

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v. - : **SEALED INFORMATION**

BRIAN SWEET, : 18 Cr. ____ (____)

Defendant. :

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COUNT ONE
(Conspiracy to Defraud the United States)

The United States Attorney charges:

Relevant Entities and the Defendant

1. At all times relevant to this Information, the United States Securities and Exchange Commission (the "SEC") was an agency of the United States. The SEC is vested with the responsibility and authority, *inter alia*, to implement and enforce securities-related laws, including provisions of the Sarbanes-Oxley Act of 2002 ("SOX") and to protect investors by ensuring that they receive accurate audited financial information with respect to publicly traded companies.

2. At all times relevant to this Information, the Public Company Accounting Oversight Board (the "PCAOB") was a non-profit corporation created by SOX. As set forth in SOX, the PCAOB was created to "oversee the audit of companies that

are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports." The PCAOB is overseen by the SEC. Pursuant to SOX, all accounting firms that prepare or issue audit reports with respect to issuers of securities or securities brokers or dealers must register with the PCAOB.

3. At all times relevant to this Information, an accounting firm headquartered in New York, New York ("the Accounting Firm") was registered with the PCAOB as a "registered public accounting firm" as provided by SOX. Accordingly, the Accounting Firm was authorized to, and did, issue audit reports with respect to issuers of publicly traded securities.

4. From in or about 2009 to in or about April 2015, BRIAN SWEET, the defendant, was employed at the PCAOB as part of the staff responsible for inspections of registered public accounting firms, a process described more fully below. Beginning in or about May 2015, SWEET began working at the Accounting Firm as a partner in the department within the Accounting Firm responsible for ensuring that the Accounting Firm performed well during PCAOB inspections.

The PCAOB Inspection Process

5. As part of its statutory duties under SOX, the PCAOB conducts a continuing program of inspections of registered public accounting firms in order to ensure that such firms comply with SOX, SEC and PCAOB rules, and professional standards in connection with their performance of audits and the issuance of audit reports of companies issuing securities. These inspections usually entail the PCAOB examining the work that the accounting firm has performed with respect to particular audits of particular issuing companies, or brokers or dealers.

6. A large part of the PCAOB inspection process entails reviewing the work papers of an accounting firm with respect to particular audits. Pursuant to auditing standards promulgated by the PCAOB, accounting firms must complete documentation of any audit work within the 45-day period following the issuance of an audit opinion (the "Documentation Period") and must assemble a final set of audit documentation within that period. As a matter of practice, most large accounting firms, including the Accounting Firm, electronically "lock" audit documentation at the end of the

Documentation Period so that it is technologically impossible for any changes to be made.

7. The PCAOB treats as highly confidential its internal list of planned inspections for a given year and the PCAOB will generally only inform an auditing firm of an upcoming inspection after the 45-day Documentation Period has run, so that the work papers at issue will have already been finalized, and cannot be edited or improved upon in anticipation of a scheduled PCAOB inspection.

8. As required by SOX, once a PCAOB inspection is completed, the PCAOB prepares a written inspection report (the "Inspection Report") containing the findings of the PCAOB. An Inspection Report contains two sections. Part I of an Inspection Report summarizes the PCAOB's "comments" or findings with respect to individual audits for which deficiencies were identified. Barring an appeal by an accounting firm, Part I of an Inspection Report becomes public 30 days after it is issued. Part II of an Inspection Report addresses systemic deficiencies within the accounting firm. Accounting firms are given a one year period to remedy any deficiencies identified in Part II of the Inspection Report. Part II of an Inspection Report becomes public only if an

accounting firm fails to remedy any deficiencies within the one year period.

9. Pursuant to SOX, the PCAOB transmits both Part I and Part II of Inspection Reports to the SEC at the time of issuance. The SEC, in turn, utilizes these inspection reports to carry out its regulatory, oversight and enforcement functions.

10. In or about 2014, the Accounting Firm received comments from the PCAOB in approximately 28 of 51 inspections. This was approximately twice as many comments as the number of comments received by the Accounting Firm's competitors, on average.

11. Beginning in or about January 2015, the SEC communicated to the Accounting Firm that in light of the firm's poor performance in a number of PCAOB inspections, among other matters, the SEC had concerns with the Accounting Firm's audit quality.

The Scheme

12. Upon leaving his employment at the PCAOB in 2015, BRIAN SWEET, the defendant, took with him confidential PCAOB information, including a list of Accounting Firm audits that the PCAOB would inspect in 2015. In order to assist his new employer, the Accounting Firm, in improving its outcomes with

respect to PCAOB inspections, SWEET, in breach of his duties of confidentiality and other duties owed to the PCAOB, shared this list with others at the Accounting Firm.

