

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 62899 / September 13, 2010

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3185 / September 13, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-14044

In the Matter of

KMJ CORBIN & COMPANY, LLP
KENDALL G. MERKLEY, CPA, and
ANTHONY J. PRICE, CPA

Respondents.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS PURSUANT
TO SECTIONS 4C AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND RULE 102(e) OF THE
COMMISSION'S RULES OF PRACTICE,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against KMJ Corbin & Company, LLP (“KMJ”); Kendall G. Merkley, CPA (“Merkley”); and Anthony J. Price, CPA (“Price”) (“Respondents”) pursuant to Sections 4C¹ and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 102(e)(1)(ii) of the Commission’s Rules of Practice.²

¹ Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

² Rule 102(e)(1)(ii) provides, in pertinent part, that:

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

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 Respondents and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission’s Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents’ Offers, the Commission finds³ that:

A. SUMMARY

1. This matter involves improper professional conduct by KMJ Corbin & Company, LLP, Kendall G. Merkley, and Anthony J. Price in connection with audits and reviews of the financial statements of Home Solutions of America, Inc. (“HSOA”) from December 31, 2004 through the second quarter of 2007 (“the Engagements”). The Respondents did not conduct the Engagements in accordance with Public Company Accounting Oversight Board (“PCAOB”) Standards, and HSOA’s financial statements did not present fairly, in all material respects, HSOA’s financial position, operating results, and cash flows in conformity with generally accepted accounting principles (“GAAP”). By causing KMJ to issue false and misleading audit reports and failing to comply with PCAOB Standards and Rules, Merkley was a cause of HSOA’s violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder and caused KMJ’s violation of Regulation S-X Rule 2-02(b)(1).

2. On November 30, 2009, the Commission filed a complaint against HSOA and seven individuals alleging, in part, that HSOA’s financial statements for the year ended December 31, 2004 through the quarter ended June 30, 2007 were materially misstated because HSOA: (i) improperly deferred expenses related to year-end bonuses; (ii) improperly recorded fictitious and premature revenue; and (iii) failed to disclose material transactions with related parties.⁴ HSOA misstated its 2004, 2005, and 2006 net income by 10%, 7%, and 61%, respectively, and its first and second quarter 2007 net income by 308% and 106%, respectively. In its complaint, the

³ The findings herein are made pursuant to Respondents’ Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

⁴ *SEC v. Home Solutions of America, Inc., et al*, Civil No. 3:09-cv-02269-N (N.D.Tx.).

Commission alleges that the Chairman of the Board and CEO and the CFO made or caused to be made materially false statements to KMJ relating to bonuses and certain revenue transactions. Additionally, the Commission alleges that a vice president and a director, who was assisted by the vice president and director's business partner with respect to a 2006 transaction, made or caused to be made materially false statements to KMJ regarding the related party transactions discussed below. In a settlement with the Commission, without admitting or denying the allegations in the Commission's complaint, HSOA consented to the entry of a permanent injunction from violating the antifraud and reporting provisions of the federal securities laws. Additionally, on January 5, 2010, the Commission entered an order revoking the registration of HSOA's common stock.⁵

B. RESPONDENTS

3. **KMJ Corbin & Company, LLP** is an accounting firm registered with the PCAOB and with offices in Costa Mesa and San Diego, California. As of July 2010, KMJ was engaged to audit 15 public company issuer clients. From 2002 until it resigned on February 9, 2009, KMJ served as the independent auditor for HSOA.

4. **Kendall G. Merkley**, CPA, age 49 and a resident of Glendora, California, is licensed as a certified public accountant in the state of California. Merkley served as KMJ's managing partner from 2005 to 2008. Merkley was the engagement partner on KMJ's engagements to audit and review HSOA's 2003 through 2006 financial statements and the concurring partner on KMJ's 2002 engagement.

5. **Anthony J. Price**, CPA, age 40 and a resident of Huntington Beach, California, is licensed as a certified public accountant in the state of California. Price served on KMJ's HSOA engagement as the manager on the 2004 and 2005 audits and 2005 and 2006 reviews. Additionally, Price assisted Merkley in supervising the 2006 audit after being promoted to partner in September 2006 and served as the engagement partner supervising KMJ's reviews for the first and second quarters of 2007.

C. RELEVANT ENTITY

6. HSOA touted itself as a leading remediation and construction company, and claimed to have multimillion dollar contracts and robust financial results, in the aftermath of Hurricane Katrina and other weather-related disasters. HSOA's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and listed on the NASDAQ National Market, before being delisted on January 7, 2008, for failure to file timely periodic reports.

⁵ See Release No. 34-61285, January 5, 2010.

D. FACTS

7. While supervising and conducting KMJ's audits and reviews of HSOA's financial statements for 2004, 2005, 2006 and the periods ended March 31 and June 30, 2007, Merkley (except as to 2007) and Price failed to adhere to PCAOB Standards and Rules. In summary, Merkley and Price failed to: (i) obtain sufficient competent evidential matter regarding bonuses, revenues, and cost of revenues with respect to KMJ's 2004, 2005, and 2006 audit engagements; (ii) comply with PCAOB Auditing Standard No. 3, *Audit Documentation*; (iii) adequately plan the audit and properly supervise assistants in connection with the 2006 engagement; and (iv) conduct reviews of interim financial information in accordance with PCAOB Standards and Rules. Additionally, Merkley caused KMJ to issue inaccurate audit reports in that he should have known that KMJ's audit reports were false because they incorrectly represented that the audits were conducted in accordance with PCAOB standards and that HSOA's financial statements were prepared in conformity with GAAP.

Failure to Obtain Sufficient Competent Evidential Matter

8. An auditor is to obtain sufficient competent evidence to afford a reasonable basis for an opinion regarding the financial statements under audit (*See PCAOB Standards and Related Rules*, AU § 326.01).⁶ Although audit evidence includes representations from management, management's representations are not a substitute for performing sufficient auditing procedures to afford a reasonable basis for an opinion regarding the financial statements under audit (*See PCAOB Standards and Related Rules*, AU § 333.02).

