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January 6, 2016

Josée Turcotte, Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, ON M5H 2S9

RE: Request for Comment: Proposed OSC Policy 15-601 – Whistleblower Program

Dear Sirs/Mesdames:

This submission is provided in response to the above-noted Request for Comment published on October 28, 2015. We appreciate the opportunity to provide our views on proposed Policy 15-601 – Whistleblower Program (the "**Proposed Policy**") of the Ontario Securities Commission (the "**OSC**" or the "**Commission**").

Chartered Professional Accountants of Canada ("**CPA Canada**") is the national organization of Canada's unified accounting profession. With more than 200,000 members across the country, CPA Canada is committed to ensuring the highest standards of accounting, ethics and business practices for our members, their clients and the Canadian public.

As a general note, we strongly support the OSC's efforts to identify and deter serious misconduct by capital markets participants, and we recognize the important role that could be played in such efforts by an appropriate whistleblower program.

We have two main concerns with the Proposed Policy:

1) The Proposed Policy encourages, in certain circumstances, audit and accounting professionals as whistleblowers on their own clients. This could undermine the auditor/client relationship and create a conflict with the auditor's professional duty of confidentiality. Ultimately, this could threaten the quality and candor of public company accounting and auditing in Canada.

2) The Proposed Policy encourages, in certain circumstances, external whistleblowing before (and possibly in place of) engaging internal reporting and compliance mechanisms. This undermines existing programs for reporting and compliance, including National Instrument 52-110 – *Audit Committees (*"**NI 52-110**").

We offer suggestions below to address these concerns.

We also wish to express our support for the anti-retaliation provisions contained in the Proposed Policy. As the Proposed Policy recognizes, in order to function properly, a whistleblower program will need to contain effective anti-retaliation provisions.

Eligibility of information obtained as a result of an audit engagement

Under the Proposed Policy, an audit professional or another person who obtains information as a result of the provision of audit or assurance services or the conduct of an audit would, in certain circumstances, be eligible for a reward under the whistleblower program.

Generally speaking, the Proposed Policy makes auditors ineligible for whistleblower awards. Section 15(1)(e) provides an exclusion from eligibility for an individual who "obtained information in connection with providing internal audit or external assurance services to, or conducting an internal or financial audit of, a client or employer that is, or that employs, the subject of the whistleblower submission". This exclusion, however, is subject to the exceptions outlined in section 15(2) of the Proposed Policy.

We are concerned that the exceptions in section 15(2) amount to an incentive that conflicts with the professional duties of our members and could undermine public trust in auditors' professionalism and responsibility. Chartered professional accountants are subject to strong confidentiality obligations as a result of the rules of professional conduct that have been adopted by the provincial and territorial regulatory bodies pursuant to statute. For example, Rule 208 of the Rules of Professional Conduct adopted by Chartered Professional Accountants of Ontario requires that no member, student or firm disclose any confidential information of a client, a former client, an employer or a former employer except in very limited circumstances.

Having regard to this confidentiality obligation and the audit function, auditors should be ineligible for awards under all circumstances. Auditors already have a duty to detect and report to management any securities law violations. If management does not satisfy the auditor's concerns, the auditor is professionally bound to exercise a range of effective responses, including refusing to provide an opinion on the company's financial statements and controls, or providing only a qualified opinion. These are powerful remedies available to auditors within existing systems that are functioning well.

The 120-day exception in section 15(2)(c) of the Proposed Policy is particularly inappropriate in the context of an audit. Generally, if there is a disagreement among members of an external audit team, the question will be escalated to more senior levels until a resolution is reached. One can conceive of a situation in which an audit team member might be eligible for an award: that member may disagree with the resolution determined by the lead audit partner and simply wait out the 120 days before providing the information to the Commission. This could encourage junior external audit personnel to go around their manager and even their client after 120 days.

As you may know, the International Ethics Standards Board for Accountants (the "**IESBA**") is currently considering revisions to its code of ethics that would, in certain circumstances, permit a professional accountant performing an audit of financial statements to disclose information regarding non-compliance with laws and regulations to an appropriate authority without breaching his or her duty of confidentiality to a client. However, the proposed exception would apply only where the professional accountant has first raised the matter with management or those responsible for governance and has determined that the response of management or those charged with governance is insufficient and that further action is needed in the public interest. It is expected that if the IESBA adopts such a revision to its code, similar provisions would be added to the rules of professional conduct of the provincial and territorial regulatory bodies.

