

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 68307 / November 28, 2012**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3425 / November 28, 2012**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15109**

**In the Matter of**

**KCAP FINANCIAL, INC.,  
DAYL W. PEARSON,  
MICHAEL I. WIRTH, CPA  
AND R. JONATHAN  
CORLESS,**

**Respondents.**

**ORDER INSTITUTING CEASE-AND-DESIST  
PROCEEDINGS PURSUANT TO SECTION  
21C OF THE SECURITIES EXCHANGE ACT  
OF 1934, MAKING FINDINGS, AND  
IMPOSING CIVIL PENALTIES AND A  
CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against KCAP Financial, Inc., Dayl W. Pearson, Michael I. Wirth, CPA, and R. Jonathan Corless (collectively “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted Offers 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 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, which are admitted, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Civil Penalties and a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondents’ Offers, the Commission finds<sup>1</sup> that:

#### Summary

From the end of 2008 through the middle of 2009, KCAP Financial, Inc. (“KCAP”), a business development company (“BDC”), materially overstated the value of its asset portfolio in its reported financial statements. During the relevant period, KCAP held two primary classes of assets in its portfolio: corporate debt consisting of senior secured term loans, junior term loans, mezzanine debt, and bonds issued primarily by privately-held middle market companies (“debt securities”); and investments in collateralized loan obligation funds (“CLOs”).<sup>2</sup> During the 2008-09 financial crisis, KCAP did not account for certain market-based activity in determining the fair value of its debt securities. KCAP also did not account for certain market-based activity for its two largest CLO investments by fair valuing those investments at KCAP’s cost. Moreover, KCAP’s public filings were materially misleading because they stated that these two CLOs were valued using a discounted cash flow method that incorporated market data, when the CLOs were valued at KCAP’s cost.

By not accounting for certain market-based activity, KCAP did not record and report the fair values of its assets in conformity with the Financial Accounting Standards Board Statement of Financial Accounting Standards 157 – Fair Value Measurements (“FAS 157”) and Generally Accepted Accounting Principles (“GAAP”). In particular, FAS 157 calls for expanded disclosures about fair value measurements and requires that assets be fair valued based on an “exit price,” which reflects the price that would be received to sell an asset in an orderly transaction between market participants at the measurement date.

In May 2010, KCAP disclosed that it needed to restate the fair values for certain of its debt securities and CLOs and that it had overstated its Net Asset Value by approximately 27% as of the December 31, 2008 valuation date. Also, KCAP’s internal controls over financial reporting were not properly designed to value its illiquid assets because the company’s valuation procedures did not adequately take into account certain market inputs. KCAP’s asset overvaluation and internal controls failures violated the reporting, books and records, and internal controls provisions of the federal securities laws, namely Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 promulgated thereunder.

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<sup>1</sup> 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.

<sup>2</sup> A CLO is a trust typically collateralized by a pool of loans, which may include, among others, domestic and foreign senior secured loans, senior unsecured loans, and subordinate corporate loans.

Dayl W. Pearson, KCAP's President and Chief Executive Officer, and R. Jonathan Corless, KCAP's Chief Investment Officer, had primary responsibility for calculating the fair value of KCAP's debt securities, while Michael I. Wirth, KCAP's Chief Financial Officer, had primary responsibility for calculating the fair value of KCAP's CLOs. Wirth was also responsible for KCAP's financial statements, and he prepared KCAP's disclosures concerning its valuation methodologies in KCAP's public filings. Pearson reviewed those valuation disclosures before they were filed.

Thus, Pearson, Wirth, and Corless each caused KCAP's reporting, books and records, and internal controls violations. Each also directly violated Exchange Act Rule 13b2-1 by causing KCAP's internal books and records to reflect the materially overstated fair values of certain of its debt securities and CLOs. Pearson and Wirth also violated Exchange Act Rule 13a-14 by signing various KCAP public filings with certifications that KCAP had designed sufficient internal controls over financial reporting.