9. The amount and kinds of required evidence depend on the circumstances and the auditor's professional judgment, but evidence has to be "persuasive" though it need not be "convincing" (*See PCAOB Standards and Related Rules*, AU § 326.22). With respect to such judgment, an auditor must maintain an attitude of professional skepticism and assess the risk that the financial statements may contain a material misstatement due to fraud (*See PCAOB Standards and Related Rules*, AU § 316.13). In developing his or her opinion, the auditor should consider relevant evidential matter regardless of whether it appears to corroborate or to contradict the assertions in the financial statements (*See PCAOB Standards and Related Rules*, AU § 326.25).

Bonuses

10. Merkley and Price failed to obtain sufficient competent evidential matter regarding HSOA's bonuses to support KMJ's 2004, 2005, and 2006 audit opinions. Merkley and Price accepted management's representations that HSOA should report bonus expenses in the year paid, even though they were aware of evidence that they should have known contradicted management's

⁶ Citations to PCAOB Standards and Rules refer to standards and rules in effect at the time of the conduct discussed herein.

assertions. At other times, Merkley and Price failed to consider relevant evidential matter as to the periods in which bonus expenses should have been reflected.

2004 Audit

11. Merkley and Price did not discover that HSOA had not accrued a liability for year-end bonuses until April 2005, approximately two weeks after KMJ issued its audit report on HSOA's 2004 financial statements. Merkley initially rejected management's justification for expensing bonuses when paid and flagged his concerns about HSOA's accounting in an e-mail sent to HSOA's CFO, stating that the presumption is that the bonus, which is derived from and directly related to the 2004 results, was earned in 2004, and simply paid in 2005 after the 2004 results were finalized through the audit process. After discussion with HSOA's CFO and in a subsequent e-mail to HSOA's CFO and with a copy to Price, Merkley conveyed that the only way KMJ would be satisfied with HSOA's accounting treatment of bonuses was if HSOA were to represent that (i) HSOA's CEO had discretion to pay an amount less than the bonus pool approved by the board, and (ii) that the bonuses were not fully vested, because recipients had agreed in writing to repay a prorated share of their bonuses if they left the company before the end of the calendar year in which the bonuses were paid. After HSOA management revised its memorandum to include these points in support of expensing the 2004 EBITDA bonus in 2005, Merkley accepted management's representations.

12. HSOA's accounting did not comply with GAAP because HSOA did not record the bonuses in 2004, when HSOA incurred the liability.⁷ As a result, HSOA overstated its 2004 net income by 10%. Merkley should have known that the representations that HSOA management made to justify not accruing the 2004 EBITDA bonus in HSOA's 2004 financial statements were untrue as of KMJ's report date and, therefore, could not support the conclusions KMJ reached during the 2004 audit. Although Merkley and Price discussed it with executive management, neither Merkley nor Price corroborated management's assertions, or disclosed the bonus issue to the non-management members of HSOA's board of directors. Similarly, neither Merkley nor Price updated the 2004 audit work papers to include or make any reference to the memorandum obtained from management.

2005 Audit

13. Less than three weeks after accepting management's assertion that the 2004 EBITDA bonus should be expensed in 2005, over the purported vesting period (i.e., from the date paid through the end of the calendar year in which paid), Merkley and Price took a contrary position regarding HSOA's accounting for the 2004 EBITDA bonus during KMJ's review of HSOA's March 31, 2005 financial statements. KMJ's work papers document that it expected to

⁷ See Statement of Financial Accounting Standards No. 5, "Accounting for Contingencies" ("FAS 5"), paragraph 8. FAS 5 states, in part, a loss contingency shall be accrued by a charge to income if information exists prior to issuance of the financial statements that a liability has been incurred at the date of the financial statements and that the amount of the loss can be reasonably estimated.

see, but did not see, a liability at March 31, 2005 for 2004 bonuses to be paid in April 2005. As a result, KMJ proposed and HSOA recorded an adjustment to expense the entire 2004 EBITDA bonus in the quarter ended March 31, 2005. KMJ's work papers do not document the basis for the conclusion that it was appropriate to expense the 2004 EBITDA bonuses in the first quarter 2005. Similarly, KMJ's work papers do not document what facts supported expensing the 2004 EBITDA bonus in the first quarter 2005 that would not also support expensing the 2004 EBITDA in 2004. KMJ's work papers also do not document why, as represented in the bonus memo, it was not appropriate to expense the 2004 EBITDA bonuses over the purported vesting period.

14. In connection with KMJ's 2005 audit engagement, Merkley and Price did not consider evidence that HSOA was inappropriately accounting for EBITDA bonuses. After Merkley and Price learned that HSOA had not recorded a liability for approximately \$1.7 million of bonuses approved by HSOA's board of directors, Merkley sent HSOA's CFO an e-mail stating his concern about not recording this bonus in 2005. Despite Merkley's concerns, HSOA did not correct its accounting for bonuses at year-end 2005. Furthermore, neither Merkley nor Price proposed an audit adjustment to correct HSOA's accounting, documented any justification for not accruing the 2005 EBITDA bonus, nor disclosed the issue to HSOA's board of directors. In accepting management's accounting, Merkley and Price appear to have again relied upon the bonus memorandum provided to them in April 2005 without corroboration and without incorporating it into KMJ's work paper files. HSOA's accounting for year-end bonuses did not comply with GAAP and resulted in HSOA understating its first quarter 2005 net income by 19% and overstating its year-end 2005 net income by 7%.

2006 Audit

15. At year-end 2006, Merkley and Price learned that HSOA had adopted a new bonus plan pursuant to which management earned cash bonuses under a tiered structure.⁸ Merkley and Price questioned HSOA's management as to why HSOA's bonus accrual was less than the amount that was apparently payable under the new bonus structure. Despite evidence that second-tier bonuses had been earned but not accrued, Merkley and Price accepted management's oral representation, as documented in KMJ's work papers, that the amount accrued "is more reflective of the amount that will be paid for 2006 performance" without corroboration from members of HSOA's board of directors other than HSOA's Chairman or documentation of management's estimate.⁹ HSOA's accounting for year-end bonuses did not comply with GAAP and resulted in HSOA understating its 2006 net income by 3%.

