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Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions

In the Matter of José Daniel Meléndez Giménez,

Respondent.

PCAOB Release No. 105-2022-035

December 6, 2022

By this Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions (“Order”), the Public Company Accounting Oversight Board (“Board” or “PCAOB”) is:

- (1) censuring José Daniel Meléndez Giménez (“Meléndez” or “Respondent”);
- (2) barring Meléndez from being associated with a registered public accounting firm;¹
and
- (3) imposing a civil money penalty in the amount of \$25,000 on Meléndez.²

The Board is imposing these sanctions on the basis of its findings that Meléndez failed to cooperate with the Board’s 2016 inspection of KPMG S.A.S. (“KPMG Colombia” or the “Firm”), including by directing the improper alteration of work papers for an issuer audit that was subject to inspection.

I.

The Board deems it necessary and appropriate, for the protection of investors and to further the public interest in the preparation of informative, accurate, and independent audit reports, that disciplinary proceedings be, and hereby are, instituted pursuant to Section 105(c)

¹ Meléndez may file a petition for Board consent to associate with a registered public accounting firm after three (3) years from the date of this Order.

² Based on his conduct, Meléndez’s civil money penalty in this settlement would have been \$50,000. The Board determined to accept Meléndez’s offer of settlement and impose a lower penalty after considering Meléndez’s financial resources.

of the Sarbanes-Oxley Act of 2002, as amended (“Act”), and PCAOB Rule 5200(a)(1) against Respondent.

II.

In anticipation of the institution of these proceedings, and pursuant to PCAOB Rule 5205, Respondent has submitted an Offer of Settlement (the “Offer”) that the Board has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Board or in which the Board is a party, and without admitting or denying the findings contained in the Order, except as to the Board’s jurisdiction over Respondent and the subject matter of these proceedings (which is admitted) and the facts, findings, and violations in paragraphs 1 and 13-30 (which are admitted), Respondent consents to the entry of this Order as set forth below.³

III.

On the basis of Respondent’s Offer, the Board finds that:⁴

A. Respondent

1. **José Daniel Meléndez Giménez** was, at all relevant times, a KPMG Colombia partner and the lead partner for the audit procedures the Firm performed over certain Colombian subsidiaries of Issuer A in connection with the audit of Issuer A’s financial statements for the year ended December 31, 2015 (the “Component Audit”). Melendez is a certified public accountant under the laws of Lara, Venezuela (registration no. 45.193). At all relevant times, Meléndez was 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).

B. Relevant Entities and Individuals

2. **KPMG Colombia** is a simplified stock company headquartered in Bogotá, Republic of Colombia.⁵ KPMG Colombia is a member of the KPMG international network of

³ The findings herein are made pursuant to Respondent’s Offer and are not binding on any other person or entity in this or any other proceeding.

⁴ The Board finds that Respondent’s conduct described in this Order meets the condition set out in Section 105(c)(5)(A) of the Act, 15 U.S.C. § 7215(c)(5)(A), which provides that certain 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.

⁵ See *KPMG S.A.S.*, PCAOB Rel. No. 105-2022-034 (Dec. 6, 2022).

firms (“KPMG Global”). The Firm is, and at all relevant times was, registered with the Board pursuant to Section 102 of the Act and PCAOB rules.

3. The “**Manager**” was formerly an employee of KPMG Colombia. He served as the manager for the Component Audit.⁶

4. The “**Senior**” was formerly an employee of KPMG Colombia. He served as the audit senior for the Component Audit.⁷

5. **Issuer A** was, at all relevant times, an “issuer” within the meaning of Section 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii). Another member firm of KPMG Global served as the principal auditor for Issuer A’s financial statements for the year ended December 31, 2015, and instructed KPMG Colombia to conduct the Component Audit.

C. Summary

6. This matter involves Respondent’s failure to cooperate with the PCAOB’s 2016 inspection of KPMG Colombia, and Respondent’s related violations of PCAOB audit documentation standards and ethics rules and standards. After the completion of the Component Audit and the expiration of the applicable documentation completion date, Respondent learned that the PCAOB’s Division of Registration and Inspections (“DRI”) would be inspecting the Component Audit. Respondent then led a wide-ranging review of the audit work papers, and instructed members of the engagement team to improperly make changes to the work papers and to backdate those changes.

