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Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

SEC Release No. 34-63237; File No. S7-33-10
Proposed Rules for Implementing the Whistleblower Provision of Section 21F of the Securities Exchange Act of 1934

Dear Ms. Murphy:

We appreciate the opportunity to respond to the Securities and Exchange Commission's (SEC or Commission) proposed rules for *Implementing the Whistleblower Provision of Section 21F of the Securities Exchange Act of 1934* (the Proposed Rule). We support the SEC's continuing efforts to promote the integrity and quality of public company reporting.

The importance of maintaining an open and effective line of communication for reporters of potential wrongdoing inside any organization cannot be underestimated. In recognition of that view, the Sarbanes Oxley Act of 2002 added a legal requirement for public company audit committees to establish procedures "for the receipt, retention and treatment of complaints received by the issuer regarding accounting, internal accounting, and controls." The auditor's responsibility under Section 10A of the Exchange Act provides for an independent assessment of whether a registrant appropriately reacts to reports of potential violations of federal securities laws. We believe that registrants' ethics and compliance programs currently in place provide an effective means of identifying and addressing violations of the law.

We are concerned that certain aspects of the Proposed Rule are inconsistent or incompatible with other legal, regulatory and professional requirements to which auditors are subject. In this letter we highlight those concerns as they relate to the following areas:

- Applicability to public company audit engagements
- Compliance with confidentiality laws and standards
- Evaluating a public company's internal control over financial reporting

I. The Exclusion for Public Company Accounting Firm Professionals is Too Narrow

Under the language of the Proposed Rule, members of a public company audit engagement team would not be eligible for a whistleblower award if information reported to the SEC is obtained during the "performance of an engagement required under the securities laws." As the Staff observes in the proposing release, violations of federal securities laws uncovered during the course of an audit engagement already are subject to the reporting provisions of Section 10A. However the Proposed Rule does not disqualify a partner or employee of an accounting firm from receiving a whistleblower award under other circumstances – for example:

- Reporting perceived audit misconduct or misapplication of PCAOB auditing standards by the auditor's accounting firm in connection with performance of the public company's audit.
- Reporting information learned through performance of a related professional service to a public company audit client, such as a tax or advisory engagement.
- Reporting information obtained in the audit of a nonpublic company, as the types of conduct violative of the federal securities laws (e.g. the illegal sale of unregistered securities) extend beyond companies that file with the SEC.

We believe that the proposed eligibility exclusion is too narrow, since in the circumstances noted above the reporter would have violated state laws and professional standards requiring the professional to maintain the confidentiality of client information received in the course of performing professional services. In addition, even if a whistleblower report were not to reveal client-specific information and consequently did not present confidentiality concerns, the reporting of information regarding a public company audit process to the SEC would threaten to undermine the system of inspections and enforcement of the PCAOB, especially in light of the PCAOB's own "tip center" system.

The proposing release is silent on eligibility of partners, principals and employees of an accounting firm that are not directly involved in the audit of a public company who may gain knowledge of potential federal securities law violations through indirect means (e.g., overhearing a conversation between audit engagement team members). Similarly, tax and advisory professionals may perform services for *non-audit* clients and are routinely exposed to public company information. All partners, principals and employees of a public accounting firm are equally subject to state laws and professional standards mandating client confidentiality. The Dodd-Frank Act, unlike Section 10A, does not mandate reporting of illegal conduct thus superseding state confidentiality laws and professional standards.

Confidentiality of the client relationship and the auditor's duty of integrity are essential to promoting trust and "give and take" between the auditor and the client, and are keys to effective robust audits. We believe that no person who violates a legal confidentiality law in making a whistleblower report should be entitled to share in a whistleblower award.

II. The Proposed Rule Will Undermine Certain Components of Public Companies' Systems of Internal Control on which Auditors Rely

The proposing release recognizes the potential impact the rule may have upon internal whistleblower systems of public companies. Auditors consider the existence and effective operation of a whistleblower reporting system as an important component of a public company's system of internal control. We do not believe that the efforts made to address the potential undermining of those systems by providing financial incentives to bypass them will be effective.

A company's internal reporting and compliance processes are frequently an integral aspect of internal control, which impacts the overall control environment, control activities, information and communication, and monitoring that auditors consider. The auditor uses its understanding of internal control and the assessed levels of inherent and control risk in determining appropriate audit procedures.[1] Auditors also perform an audit of management's assessment of the effectiveness of internal control over financial reporting for registrants that are not non-accelerated filers.[2] As part of that assessment, auditors may consider the extent to which a company's internal control processes have employee-reporting policies and whether those policies are effective.

The Proposed Rule attempts to lessen the countervailing incentive that a potential financial reward will have on an individual who otherwise might be expected to make an internal report of misconduct, chiefly by imposing a timing limit that would in theory permit a company to address the subject of an SEC whistleblower's allegations. We believe that this limit will be ineffective in practice. Instead, we believe that the rule proposal should be revised to require that the whistleblower attempt to use the public company's internal reporting system prior to making an SEC report as a precedent to claiming an award. In this way, we believe that ethics and

[1] PCAOB Interim Auditing Standard AU 319, *Consideration of Internal Control in a Financial Statement Audit* requires auditors to consider a company's internal control in connection with an audit.
[2] Auditing Standard No. 5, *an Audit of Internal Control Over Financial Reporting That is Integrated with An Audit of Financial Statements.*

compliance systems that responsible public companies have erected and maintain will remain robust and continue as a reliable part of a system of controls on which public company auditors rely.

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We appreciate the opportunity to submit our comments on the Proposed Rule. If you have any questions regarding our comments or other information included in this letter, please do not hesitate to contact Sam J. Ranzilla, (212) 909-5837, sranzilla@kpmg.com, or Glen L. Davison, (212) 909-5839, gdavison@kpmg.com.

Very truly yours,

KPMG LLP

cc:

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