⁸ Under the new bonus plan, HSOA awarded first tier cash bonuses if the Company exceeded an approved EBITDA target and second tier cash bonuses if the Company exceeded the first tier target by 20%. HSOA accrued only amounts payable under the first tier even though it was obvious by December 2006 that the Company had also exceeded the second tier target.

⁹ In April 2007, HSOA paid bonuses equivalent to amounts that were due based upon the achievement of the objective criteria of the bonus plan, which was approximately double the amount management accrued as of year-end 2006.

Revenues and Costs of Revenues

16. Merkley and Price also failed to obtain sufficient competent evidential matter that HSOA's 2006 revenues and cost of revenues were presented in conformity with GAAP.

17. Because KMJ determined that HSOA's internal controls were ineffective, Merkley and Price intended to base KMJ's 2006 audit opinion principally on the results of substantive audit procedures. As analytical review procedures alone are unlikely to provide sufficient competent evidential matter for accounts with significant risks of material misstatement (*See PCAOB Standards and Related Rules*, AU § 329.09), Merkley and Price planned to validate significant accounts, such as revenues and costs of revenues, by performing substantive tests of details, including examining supporting documents and recalculating amounts. KMJ staff working under Merkley and Price's supervision performed inadequate substantive tests to verify HSOA's 2006 revenues, particularly with respect to revenues reported using percentage-of-completion accounting.

Limited Substantive Evidence Supporting Revenues based on Percentage-of-Completion Accounting

18. HSOA derived approximately 57% of its consolidated 2006 revenues from Fireline Restoration Services, Inc. ("Fireline"), its largest subsidiary, and Home Solutions Restoration ("HSR"), an internal reporting group comprised of Florida Environmental Remediation Services ("FERS"), Home Solutions Restoration of Louisiana ("HSRLA"), and Associated Contractors LLC ("Associated"). Fireline and HSR recorded the majority of their respective revenues using percentage-of-completion accounting. KMJ tested HSOA's accounting by obtaining schedules detailing the contract amount, total estimated costs, costs incurred, and the percentage of the contract value earned based on the costs incurred.

19. KMJ's testing of HSOA's revenues recorded using percentage-of-completion accounting and associated costs was flawed in three major respects: (i) it did not utilize planned audit scopes, (ii) it performed only limited substantive testing on items selected for testing, and (iii) it did not test transactions completed prior to year-end.

20. KMJ staff selected audit samples utilizing audit scopes in excess of the "tolerable misstatement" amount determined by KMJ and approved during KMJ's initial planning work. For example, individually significant items, based on KMJ's calculation of tolerable misstatement for Fireline and Associated, were \$280,000 and \$152,250, respectively, but the KMJ staff selected, without explanation, items greater than \$1 million and \$2 million, respectively. As a result of using higher audit scopes, fewer projects were subjected to substantive auditing procedures than planned.

21. Moreover, in addition to subjecting fewer projects to substantive auditing procedures, KMJ insufficiently tested the projects it did select. For example, at Fireline, KMJ concluded that it had obtained sufficient competent evidential matter by selecting for testing 14 projects with a contract value in excess of \$1 million and calculating that it had tested 89% of total

contract values.¹⁰ Although Merkley and Price intended KMJ staff to test project values by examining underlying executed agreements, KMJ staff inappropriately included five projects in its calculation for which HSOA could not provide executed agreements to support the listed contract values. These five contracts represented 19% of the total contract values. Additionally, KMJ staff examined invoices to support only five items for five projects, which it selected on a haphazard basis. In aggregate, KMJ substantively tested only \$1.5 million of Fireline's costs, approximately 50% of which Fireline incurred prior to HSOA's acquisition of Fireline, and therefore contributed little audit evidence to support HSOA's 2006 revenues. As a result of its procedures, KMJ substantively tested only \$1.3 million (3.3%) of Fireline's 2006 revenues of \$39.3 million.

22. Finally, KMJ did not substantively test projects HSOA completed between July 1, 2006, the date HSOA acquired Fireline, and December 31, 2006. Consequently, KMJ's testing of substantial amounts of Fireline's 2006 revenues was largely based on simple analytical comparisons and representations by management.

Reliance on Management Representations Without Obtaining Corroborating Evidence

23. During 2006, HSOA management materially misstated HSOA's net income by recording fictitious and premature revenues from (i) a significant customer; (ii) targets of pending acquisitions (i.e., Fireline and Associated); and (iii) related parties. Merkley and Price relied on representations of HSOA management but failed to obtain corroborating evidence or did not recognize multiple inconsistencies that should have alerted them to management's misrepresentations, and to seek additional competent evidential matter on which to base KMJ's 2006 audit opinion.

Fictitious Revenues from a Significant Customer

24. In connection with KMJ's first quarter 2006 review, Merkley and Price identified and inquired about a significant, unusual arrangement with HSOA's largest customer, which purportedly allowed HSOA to unilaterally charge the customer up to \$2 million per month for agreeing to have personnel on standby, regardless of whether HSOA incurred any costs. Merkley and Price also learned that HSOA modified an agreement defining the terms of future work by HSOA executed by the customer in April 2006 by having the customer initial, in May 2006, a provision allowing HSOA to invoice the customer for standby mobilization services retroactive to January 2006.¹¹ Merkley and Price reviewed a copy of the agreement modified in May 2006,

¹⁰ KMJ calculated it had tested 89% of project contract values by dividing the sum of the contract values for the 14 projects it selected by the total values for all listed projects. KMJ's calculation was flawed because the numerator included amounts it was unable to test and because the denominator excluded contracts completed during the year.

