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## Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions

*In the Matter of SW Audit,*

Respondent.

PCAOB Release No. 105-2024-009

February 20, 2024

By this Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions (“Order”), the Public Company Accounting Oversight Board (“Board” or “PCAOB”) is:

- (1) censuring SW Audit (“SW Audit,” the “Firm,” or “Respondent”);
- (2) imposing a civil money penalty in the amount of \$60,000 upon the Firm; and
- (3) requiring the Firm to comply with its policies and procedures directed toward ensuring compliance with PCAOB and SEC independence requirements, PCAOB standards for communications with audit committees, and PCAOB standards for timely assembly and retention of audit documentation.

The Board is imposing these sanctions on the basis of its findings that the Firm violated PCAOB rules relating to independence in connection with the audits of an issuer audit client, Prime Global Capital Group Incorporated (“Prime Global”); failed to make certain required audit committee communications with respect to another issuer audit client, Kibush Capital Corp. (“Kibush”), and failed to establish and implement a system of quality control that provided reasonable assurance that its personnel comply with applicable PCAOB rules and standards.<sup>1</sup>

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<sup>1</sup> All references to PCAOB rules and standards in this Order are to the versions of those rules and standards, and to their organization and numbering, in effect at the time of the audits and reviews discussed herein.

I.

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

II.

In anticipation of the institution of these proceedings, and pursuant to PCAOB Rule 5205, SW Audit has submitted an Offer of Settlement (“Offer”) that the Board has determined to accept. Solely for purposes of these proceedings and any other proceedings brought by or on behalf of the Board, or to which the Board is a party, and without admitting or denying the findings herein, except as to the Board’s jurisdiction over Respondent and the subject matter of these proceedings, which is admitted, Respondent consents to the entry of this Order as set forth below.<sup>2</sup>

III.

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

**A. Respondent**

1. **SW Audit** (f/k/a ShineWing Australia) is an unincorporated partnership headquartered in Melbourne, Australia. It is a member of the ShineWing International Ltd. network of firms (“ShineWing International”). At all relevant times, SW Audit was registered with the Board pursuant to Section 102 of the Act and PCAOB rules. During the period covered by this Order, the Firm annually served as the principal auditor for approximately three issuer clients.

**B. Issuers**

2. **Prime Global Capital Group Incorporated** is a corporation headquartered in Kuala Lumpur, Malaysia. Its public filings disclose that it operates palm and durian plantations as well as a real estate business in Malaysia. At all relevant times, Prime Global was an “issuer” as that term is defined in Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii). On January 29,

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<sup>2</sup> The findings herein are made pursuant to the Firm’s Offer and are not binding on any other person or entity in this or any other proceeding.

2019, SW Audit issued an audit report on Prime Global’s financial statements that Prime Global included in its Form 10-K filed with the U.S. Securities and Exchange Commission (“Commission”) for the fiscal year ended October 31, 2018 (the “2018 Prime Global Audit”).

3. **Kibush Capital Corp.** is a corporation headquartered in Las Vegas, Nevada. Its public filings disclose that it is a mineral and natural resources exploration company. At all relevant times, Kibush was an “issuer” as that term is defined in Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii). On August 31, 2021, SW Audit issued an audit report on Kibush’s financial statements that Kibush included in its Form 10-K filed with the Commission for the fiscal year ended September 30, 2020 (the “2020 Kibush Audit”).

### C. Other Relevant Entity

4. **ShineWing TY Teoh PLT** (“ShineWing Malaysia”) is headquartered in Petaling Jaya, Malaysia and is a member of ShineWing International. At all relevant times, ShineWing Malaysia was registered with the Board pursuant to Section 102 of the Act and PCAOB rules. ShineWing Malaysia performed audit procedures on the 2018 Prime Global Audit and performed statutory audits and tax compliance services for Prime Global subsidiaries.

### D. SW Audit Failed to Satisfy Independence Requirements in Violation of PCAOB Rules 3520 and 3524

5. PCAOB rules and standards require that a registered public accounting firm and its associated persons be independent of the firm’s audit client throughout the audit and professional engagement period.<sup>3</sup> That requirement includes an obligation to satisfy the independence criteria set out in the rules and standards of the PCAOB and all other independence criteria set out in the Commission’s rules and regulations under the federal securities laws.<sup>4</sup>

#### i. SW Audit Failed to Obtain Audit Committee Pre-Approval of Tax Compliance and Other Services

6. Rule 3524, *Audit Committee Pre-approval of Certain Tax Services*, provides that, in connection with seeking audit committee pre-approval to perform for an issuer audit client any permissible tax service, a registered public accounting firm shall describe, in writing, to the audit committee of the issuer, among other things, the scope of the service, the fee structure of

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<sup>3</sup> See PCAOB Rule 3520, *Auditor Independence*.

