Date

14 February 2005

Le Président

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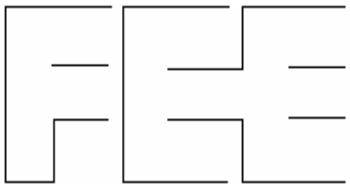

Office of the Secretary
Public Company Accounting Oversight Board (PCAOB)
1666 K Street, NW
USA - Washington D.C. 20006-2803

By e-mail: comments@pcaobus.org

Dear Sirs,

Re: PCAOB Rulemaking Docket Matter No. 017 – "Proposed Ethics and Independence Rules concerning Independence, Tax Services, and Contingent Fees"

FEE (Fédération des Experts Comptables Européens – European Federation of Accountants) is pleased to comment on the PCAOB Release No. 2004-15 "Proposed Ethics and Independence Rules concerning Independence, Tax Services, and Contingent Fees" (referred to as "the proposed standard") issued on 14 December 2004.

We agree with the principle that a registered public accounting firm must be independent of its audit client throughout the audit and professional engagement period.

We welcome the reconfirmation that the provision by a registered public accounting firm of the majority of tax services to its audit client is acceptable throughout the audit and professional engagement period, and in particular we are also appreciative of the clarification provided on the provision of routine tax return preparation and tax compliance, general tax planning and advice on business transactions, international assignment tax services and employee personal tax services.

We are supportive of the proposal that the provision of any service or product to the audit client for a contingent fee or a commission impairs the independence of a registered public accounting firms of its audit client throughout the engagement period.

We are sending a copy of our response to the International Federation of Accountants (IFAC) Ethics Committee and the European Commission as we have some concerns regarding the other proposals in the standard.

In addition to our overall comments on matters of principle, this letter includes comments on specific paragraphs.

Overall comments

Worldwide repercussions of proposed standard

The proposed standard will have a very wide impact not only on US-based auditors, but also on auditors throughout the world serving:

(1) SEC foreign registrant companies which choose to be listed in the US; and
(2) the relevant subsidiaries of US domestic SEC registrants which fall under the same requirements as the US domestic portion of the entity.

The auditors of both types of registrants will be required to comply with the rules set out in the proposed standard as well as their local ethics and independence laws and regulations concerning tax services and contingent fees which is expected to result in difficulties in application in practice. Certain restrictions as introduced by the proposed standard will not readily translate to environments outside the US.

Conceptual framework approach

European independence regulations are set in the European Commission Recommendation on Statutory Auditor's Independence in the European Union (EC Independence Recommendation) and in the IFAC Code of Ethics for Professional Accountants (IFAC Code of Ethics) and in the proposed Eighth Company Law Directive on Statutory Audit which mainly legislates some important elements of the EC Independence Recommendation. The conceptual framework approach forms the basis of both the IFAC Code of Ethics and the EC Independence Recommendation and has been endorsed by the International Organisation for Securities Organisations (IOSCO) in its Principles of Auditor Independence published in October 2002.

FEE supports the conceptual framework approach as a more appropriate basis for independence standards than the use of detailed rules only, as in certain of the provisions proposed by the PCAOB. Our profession is committed to respecting fundamental principles duly and consistently, supplemented by rules only where necessary, ensuring their proper application in particular circumstances.

Outlined in broad terms, the conceptual approach operates as follows:

- Fundamental principles are set out which must always be observed by a professional accountant. (In the case of audit, the subject of this guidance, the relevant fundamental principle is objectivity, which necessarily requires the professional accountant to be independent);
- The auditor must conscientiously consider, before taking on a piece of work, whether it involves threats which would impede the observance of the fundamental principles;
- Where such threats exist, the auditor must put in place safeguards that eliminate them or reduce them to clearly insignificant levels;
- If the auditor is unable to implement fully adequate safeguards, he must not carry out the work. In this particular situation, prohibition should be regarded as an ultimate safeguard.