¹¹ On May 10, 2006, HSOA faxed KMJ a copy of an agreement, executed by the customer on April 7, 2006, that defined payment terms for the first \$20 million of work performed by HSOA for the customer after April 1, 2006. On the first page of this agreement, HSOA management inserted a provision purportedly allowing

reviewed journal entries recording \$3 million of revenue based on the modification, and engaged in discussions with HSOA management. As such, Merkley and Price should have known that the nature and business purpose of the purported arrangement was questionable, HSOA lacked contemporaneous documentation and HSOA recorded the related revenues outside of HSOA's normal billing process. Merkley and Price accepted HSOA's recognition of \$3 million of revenue on the condition that HSOA specifically disclose the revenue recorded under the agreements in its Form 10-Q, and with the understanding that the amounts would be subject to more stringent audit procedures by KMJ at year-end. Additionally, KMJ required, at least in connection with the first and second quarter 2006 reviews, that management represent in writing that HSOA's revenue recognition complied with GAAP and that related receivables were collectible.

25. Although management did make these representations to KMJ, management did not state, and KMJ did not document, how HSOA's accounting treatment complied with GAAP. Moreover, in subsequent quarters, neither Merkley nor Price raised any additional questions about the arrangement despite several inconsistent facts, including that: (i) HSOA did not have a purchase order or other documentation that evidenced why HSOA billed the customer for only 50% of the amounts purportedly billable in the first quarter of 2006; (ii) HSOA ceased accruing revenue from purported standby mobilization services after the first quarter 2006; (iii) the customer, which had accounted for approximately 23% of HSOA's revenues in 2005, awarded HSOA almost no new work after it terminated discussions to be acquired by HSOA in April 2006; and (iv) the customer made no payments against amounts invoiced for purported standby mobilization services.

26. At year-end 2006, Merkley and Price planned to rely upon the customer's confirmation of the balance due to HSOA. The confirmation request sent to the customer, however, did not ask the customer to confirm significant terms of the arrangement, such as the date the agreement was entered into, its payment terms, agreement as to the amount invoiced for the period ended March 31, 2006, and the reason why no amounts were invoiced for subsequent periods. Moreover, the customer did not return the confirmation, and made no payments on the invoices in question. Nevertheless, Merkley and Price accepted management's representations based on the written agreement, which they knew had not been executed contemporaneously with the purported agreement to allow HSOA to invoice the customer for standby mobilization services, that HSOA's reported revenues complied with GAAP and that a significant portion of the receivable balance should be reserved as uncollectible due to the customer's deteriorating economic conditions.¹²

HSOA to invoice the customer up to \$2 million per month beginning January 2006. Merkley and Price subsequently saw copies of the agreement on which the customer had initialed and faxed back to HSOA on May 11, 2006. HSOA's CEO, however, never disclosed to Merkley, Price or KMJ that the customer had initialed the provision based on an oral agreement that HSOA could not invoice the customer unless it first issued a purchase order for such services.

¹² KMJ did not review any documentation of management's analysis of the collectability of individual invoices or aggregate balances. Similarly, KMJ did not request or review HSOA's correspondence with the

Fictitious Revenues from Targets of Pending Acquisitions

27. Merkley and Price also overlooked evidence that should have caused them to raise additional questions about revenue recognized by HSOA in advance of its acquisitions of Fireline and Associated in the second and third quarters of 2006, respectively.

28. Immediately prior to its acquisition of Fireline as of July 1, 2006, HSOA recognized \$8.4 million of revenue based on a purported transaction negotiated with the president of Fireline. In connection with its review of HSOA's financial information as of June 30, 2006, KMJ inquired about the agreement, but did not question the transaction's abnormally high margin. After HSOA acquired Fireline, Merkley and Price failed to notice or ignored the fact that Fireline's accounts payable and accrued liabilities at June 30 and September 30, 2006, in aggregate were less than the \$8.4 million receivable on HSOA's books and records and that Fireline's accounts payable and accrued liabilities per its audited financial statements as of June 30, 2006 were less than \$8.4 million. KMJ did not examine, and HSOA did not have, an executed contract for the project purportedly completed by HSOA prior to June 30, 2006. KMJ also failed to consider facts indicating that HSOA continued to record costs supposedly associated with the project in the third and fourth quarters of 2006, even though HSOA recognized 100% of the revenue in the second quarter.

29. Similarly, immediately prior to its acquisition of Associated as of October 1, 2006, HSOA recognized \$4 million of revenue based on purported transactions with Associated. In connection with its 2006 audit engagement, KMJ obtained contracts and examined invoices sent by HSOA covering periods immediately before the effective date of HSOA's acquisition of Associated. Merkley and Price overlooked several inconsistencies that should have alerted them to make additional inquiries and require more competent evidence. First, KMJ failed to notice that certain of the invoices were unlike HSOA's typical invoices to Associated. Although HSOA typically issued sequentially-numbered invoices by project, certain of the invoices examined by KMJ were identified with an "A" suffix rather than the next number in the invoice sequence (the "A Invoices"). Each of the A Invoices included amounts billed or items other than time and materials, such as management fees, for which HSOA had not invoiced Associated in any other invoices. Additionally, KMJ did not note that certain of the A Invoices invoiced Associated for time periods that overlapped time periods for other invoices examined by KMJ for the same project, or note that the A Invoices billed labor at rates above the rates used on other invoices.

customer soliciting payment of the standby mobilization receivable balance. Price continued to rely upon management's representations regarding the standby mobilization agreement after the customer's president told Price in December 2007 or January 2008 that it did not owe amounts for standby mobilization and that his oral agreement with HSOA's CEO was that HSOA could not invoice for standby mobilization prior to being issued a purchase order for such services. The customer's president did not provide Price with any evidence to support the existence of the oral agreement with HSOA's CEO, but acknowledged initialing in May 2006 the mobilization provision added to the agreement originally executed in April 2006. It was not until 2009, when the staff showed Merkley and Price e-mails they had not previously seen between HSOA's CEO and the customer's president that Merkley and Price concluded they could not rely upon management's representations. Promptly thereafter, Merkley and Price caused KMJ to resign as HSOA's auditor.

Furthermore, KMJ did not inquire or otherwise determine if these atypical invoices were reflected in Associated's books and records.

Fictitious Revenues from Related Parties

30. At year-end 2006, Fireline's president executed a scheme to inflate Fireline's receivables and related revenues by causing private companies that he controlled to enter into contracts with HSOA to perform construction work. He then directed Fireline employees to create documents and make accounting entries that made it appear that Fireline was performing on these related party contracts.¹³ As a result, HSOA inflated its reported revenue and receivables by \$3.2 million and \$6.9 million for the year ended December 31, 2006 and six months ended June 30, 2007, respectively. HSOA also did not disclose the existence of these transactions as required by Financial Accounting Standards No. 57, *Related Party Disclosures*.

