

STATEMENT OF KAYLA J. GILLAN
July 26, 2005
Ethics and Independence Rules
Concerning Independence, Tax Services, and Contingency Fees

I support the rules before us today, and add my voice to those thanking Mr. Carmichael and Ms. Rivshin for their conscientious work on this project. Additionally, as usual, Samantha Ross and Gordon Seymour have provided invaluable insights and assistance, and I thank them as well. I also want to applaud the over 800 people and organizations that took the time to submit comment letters. It's not an understatement to say that your energy overwhelmed us. We have considered all of the views and recommendations offered, and I strongly believe that the final rules presented here today are better because of this valuable input.

First, we need to remember that "independence," like all virtues, is a state of mind. It cannot be guaranteed through legislation or regulation any more than greed can be banned. It will be important as these rules are implemented that both auditors and audit committees remain vigilant in their scrutiny of non-audit services, to ensure that independence is not only maintained as a matter of fact, but also as a matter of perception. Investor confidence is too valuable to become complacent in this area. Similarly, compliance with independence rules will continue to be a priority in the PCAOB inspections of registered firms.

Second, today's actions will, I hope, begin to heal long-festering sores. Let us not deceive ourselves; the "auditor independence" road journeyed during the past 5-1/2 years has been bumpy, twisted, and in many minds thoroughly unpleasant. Yet, this proposal – the subject of obvious wide interest to participants in our public markets – was almost unanimously praised by commenters as a balanced resolution to a sticky subject. Many in the investment community, while generally supporting the proposal, recommended more extensive prohibitions. Similarly, many in the corporate and audit community recommended that the prohibitions be slightly lessened. The fact that our final rules, although tweaked up and down and here and there, remain somewhat in between these two ends of the spectrum is, I think, healthy. While none may be ecstatic, I think most will be satisfied.

In this context, I'd like to turn to a recommendation that was not incorporated into the final rule. In Rule 3523, we prohibit the provision of personal tax services by the auditor to certain types of corporate employees. Some recommended that this be broadened to include either all directors of the company, or minimally the audit committee members. Others recommended that, as an alternative to restricting personal tax services to directors, we require the auditor to disclose these types of engagements to the audit committee.

I remain concerned about whether auditors are, in fact, disclosing this type of information to audit committees, and believe that we should through our inspection process monitor behavior. If actual practice does not conform to what we believe should be best practice, I as one Board member would support re-opening this issue for further rulemaking.