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Office of the Secretary
Public Company Accounting Oversight Board
1666 K Street, N.W.
Washington, D.C. 20006-2803

May 9, 2003

Dear Mr. Secretary:

PCAOB Rulemaking Docket Matter No. 003

KPMG appreciates the opportunity to comment on the Public Company Accounting Oversight Board's (Board) proposed rule, *Proposal of Ethics Code for Board Members, Staff and Designated Contractors and Consultants* (Proposed Rule), which was released April 18, 2003 pursuant to Section 101(g)(3) of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley).

Our comments focus on enhancing the Board's ability to attract professional staff and future Board members.

EC 12. Post-Employment Restrictions and EC 2 (f). Definitions—Immediate Family

The prohibition on a former staff member's "practice" before the Board or the Securities and Exchange Commission (Commission) in section EC 12(c), may restrict the ability of the Board to attract qualified candidates. As proposed, the defined term "practice" includes "...representing... any other person in any formal or informal appearance before the Board or the Commission" and "making any oral or written communication on behalf of any other person to, and with the intent to influence, the Board or Commission."

While we do not believe it was intended, one could interpret the restrictions from practice in section EC 12(c) to effectively disqualify a former staff member from engaging in any activities, directly or indirectly, related to Board matters, for one year. For example, this might include the inability of the former staff member from participating in the development of comment letters on the Board's proposed rulemakings. We believe that such broad post-employment restrictions may limit the number of qualified candidates interested in professional staff positions.

We believe that the Board should consider a policy similar to the one used by the Commission for its Professional Accounting Fellow (PAF) program. We believe this policy has met the Commission's objectives of appropriately limiting certain post-employment activities for a specified period, while at the same time maintaining the





attractiveness of a PAF position to qualified candidates. Under Commission policy, former PAFs are allowed to work with public accounting firm clients in matters before the Commission, including discussions with the Commission staff, provided they had not substantially participated in the client's matter nor had official responsibility for the matter while employed by the Commission. A notification is filed by the former PAF in advance of communications with, or appearances before, the Commission or its staff. We believe the Board should consider a similar policy and notification process in adopting its final rules.

Finally, we recommend that the text of the definition for "practice" be clarified with the language included in Appendix 2, section EC 12. In that section, the Board clarifies that practice before the Commission is "with respect to Board-related matters". We have interpreted the Proposed Rule not to prohibit practice before the Commission unrelated to Board-related activities for any period, and such clarification in the actual definition based on the language in Appendix 2 will enhance consistent application of the Code. The proposed definition is as follows:

(f) Practice

The term "practice" means:

- (1) knowingly acting as an agent or attorney for, or otherwise representing himself or herself or any other person in any formal or informal appearance before the Board or Commission with respect to Board-related matters; or
- (2) making any oral or written communication on behalf of himself or herself or any other person to, and with the intent to influence, the Board or Commission with respect to Board-related matters.

Note: For purposes of this definition, participating in the financial reporting process as the officer or director of an issuer or participating in an audit of an issuer does not, in and of itself, constitute practice before the Board or Commission with respect to Board-related matters.

Additionally, we recommend that the Board provide additional clarification, and possibly examples, in the "Section-by-Section Analysis of the Ethics Code" relative to the types of restricted post-employment activities meant to be covered by the final Code.

EC 2(e). Definitions – Immediate Family

We believe the Commission's definition of "Immediate Family Member" as used in the independence rules (Regulation S-X rule 2-01(f)(13)) is clearer than the proposed definition of "Immediate Family". The SEC definition is "immediate family members mean a person's spouse, spousal equivalent, and dependents."

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If you have questions regarding any of the information included in this letter, then please call or write to Michael A. Conway, (212) 909-5555, mconway@kpmg.com or Neil Lerner + (44) 207 311 8620, neil.lerner@kpmg.co.uk.

Yours sincerely,

KPMG