31. Evidence exists that KMJ should have been aware of at least some of the related party transactions. For instance, in connection with its 2006 audit work at Fireline, KMJ staff examined contracts for two of the four related party projects for which revenue was reported, apparently without recognizing that Fireline's president executed the contracts on behalf of the customer or that the contracts had been backdated. For one project, Fireline's controller confirmed to Price that the customer was affiliated with Fireline and was working as an intermediary between Fireline and a third party customer. As such, Price should have known that HSOA had not disclosed its related party transactions in accordance with GAAP.

Failure to Comply with PCAOB Auditing Standard No. 3

32. PCAOB Auditing Standard No. 3 requires, in part, that "documentation must contain sufficient information to enable an experienced auditor, having no previous connection with the engagement: (a) to understand the nature, timing, extent, and results of the procedures performed, evidence obtained, and conclusions reached, and (b) to determine who performed the work and the date such work was completed as well as the person who reviewed the work and the date of such review" (*See Auditing Standard No. 3, paragraph 6*).

33. Merkley and Price did not ensure that KMJ's 2005 reviews and audit were documented in accordance with PCAOB Auditing Standard No. 3 despite previously acknowledging to the PCAOB that its 2004 documentation was not adequate.¹⁴ In fact, the

¹³ In connection with the 2006 audit, Fireline's president had his partner in some of the related party entities falsely confirmed to KMJ that HSOA had a \$650,000 payable to one of the related parties.

¹⁴ Prior to issuing its audit opinion on the 2005 financial statements, KMJ acknowledged that its 2004 audit documentation was not adequate in its response to the PCAOB's draft inspection report on selected KMJ engagements, including HSOA. See Part IV, Response of the Firm to Draft Inspection Report of Inspection of Corbin & Company, LLP issued by the PCAOB on April 6, 2006 (http://pcaobus.org/Inspections/Reports/Documents/2006_Corbin_and_Company.pdf).

majority of KMJ's 2005 review and audit work papers bear no evidence of review and none of the work papers bear evidence of a partner level review.¹⁵

Failure to Plan and Supervise Adequately the 2006 Audit

34. An auditor is required to plan and perform the audit "to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud" (*See PCAOB Standards and Related Rules*, AU § 110.02). In planning, the auditor should assess the risk of material misstatement due to fraud or error, which includes consideration of "conditions that may require extension or modification of audit tests, such as the risk of material error or fraud or the existence of related party transactions" (*See PCAOB Standards and Related Rules*, AU §§ 312.16 and 311.03). Based upon the auditor's risk assessment and other planning considerations, the auditor should prepare a written audit program setting forth "in reasonable detail the audit procedures that the auditor believes are necessary to accomplish the objectives of the audit" (*See PCAOB Standards and Related Rules*, AU § 311.05). An auditor is also required to review work performed by assistants "to determine whether it was adequately performed and to evaluate whether the results are consistent with the conclusions to be presented in the auditor's report" (*See PCAOB Standards and Related Rules*, AU § 311.13).

35. Merkley and Price failed to adequately plan, or properly supervise assistants, in connection with the 2006 audit. Merkley and Price allowed assistants to assess the risk of material misstatements and designate the extent of testing to address identified risks approximately two weeks *after* completing audit procedures for significant accounts, including revenues and cost of revenues. Moreover, Merkley and Price did not ensure that assistants tailored standard audit programs to be responsive to identified risks and to be consistent with other planning conclusions. As such, the extent of testing KMJ actually performed did not correspond with the risks of material misstatement for all significant areas. Nonetheless, Merkley and Price approved KMJ's planning and audit documentation.

Failure to Conduct Reviews of Interim Financial Information in Accordance with PCAOB Standards and Rules

36. The objective of a review of interim financial information is to provide the accountant with a basis for communicating awareness of any material modifications that should be made to the interim financial information for it to conform with GAAP (*See PCAOB Standards and Related Rules*, AU § 722.07). *PCAOB Standards and Rules*, AU § 722 establishes standards and provides guidance on the nature, timing, and extent of the procedures to be performed by an independent accountant when conducting a review of interim financial information (*See PCAOB Standards and Related Rules*, AU § 722.01). A review of interim financial information consists principally of performing analytical procedures and making inquires of persons responsible for

¹⁵ Contemporaneous time records indicate that Merkley and Price charged time to the HSOA engagement during the periods KMJ conducted its reviews and audit. As such, it appears Merkley and Price participated in KMJ's reviews and audit but failed to document work performed as required by PCAOB standards.

accounting and financial matters, and other procedures that address significant accounting and disclosure matters relating to the interim financial information to be reported (*See PCAOB Standards and Related Rules*, AU §§ 722.07 and 722.15). “The accountant should apply analytical procedures to the interim financial information to identify and provide a basis for inquiry about the relationships and individual items that appear to be unusual and that may indicate a material misstatement” (*See PCAOB Standards and Related Rules*, AU § 722.16). In applying analytical procedures and making inquiries, the accountant should consider plausible relationships between both financial and relevant nonfinancial information, inquire about unusual or complex situations, significant transactions occurring or recognized in the last several days of the interim period, and the status of uncorrected misstatements identified during the previous audit and interim review (*See PCAOB Standards and Related Rules*, AU §§ 722.16 and 722.18). Additionally, the accountant should obtain evidence that the reported financial information agrees with or reconciles with the accounting records (*See PCAOB Standards and Related Rules*, AU § 722.18). Additionally, PCAOB Auditing Standard No. 3 applies to reviews of interim financial information and establishes requirements for the extent of documentation that an auditor should prepare and retain.