We note that the Proposed Policy already contains a restriction for whistleblowers who are legal counsel. Any information obtained in connection with the provision of legal services or the conduct of legal representation of a client (section 15.1(c)) or employer (section 15.1(d)) is eligible for an award, but only if such disclosure would be permitted under the rules of the applicable provincial or territorial law society or barreau.

It is also worth noting that the potential eligibility of audit professionals for an award under the whistleblower program was not previewed in OSC Staff Consultation Paper 15-401 – Proposed Framework for an OSC Whistleblower Program (the "**Consultation Paper**"). Rather, the Consultation Paper specifically indicated that an individual who obtained information "as a result of having been engaged to provide audit services" would be ineligible for an award under the whistleblower program. The Consultation Paper compared this exclusion to the exclusion of information subject to solicitor-client privilege.

For these reasons, we ask the Commission to make members of provincial or territorial regulatory bodies for accounting and audit professionals ineligible for awards under the Proposed Policy. In the alternative, we urge the Commission to restrict their eligibility to situations in which the disclosure would be permitted under the rules of professional conduct adopted by the applicable regulatory body.

Potential effects on internal reporting and compliance procedures

The Proposed Policy permits, in certain circumstances, external whistleblowing before (and possibly in place of) engaging internal reporting and compliance mechanisms.

We urge the Commission to amend the Proposed Policy to require that whistleblowers report information through internal reporting procedures prior to – or, alternatively, at the same time as – providing the information to the Commission.

As currently framed, the Proposed Policy expressly does not require whistleblowers to use internal reporting procedures in order to be eligible for an award: section 16(1). By virtue of financial incentive, for all practical purposes, whistleblowers are encouraged to provide information to the Commission instead of following internal reporting procedures. Where a whistleblower chooses to follow the internal reporting procedure first, the Proposed Policy encourages that person to go to the Commission within 120 days of the internal report – whether the internal process is complete or not.

The audit committees of reporting issuers subject to National Instrument 52-110 – *Audit Committees (*"**NI 52-110**") are already required to establish procedures for the confidential and anonymous submission by employees of concerns regarding accounting and auditing matters and to receive, retain and deal with complaints relating to the reporting issuer's audit or accounting matters. In many cases, these procedures involve external auditors. In addition, all major accounting firms have established ethics hotlines of their own. These programs, together with the other provisions of NI 52-110, are intended to enhance the quality of reporting issuers' financial disclosure and foster increased confidence in Canadian capital markets.

In order for the procedures mandated by NI 52-110 to work as desired, employees must report their concerns through the internal channels established by an issuer's audit committee, ideally to completion. Because the Proposed Policy does not require internal reporting first – or at all – it threatens to undermine internal reporting and compliance procedures as the first stop for employees with concerns relating to audit or accounting matters.

External auditors rely on issuers, including an issuer's audit committee, to prepare financial statements and inform auditors of any irregularities. By allowing employees to bypass the mandated internal reporting and compliance mechanisms, the Proposed Policy increases the possibility that employees of an organization will be aware of irregularities or misconduct but not report them internally. In cases of serious misconduct, failure to timely report internally could give rise to errors and the need for issuers to restate financial statements and/or for auditors to withdraw audit reports. Such events tend to undermine public trust in the fairness and efficiency of the Canadian capital markets.

In order to support audit committees and internal reporting, and to minimize the need for restated financial statements and withdrawn audit reports, the Proposed Policy should require whistleblowers to report their information through established internal reporting procedures prior to, or concurrently with, the provision of the information to the Commission.

Whistleblower protection

We also wish to underscore the importance of whistleblower-protection measures, and in particular of anti-retaliation provisions, in the proper functioning of a whistleblower program. We note that the Proposed Policy contains anti-retaliation provisions at section 13. Furthermore, the Notice and Request for Comment indicates that the Commission may exercise its public-interest jurisdiction to prosecute retaliatory actions on the part of employers against employees who use internal compliance and reporting mechanisms to report suspected misconduct or report such information directly to the Commission. We support such anti-retaliatory measures.

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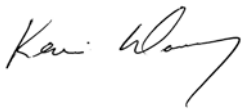
We are grateful for the opportunity to comment on the Proposed Policy.

Yours truly,



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President & CEO