

**PROPOSAL ON AUDITOR INDEPENDENCE – AMENDMENT TO RULE 3523 AND
NEW RULE 3526**

Statement of Charles D. Niemeier
July 24, 2007 Open Meeting

I support the proposal to modify our rule relating to tax services provided by audit firms to individuals employed by audit clients. As I said when the Board issued its concept release, the way perceived impairments to independence have historically been addressed is to add rules to cover new situations that arise. But as the list of *per se* independence impairments has grown, so have the difficulties in finding auditors without conflicts. At times, conflicts have been resolved with individualized exemptions, but this is not a solution I favor. Such a process is not transparent or accessible to investors, and thus in fixing a conflict it may nevertheless further erode investor confidence that the rules protect auditor independence. Therefore, to avoid exacerbating the problem of increasing conflicts, I think we need to be careful to make sure our rules are no broader than necessary.

Tax services provided to managers involved in financial reporting during the audit present significant independence concerns. But at this stage in our process I am not convinced that those issues extend to the period before a firm commences a PCAOB audit and begins interaction with management for purposes of conducting the audit. Limiting the rule to cover only the professional engagement period would help to ensure our rules aren't broader than necessary.

I'd like to make one other point regarding our request for comment. The proposal describes how Rule 3523, as amended, would apply to registered firms that provided tax services to management prior to an IPO. That is, the rule would not prevent a firm from becoming the auditor of record for the IPO, even if prior to the IPO the firm had

performed tax services for individual managers. A number of commenters on our concept release asked the Board to consider providing a transition exception, so that firms could continue to provide personal tax services for the first 180 days of the audit engagement. I find this comment confusing. The transition period sought is long, and indeed could extend past the completion of the first PCAOB audit. That doesn't strike me as good policy, and unfortunately none of the comments in favor of such an exception provided any analysis showing that (1) the exception would not have a detrimental effect on auditor independence, or (2) even if it did, that the risk to auditor independence could be justified by a competing policy goal to maximize the pool of firms available to accept the audit engagement. We'll be asking for additional comment on this point. To the extent commenters continue to seek such an exception, I hope they will provide deeper analysis.

Finally, I support proposing to require auditors to have a dialogue with the audit committee about independence before they take on a new engagement. One of the reasons I favor keeping *per se* independence rules as narrow as necessary is that I put a lot of stock in the SEC's general requirement that companies and auditors avoid circumstances that would lead a reasonable investor to conclude that the auditor is not capable of exercising objective and impartial judgment. For this general requirement to work, though, I think it requires careful thought by auditors and audit committees as the first line of defense. The proposed new rule is designed to give audit committees the information they need to make this assessment and to encourage dialogue at an earlier stage than it necessarily takes place in every case today. I look forward to comment.