<sup>4</sup> See PCAOB Rule 3520, Note 1.

the engagement, and any side letter or other amendment to the engagement letter, or any other agreement between the firm and the audit client relating to the service.

7. Rule 2-01(c)(7) of Commission Regulation S-X provides that “[a]n accountant is not independent of an issuer” unless, “[b]efore the accountant is engaged by the issuer...to render audit or non-audit services, the engagement is approved by the issuer’s...audit committee.”<sup>5</sup>

8. SW Audit served as Prime Global’s auditor for the 2018 Prime Global Audit.

9. At the same time SW Audit performed the 2018 Prime Global Audit, its affiliate, ShineWing Malaysia, provided statutory audit and tax compliance services for subsidiaries of Prime Global.

10. SW Audit failed, however, to obtain pre-approval from Prime Global’s audit committee for ShineWing Malaysia to provide these services.

11. Accordingly, SW Audit violated Rule 3520 and Rule 3524 by not fulfilling the requirements of Rule 2-01(c)(7)(i) of Commission Regulation S-X, and thus was not independent of Prime Global.

**ii. SW Audit Failed to Satisfy Independence Rules by Seeking to Limit Its Liability Through Its Agreement with an Issuer Client**

12. Rule 2-01(b) of Commission Regulation S-X provides that “[t]he Commission will not recognize an accountant as independent, with respect to an audit client, if the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant’s engagement. In determining whether an accountant is independent, the Commission will consider all relevant circumstances, including all relationships between the accountant and the audit client, and not just those relating to reports filed with the Commission.”<sup>6</sup>

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<sup>5</sup> 17 C.F.R. § 210.2-01(c)(7). The definition of accountant includes “any accounting firm with which the certified public accountant . . . is affiliated.” 17 C.F.R. § 210.2-01(f)(1).

<sup>6</sup> 17 C.F.R. § 210.2-01(b).

13. Under relevant independence criteria, entering into an indemnity agreement with a client impairs an auditor's independence.<sup>7</sup>

14. The executed audit engagement letter between SW Audit and Prime Global for the 2018 Prime Global Audit included the following language indemnifying SW Audit against a variety of claims and damages arising from SW Audit's provision of audit services to Prime Global:

18. Exclusions and limitations of liability: You indemnify ShineWing Australia for any claims, demands, causes of action, losses and damages (including potential losses), business interruptions, loss of data, failure to realise anticipated savings or benefits whatsoever incurred by or awarded against you, . . . liabilities, costs (including legal costs on an indemnity basis) or expenses . . . that may be suffered or incurred by us as a result of any breach by you of a term of this Contract.<sup>8</sup>

15. Accordingly, SW Audit violated Rule 3520 by not fulfilling the requirements of Rule 2-01(b) of Commission Regulation S-X, and thus was not independent of Prime Global.

#### **E. SW Audit Failed to Make Required Audit Committee Communications in Violation of AS 1301 and AS 1305**

16. Pursuant to PCAOB auditing standards, an auditor must communicate with a client's audit committee regarding certain matters related to the conduct of an audit and obtain certain information from the audit committee relevant to the audit.<sup>9</sup> The auditor should communicate to the audit committee an overview of the overall audit strategy, including the

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<sup>7</sup> See *id.*; see also Section A, Question 1 of the Commission's Frequently Asked Questions on Auditor Independence (issued Dec. 13, 2004), <https://www.sec.gov/info/accountants/ocafaqaudind080607> (updated June 27, 2019) ("When an accountant and the audit client, directly or through an affiliate, enter into an agreement of indemnity which seeks to provide the accountant immunity from liability for their own negligent acts, whether of omission or commission, the accountant is not independent. Further, including in engagement letters a clause that an issuer would release, indemnify or hold harmless from any liability and costs resulting from knowing misrepresentations by management would also impair the firm's independence.").

<sup>8</sup> The audit engagement letter defined "we" as SW Audit and "you" as Prime Global.