13. In 2016 and 2017, BRIAN SWEET, the defendant, and others at the Accounting Firm obtained additional confidential PCAOB inspection information concerning the Accounting Firm audits that the PCAOB would inspect in those years. In 2016, in response to the receipt of that information, the Accounting Firm implemented steps to improve the documentation of the relevant audits (as the 45-day period had not yet closed). In 2017, in response to the receipt of that information, the Accounting Firm implemented steps to improve the audit work itself with respect to the relevant audits (as the audit opinions had not yet been issued). In both 2016 and 2017, the Accounting Firm acted in order to avoid negative inspection results and to give the appearance to the SEC, the PCAOB, and the general public that the Accounting Firm had performed well in these inspections while concealing that they had obtained confidential PCAOB information regarding which audits would be inspected.

Statutory Allegations

14. From at least in or about April 2015, up to and including in or about February 2017, in the Southern District

of New York and elsewhere, BRIAN SWEET, the defendant, and others known and unknown, willfully and knowingly combined, conspired, confederated, and agreed together and with each other to defraud the United States and an agency thereof, to wit, the SEC, in violation of Title 18, United States Code, Section 371.

15. It was a part and an object of the conspiracy that BRIAN SWEET, the defendant, and others known and unknown, willfully and knowingly, using deceit, craft, trickery and dishonest means, would and did defraud the United States and an agency thereof, to wit, the SEC, in any manner and for any purpose, to wit, by misappropriating, embezzling, obtaining, sharing, and using confidential information from the PCAOB, in order to fraudulently affect PCAOB inspection outcomes, the results of which were reported to the SEC and utilized by the SEC to carry out its regulatory and enforcement functions, thereby impeding, impairing, defeating, and obstructing the lawful function of the SEC, in violation of Title 18, United States Code, Section 371.

Overt Acts

16. In furtherance of said conspiracy and to effect the illegal object thereof, the following overt acts, among

others, were committed in the Southern District of New York and elsewhere:

a. In or about April 2015, BRIAN SWEET, the defendant, prior to leaving his position with the PCAOB and in anticipation of beginning employment at the Accounting Firm, and without the authorization of the PCAOB, copied valuable confidential information and documents belonging to the PCAOB from his PCAOB computer to a removable storage device.

b. In or about May 2015, SWEET emailed confidential PCAOB information concerning which of the Accounting Firm's engagements would be subject to inspection by the PCAOB in 2015 to other Accounting Firm personnel, including personnel located in the Southern District of New York.

c. On or about March 28, 2016, during the 45-day Documentation Period for most of the engagements at issue, SWEET acquired and shared valuable confidential PCAOB information concerning the identity of certain of the Accounting Firm's engagements that would be subject to inspection by the PCAOB in 2016 (the "2016 List").

d. In or about March and April 2016, in an effort to avoid poor inspection results, SWEET and others at the Accounting Firm utilized the 2016 List to conduct re-reviews

of audit work papers, and to make changes to those work papers, for the engagements on the 2016 List.

e. In or about January 2017, SWEET acquired and shared valuable confidential PCAOB information concerning the identity of certain of the Accounting Firm's engagements that would likely be subject to inspection by the PCAOB in 2017.

f. In or about February 2017, during the active audits for most of the engagements at issue, SWEET acquired and shared valuable confidential PCAOB information concerning the identity of all of the Accounting Firm's engagements that would be subject to inspection by the PCAOB in 2017 (the "2017 Final List").

g. In or about February 2017, in an effort to avoid poor inspection results, SWEET and others at the Accounting Firm utilized the 2017 Final List to notify engagement partners responsible for engagements on the 2017 Final List and to direct that additional work be done on such engagements.

(Title 18, United States Code, Section 371.)

COUNT TWO
(Conspiracy to Commit Wire Fraud)

The United States Attorney further charges:

17. From at least in or about April 2015, up to and including in or about February 2017, in the Southern District of New York and elsewhere, BRIAN SWEET, the defendant, and others known and unknown, willfully and knowingly combined, conspired, confederated, and agreed together and with each other to commit wire fraud in violation of Title 18, United States Code, Section 1343, to wit, SWEET and others known and unknown engaged in a scheme to defraud the PCAOB, by misappropriating, embezzling, obtaining, sharing, and using the PCAOB's property in the form of valuable confidential information and documents, and by transmitting the PCAOB's valuable confidential information by email, all in breach of duties of confidentiality and other duties owed by SWEET and other former or current PCAOB employees to the PCAOB.

18. It was a part and an object of the conspiracy that BRIAN SWEET, the defendant, and others known and unknown, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, would and did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures, and

sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

(Title 18, United States Code, Section 1349.)

FORFEITURE ALLEGATION: COUNTS ONE AND TWO

19. As a result of committing one or more of the offenses alleged in Counts One and Two of the Information, BRIAN SWEET, the defendant, shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, all property, real and personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the said offenses.

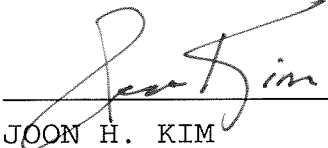
Substitute Asset Provision

20. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) and Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of the defendant up to the value of the above forfeitable property.

(Title 18, United States Code, Section 981;
Title 21, United States Code, Section 853; and
Title 28, United States Code, Section 2461.)



JOON H. KIM
Acting United States Attorney

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(18 U.S.C. §§ 371 & 1349.)

JOON H. KIM
Acting United States Attorney.