In the rapidly evolving modern global economy, it is impossible to list comprehensively all possible threats to independence. In fact, such an approach is open to the danger of ignoring threats not specifically mentioned or detailed in the rules. Ethical guidance based on the conceptual framework approach includes examples of threats that might arise and appropriate safeguards to deal with them but these are clearly stated to be illustrative and not exhaustive. If an auditor were to appear before a disciplinary tribunal charged with a breach of ethical requirements, it would not be a sufficient defence to demonstrate that particular examples of threats and safeguards in the ethical code had been addressed. He would need to be able to demonstrate that, in the particular circumstances under consideration, the fundamental principles had in fact been observed – a far more rigorous test of compliance. The conceptual framework approach is also the best way for an audit committee to exercise judgement in relation to non-audit services as this approach allows it to consider the relevant threats and safeguards in the particular circumstances under consideration.

Listed transactions

We note that the approach adopted by the proposed standard assumes a registered public accounting firm as not being independent of its audit client if the firm, or any affiliate of the firm, provides services related to planning, or opining on the tax treatment of, a listed transaction as defined by the US Internal Revenue Service and Treasury (listed transactions). In effect therefore, we understand that the PCAOB's prohibition implies that no sufficient safeguard exists to eliminate the threats to an auditor's independence if such services were to be provided to an audit client.

In the majority of European Union member states, no similar listing of tax avoidance transactions has been established by the local tax authorities. In general, the 'anti-avoidance principle applies, whereby any tax transaction which has no real economic substance but only tax avoidance purposes is prohibited by tax laws and regulations. Listed transactions are specific to the US environment and therefore, the practical application of this aspect of the proposed standard might be difficult in Europe.

We propose that restrictions on advice on US listed transactions should be limited to US transactions and not extend to non-US transactions. There should also be no restriction on post-implementation services related to listed transactions, such as subsequent tax compliance activities and advice on disclosures.

Aggressive tax positions

Proposed Rule 3522 includes a provision that would treat a registered public accounting firm as not independent if the firm, or an affiliate of the firm, provides services, other than auditing services, related to planning or opining on a transaction that are based on an aggressive interpretation of applicable tax laws and regulations whereby a transaction is considered as aggressive when it satisfies three criteria as defined by the PCAOB.

We accept that a registered public accounting firm should not be promoting such aggressive and artificial tax planning arrangements to an audit client where the assessment is that the arrangements are not likely to be successful.

We recommend redrafting the second criterion as defined by the PCAOB ('a significant purpose of the transaction is tax avoidance') and replacing it with 'the sole business purpose of which is tax avoidance', in line with the wording used in the SEC's guidance to audit committees in its release accompanying its 2003 independence rules (Strengthening the Commission's Requirements Regarding Auditor Independence, SEC Release No. 33-8183, § II.B.11 (Jan. 28, 2003)).

FEE is also of the opinion that the proposed standard should use greater care in discussing whether a tax scheme is 'tax avoidance' rather than 'tax evasion'. The correct application of these terms has important consequences.

FEE understands that 'tax evasion' refers to any tax transaction or act which does not comply with the applicable tax laws and regulations. As such transactions or acts are illegal, neither audit firms nor audit clients should under any circumstances be associated with them.

'Tax avoidance' refers to any tax transaction or act permitted under the applicable tax laws and regulations, with the aim of reducing the tax liability for example by acceleration of deductions in to earlier taxable years or increasing the tax credits by deferring income inclusion to later taxable years. Such transactions or acts are legal and audit clients and other entities are entitled to take advantage of tax saving schemes within the boundaries of the applicable tax laws and regulations. When tax advisors are engaged to plan tax aspects of transactions, analyse tax consequences or other tax engagements, they have, whether they are registered accounting firms or not, a duty to advise audit clients on solutions allowing the latter to save taxes where legitimate.

The borderline between 'tax evasion' and 'tax avoidance' is often thin and if tax avoidance transactions are performed *only* with the aim of avoiding paying tax, have no real economic substance and are too aggressive, then there is a risk that tax authorities will consider them illegal. Audit firms and audit clients alike should refrain from offering or entering into such transactions.

FEE believes that the proposed standard at times may confuse the use of the terms 'tax evasion' and 'tax avoidance' whereby the proposed standard considers 'tax avoidance' to be on the same level as 'tax evasion', and thus as illegal which is not necessarily the case. We believe this to be the case on Page 7, second paragraph, on Page 31, Aggressive Tax Positions, second bullet point, on Page 33, first paragraph and on Page A-5, Rule 3522 (c). Also, we believe that footnote 67 on Page 33 should make reference to 'tax evasion' rather than 'tax avoidance'.