<sup>9</sup> AS 1301.01, *Communications with Audit Committees*.

timing of the audit, and discuss with the audit committee the significant risks identified during the auditor's risk assessment.<sup>10</sup>

17. PCAOB standards specify that auditors should communicate to the audit committee “[a]ll critical accounting policies and practices to be used, including (1) The reasons certain policies and practices are considered critical; and (2) How current and anticipated future events might affect the determination of whether certain policies and practices are considered critical.”<sup>11</sup>

18. An auditor should also communicate to the audit committee (1) the auditor's evaluation of certain matters relevant to the quality of the issuer's financial reporting;<sup>12</sup> (2) the auditor's responsibility under PCAOB rules and standards with respect to other information presented in documents containing audited financial statements, any related procedures performed, and the results of such procedures;<sup>13</sup> and (3) any significant difficulties encountered during the audit.<sup>14</sup>

19. An auditor must also communicate in writing to the audit committee all significant deficiencies and material weaknesses identified during the audit.<sup>15</sup>

20. In connection with the 2020 Kibush Audit, SW Audit communicated with Kibush's audit committee concerning certain matters related to independence, going concern, internal controls, misstatements, and areas of audit focus. But the Firm failed to inform Kibush's audit committee of the following, as required by PCAOB standards: (i) critical accounting policies and practices, including the reasons certain policies and practices were considered critical, and how current and anticipated future events might affect the determination of whether certain

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<sup>10</sup> *Id.* at .09. In the adopting release for Auditing Standard No. 16 (now known as AS 1301) (“AS 1301 Adopting Release”), the Board indicated that “[c]ommunications between the auditor and the audit committee allow the audit committee to be well-informed about accounting and disclosure matters, including the auditor's evaluation of matters that are significant to the financial statements, and to be better able to carry out its oversight role.” See Auditing Standard No. 16—*Communications With Audit Committees; Related Amendments to PCAOB Standards; and Transitional Amendments to AU Sec. 380*, PCAOB Rel. No. 2012-004, at 2 (August 15, 2012).

<sup>11</sup> AS 1301.12b.

<sup>12</sup> *Id.* at .13.

<sup>13</sup> *Id.* at .14.

<sup>14</sup> *Id.* at .23.

<sup>15</sup> AS 1305.04, *Communications About Control Deficiencies in an Audit of Financial Statements*

policies and practices were considered critical; (ii) SW Audit’s evaluation of matters relevant to the quality of an issuer’s financial reporting; (iii) SW Audit’s responsibility under PCAOB rules and standards with respect to other information presented in documents containing audited financial statements, any related procedures performed, and the results of such procedures; and (iv) any significant difficulties encountered in performing the audit.

21. SW Audit also failed to inform Kibush’s audit committee in writing about the material weaknesses included in Kibush’s Form 10-K filed with the Commission for the fiscal year ended September 30, 2020.

22. Accordingly, SW Audit violated AS 1301.12b, .13, .14, .23, and AS 1305.04 in connection with the 2020 Kibush Audit.

#### **F. SW Audit’s System of Quality Control Failed to Provide Reasonable Assurance with Respect to Compliance with PCAOB Rules and Standards**

23. PCAOB rules require a registered public accounting firm and its associated persons to comply with PCAOB quality control standards.<sup>16</sup> These standards require that a registered public accounting firm have a system of quality control for its accounting and auditing practice.<sup>17</sup> A firm’s system of quality control provides a critical foundation and infrastructure for a firm’s audit quality as it should “ensure that services are competently delivered and adequately supervised.”<sup>18</sup> “A system of quality control is broadly defined as a process to provide the firm with reasonable assurance that its personnel comply with applicable professional standards and the firm’s standards of quality.”<sup>19</sup>

24. As described below, the Firm failed to establish policies and procedures sufficient to provide reasonable assurance that its personnel complied with applicable professional standards and regulatory requirements.

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<sup>16</sup> See PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*; PCAOB Rule 3400T, *Interim Quality Control Standards*.

<sup>17</sup> See QC 20.01, *System of Quality Control for a CPA Firm’s Accounting and Auditing Practice*.

<sup>18</sup> QC § 20.02.

<sup>19</sup> QC § 20.03.

**i. The Firm’s System of Quality Control Failed to Provide Reasonable Assurance with Respect to Independence**

25. A registered public accounting firm should establish quality control policies and procedures to provide reasonable assurance that “personnel maintain independence (in fact and in appearance) in all required circumstances.”<sup>20</sup>

26. At all relevant times, the Firm failed to maintain effective policies and procedures to provide it with reasonable assurance that personnel would maintain their independence. While the Firm required engagement team members to sign independence confirmations in connection with issuer audits, these confirmations did not specifically address the independence of engagement team members with respect to an issuer and its affiliates in accordance with PCAOB and SEC independence requirements.