37. Although KMJ performed certain analytical procedures and made some inquiries, Merkley and Price failed to develop expectations based on plausible relationships and exercise professional skepticism in inquiring about unusual and significant transactions occurring at quarter end and the status of uncorrected misstatements identified during prior periods. In certain reviews, Merkley and Price relied on analytical review comparisons that yielded no meaningful relationships.¹⁶ At other times, Merkley and Price failed to recognize or appropriately respond to implausible relationships and unusual, significant transactions occurring at quarter-end, each of which represented fictitious revenue recorded by HSOA management.¹⁷ For at least the first quarter 2006 review, neither Merkley nor Price confirmed that the financial statements included in HSOA’s first quarter 2006 Form 10-Q agreed to financial information reviewed by KMJ. Lastly, after discovering a likely error in recording year-end 2004 EBITDA bonuses, neither Merkley nor Price ensured that HSOA accounted for year-end EBITDA bonuses in accordance with GAAP or

¹⁶ For instance, on a work paper prepared by Price and reviewed by Merkley in connection with its March 31, 2006 review, Price compared annualized first quarter 2006 results to 2005 results multiplied by three, not four, for a subsidiary acquired on September 27, 2005. Also, on another work paper reviewed by Merkley in connection with its March 31, 2006 review, the preparer compared annualized first quarter 2006 results to unadjusted 2005 results for a subsidiary that began operations in the fourth quarter of 2005.

¹⁷ For example, Price noted a large unusual transaction constituting significantly all of HSOA’s largest subsidiary’s revenue in the first quarter 2007 but accepted management’s representation regarding the transaction despite multiple inconsistencies and management’s conflicting statements about the transaction and HSOA’s accounting. Price relied on management’s representations that the amounts recorded as revenue had been billed by HSOA and were based on work by HSOA, even though he knew that such amounts were recorded via journal entries and not through the subsidiary’s normal billing systems. Additionally, KMJ’s work papers document that advances from a third party lender were recorded as liabilities by HSOA, when in fact they ultimately recognized such amounts as revenue. In connection with KMJ’s second quarter 2007 review, Price similarly failed to obtain an understanding of the purported transactions.

consistently with management's representations. Additionally, Merkley and Price failed to ensure that KMJ's reviews were documented in accordance with PCAOB Auditing Standard No. 3, as evidenced by the lack of review on most work papers and no evidence of a partner review.

Failure to Issue Accurate Audit Reports

38. PCAOB standards require that the auditor's report contain an opinion on the financial statements taken as a whole and contain a clear indication of the character of the auditor's work (*See PCAOB Standards and Related Rules*, AU § 508.04). The auditor can determine that he is able to issue an audit report containing an unqualified opinion only if he has conducted his audit in accordance with PCAOB standards and the financial statements have been prepared in conformity with GAAP (*See PCAOB Standards and Related Rules*, AU §§ 508.08 and 508.14).

39. Merkley acted unreasonably in rendering audit reports containing unqualified opinions. Merkley approved KMJ's issuance of audit reports on HSOA's financial statements even though he should have known that KMJ's audits had not been conducted in accordance with PCAOB standards and that HSOA's financial statements did not present fairly, in all material respects, HSOA's financial position, operating results, and cash flows in conformity with GAAP.

E. VIOLATIONS

Merkley Was a Cause of HSOA's Violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 13a-1 and 13a-13 Thereunder

40. Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require issuers with securities registered under Section 12 of the Exchange Act to file quarterly and annual reports with the Commission and to keep this information current. The obligation to file such reports embodies the requirement that they be true and correct. *See, e.g., SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978). HSOA violated Section 13(a) of the Exchange Act and Rules 13a-1, and 13a-13, by filing Forms 10-KSB and 10-QSB (for 2004 and 2005) and Forms 10-K and 10-Q (for 2006 and the first and second quarters of 2007) that materially misrepresented HSOA's revenues and earnings. Merkley signed audit reports indicating that KMJ's audits of HSOA's 2004, 2005, and 2006 financial statements had been conducted in accordance with the standards of the PCAOB, and that the financial statements were presented fairly in conformity with GAAP, despite numerous inconsistencies and evidence to the contrary, including misrepresentations by HSOA's management. Similarly, Merkley supervised KMJ's reviews of HSOA's 2005 and 2006 interim financial statements, which he improperly represented had been conducted in accordance with PCAOB standards. By his actions, Merkley was a cause of HSOA filing false and misleading annual and quarterly reports with the Commission that misrepresented HSOA's financial results. Accordingly, Merkley was a cause of HSOA's violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder.

41. Section 13(b)(2)(A) of the Exchange Act requires registrants under Section 12 of the Exchange Act to make and keep books, records, and accounts that accurately and fairly reflect

the transactions and dispositions of their assets. HSOA violated Section 13(b)(2)(A) by recording and reporting revenue from fictitious projects, overstating revenue earned from real projects, and artificially inflating net income by improperly deferring bonus expense. As discussed above, Merkley's actions were a cause of HSOA's books and records to inaccurately reflect transactions, thereby causing HSOA's violations of Section 13(b)(2)(A) of the Exchange Act.

Rule 2-02 of Regulation S-X

42. Rule 2-02(b)(1) of Regulation S-X requires an accountant's report to state "whether the audit was made in accordance with generally accepted auditing standards." "[R]eferences in Commission rules and staff guidance and in the federal securities laws to GAAS or to specific standards under GAAS, as they relate to issuers, should be understood to mean the standards of the PCAOB plus any applicable rules of the Commission." (*See SEC Release No. 34-49708 (May 14, 2004)*). Thus, an auditor violates Regulation S-X Rule 2-02(b)(1) if it issues a report stating that it had conducted its audit in accordance with PCAOB standards when it had not. *See In re Andrew Sims, CPA*, Rel. No.34-59584, AAER No. 2950 (Mar. 17, 2009).

43. KMJ issued audit reports on HSOA's 2005 and 2006 financial statements stating that it had conducted its audits in accordance with PCAOB standards. KMJ's audits, however, were not conducted in accordance with PCAOB standards, in part due to Merkley's failures to plan, supervise assistants, document procedures performed, and obtain sufficient competent evidence to serve as a basis for KMJ's audit opinions. Merkley should have known that KMJ had not documented its 2005 audit in accordance with PCAOB Auditing Standard No. 3, *Audit Documentation*, should have known KMJ had not obtained sufficient competent evidential matter that HSOA's 2005 and 2006 bonuses were presented in conformity with GAAP, and should have known KMJ had not obtained sufficient competent evidential matter that HSOA's 2006 revenues and cost of revenues were presented in conformity with GAAP at the dates he approved KMJ's issuance of audit reports on HSOA's 2005 and 2006 financial statements. Accordingly, Merkley caused KMJ's violations of Rule 2-02(b)(1).

