2004, after Canadian independence standards had been proposed addressing analysis of, and documentation relating to, such threats and safeguards.

Moreover, KPMG Canada's quality control procedures relating to client continuance were insufficient. KPMG Canada policies required client continuance forms to be completed yearly by the engagement team and reviewed by a professional practice partner. Client continuance forms included a consideration of KPMG Canada's compliance with independence requirements and an assessment of the risks associated with auditing clients, including the adequacy of the client's accounting records. However, Bentham failed to complete client continuance forms for Southwestern every year from 1999 through 2002, and KPMG Canada failed to detect this failure. Since no forms had been completed, no reviews by a professional practice partner could occur.

Furthermore, KPMG Canada failed to conduct appropriate reviews of its engagement partners' audit files to determine compliance with KPMG Canada policies and procedures related to, among other things, independence. The risk management group in KPMG Canada's National Office oversees the Quality Performance Review ("QPR") program. Partners were subject to a QPR once every three years. Several client files were examined for each partner, and the files selected were to be weighted towards higher risk clients. Nonetheless, the audit files for Southwestern were never subject to a QPR review.

Southwestern was a high risk client. KPMG Canada policies provided that all public companies, like Southwestern, must have a concurring review and that such clients are high risk. Additionally, according to KPMG Canada's risk criteria in its client continuance forms, Southwestern should have been identified as a high risk client because, among other things, Southwestern's accounting records and internal controls were inadequate; Southwestern had no audit committee; Southwestern faced financing difficulties; each year, KPMG Canada's audit report disclosed that Southwestern's ability to continue to operate was dependent upon its raising additional financing; Southwestern had significant related party transactions; and Southwestern's founder was a particularly dominant CEO.

Despite all of these factors, neither Bentham nor Gordon¹¹ considered Southwestern to be a high risk client. Moreover, Southwestern was not selected in Bentham's partner QPRs in 1998 and 2001 notwithstanding the fact that it clearly fit KPMG Canada's definition of a high risk client, and even though Southwestern was Bentham's only SEC engagement client in 1998.

KPMG Canada's QPRs include reviewing compliance with policies in key risk management areas, including independence. QPR objectives include assessing the engagement team's compliance with firm and professional standards and assessing adherence to relevant statutory requirements. Professional standards and statutory requirements would include SEC independence standards. As a result, had KPMG Canada performed QPRs of Southwestern in 1998 or 2001, it should have discovered that KPMG Canada's independence was compromised because the firm provided prohibited bookkeeping services.

E. LEGAL ANALYSIS

An independent auditor "assumes a *public* responsibility transcending any employment relationship with the client [and] owes ultimate allegiance to the corporation's creditors and stockholders, as well as to the investing public. This 'public watchdog' function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust." *United States v. Arthur Young & Co.*, 465 U.S. 805, 817-18 (1984).

"Because of the importance of an accountant's independence to the integrity of the financial reporting system, the Commission has concluded that circumstances that raise questions about an accountant's independence always merit heightened scrutiny." Section III.C.I. of Amendment to Rule 102(e) of the Commission's Rules of Practice, Release No. 33-7593 (October 19, 1998).

Section 602.02.c.i of the Commission's Codification of Financial Reporting Policies provides: "It is the Commission's position that an accounting firm cannot be deemed independent with regard to auditing financial statements of a client if it has participated closely, either manually or through its computer services, in maintenance of the basic accounting records and preparation of the financial statements."

Rule 2-01(c)(4)(i)(A) of Regulation S-X, which became effective in February 2001, similarly provides that "[a]n accountant is not independent, if, at any point during the audit and professional engagement period, the accountant provides . . . [b]ookkeeping or other services" to an audit client related to that client's accounting records or financial statements, including: "(1) Maintaining or preparing the audit client's accounting records; (2) Preparing the audit client's financial statements that are filed with the Commission or form the basis of financial statements

¹¹ In December 2000, KPMG Canada required concurring partners to review a planning memorandum prior to the commencement of significant fieldwork for the audit of an SEC registrant engagement or other engagements identified as "high risk." Because Gordon did not consider Southwestern to be a high risk client, he did not review planning memoranda prior to the commencement of significant fieldwork for Southwestern. KPMG Canada's quality control policies and procedures failed to surface these deficiencies. KPMG Canada likewise did not detect that Gordon, in certain years, had failed to sign off on Southwestern's audit workpapers as concurring and/or SEC reviewing partner.

filed with the Commission; or (3) Preparing or originating source data underlying the audit client's financial statements.”

Rule 2-02(b)(1) of Regulation S-X also requires the accountant's report to “state whether the audit was made in accordance with generally accepted auditing standards.” 17 C.F.R. § 210.2-02 (1998). Codification of Statements on Auditing Standards (“SAS”), AU Section 220, provides that an auditor “should administer his practice within the spirit of [the Commission's] precepts and rules” in order to be independent. SAS, AU Section 150.02, states that the audit “report should contain a clear-cut indication of the character of the auditor's work, if any, and the degree of responsibility the auditor is taking.”