### **Respondents**

1. **KCAP Financial, Inc., f/k/a Kohlberg Capital Corporation ("KCAP")**, is an internally managed, non-diversified closed-end investment company that elected to be regulated as a BDC under the Investment Company Act of 1940 ("Investment Company Act"). KCAP also has a wholly-owned portfolio company, Katonah Debt Advisors, which manages its CLO funds. KCAP is incorporated in the State of Delaware and is headquartered in New York City. KCAP's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the NASDAQ Global Select Market. KCAP is required to file reports with the Commission pursuant to Section 13 of the Exchange Act.

2. **Dayl W. Pearson**, age 57, is a resident of Locust Valley, NY. Since December 2006, Pearson has been KCAP's President and Chief Executive Officer.

3. **Michael I. Wirth, CPA**, age 54, is a resident of Scarsdale, NY. Wirth is currently licensed as a CPA in New York. From December 2006 through June 2012, Wirth served as KCAP's Chief Financial Officer.

4. **R. Jonathan Corless**, age 60, is a resident of Pound Ridge, NY. Since December 2006, Corless has served as KCAP's Chief Investment Officer.

### **Background**

5. During fiscal years 2008 and 2009, KCAP invested in debt securities issued by privately-held middle market companies. The middle market, as defined by KCAP, consisted of companies with Earnings Before Interest, Taxes, Depreciation, and Amortization ("EBITDA") of \$10 million to \$50 million and/or total debt of \$25 million to \$150 million. As of December 31, 2008, KCAP's investments in debt securities totaled approximately \$384 million and constituted 75% of the \$514 million in KCAP's investment portfolio.

6. KCAP also invested in the equity tranches of CLOs, primarily those managed by KCAP's wholly-owned investment adviser Katonah Debt Advisors. At December 31, 2008, KCAP's CLO investments totaled approximately \$57 million and constituted 11% of KCAP's investment portfolio.

7. KCAP is regulated as a BDC under the Investment Company Act. A BDC is a type of closed-end investment company established by Congress to make capital more readily available to small, developing, and financially troubled companies that do not have ready access to the public capital markets or other forms of conventional financing. BDCs function like private equity or venture capital funds. As a BDC, KCAP is subject to the relevant requirements of the Investment Company Act to the same extent as a registered closed-end fund, including Section 2(a)(41)(B)(ii), which requires a registered fund's Board of Directors to determine, in good faith, the fair value of its portfolio assets when market quotations are not readily available.

8. In September 2006, the Financial Accounting Standards Board ("FASB") issued FAS 157.<sup>3</sup> FAS 157 became effective for financial reporting fiscal periods beginning after November 2007. Thus, beginning with its financial statements for the first quarter of fiscal 2008, KCAP had to prepare its financial statements in conformity with FAS 157.

9. FAS 157 defines "fair value," establishes a framework for measuring fair value in accordance with GAAP and calls for expanded disclosures about fair value measurements. FAS 157 defines fair value as an exit price, which reflects the price that would be received to sell an asset in an orderly transaction between market participants at the measurement date. FAS 157 emphasizes that fair value is a market-based measurement, not an entity-specific measurement, and should be determined based on the assumptions market participants would use in pricing the asset.

10. FAS 157 outlines three broad approaches to measure fair value – the market approach, income approach, and/or cost approach and states that valuation techniques consistent with these three approaches shall be used to measure fair value. Under the market approach, prices and other relevant information generated by market transactions involving identical or comparable assets or liabilities are used to measure fair value. The income approach utilizes valuation techniques to convert future amounts to a single discounted present value amount. Lastly, the cost approach is based on the amount that currently would be required to replace the assets in service (i.e. current replacement cost).

11. FAS 157 establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three broad levels. The highest priority is given to quoted prices in active markets for identical assets or liabilities (Level One assets). The next highest priority is given to instances where quoted prices in active markets do not exist for the identical asset, but the asset's fair value can be calculated directly or indirectly based on observable

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<sup>3</sup> Upon the codification of GAAP, which became effective for periods ending after September 15, 2009, FAS 157 became known as ASC 820 - Fair Value Measurements and Disclosures.

market inputs (Level Two assets).<sup>4</sup> The lowest priority is given to instances where observable market inputs are not available, and, therefore, the fair value of those assets is calculated through the use of management estimates of the assumptions that market participants would use in pricing the asset (Level Three assets).