Rule 102(e) and Section 4C of the Exchange Act

44. Rule 102(e)(1)(ii) of the Commission's Rules of Practice and Section 4C of the Exchange Act authorize the Commission to censure or deny, temporarily or permanently, the privilege of appearing or practicing before the Commission to accountants who are found to have engaged in improper professional conduct. Under Rule 102(e)(1)(iv), the term "improper professional conduct" means, in part, "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."

45. Merkley's and Price's actions during the engagements were unreasonable and failed to conform to applicable professional standards. Merkley and Price failed to (i) obtain sufficient competent evidential matter regarding bonuses, revenues, and cost of revenues with respect to KMJ's 2004, 2005, and 2006 audit engagements; (ii) comply with PCAOB Auditing Standard No. 3; (iii) adequately plan the audit and properly supervise assistants in connection with the 2006

engagement; and (iv) conduct reviews of interim financial information in accordance with PCAOB standards and rules. Additionally, Merkley caused KMJ to issue inaccurate audit reports in that he should have known that KMJ's unqualified audit reports were false because they incorrectly represented that the audits were conducted in accordance with PCAOB standards and that HSOA's financial statements were prepared in conformity with GAAP. Based on Merkley's violations of applicable professional standards, Merkley was a cause of HSOA issuing misstated financial statements. This conduct supports an action against Merkley and Price under Rules 102(e)(1)(ii) and 102(e)(1)(iv)(B)(2) of the Rules of Practice.

F. FINDINGS

Based on the foregoing, the Commission finds that KMJ, Merkley and Price engaged in improper professional conduct pursuant to Rules 102(e)(1)(ii) and 102(e)(1)(iv)(B)(2) of the Commission's Rules of Practice and Section 4C of the Exchange Act. Additionally, the Commission finds that Merkley was a cause of HSOA's violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act, and Rules 13a-1 and 13a-13 promulgated thereunder and caused KMJ's violation of Regulation S-X Rule 2-02(b)(1).

G. UNDERTAKINGS

KMJ undertakes the following:

1. Acceptance of New Public Company Audit Clients. The goal of this undertaking is to provide adequate time for KMJ to implement the undertakings concerning auditing and professional development matters described below and implement such other adjustments to its audit practice required by the suspension of Merkley and Price from appearing or practicing before the Commission. KMJ undertakes that, following the issuance of this Order, it will not accept new engagements for public company audits prior to the later of March 31, 2011, or the date that KMJ certifies in writing compliance with each of the undertakings in the form described in paragraph 5, below (the "Certificate of Compliance"). A public company audit is defined as an engagement to audit the financial statements of an "issuer" as that term is defined in Section 3(a)(8) of the Securities Exchange Act of 1934.

2. Auditing Matters. The goal of this undertaking is to require KMJ to engage in an internal review of its existing policies and procedures concerning compliance with the relevant professional, regulatory and firm requirements with respect to public company audit engagements. Prior to December 31, 2010, KMJ shall revise as may be necessary, and then engage in steps to implement and enforce, such policies and procedures so as to provide reasonable assurance that KMJ will comply with its obligations under professional, regulatory and firm requirements with respect to public company audit engagements. KMJ shall review its policies and procedures concerning:

- a. Identification and monitoring of high risk engagements, including policies covering mandatory procedures for high risk engagements. Additionally, KMJ shall designate a

- partner within the firm responsible for risk management, including, but not limited to, client acceptance and continuance procedures.
- b. Completion of planning prior to the commencement of audit fieldwork. Such policies and procedures shall provide reasonable assurance that, prior to the commencement of any significant audit procedures:
- (i) Work papers identifying significant audit areas, documenting risks of material misstatements, and planned extent of testing are finalized and reviewed and approved by the engagement partner, and, when appropriate, the engagement quality reviewer; and
 - (ii) Written audit programs are tailored to address identified risks of material misstatements and specify in reasonable detail the procedures expected to be performed to accomplish the objectives of the audit, specify the dollar amount of audit scopes to be used to select items to be tested, specify the expected extent of testing, and a requirement that the reason for any deviation is documented.
- c. Audit Sampling. KMJ shall implement such policies and procedures to ensure that it documents its judgments as to the use of statistical or nonstatistical audit sampling methods, identifies relevant populations, identifies expected audit coverage, determines appropriate sample size, selects sample items in such a way that the items selected are representative of the population, tests sample selections, evaluates results, and projects identified errors to the entire population.
- d. Consultations. KMJ shall implement enhanced consultation procedures and documentation requirements regarding unusual accounting, auditing, or financial reporting issues. Such procedures shall also include procedures for external firm consultations regarding accounting, auditing, or financial reporting issues not resolved by the audit team, engagement quality reviewer, and, if applicable, the internal consultation process.
- e. Documentation. KMJ shall implement enhanced documentation procedures to provide reasonable assurance that KMJ complies with Auditing Standard No. 3, *Audit Documentation*, on each of its public company audit engagements. Such procedures shall emphasize that documentation must be prepared in sufficient detail to provide a clear understanding of its purpose, source, and the conclusions reached and require that any additions made after the documentation date¹⁸ must identify the date the

¹⁸ Auditing Standard No. 3, paragraph 15, states, “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). If a report is not issued in connection with an engagement, then the documentation completion date should not be more than 45 days from the date that fieldwork was substantially completed. If the auditor was unable to complete the engagement, then the documentation completion date should not be more than 45 days from the date the engagement ceased.”

