PCAOB
Public Company Accounting Oversight Board

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ORDER INSTITUTING DISCIPLINARY PROCEEDINGS, MAKING FINDINGS, AND IMPOSING SANCTIONS *In the Matter of Susan E. Birkert* *Respondent.*	PCAOB Release No. 105-2007-003 November 14, 2007

By this Order, the Public Company Accounting Oversight Board ("Board" or "PCAOB") is barring Susan E. Birkert from being an associated person of a registered public accounting firm.[1/] The Board is imposing this sanction on the basis of its findings concerning Birkert's violations of PCAOB rules and standards relating to independence in connection with an audit of the financial statements of one issuer client.

I.

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

II.

In anticipation of institution of these proceedings, and pursuant to PCAOB Rule 5205, Respondent 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

[1/] Birkert may file a petition for Board consent to associate with a registered public accounting firm after one (1) year from the date of this Order.

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without admitting or denying the findings herein, except as to the Board's jurisdiction over her and the subject matter of these proceedings, which is admitted, Respondent consents to entry of this Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions ("Order") as set forth below.

III.

On the basis of Respondent's Offer and information obtained by the Board in this matter, the Board finds[2/] that:

A. Respondent

1. Birkert, 27, of Levittown, New York, joined KPMG LLP ("KPMG") in November 2002. From May 2004 until November 28, 2006, she was a member of KPMG's Comtech Telecommunications Corp. ("Comtech") audit engagement team, first as an Associate and then as a Lead Senior on KPMG's fiscal year ("FY") 2004, FY2005 and FY2006 year-end audits of Comtech and on KPMG's quarterly Comtech reviews. Respondent is not a CPA, but, at all times relevant to this matter, Respondent was an associated person of a registered public accounting firm (KPMG), as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i).

B. Summary of Violations

2. PCAOB rules and standards require associated persons of registered public accounting firms to comply with certain independence restrictions, including

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[2/] The findings herein are made pursuant to the Respondent's Offer and are not binding on any other person or entity in this or any other proceeding. The sanctions that the Board is imposing on Respondent in this Order may be imposed only if Respondent's conduct meets one of the conditions set out in Section 105(c)(5) of the Act, 15 U.S.C. § 7215(c)(5). The Board finds that Respondent's conduct described in this Order meets the condition set out in Section 105(c)(5)(A), which provides that such sanctions may be imposed in the event of "intentional or knowing conduct, including reckless conduct, that results in a violation of the applicable statutory, regulatory, or professional standard."

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restrictions against committing to acquire a financial interest in an audit client[3/] Respondent violated these requirements by directing $5,000 toward the purchase of Comtech stock while she was a member of the KPMG Comtech audit engagement team.

C. Discussion

3. Comtech is a Delaware corporation headquartered in Melville, New York. Its common stock is registered with the United States Securities and Exchange Commission ("Commission") under Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act"). Comtech's public filings disclose that it was, at all times relevant to this matter, in the business of communications products, systems and services, including telecommunications transmission, mobile data communications and RF microwave amplifiers. At all relevant times, Comtech was an issuer as that term is defined by Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii).

4. Respondent was a member of the KPMG audit engagement team that audited and reviewed Comtech's financial statements for the fiscal year ended July 31, 2006. During that audit, she served as the Lead Senior conducting audit and review work.

5. In November 2005, during a period when Respondent was participating in KPMG's Comtech review work for the quarter ended October 31, 2005, Respondent, in conversation with an acquaintance from Respondent's previous employer, mentioned that Comtech was the largest public audit client that she was working on. The acquaintance asked whether Respondent thought that Comtech was a good company in which to invest, and Respondent said that it was. The acquaintance then asked whether Respondent wanted him to purchase any Comtech stock for Respondent. Respondent replied affirmatively and said that she would give the acquaintance $5,000 to buy Comtech stock for her.

[3/] See PCAOB Rules 3100, 3200T (incorporating requirements of certain AICPA auditing standards as in existence on April 16, 2003, including AU § 220, *Independence*), and 3600T (incorporating requirements of certain AICPA independence standards as in existence on April 16, 2003, including ET § 101 and interpretations thereunder).

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6. Shortly after that discussion, the acquaintance told Respondent that he had purchased the Comtech stock for her. On or about December 12, 2005, Respondent delivered to the acquaintance a $5,000 check, payable to the acquaintance, for the Comtech stock purchase.[4/] Respondent understood at the time she gave the acquaintance the $5,000 check that owning stock in an audit client was a violation of independence rules.

7. Subsequent to delivery of the $5,000 check, Respondent continued to work on KPMG's audit and reviews of Comtech. Respondent performed work on KPMG's reviews of Comtech's financial statements for the second and third quarters ended January 31, 2006 and April 30, 2006; KPMG's audit of Comtech's financial statements for the fiscal year ended July 31, 2006; and KPMG's review of Comtech's financial statements for the first quarter ended October 31, 2006.[5/]

8. As an associated person of KPMG, Respondent was required to comply with the Board's interim auditing standards and interim independence standards in connection with the Comtech audit.[6/] Those standards required that Respondent maintain independence from Comtech,[7/] and provided, among other things, that her independence would be considered impaired if she "committed to acquire any direct . . .

[4/] Although Respondent understood that the acquaintance deposited the $5,000 check, she never obtained or saw any documentation that the acquaintance had purchased Comtech stock.

[5/] In May of 2006, Respondent falsely acknowledged to KPMG that she was in compliance with KPMG independence policies and PCAOB independence requirements for the period April 1, 2005 through March 31, 2006. Later in 2006, following a KPMG internal investigation prompted by an anonymous tip, Respondent admitted to providing the $5,000 check for the purchase of Comtech stock, and KPMG terminated her employment. Comtech disclosed in its Form 10-Q for its FY2007 first quarter ended October 31, 2006, filed with the Commission on December 4, 2006, that KPMG advised Comtech in November 2006 that it believed that a KPMG accountant who worked on the engagement to audit Comtech's financial statements made an investment in its common stock.

[6/] See PCAOB Rules 3200T and 3600T.

[7/] See ET § 101.01; AU § 220.

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financial interest" in Comtech during the period of the professional engagement.[8/] The steps she took to acquire such an interest, through her acquaintance, violated the standards requiring that she remain independent.

IV.

In view of the foregoing, and to protect the interests of investors and further the public interest in the preparation of informative, fair, 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)(B) of the Act and PCAOB Rule 5300(a)(2), Susan E. Birkert is barred from being an associated person of a registered public accounting firm, as that term is defined in Section 2(a)(9) of the Act and PCAOB Rule 1001(p)(i); and

B. After one year from the date of this Order, Birkert may file a petition, pursuant to PCAOB Rule 5302(b), for Board consent to associate with a registered public accounting firm.

ISSUED BY THE BOARD.

J. Gordon Seymour
Secretary

November 14, 2007

[8/] See ET § 101.02. ET § 101.02 discusses independence restrictions relating to a "covered member." As ET § 101.02 existed on April 16, 2003, "covered member" was a term defined (in ET § 92.06) to encompass, among other things, any individual on the attest engagement team. Accordingly, the ET 101.02 restrictions applied to Respondent.