27. Accordingly, the Firm violated QC § 20.09.

**ii. The Firm’s System of Quality Control Failed to Provide Reasonable Assurance with Respect to Assembly of Audit Documentation for Retention**

28. A firm’s quality control policies and procedures should also address the documentation of each engagement in accordance with applicable professional standards.<sup>21</sup> One of these standards is AS 1215, *Audit Documentation*, which provides that “[t]he auditor must prepare audit documentation in connection with each engagement conducted pursuant to the standards of the PCAOB.”<sup>22</sup> “A complete and final set of audit documentation should be assembled for retention as of a date not more than 45 days after the report release date (*documentation completion date*).”<sup>23</sup>

29. At all relevant times, the Firm failed to maintain effective policies and procedures to provide it with reasonable assurance that it would comply with AS 1215’s requirements regarding audit documentation. Rather, the Firm had a policy requiring that audit documentation be assembled for retention not more than *60 days* after the report release date, which was inconsistent with AS 1215’s 45-day requirement.

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<sup>20</sup> QC § 20.09.

<sup>21</sup> QC §§ 20.03, .17, .18.

<sup>22</sup> AS 1215.04.

<sup>23</sup> AS 1215.15.



30. Accordingly, the Firm violated QC §§ 20.17 and .18.

#### IV.

31. SW Audit has represented to the Board that it has established and implemented the following changes to its policies and procedures for the purpose of providing it with reasonable assurance of compliance with PCAOB and SEC independence requirements, PCAOB standards for communications with audit committees, and PCAOB standards for timely retention of audit documentation:

- a. SW Audit implemented templates for group audit engagements to facilitate pre-approval of services from issuer audit committees;
- b. SW Audit implemented engagement letter templates for issuer audit engagements that omit any indemnification clause;
- c. SW Audit revised its independence confirmations for issuer audit engagements to include individuals' independence pursuant to PCAOB and SEC requirements;
- d. SW Audit required relevant personnel to complete training concerning, *inter alia*, PCAOB and SEC independence requirements, documentation assembly and retention requirements, and required audit committee communications; and
- e. SW Audit engaged an external quality advisor and hired an audit technical director to improve the Firm's system of quality control.

#### V.

In view of the foregoing, and to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports, the Board determines it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

- A. Pursuant to Section 105(c)(4)(E) of the Act and PCAOB Rule 5300(a)(5), the Firm is hereby censured;
- B. Pursuant to Section 105(c)(4)(D) of the Act and PCAOB Rule 5300(a)(4), a civil money penalty in the amount of \$60,000 is imposed upon the Firm.

1. All funds collected by the Board as a result of the assessment of this civil money penalty will be used in accordance with Section 109(c)(2) of the Act.
2. The Firm shall pay this civil money penalty within ten (10) days of the issuance of this Order by: (1) wire transfer pursuant to instructions provided by Board staff; or (2) United States Postal Service money order, bank money order, certified check, or bank cashier's check (a) made payable to the Public Company Accounting Oversight Board, (b) delivered to the Office of Finance, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington D.C. 20006, and (c) submitted under a cover letter, which identifies the Firm as a respondent in these proceedings, sets forth the title and PCAOB release number of these proceedings, and states that payment is made pursuant to this Order, a copy of which cover letter and money order or check shall be sent to Office of the Secretary, Attention: Phoebe W. Brown, Secretary, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington D.C. 20006.
3. If timely payment is not made, additional interest shall accrue at the federal debt collection rate set for the current quarter pursuant to 31 U.S.C. § 3717. Payments shall be applied first to post-Order interest.
4. With respect to any civil money penalty amounts that Respondent shall pay pursuant to this Order, Respondent shall not, directly or indirectly, (a) seek or accept reimbursement or indemnification from any source including, but not limited to, any current or former affiliated firm or professional or any payment made pursuant to any insurance policy; (b) claim, assert, or apply for a tax deduction or tax credit in connection with any federal, state, local, or foreign tax; nor (c) seek or benefit by any offset or reduction of any award of compensatory damages, by the amount of any part of Respondent's payment of the civil money penalty pursuant to this Order, in any private action brought against Respondent based on substantially the same facts as set out in the findings in this Order.
5. Respondent understands that failure to pay the civil money penalty described above may result in summary suspension of Respondent's registration, pursuant to PCAOB Rule 5304(a), following written notice to Respondent at the address on file with the PCAOB at the time of the issuance of this Order.

- C. Pursuant to Section 105(c)(4)(G) of the Act and PCAOB Rule 5300(a)(9), the Firm is required to comply with its revised policies and procedures, including those intended to provide reasonable assurance that Firm personnel (1) comply with PCAOB and SEC independence requirements; (2) communicate to the audit committee required information; and (3) prepare, assemble, and retain audit documentation in connection with each engagement conducted pursuant to the standards of the PCAOB.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

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Phoebe W. Brown  
Secretary

February 20, 2024