- information was added, the name of the person who prepared the additional documentation, and the reason for adding it. Additionally, KMJ shall adopt a policy making it mandatory that engagement partners on public company audit engagements review each audit area designated as having a significant risk of material misstatement (whether due to fraud or error) to ensure compliance with both PCAOB standards and related rules and firm policies and procedures.
- f. Detection and Reporting of Illegal Client Activity (Section 10A Compliance). KMJ shall make such revisions as may be necessary in order to adopt, implement and enforce written policies and procedures providing reasonable assurance that KMJ complies with Section 10A of the Securities Exchange Act of 1934, as amended, including without limitation, for each audit subject to Section 10A, procedures designed to provide reasonable assurance of detecting illegal acts that would have a direct and material effect on the determination of financial statement amounts, and to comply with all requirements under the standards of the Commission, the PCAOB, and Section 10A to evaluate and report suspected illegal acts.
 - g. Engagement Quality Control. KMJ shall undertake a review of its existing procedures to provide reasonable assurance that it complies with the PCAOB's Auditing Standard No. 7, *Engagement Quality Review*.
3. Professional Development. The goal of this undertaking is to require KMJ to establish, implement, and enforce written policies and procedures designed to provide reasonable assurance that KMJ's professionals serving public company audit clients participate in professional development activities in accordance with firm guidelines, in subjects that are relevant to their responsibilities and will contribute to their technical training and proficiency as an auditor. Within 90 days of this Order, KMJ will evaluate its existing professional development policy and shall make such revisions as may be necessary in order to adopt, implement, and enforce written policies and procedures to provide that professionals serving public company audit clients participate in professional development activities in accordance with firm guidelines, in subjects that are relevant to their responsibilities and will contribute to their technical training and proficiency as an auditor. Additionally, prior to December 31, 2010, KMJ will require each audit professional serving public company audit clients to undergo:
- a. A Minimum of 16 Hours of Audit-Related Training. The audit-related training requirement shall cover topics including, but not limited to: (1) assessing risks of material misstatements and developing responsive audit plans, (2) determining and documenting appropriate sampling methods and sample sizes, selecting samples, and evaluating and documenting results; (3) audit documentation; and (4) obtaining and evaluating sufficient competent evidential matter, including corroboration of management's representations. The audit-related training requirement may be fulfilled by participating in or completing course(s) conducted by or offered by the American Institute of Certified Public Accountants (AICPA) or another comparable organization.

- b. A Minimum of 8 Hours of Fraud-Detection Training. KMJ shall ensure that audit professionals assigned to public company engagements undergo fraud detection training conducted by the Association of Certified Fraud Examiners or another comparable organization. The training will include techniques in detecting and responding to possible fraud by audit clients or by employees, officers or directors of audit clients.
4. Cooperation. KMJ agrees that KMJ (including its partners, principals, officers, agents and employees) shall cooperate fully with the Commission with respect to any matter relating to the Commission's investigation of HSOA or its current or former officers, directors or employees, including but not limited to any litigation or other proceeding related to or resulting from that investigation, including litigation in *SEC v. Home Solutions of America, Inc., et al*, Civil No. 3:09-cv-02269-N (N.D.Tx.). Such cooperation shall include, but is not limited to, upon reasonable notice, and without subpoena:
 - a. Producing any document, record, or other tangible evidence reasonably requested by Commission staff in connection with the Commission's investigation, litigation or other proceedings;
 - b. Providing all information reasonably requested by Commission staff in connection with the Commission's investigation; and
 - c. Using its best efforts to secure the attendance and truthful statements or testimony of any KMJ partner, principal, officer, agent, or employee, excluding any such person who is a party to litigation with the Commission, at any meeting, interview, testimony, deposition, trial, or other legal proceeding reasonably requested by the Commission staff.
5. Certification of Compliance. KMJ shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and KMJ agrees to provide such evidence. The certification and supporting material shall be submitted to David Peavler, Assistant Director, Fort Worth Regional Office or his successor, with copies to the Office of Chief Counsel of the Enforcement Division and to the PCAOB, Director of Registration and Inspection, no later than March 31, 2011.

IV.

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

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

KMJ

- A. KMJ is hereby censured pursuant to Rules 102(e)(1)(ii) and 102(e)(1)(iv)(B)(2) of the Commission's Rules of Practice and Section 4C of the Exchange Act.

Merkley

B. Merkley shall cease and desist from committing or causing any violations and any future violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act, Rules 13a-1 and 13a-13, thereunder, and Regulation S-X Rule 2-02(b)(1).

C. Merkley is denied the privilege of appearing or practicing before the Commission as an accountant.

D. After three years from the date of this order, Merkley 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 Merkley'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/she practices before the Commission in this capacity; and/or

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

(a) Merkley, or the public accounting firm with which he is associated, is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Merkley, or the registered public accounting firm with which he is associated, has been inspected by the PCAOB and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

(c) Merkley has resolved all disciplinary issues with the PCAOB, and has complied with all terms and conditions of any sanctions imposed by the PCAOB (other than reinstatement by the Commission); and

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

E. The Commission will consider an application by Merkley to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state 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 Merkley's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

Price

F. Price is denied the privilege of appearing or practicing before the Commission as an accountant.

G. After two years from the date of this order, Price 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 Price'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/she practices before the Commission in this capacity; and/or

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

(a) Price, or the public accounting firm with which he is associated, is registered with the PCAOB in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Price, or the registered public accounting firm with which he is associated, has been inspected by the PCAOB and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

(c) Price has resolved all disciplinary issues with the PCAOB, and has complied with all terms and conditions of any sanctions imposed by the PCAOB (other than reinstatement by the Commission); and

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

H. The Commission will consider an application by Price to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state 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 Price's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Elizabeth M. Murphy
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), on the Respondents and their legal agents.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

David Peavler, Esq.
Fort Worth Regional Office
Securities and Exchange Commission
801 Cherry Street, Suite 1900
Fort Worth, TX 76102

KMJ Corbin & Company LLP
Attention: Mr. Theodore M. Faddoul, Managing Partner
c/o Stephen J. Tully, Esq.
Garrett & Tully
4165 E. Thousand Oaks Blvd., Suite 201
Westlake Village, CA 91362

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(Counsel for KMJ Corbin & Company LLP)

Mr. Kendall G. Merkley

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