

November 6, 2003

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

**RE: PCAOB Rulemaking Docket Matter No. 009 Proposed Rule Regarding Certain Terms Used in Auditing and Related Professional Practice Standards**

Dear Mr. Secretary:

The American Institute of Certified Public Accountants ("AICPA") appreciates the opportunity to submit written comments on the Public Company Accounting Oversight Board's ("PCAOB") proposed rule regarding certain terminology used in auditing and related professional practice standards. The AICPA is the largest professional association of Certified Public Accountants in the United States, with more than 340,000 members in public practice, business, industry, government, and education.

The AICPA commends the PCAOB for developing guidelines on the use of certain terms in auditing and related professional practice standards. We are, however, concerned with the implication for practitioners of some of the guidelines in the proposed rule. We acknowledge the very technical nature of the proposed rule and our comments. As a result, we stand ready to meet with the PCAOB and its staff to further clarify any of our recommendations. Our concerns are as follows:

**AICPA Comments on Rule 3101(a)(1)**

The proposed rule states:

The words "must," "shall," and "is required" indicate unconditional obligations. The auditor must accomplish obligations of this type in all cases in which the circumstances exist to which the obligation applies. Failure to discharge an unconditional obligation is a violation of Rule 3100.

We fully support use of the terms in connection with principles (for example, the auditor must exercise due professional care). We are, however, concerned that the rule may limit an auditor's ability to apply professional judgment in carrying out his or her obligations when it involves actions or procedures. Therefore, as the PCAOB promulgates future standards, we encourage it to use "must" when discussing principles and "shoulds" in connection with detailed procedures. We believe that using the term "must" in

connection with detailed procedures will reduce the effectiveness of auditing procedures because it will not allow the auditor to tailor those to the applicable industry and circumstances.

### **AICPA Comments on Rule 3101(a)(2)**

The proposed rule states:

The word "should" indicates obligations that are presumptively mandatory. The auditor must comply with requirements of this nature specified in the Board's standards unless the auditor can demonstrate, by verifiable, objective, and documented evidence, that alternative actions he or she followed in the circumstances were sufficient to achieve the objectives of the standard and serve adequately to protect the interests of investors and further the preparation of informative, fair, and independent audit reports. *Failure to discharge a presumptively mandatory obligation is a violation of Rule 3100 unless the firm or associated person carries the burden of establishing that, in the circumstances, compliance was not necessary to achieve the objectives of the standard [emphasis added].*

We have two concerns with this rule. First, the italicized text above seems inconsistent with the second sentence. Second, with respect to the required documentary evidence, Appendix 2, *Section-by-Section Analysis of Proposed Rule 3101*, indicates that the "evidence must be memorialized at the time of the audit, not after-the-fact, and must be made a part of the audit workpapers." This is not clearly stated in the rule. If the PCAOB's intent is to require the auditor to document the evidence during the audit and include it with the audit documentation, the AICPA recommends specifically stating that requirement in the rule.

To address our two concerns, we recommend to the PCAOB that it consider replacing the last sentence of Rule 3101(a)(2) (see italicized text above), with the following:

Failure to discharge a presumptively mandatory obligation is a violation of Rule 3100 unless the firm or associated person demonstrates that, in the circumstances, compliance with the specified obligation was not necessary to achieve the objectives of the standard. In that situation, the auditor must include in the audit documentation an explanation of how the alternative actions he or she followed in the circumstances were sufficient to achieve the objectives of the standard and serve adequately to protect the interests of investors and further the preparation of informative, fair, and independent audit reports. That explanation must be supported in the audit documentation by objective and verifiable evidence.

Additionally, the interim standards contain a number of requirements to consider (“should consider”) certain actions or procedures. Because of the documentation requirement in Rule 3101(a)(2) and the fact that a “consideration” doesn’t generally result in documentary evidence, Rule 3101(a)(2) in effect is requiring the auditor to document every instance of *compliance* with a “should consider” obligation. We therefore recommend that PCAOB specifically exclude from the scope of Rule 3101(a)(2) the “should consider” professional obligation. The professional obligation to “consider” matters, which is addressed in Rule 3101(a)(3) should be revised to apply to *all* considerations regardless of how that obligation is expressed (that is, whether it’s preceded by a “should,” “may,” “might,” or “could”).

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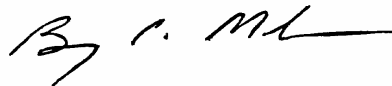
The AICPA recognizes the enormous effort put forth by the PCAOB members and staff to implement the provisions of the Sarbanes Oxley Act. Initially, a significant responsibility of PCAOB will be to help restore public confidence in audited financial statements of public companies and establishment and maintenance of high quality auditing and other professional standards is critical to that goal. The AICPA is committed to working with the PCAOB to continue developing high quality standards for audits of issuers.

We would be pleased to meet with PCAOB members and staff to discuss our comments.

Sincerely,



S. Scott Voynich, CPA  
Chairman of the Board



Barry C. Melancon, CPA  
President and CEO