7. Additionally, shortly before the inspection, Respondent signed a written certification, which he knew would be submitted to DRI, stating that no changes had been made to the work papers after the documentation completion date for the Component Audit. Respondent later revised the document containing that certification, after all of the changes described in this Order had taken place, without correcting that certification. Respondent knew that the revised certification would also be submitted to DRI.

⁶ See *Edgar Mauricio Ramírez Rueda*, PCAOB Rel. No. 105-2022-036 (Dec. 6, 2022).

⁷ See *Marco Alexander Rodríguez Ramírez*, PCAOB Rel. No. 105-2022-037 (Dec. 6, 2022).

8. As a result, and as further described below, Respondent violated PCAOB Rule 4006, *Duty to Cooperate with Inspectors*, AS 3, *Audit Documentation*, and ET § 102, *Integrity and Objectivity*.⁸

D. Respondent Violated PCAOB Rules, Auditing Standards, and Ethics Standards in Connection with the PCAOB’s 2016 Inspection

i. Rules and Standards

9. PCAOB Rule 4006 requires that “[e]very registered public accounting firm, and every associated person of a registered public accounting firm . . . cooperate with the Board in the performance of any Board inspection.”⁹ “Implicit in this cooperation requirement is that auditors provide accurate and truthful information.”¹⁰

10. PCAOB rules also require that associated persons of registered public accounting firms comply with applicable auditing and related professional practice standards.¹¹ Among other requirements, registered firms and their associated persons must comply with the auditing, ethics, and quality control standards adopted by the Board.¹²

11. The Board’s audit documentation standard states, in part: “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*). . . . Audit documentation must not be deleted or discarded after the documentation completion date, however, information may be added. Any documentation added must indicate the date the information

⁸ All references to PCAOB rules and standards in this Order are to the versions of those rules and standards, and to their organization and numbering, in effect at the time of the audit discussed herein.

⁹ PCAOB Rule 4006.

¹⁰ *Kabani & Co., Inc.*, Rel. No. 34-80201, 2017 WL 947229, at *12 (SEC Mar. 10, 2017) ((citations omitted)), *petition for review denied*, *Kabani & Co., Inc. v. SEC*, 733 F. App’x 918 (9th Cir. 2018); *see also* PCAOB Staff Audit Practice Alert No. 14, at *3 (Apr. 21, 2016) (“This duty to cooperate includes an obligation not to provide improperly altered documents or misleading information in connection with the Board’s inspection processes.” (citations omitted)).

¹¹ *See* PCAOB Rule 3100, *Compliance with Auditing and Related Professional Practice Standards*.

¹² *See* PCAOB Rule 3200T, *Interim Auditing Standards*; PCAOB Rule 3500T, *Interim Ethics and Independence Standards*.

was added, the name of the person who prepared the additional documentation, and the reason for adding it.”¹³

12. PCAOB ethics standards provide, in part, that an associated person “shall maintain objectivity and integrity” and “shall not knowingly misrepresent facts” in the performance of professional services.¹⁴ An associated person knowingly misrepresents facts in violation of ET § 102 when, for example, he or she knowingly: (i) makes, or permits or directs another to make, materially false and misleading entries in an entity’s records; or (ii) signs, or permits or directs another to sign, a document containing materially false and misleading information.¹⁵

ii. Respondent Improperly Modified the Component Audit Work Papers After the Documentation Completion Date and in Anticipation of a PCAOB Inspection

13. After completing the Component Audit, KPMG Colombia sent an interoffice report to the principal auditor by no later than February 25, 2016. The principal auditor released its audit report for the Issuer A audit by no later than February 26, 2016. As a result, the documentation completion date for all audit work performed for the Issuer A audit was no later than April 11, 2016.

14. On September 7, 2016, DRI informed KPMG Colombia that it would inspect the Firm’s work on the Component Audit. DRI identified (a) net sales and accounts receivable, and (b) property, plant, and equipment as the focus areas for the inspection. The Firm provided that same information to Meléndez on or about that same day.

15. After learning that DRI would inspect the Component Audit, Meléndez informed the Manager and Senior of that selection. Meléndez also instructed the Manager and Senior to perform a review of the audit documentation for the engagement, with assistance from the other members of the engagement team, and to provide Meléndez with comments from that review.