As described above, KPMG Canada participated closely in the maintenance of certain of Southwestern's basic accounting records and prepared Southwestern's financial statements for the fiscal years ended March 31, 1998, 1999, 2000, 2001 and 2002. Each fiscal year from 1999 through 2002 included operating results from prior fiscal year(s) that were audited by Bentham and Gordon during which time KPMG Canada also provided bookkeeping services. As the engagement partner, Bentham was primarily responsible for the audits. Bentham also supervised the bookkeeping services and participated in some of that work. Gordon, the concurring and SEC reviewing partner, was informed that KPMG Canada was preparing certain of Southwestern's basic accounting records and financial statements, yet he concurred in the issuance of the audit reports as concurring partner and did not require KPMG Canada to withhold its audit reports as SEC reviewing partner. Therefore, KPMG Canada, Bentham and Gordon lacked independence from Southwestern when KPMG Canada issued its audit reports on Southwestern's financial statements for its 1999, 2000, 2001 and 2002 fiscal years, all of which were included in the company's public filings with the Commission.

Additionally, KPMG Canada's audit reports stated that the audits were conducted in accordance with GAAS when they were not. As set forth above, KPMG Canada, Bentham and Gordon violated AU Section 220 by lacking independence under the Commission's rules and guidance. KPMG Canada also violated AU Section 150.02 because its audit reports did not accurately describe the character of KPMG Canada's work. These reports stated that KPMG Canada was independent when it was not and failed to disclose the bookkeeping services it provided Southwestern. KPMG Canada, Bentham and Gordon thereby violated the auditor independence requirements imposed by the Commission's rules and guidance and by GAAS.

The Respondents engaged in improper professional conduct under the negligence standards of Rule 102(e)(1)(ii) of the Commission's Rules of Practice, as defined in Rule 102(e)(1)(iv)(B). Specifically, KPMG Canada, Bentham and Gordon engaged in: 1) highly unreasonable conduct that resulted in a violation of applicable professional standards in circumstances in which KPMG Canada, Bentham and Gordon knew or should have known heightened scrutiny was warranted; and 2) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards that indicate a lack of competence to practice before the Commission.

F. FINDINGS

Based on the foregoing, the Commission finds that KPMG Canada, Bentham and Gordon engaged in improper professional conduct pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

G. CERTAIN STEPS KPMG CANADA HAS TAKEN SINCE ITS AUDITS OF SOUTHWESTERN

KPMG Canada introduced a mandatory annual independence training course in November 2002. The course content includes SEC independence rules and Canadian independence standards. All client service professionals are required to take this training once each year and pass a mastery exam at the end of the course. The results are centrally monitored by KPMG Canada's National Office to confirm that all client service professionals have taken the course.

In 2003, KPMG Canada implemented a new electronic system ("the Sentinel system") that helps to detect when non-audit services are provided to SEC registrants. Individuals who propose new engagements/projects for SEC registrant audit clients must describe the engagement/project in the Sentinel system. The Sentinel system automatically sends the request to the lead audit engagement partner, who determines whether the engagement/project is a permissible service under auditor independence rules and determines whether the engagement/project requires separate pre-approval from the client's audit committee. Once the lead audit engagement partner approves the engagement/project, the Sentinel system assigns the engagement/project a Sentinel Approval Number, which is necessary in order to open a new engagement/project in KPMG Canada's Time and Billing system.

In April 2003, KPMG Canada imposed the following requirements for all high risk clients, including SEC registrants, on an annual basis: 1) the engagement team must complete a client retention workpaper, WP-100, which contains a more detailed assessment of client risk factors than previous workpapers; and 2) the engagement partner and a professional practice partner or risk management partner must approve WP-100. WP-100 also requires the engagement team to list non-audit services that are being, or are expected to be, provided to the client, including bookkeeping services.

In addition, in October 2004, KPMG Canada implemented the workpaper, Evaluation of Threats to Independence and Safeguards – Canada ("Threats and Safeguards"), as a result of recent Canadian independence standards that require each audit engagement team to document all of the actual and perceived threats to independence, as well as the safeguards that have been implemented to address those threats. The Threats and Safeguards workpaper, which is the basis for preparing the annual independence letter to the audit committee (U.S. Independence Standards Board #1 Letter ("ISB #1 Letter")), is reviewed by the concurring partner after it has been completed. The concurring partner also reviews the ISB #1 Letter.

Furthermore, since 2004, KPMG Canada now requires publicly listed entities to be subject to a QPR once every five years. Beginning with the 2004 QPR program, KPMG Canada required retention of documentation from SEC engagement reviews for seven years.