Tax Services for Senior Officers in a Financial Reporting Oversight Role

The proposed Rule 3523 provides that a registered public accounting firm is not independent of its audit client if the firm, or any affiliate of the firm, during the audit and professional engagement period, provides any tax service to an officer in a financial reporting oversight role at the audit client. The proposed rule's use of the term 'financial reporting oversight role' includes any individual who has direct responsibility for oversight over those who prepare the issuer's financial statements and related information.

Given the fact that the financial reporting oversight responsibility over the preparation of the financial statements is *either* an individual responsibility of particular members of the board of directors or its equivalent but not of each member of the board of directors *or* a collective responsibility of the board of directors and not an individual responsibility of any one member of the board of directors, it is not appropriate to place a prohibition on the provision of any tax services by the registered public accounting firm to each member of the board of directors of an audit client.

FEE can accept that the provision of tax services to the management of a listed audit client who are responsible for both the preparation and oversight of the financial statements might impair the auditor's independence; in any case FEE is of the opinion that a prohibition should not be applicable to those charged with governance of the audit client, i.e. the non-executive directors in a one-tier board structure systems and the supervisory board in a two-tier board system who have no involvement with the financial reporting process.

The rules-based approach adopted by the proposed standard does not allow for either the proper identification of the threat posed by the provision of such tax services to those charged with the financial reporting oversight role or the safeguards the registered public accounting firm may put in place to eliminate the threats to its independence or reduce them to insignificant levels, which would be required under the conceptual framework approach. Where it is not possible to reduce or mitigate the threats, for instance in case of a close personal relationship, the conceptual framework approach prohibits the registered public accounting firm from providing any tax services to those charged with governance of an audit client.

FEE also believes the role of the audit committee of an audit client in the pre-approval of tax services should also be considered in this respect.

FEE also suggests in this context that the definition of senior officers in a financial reporting oversight role would benefit from further clarification. For example, the introduction of criteria similar to the criteria to be used to determine whether the provision of aggressive tax positions by an audit firm to an audit client impairs the audit firm's independence or not, would be very useful. Also, the restrictions should only be applied to those in a financial reporting oversight role at the issuing company itself. The definitions of 'affiliate of the audit client' and 'investment company complex' appears to bring in officers at companies other than the issuing company itself.

The Auditor's Involvement with the Audit Committee

We are of the opinion that the focus of the process whereby an audit committee considers pre-approval for a registered public accounting firm to perform any permissible tax service for an audit client should be on a proper discussion at the audit committee meetings of the type and extent of services which may be provided. A discussion coupled with the transparency provided by regular reporting of work performed as already required by Independence Standards Board No. 1 (ISB 1) applied by the SEC and the disclosure of non-audit fees in the financial statements and related filings should be a sufficient process. Also, the process adopted should be the same for all non-audit services with no additional requirements for tax services.

Proposed Rule 3524 introduces additional procedures to the requirements for an audit client's audit committee to consider pre-approval for a registered public accounting firm to perform permissible tax services to the audit client. These additional requirements appear very detailed and bureaucratic. FEE questions the appropriateness of mandating these additional procedures as they will be very burdensome and time-consuming for the accounting firm and the audit client's audit committee to fulfil to no apparent public benefit.

Also, FEE is of the opinion that the existing process set out by the SEC should not be extended until there is an opportunity to properly review how it is operating in practice and that it should be extended only in the event that clear shortcomings are identified.

Comments on specific paragraphs

Effective date

The effective date for the rules included in the proposed standard related to tax services is 20 October 2005 or 10 days after the SEC approves the rules, if later. FEE considers that the rules should apply to projects pre-approved after the effective date. All tax services related to any past or future year which were permissible by law and regulations prior to the issuance of the proposed standard may be provided through the effective date of the rules.

A suitable transition period should be allowed following the issue of the final rules. A one year period would seem appropriate consistent with the transition period when the SEC independence rules were introduced.

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If you have any further questions about our views on these matters, do not hesitate to contact us.

Yours sincerely,

David Devlin
President