12. In October 2008, FASB issued Statement FAS 157-3, which provided guidance on fair valuing assets in situations in which there is little, if any, market activity. Statement FAS 157-3 noted, among other things, that “[e]ven in times of market dislocation, it is not appropriate to conclude that all market activity represents forced liquidations or distressed sales.”<sup>5</sup>

13. KCAP’s fair value calculations for its debt securities were primarily performed by two senior KCAP officials – Pearson and Corless – with the assistance of a team of four internal credit analysts. Each quarter, the analysts prepared valuation summaries for each debt security. The analysts sent these summaries to Corless for review and approval. After reviewing the valuation packages and making adjustments to the values, Corless forwarded them to Pearson for review, additional adjustments, and approval. The valuation summaries were then sent to KCAP’s Valuation Committee<sup>6</sup> for review and approval.

14. KCAP’s fair value calculations for its CLOs were primarily performed by Wirth with the assistance of an analyst. Pearson reviewed the CLO valuations before Wirth sent them to the Valuation Committee for review and approval.

#### *Materially Misstated Valuation of Debt Securities*

15. KCAP was required to apply valuation methodologies consistent with FAS 157 beginning with the first quarter of 2008. For the first three quarters of 2008, KCAP classified some of its debt securities as liquid, and therefore determined their fair value based on third-party pricing services.

16. KCAP used an enterprise value (“EV”) methodology to determine fair value for those debt securities that it determined were illiquid. The EV methodology calculated whether, in the event of a default or liquidation of the issuer, KCAP would receive full repayment of its loan. To apply the methodology, KCAP calculated an issuer’s EV based on EBITDA valuation multiples of comparable companies. KCAP typically considered three EBITDA multiples: (1) the

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<sup>4</sup> An example of a Level Two asset is an interest-rate swap where the components of the swap are observable data points like the quoted price of a 10-year Treasury bond. The quoted price of a 10-year Treasury bond can be used, either in whole or in part, as a proxy for the fair value of the interest-rate swap.

<sup>5</sup> Statement FAS 157-3 further noted that “it is not appropriate to automatically conclude that any transaction price is determinative of fair value. Determining fair value in a dislocated market depends on the facts and circumstances and may require the use of significant judgment about whether individual transactions are forced liquidations or distressed sales.”

<sup>6</sup> KCAP’s Board of Directors delegated their statutory obligation under the Investment Company Act to report investments at fair value to the Valuation Committee.

average comparable public companies based on size and industry; (2) the average of recent comparable private merger and acquisition transactions; and (3) an actual or implied multiple at the time of the issuer's most recent acquisition or restructuring.

17. If the issuer's EV was greater than the issuer's total outstanding debt that was senior to or the same seniority as the debt security held by KCAP, KCAP used the cost of the debt security as fair value. Conversely, if the issuer's EV was calculated to be less than the issuer's outstanding debt that was senior to or the same seniority as the debt held by KCAP, KCAP would adjust its fair value to be less than its cost.

18. The EV methodology did not, however, calculate or inform KCAP – or the public – what the exit price was for that security. Instead, the EV methodology provided KCAP an assessment of whether the entire principal balance owed to it was likely to be repaid by the debt issuer.

19. During the fourth quarter of 2008, Pearson and Corless classified all of KCAP's debt securities as illiquid, Level Three assets. Therefore, KCAP determined the fair value for all its debt securities solely using the EV methodology.<sup>7</sup> Pearson and Corless assumed that, due to market conditions in the fourth quarter of 2008, price quotes from third-party pricing services did not represent fair value. To the extent any of KCAP's debt securities traded during the fourth quarter of 2008, Pearson and Corless concluded that all such trades reflected distressed transactions.

20. Pearson's and Corless' decision not to use trade data from market transactions during the fourth quarter of 2008 – and to fair value all of KCAP's debt securities based on the EV methodology – caused KCAP to overstate the fair values for most of its debt securities. Upon restatement, 13 of KCAP's debt securities were fair valued using prices reported by third-party pricing services in the fourth quarter of 2008, which resulted in values significantly lower than KCAP's originally reported values at December 31, 2008.