H. UNDERTAKINGS BY KPMG CANADA

Respondent KPMG Canada undertakes the following:

1. Within 10 days of the date of this Order, KPMG Canada shall pay \$73,682 to the United States Treasury, which represents \$60,148 in KPMG Canada's fees from the audit and bookkeeping services it performed for Southwestern for fiscal year 1999 through 2002, and \$13,534 in prejudgment interest. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, Stop 0-3, VA 22312; and (D) submitted under cover letter that identifies KPMG Canada as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Antonia Chion, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-8549-A.
2. *Firm-Wide Auditor Independence Training*: KPMG Canada shall continue to require all audit professionals to annually undergo training regarding auditor independence requirements and guidance.
3. *Maintenance of Independence Partner*: KPMG Canada shall maintain at least one partner in its National Office with responsibility for ensuring the firm's compliance with auditor independence requirements and guidance, including, without limitation, the adoption, implementation and oversight of firm policies and procedures designed to ensure such compliance ("Independence Partner").
4. *Implementation of Policies Preventing Prohibited Bookkeeping Services from Being Provided to SEC Registrant Audit Clients*: KPMG Canada shall adopt and implement within 90 days of this Order written procedures to provide reasonable assurance that prohibited bookkeeping services will not be provided to SEC registrant audit clients, including:
 - i. Procedures requiring that client continuance forms (containing an assessment of risks and a listing of non-audit services being provided) for all SEC registrant audit clients to be completed and reviewed annually; and further requiring KPMG Canada's National Office to monitor the annual completion and review of client continuance forms for all SEC registrant audit clients.
 - ii. Procedures requiring an Independence Partner to annually review such documents, forms and other information relating to all SEC registrant audit clients (including, but not limited to, client continuance forms and information in the Sentinel

system) sufficient to determine whether any prohibited bookkeeping services are being provided to SEC registrant audit clients.

5. *Documentation of Concurring Partner Review for SEC Registrant Audit Clients:* KPMG Canada shall adopt and implement written procedures within 90 days of this Order requiring concurring partners to sign and date workpapers (including planning memoranda) for all SEC registrant audit clients on the date they review such workpapers.

6. *Retention of QPR Documentation for SEC Registrant Audit Clients:* KPMG Canada shall maintain its policy requiring retention of all documentation from QPRs of SEC registrant audit engagements for at least seven years.

7. *Distribution of Order:* KPMG Canada shall distribute a copy of this Order to all of its audit professionals within 10 business days after entry of the Order.

8. *Report on Compliance:* Within 120 days from the entry of this Order, KPMG Canada shall certify in writing to Commission staff that it is in compliance with the undertakings set forth in paragraphs H.1 through H.7.

In determining to accept the Offer of KPMG Canada, the Commission considered remedial acts promptly undertaken by KPMG Canada, cooperation afforded the Commission staff and the undertakings set forth above.

I. UNDERTAKINGS BY GORDON

Gordon undertakes that:

1. As long as he practices before the Commission as a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission, Gordon's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner; and/or

2. As long as he appears or practices before the Commission as an independent accountant:

(a) Gordon, or the public accounting firm with which he is associated, is and will remain registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002; and

(b) Gordon will comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

In determining to accept the Offer of Gordon, the Commission considered the undertakings set forth above.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in the Respondents' Offers.

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

KPMG Canada

- A. KPMG Canada is censured pursuant to Rule 102(e)(1)(ii).

Bentham

B. Bentham is denied the privilege of appearing or practicing before the Commission as an accountant.

C. After two years from the date of this Order, Bentham may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Bentham's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Bentham, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Bentham, or the registered public accounting firm with which he is associated, has been inspected by the Board or equivalent Canadian organization and that inspection did not identify any criticisms of or potential defects in Bentham's or the firm's quality control system that would indicate that Bentham will not receive appropriate supervision or, if the Board has not conducted an inspection, has received an unqualified report relating to his, or the firm's, most recent peer review conducted in accordance with the guidelines adopted by the former SEC Practice Section of the American Institute of Certified Public Accountants Division for CPA Firms or an organization providing equivalent oversight and quality control functions;

(c) Bentham has resolved all disciplinary issues with the Board or equivalent Canadian organization, and has complied with all terms and conditions of any sanctions imposed (other than reinstatement by the Commission); and

(d) Bentham acknowledges his responsibility, as long as Bentham appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

D. The Commission will consider an application by Bentham to resume appearing or practicing before the Commission provided that his chartered accountant license is current and he has resolved all other disciplinary issues with the applicable Canadian institute of chartered accountants. However, if licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Bentham's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

Gordon

E. Gordon is denied the privilege of appearing or practicing before the Commission as an accountant for nine months from the date of this Order.

By the Commission.

Jonathan G. Katz
Secretary