16. The Manager, Senior, and other members of the engagement team thereafter performed the review as Meléndez directed. On September 19, the Manager assembled the comments he received from the engagement team’s review of the Component Audit work

¹³ AS 3 ¶¶ 15-16 (emphasis in original).

¹⁴ See ET § 102.01.

¹⁵ See ET §§ 102.02(a), (c).

papers, including comments from the Senior, and forwarded them to Meléndez as an attachment to an email with the subject “To do PCAOB.”

17. After receiving the engagement team’s initial review comments, Meléndez informed the Manager and Senior that the engagement team needed to revise the audit work papers ahead of the inspection, including to address the comments from the engagement team’s review. At the time he gave that instruction, Meléndez planned to make only the revised versions of any modified workpapers available to DRI during the inspection.

18. The Manager, the Senior, and other members of the engagement team began revising the Component Audit work papers shortly after receiving Meléndez’s instruction.

19. After the engagement team began making changes, Meléndez personally performed a review of the audit work papers, including a review of some of the changes that the engagement team had already made pursuant to his recent instructions. From September 21 to October 2, Meléndez sent the Manager and Senior a series of emails providing detailed comments from his review for the engagement team to address through further revisions to the work papers.

20. Meléndez also enlisted others at KPMG Colombia to help review certain select areas of the audit work papers. Those individuals, at Meléndez’s request, likewise provided comments to the engagement team for consideration.

21. In some of the emails he sent to the Manager and Senior, Meléndez noted that it was possible to see in the revised version of the work papers that some of the changes had been made in September 2016, and he instructed the Manager and Senior to alter those dates. When providing that instruction, Meléndez intended to hide the fact that alterations were being made to the work papers after the documentation completion date.

22. Pursuant to Meléndez’s instructions, the engagement team altered and backdated multiple work papers between September 7, 2016, and the start of DRI’s inspection of the Firm’s work on the Component Audit. In making those changes, the engagement team members did not indicate the date they made the changes, who made the changes, or the reasons why the changes were made. To the contrary, the engagement team backdated the changes to dates before the documentation completion date, and concealed the actual revision dates, by improperly changing the date on a computer clock using an administrative passcode.

23. Meléndez was aware that the engagement team members did not document the reason(s) they were modifying the work papers after the documentation completion date.

Meléndez also knew that the engagement team had backdated the revised work papers, per his instructions, before the Firm provided the work papers to DRI.

24. Meléndez knew that DRI received the improperly modified and backdated work papers during the inspection fieldwork that took place from October 10, 2016, to October 21, 2016.

25. When taking the actions described in paragraphs 6 to 24, above, Meléndez intended to create the false appearance that the improperly modified and backdated work papers constituted the complete and final set of audit documentation assembled for retention for the Component Audit prior to the documentation completion date.

26. As a result of the above-described conduct, Meléndez violated PCAOB Rule 4006, AS 3, and ET § 102 in connection with the Board's 2016 inspection of the Firm and DRI's review of the Firm's work on the Component Audit.

iii. Meléndez Provided a Materially False and Misleading Certification to DRI

27. Prior to the start of the fieldwork for the inspection, Meléndez signed an engagement profile for the Component Audit, which he knew the Firm would provide to DRI in connection with the inspection. In that engagement profile, Meléndez represented that no modifications had been made to the audit documentation for the Component Audit. Meléndez dated his signature September 19, 2016, which was the same day that the Manager sent Meléndez the "To do PCAOB" email.

28. Despite his involvement in the modifications described above, and despite having previously signed the engagement profile indicating that no changes had been made to the audit documentation subsequent to the documentation completion date, Meléndez did not inform DRI or anyone else at the PCAOB that the work papers provided to DRI had been improperly modified and backdated, or provide DRI with information about the actual dates the work papers were modified and the reasons they were modified after the documentation completion date.

29. On or about October 20, 2016, Meléndez also revised the engagement profile, knowing that the revised engagement profile would also be provided to DRI in connection with the inspection. By that time, Meléndez knew that the engagement team had made improper revisions to a substantial number of work papers for the Component Audit after the documentation completion date and in anticipation of the inspection. Nevertheless, Meléndez continued to certify in the revised engagement profile that no changes had been made to the audit documentation for the Component Audit after the documentation completion date.