21. Pearson and Corless were aware of and did not take into account numerous quotes or actual trades in the fourth quarter of 2008 involving several of KCAP's debt securities. For example, KCAP held a debt instrument issued by Ford Motor Credit Co. ("Ford"). On or about December 31, 2008, the Ford debt instrument held by KCAP was trading between 41-45% of par value. In early March 2009, before KCAP filed its Form 10-K, Ford made a tender offer to repurchase \$500 million of the same Ford debt instrument held by KCAP at 38-47% of par value. Ford's offer was oversubscribed, and Ford subsequently repurchased an additional \$700 million of its debt instrument at the same price (38-47% of par value).

22. Notwithstanding this market activity, when KCAP filed its Form 10-K for the period ending December 31, 2008, it valued the Ford debt instrument at 70% of par. When KCAP

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<sup>7</sup> For the fourth quarter of 2008, KCAP began incorporating into the EV methodology a discounted cash flow analysis based on the *issuer's* projected cash flow. This approach, however, did not include a discounted cash flow analysis based on the principal and/or interest payments flowing from the *debt security* actually held by KCAP.

restated in May 2010, and took into account evidence of market-based activity, it re-valued the Ford debt significantly lower – at approximately 41% of par.

23. Similarly, KCAP also held two bonds – Freescale Semiconductor and Cooper-Standard Automotive – that had actual trading activity in December 2008 reported by the Trade Reporting and Compliance Engine (“TRACE”), a source for reports on secondary bond market trades in the United States. KCAP did not take into account the trading activity reported on TRACE for these bonds, which showed dramatically lower values than the fair values KCAP assigned to these bonds in its original 2008 financial statements. Compared to the restatement, KCAP’s original valuations for Freescale Semiconductor and Cooper-Standard Automotive were overstated by 75% and 300%, respectively.

24. KCAP did not use an EV methodology to determine the fair value of its debt securities in its restatement. Rather, KCAP largely used an income-based approach, which involved projecting the cash flows of the principal and interest payments from the debt securities it held, and then discounting those payments to present value. Using the income approach, the vast majority of KCAP’s debt securities were restated. Based on application of the EV methodology at December 31, 2008, KCAP fair valued 64 of its 135 debt securities (almost 50%) at par. Upon restatement, however, KCAP fair valued 10 of its 135 debt securities (less than 10%) at par.

#### *Materially Misstated Valuation of CLOs*

25. At year-end 2008, KCAP used different valuation methodologies depending upon the “seasoning,” i.e., the number of contractual, quarterly cash payments made from the CLOs, to fair value the nine CLOs in its portfolio. Wirth was responsible for determining the appropriate valuation methodology to fair value KCAP’s CLOs, and was primarily responsible for calculating the fair value of those assets.

26. For seven CLOs that had four or more contractual payments, KCAP used valuation models to fair value those CLOs. These valuation models took into account current market conditions. Those current market conditions were reflected in various inputs that were considered in KCAP’s valuation models, such as discount, prepayment, and default rates.<sup>8</sup> These seven CLOs represented approximately 28% of KCAP’s overall CLO portfolio. KCAP’s two remaining CLOs – Katonah X and Katonah 2007-1 – represented a substantial portion (approximately 72%) of KCAP’s overall CLO portfolio.

27. In 2007, KCAP purchased Katonah X in two tranches. As of December 31, 2008, Katonah X had generated four quarterly payments. Applying the valuation model KCAP used to fair value those CLOs that had four quarterly payments, Wirth calculated a fair value of \$10.98

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<sup>8</sup> A discount rate is applied to convert projected cash flows out of the CLO to their present value. A prepayment rate measures the percentage of loans in the CLO for which the principal will be repaid before the call date of the loan. A default rate measures the percentage of loans that are expected to default before the loan call date.

million for Katonah X.<sup>9</sup> Wirth, however, decided to use Katonah X's cost – \$11.9 million – as its fair value.

28. By deciding to fair value Katonah X at cost, Wirth did not take into account the significant changes in market conditions, as reflected in changes to market discount, default, and prepayment rates, between KCAP's 2007 purchases and the December 2008 valuation date.

29. In early 2008, KCAP purchased the Katonah 2007-1 CLO for \$28.9 million. Because this CLO had not yet generated four quarterly payments as of December 31, 2008, Wirth calculated the fair value of this CLO to be its cost. In so doing, Wirth did not take into account the market conditions of the fourth quarter of 2008, as those conditions were reflected in critical market-based inputs.

30. KCAP did not disclose that it valued the Katonah X and 2007-1 CLOs at cost. Rather, KCAP disclosed that, for more recently acquired CLOs (like Katonah X and Katonah 2007-1), it used a "discounted cash flow model for more recent CLO funds that utilizes prepayment and loss assumptions based on historical experience and projected performance, economic factors, the characteristics of the underlying cash flow and comparable yields for similar bonds or preferred shares." Wirth prepared this disclosure, which was contained in KCAP's public filings.

31. KCAP and Wirth did not incorporate market-based inputs, such as "prepayment and loss assumptions," into the valuation of Katonah X and Katonah 2007-1. Rather, KCAP valued those two CLOs at the cost it paid for them. Thus, KCAP's disclosures with respect to Katonah X and Katonah 2007-1 were materially misleading.

32. Upon restatement, KCAP fair valued Katonah X and Katonah 2007-1 based on a discounted cash flow method, and determined that their fair values at December 31, 2008 were overstated by 128%, or \$6.7 million, and 35%, or \$7.5 million, respectively.

#### *The Restatement*

33. On May 28, 2010, KCAP restated its financial statements for all four quarters of fiscal 2008 and for the first two quarters of fiscal 2009. For certain reporting periods, the restatement resulted in a significant decrease in the Net Asset Value of KCAP's assets. For example, as a result of the restatement, KCAP reported that its CLO investments were valued at \$34.7 million, and had been overstated by 64%, or \$21.9 million, in fiscal year 2008. KCAP's debt securities were valued at \$353.9 million as a result of the restatement, and had been overstated by 9%, or \$30.6 million, in fiscal year 2008. For the fiscal year ended December 31, 2008, KCAP overstated its Net Asset Value by 27%.

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<sup>9</sup> Based on KCAP's valuation model that was applicable only to KCAP's more "seasoned" CLOs, *i.e.* those CLOs with numerous, contractual cash payments, Wirth calculated two additional fair values for Katonah X of \$11.8 million and \$14.3 million.



34. In the restatement, KCAP acknowledged that it had identified errors in its fair value measurements of its illiquid investments and it identified those errors through the use and weighting of additional valuation techniques and a broader consideration of secondary market inputs.

35. Moreover, KCAP stated that it had material weaknesses with respect to its internal controls for valuing its asset portfolio. KCAP acknowledged in the restatement that its “internal control over financial reporting was not properly designed to implement an appropriate valuation methodology and procedures to value the Company’s illiquid investments consistent with the requirements of Fair Value Measurements and Disclosures as required by GAAP because the Company’s prior valuation procedures did not adequately take into account certain market inputs and other data.”<sup>10</sup>

#### *Material Misstatements in KCAP’s Public Filings*

36. KCAP disseminated materially misstated valuations to the market in its Form 10-K for fiscal year 2008, its Forms 10-Q for the first two quarters of 2009, and in earnings releases filed on Forms 8-K from March through August 2009.

37. Pearson and Wirth each signed the Forms 10-Q for 2008, Form 10-K for 2008, and Forms 10-Q for the first two quarters of 2009 certifying that they had “[d]esigned such internal control over financial reporting, or caused such internal control over financial reporting to be designed under [their] supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles....” In light of the errors resulting in the restatement and KCAP’s internal controls failures, these certifications were false.

#### **Violations**

38. Under Section 21C of the Exchange Act, the Commission may impose a cease-and-desist order upon any person who is violating, has violated, or is about to violate any provision of the Exchange Act and upon any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation.