30. As a result of the above-described conduct, Meléndez further violated PCAOB Rule 4006 and ET § 102 in connection with the Board’s 2016 inspection of the Firm and DRI’s review of the Firm’s work on the Component Audit.

IV.

In view of the foregoing, and to protect the interests of investors and further the public interest in the preparation of informative, accurate, 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)(E) of the Act and PCAOB Rule 5300(a)(5), José Daniel Meléndez Giménez is hereby censured.
- B. Pursuant to Section 105(c)(4)(B) of the Act and PCAOB Rule 5300(a)(2), José Daniel Meléndez Giménez 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).¹⁶
- C. Pursuant to PCAOB Rule 5302(b), José Daniel Meléndez Giménez may file a petition for Board consent to associate with a registered public accounting firm after three years from the date of this Order.
- D. Pursuant to Section 105(c)(4)(D) of the Act and PCAOB Rule 5300(a)(4), a civil money penalty in the amount of \$25,000 is imposed on José Daniel Meléndez Giménez.
 - 1. All funds collected by the PCAOB as a result of the assessment of this civil money penalty will be used in accordance with Section 109(c)(2) of the Act.

¹⁶ As a consequence of the bar, the provisions of Section 105(c)(7)(B) of the Act will apply with respect to Meléndez. Section 105(c)(7)(B) provides: “It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any issuer, broker, or dealer in an accountancy or a financial management capacity, and for any issuer, broker, or dealer that knew, or in the exercise of reasonable care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission.”

2. Respondent shall pay the civil money penalty within ten days of the issuance of this Order by (a) wire transfer in accordance with instructions furnished by PCAOB staff; or (b) United States Postal Service money order, bank money order, certified check, or bank cashier's check (i) made payable to the Public Company Accounting Oversight Board, (ii) delivered to the Office of Finance, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington D.C. 20006, and (iii) submitted under a cover letter, which identifies José Daniel Meléndez Giménez as a respondent in these proceedings, sets forth the title and PCAOB release number of these proceedings, and states that payment is made pursuant to this Order, a copy of which cover letter and money order or check shall be sent to Office of the Secretary, Attention: Phoebe W. Brown, Secretary, Public Company Accounting Oversight Board, 1666 K Street, N.W., Washington, D.C. 20006.
3. If timely payment is not made, interest shall accrue at the federal debt collection rate set for the current quarter pursuant to 31 U.S.C. § 3717. Payments shall be applied first to interest.
4. With respect to any civil money penalty amounts that Respondent shall pay pursuant to this Order, Respondent shall not, directly or indirectly, (a) seek or accept reimbursement or indemnification from any source including, but not limited to, any current or former affiliated firm or professional or any payment made pursuant to any insurance policy; (b) claim, assert, or apply for a tax deduction or tax credit in connection with any federal, state, local, or foreign tax; nor (c) seek or benefit by any offset or reduction of any award of compensatory damages, by the amount of any part of Respondent's payment of the civil money penalty pursuant to this Order, in any private action brought against Respondent based on substantially the same facts as set out in the findings in this Order.
5. Respondent understands that failure to pay the civil money penalty described above may alone be grounds to deny any petition, pursuant to PCAOB Rule 5302(b), for Board consent to associate with a registered public accounting firm.
6. Respondent understands that the determination to accept Respondent's offer of a civil money penalty of \$25,000 is contingent

upon the accuracy and completeness of Respondent’s financial information provided to the Division of Enforcement and Investigations (the “Division”). Respondent also understands that, if at any time following this settlement the Division obtains information indicating that any financial information provided by Respondent—including, but not limited to, any information concerning assets, income, liabilities, or net worth—was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such information was provided, the Division may, at any time following entry of this Order, petition the Board to: (a) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such information was provided to the Division; and (b) seek an order directing payment of the maximum civil money penalty allowable under the law or any lesser amount determined to be appropriate. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (i) contest the findings in this Order; (ii) assert that payment of a civil money penalty should not be ordered; (iii) contest the amount of the civil money penalty to be ordered; or (iv) assert any defense to liability or remedy, including, but not limited to, any based on statute of limitations or any other time-related defense.

ISSUED BY THE BOARD.

/s/ Phoebe W. Brown

Phoebe W. Brown
Secretary

December 6, 2022