39. Section 13(a) of the Exchange Act requires issuers that have securities registered pursuant to Section 12 of the Exchange Act to file such periodic and other reports as the Commission may prescribe and in conformity with such rules as the Commission may promulgate. Exchange Act Rules 13a-1, 13a-11, and 13a-13 require the filing of annual, current, and quarterly

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<sup>10</sup> For example, as noted earlier, KCAP analysts prepared valuation summaries for each debt security which contained a calculated fair value. These summaries were sent to Pearson and Corless for review, and were then sent to KCAP’s Valuation Committee, which consisted of three KCAP Board members. The Valuation Committee reviewed and approved the calculated values, and these calculated values were then reviewed and approved by the entire KCAP Board. These valuation summaries contained the relevant information needed to apply the EV methodology to calculate a fair value. In most instances, however, the valuation summaries did not contain a description of current market transactions or activity in the debt security at issue.

reports, respectively. In addition to the information expressly required to be included in such reports, Rule 12b-20 under the Exchange Act requires issuers to add such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading. “The reporting provisions of the Exchange Act are clear and unequivocal, and they are satisfied only by the filing of complete, accurate, and timely reports.” *SEC v. Savoy Industries*, 587 F.2d 1149, 1165 (D.C. Cir. 1978) (citing *SEC v. IMC Int’l, Inc.*, 384 F. Supp. 889, 893 (N.D. Tex. 1974)). A violation of the reporting provisions is established if a report is shown to contain materially false or misleading information. *SEC v. Kalvex, Inc.*, 425 F. Supp. 310, 316 (S.D.N.Y. 1975).

40. Section 13(b)(2)(A) of the Exchange Act requires issuers to “make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.” Section 13(b)(2)(B) of the Exchange Act requires issuers to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are recorded to permit the preparation of financial statements in conformity with generally accepted accounting principles.

41. Exchange Act Rule 13b2-1 prohibits a person from, directly or indirectly, falsifying or causing to be falsified any book, record, or account subject to Section 13(b)(2)(A) of the Exchange Act.

42. Exchange Act Rule 13a-14, among other things, requires each principal executive, and principal financial officer to certify in each quarterly and annual report filed under Section 13(a) of the Exchange Act that such officer has reviewed the report and that such officer and the issuer’s other certifying officer have designed internal control over financial reporting, or caused such internal control over financial reporting to be designed under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP.

43. By engaging in the conduct described above, KCAP violated Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

44. By engaging in the conduct described above, Pearson, Wirth, and Corless caused KCAP’s violations and each violated Exchange Act Rule 13b2-1, and Pearson and Wirth each violated Exchange Act Rule 13a-14.

#### IV.

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

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent KCAP cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 promulgated thereunder.

B. Respondent Pearson cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, 13a-13, 13a-14, and 13b2-1 promulgated thereunder.

C. Respondent Pearson shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$50,000 to the United States Treasury. If timely payment is not made, interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments made by check or money order must be accompanied by a letter identifying Dayl W. Pearson as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and money order or check shall be sent to Antonia Chion, Associate Director Division of Enforcement, U.S. Securities and Exchange Commission, 100 F Street, N.E., Mail Stop 5720-B, Washington, DC 20549-5720-B.

D. Respondent Wirth cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, 13a-13, 13a-14, and 13b2-1 promulgated thereunder.

E. Respondent Wirth shall pay a civil money penalty in the amount of \$50,000 to the United States Treasury. Payment shall be made in the following installments: (i) \$8,333 within 30 days of entry of this Order, (ii) \$8,333 within 60 days of entry of this Order, (iii) \$8,333 within 90 days of entry of this Order, (iv) \$8,333 within 120 days of entry of this Order, (v) \$8,333 within 150 days of entry of this Order, and (vi) \$8,335 within 180 days of entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any interest accrued pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a letter identifying Michael I. Wirth as a Respondent in these proceedings, and the file number of the proceedings; a copy of the cover letter and money order or check shall be sent to Antonia Chion, Associate Director Division of Enforcement, U.S. Securities and Exchange Commission, 100 F Street, N.E., Mail Stop 5720-B, Washington, DC 20549-5720-B.

F. Respondent Corless cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, 13a-13, and 13b2-1 promulgated thereunder.

G. Respondent Corless shall, within 30 days of the entry of this Order, pay a civil money penalty in the amount of \$25,000 to the United States Treasury. If timely payment is not made, interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a letter identifying R. Jonathan Corless as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and money order or check shall be sent to Antonia Chion, Associate

Director Division of Enforcement, U.S. Securities and Exchange Commission, 100 F Street, N.E.,  
Mail Stop 5720-B, Washington, DC 20549-5720-B.

By the Commission.

Elizabeth M. Murphy  
Secretary